

October 8, 2025

**Request for Bids
Lansing School District
Purchasing Department
519 West Kalamazoo
Lansing, MI 48933**

This is not an order

Sealed proposals for the furnishing of items and services listed on the sheets attached to the bid proposal documents that are available on our web-site will be received in the Lansing School District Purchasing Office, 519 W. Kalamazoo St., Lansing, Michigan 48933 until

October 30, 2025, 2:00 PM local time.

At this time and place bids will be opened publicly and read aloud.

One (1) original and Two (2) copies of the bid are to be submitted on the forms furnished by the Lansing School District in a sealed envelope and clearly marked:

Bid SO-1846 Lyons Elementary Asphalt Replacement

BID DOCUMENTS WILL BE POSTED BY October 13, 2025

To obtain a copy of this request for bid please visit our web site at:

www.lansingschools.net

(Click on Quicklinks at the top and click on Vendors (Bid Info), scroll down to Current Requests for Bids or Proposals) or the bid documents are also posted on the State of Michigan's procurement system SIGMA. If you need assistance, please contact the Lansing School District Purchasing Department at 517-755-3030.

No faxed, telephone or e-mailed bids will be accepted. Late submittals will not be considered.

All questions must be in writing and should be directed to Jon Laing, Director of Procurement at:

Projects@lansingschools.net, no later than 5:00 PM on Wednesday, October 22, 2025. Addendums will be posted on the Lansing School District's web-site and SIGMA as they are issued.

All bids/proposals must be accompanied by a 5% bid bond and a sworn and notarized statement disclosing any familial relationship with the Board of Education and selected staff. Bids must include the completed statement to be accepted or considered.

All bids shall be submitted in accordance with the attached instructions and shall remain firm for a period of ninety (90) days after the opening of bids.

A bid bond is required with this bid in the amount of 5% of the total bid amount. Certified payrolls are required with each invoice or pay application. A performance, labor and materials bond will be required to cover 100% of the project.

The Lansing School District reserves the right to reject any or all bids in whole or in part and to accept the proposal or portion of the proposal that, in their opinion, best serves the interests of the Lansing School District.

Lansing School District

Jon Laing
Director of Procurement

PRE-BID INFORMATION

There will be a Pre-Bid Meeting held Tuesday, October 21, 2025 at 10:00 AM at Forest View Elementary, 3119 Stoneleigh Dr, Lansing, MI. (Combined meeting for Forest View and Lyons) Attendance is HIGHLY RECOMMENDED.



**Lansing School District
Lyons Asphalt Replacement**

SO-1846

**2901 Lyons Ave,
Lansing, MI 48910**

Bid Package 1

October 06, 2025

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DOCUMENT 00 11 00 - ADVERTISEMENT FOR BIDS

1.1 GENERAL

A. Construction Manager Contact Information

Bidding: estimating@lauxconstruction.com

Co-Director of Project Management:

Brian Stiebe
517-694-0117

brian@lauxconstruction.com

Project Manager: Chais VanDeventer

517-694-0117

chais@lauxconstruction.com

Assistant PM: TBD

B. Instructions to Bidders: See below.

C. Bid Basis: Bids must be on stipulated sum basis.

D. Receipt of Bids: Construction Manager will receive bids until **2:00 PM (ET) Thursday, October 30, 2025**, at the Lansing School District Offices located at 519 W. Kalamazoo Lansing, MI.

E. Bid Opening: Bids will be opened publicly shortly after the bid submission deadline at the LSD Offices Board Room. Please note that only attendees at the public opening will receive bid results. Bid results will NOT be released to anyone not attending the in-person public bid opening.

F. Bid Security: Five (5%) percent of highest possible Bid amount is required to be submitted with each bid. Bid security can be in the form of a bid bond or cashier's check.

G. Irrevocability: Bids may not be withdrawn for period of 30 days after submittal.

H. **Bidder to Hold Prices until August 2026**

1.2 INSTRUCTIONS TO BIDDERS

A. Laux Construction/Lansing School District is accepting bids for multiple work categories associated with the asphalt replacement of Lyons.

B. Bidders are to submit **THREE (3) HARD COPIES** of their bid submission in a sealed envelope addressed to Lansing School District 519 W. Kalamazoo Lansing, MI 48933. Please note "Forest View Asphalt Replacement—Work Category ____" on the outside of the envelope. Please mark "ORIGINAL" on one copy and "COPY" on the other two copies of the bid submission.



- C. Bids are to be hand-delivered or mailed so that they are received no later than **2:00 pm (ET) on Thursday, October 30, 2025.**
- D. Bidders are to include the following in their bid submission:
1. Completed and signed bid form.
 2. Bid Security (5%)
 3. Supplier/Vendor Application
 4. Commodity List
 5. Affidavit of Bidder (Familial Disclosure)
 6. Non-Discrimination in Employment Certification
 7. Affidavit of Bidder (Non-Collusion)
 8. Iran Economic Sanctions Act Certificate
 9. Legal Status of Bidder
- E. Bid security (bid bond or cashier's check) in the amount of 5% of the bid amount will be required with all bid submission.
- F. Successful bidders **may** be required to provide 100% performance and payment bonds. Do NOT include the cost of performance bonds in your bid. A line has been provided on the bid form to indicate the additional cost for the bonds should they be required by the CM.
- G. Prevailing wages/certified payroll will **NOT** be required for this project.
- H. Any allowances listed in Price and Payment Procedures section/WC descriptions are to be included in the base bid amount for the respective WC's.
- I. Laux Construction will obtain the general building permit. MEP trades will be responsible for their respective permit and associated fees. All permits are to be obtained from State of Michigan Bureau of Construction Codes.
- J. Bidders are to review the entire set of documents and familiarize themselves with all work category descriptions.
- K. Post bid interviews will be held by the construction manager and LSD on October 31st at times TBD for the apparent low three bidders from each work category. Interviews will be conducted with a virtual, online meeting via Teams. Links to these meetings will be provided by the construction manager.
- L. Questions are to be submitted in writing to the Lansing School District via email to projects@lansingschools.net no later than **5:00 pm on Friday, October 22, 2025.** Please cc Laux Construction on these emails at estimating@lauxconstruction.com or chais@lauxconstruction.com



1.3 BIDDING DOCUMENTS

A. Bidders may obtain documents in Adobe PDF format from the following sources:

1. Submit written request to the construction manager via email to estimating@lauxconstruction.com
A link will be provided via Procore.
2. At the website of Lansing School District www.lansingschools.net
3. State of Michigan SIGMA Vendor Self Service website.
4. Builders Exchange of Lansing www.bxlansing.com
5. Builders Exchange of Michigan www.grbx.com
6. Kalamazoo Builders Exchange www.builder-exchange.com

1.4 BIDDER QUALIFICATIONS/OWNER ACCEPTANCE

- A. Bidder may be required to submit a qualification statement, including financial records upon request of the construction manager.
- B. It is the owner's intent to accept the lowest, most responsible bidder; however, Lansing District reserves the right to accept or reject any and all bids that are in the best interest of the district.

1.5 PRE-BID CONFERENCE

- A. Pre-bid conference will be held at **10:00 am local time on Tuesday, October 21st, 2025**, at the Forest View project site, located at 3119 Stoneleigh Dr. Lansing, MI 48910. (PLEASE NOTE BOTH THE FOREST VIEW AND LYONS PRE-BID WILL BE HELD AT THE FOREST VIEW LOCATION)
- B. Attendance is not mandatory, but highly recommended. Bidders will be responsible for any existing site conditions that are visible during the walkthrough.
- C. Representatives of Construction Manager and Lansing School District will be in attendance.

1.6 EXAMINATION OF PROJECT SITE

- A. Examination of the site will be conducted immediately following the pre-bid conference.

1.7 FORM OF TRADE CONTRACTOR/VENDOR AGREEMENT

- A. A subcontractor agreement will be issued by Laux Construction (trade contractors). Suppliers will receive a purchase order agreement. See attached examples.

1.8 ALTERNATES AND ALLOWANCES

Refer to Section 01 20 00.01 Price and Payment Procedures for required alternates and allowances.

END OF DOCUMENT



DOCUMENT 00 30 00 - AVAILABLE PROJECT INFORMATION

1.1 Documents

- A. Project manual by Laux Construction, dated October 06, 2025.
- B. Site overview/map
- C. HMA Pavement Section
- D. Basketball Hoops Cut Sheets

END OF DOCUMENT



DOCUMENT 00 41 00 - BID FORM

DATE October 30, 2025 2:00 pm

PROJECT **Lyons Asphalt Replacement
Bid Package 1**

OWNER Lansing School District

DESIGN PROFESSIONAL N/A

BIDDER _____

WORK CATEGORY _____

1.1 ACKNOWLEDGEMENTS

- A. Bidder accepts the provisions of Bidding Documents.
- B. Bidder will enter into a contract with the Construction Manager for this work upon approval of their recommendation by the Lansing School District.
- C. Bidder will complete the Work in accordance with the Bidding Documents prepared by Laux Construction.
- D. Bidder has received the following Addenda:

No. _____ Dated _____, 20____

No. _____ Dated _____, 20____

No. _____ Dated _____, 20____

No. _____ Dated _____, 20____

No. _____ Dated _____, 20____



1.2 BID SUMS

A. Base Bid: Bidder will complete the Project for stipulated sum of:

Lyons Elementary: \$_____

B. Performance & Payment Bonds: Add the following amount should 100% P & P bonds be required by the construction manager:

\$_____

C. Alternate Bids (Do not include cost of bonds in alternate total):

- **None**

D. Unit Prices:

- **No unit prices**

1.3 TIME FOR PERFORMANCE OF WORK

A. All work related to the asphalt is to start in June, 2026 and be substantially complete and ready for occupancy no later than July, 2026.

Submitted by:

Firm Name _____ By _____

Street Address _____ Signature _____

City, State and Zip Code _____ Title _____

Telephone _____



Bidder is a (corporation) (partnership) (sole proprietorship) (Bidder strike out inapplicable terms)

Corporations affix Corporate Seal

State in which incorporated _____

BIDDING/ESTIMATOR CONTACT:

Name _____ Phone: _____

Email Address: _____

PROPOSED PROJECT MANAGER:

Name _____ Phone: _____

Email Address: _____

END OF DOCUMENT

LANSING SCHOOL DISTRICT
PURCHASING DEPARTMENT
519 W. KALAMAZOO ST., ROOM 200
LANSING MI 48933
(517) 755-3030
FAX (517) 755-3019

SUPPLIER/VENDOR APPLICATION
(Please type or print)

PURFR016 – 7/7/08 – Version 5

MARK ONE:

- ☐ New Application
☐ Update

Date: _____

W-9 form attached? ☐ YES ☐ NO

DUN & BRADSTREET RATING (if available)

NAME OF COMPANY		FEDERAL ID NUMBER (OR) SOCIAL SECURITY NUMBER Submit copy of W-9 form with application	
ADDRESS TO WHICH BIDDING FORMS AND PURCHASE ORDERS ARE TO BE MAILED – STREET NO., CITY, STATE, ZIP CODE			
ADDRESS TO WHICH PAYMENTS ARE TO BE MAILED – STREET NO., CITY, STATE, ZIP CODE			
PARENT COMPANY AND ADDITIONAL OFFICE LOCATIONS IN MICHIGAN (May attach separate sheet)			
E-MAIL ADDRESS: For Purchase orders to be emailed		WEB SITE:	
TYPE OF ORGANIZATION ☐ Individual ☐ Partnership ☐ Corporation		TELEPHONE #: _____ FACSIMILIE #: _____	
PERSONS TO CONTACT AND THOSE AUTHORIZED TO SIGN BIDS AND CONTRACTS IN YOUR NAME (if agent, so specify)			
Name		Official Capacity	
		Telephone No.	
PLEASE LIST ON THE REVERSE SIDE CLASSES OF EQUIPMENT, SUPPLIES, MATERIALS, AND/OR SERVICES ON WHICH YOU DESIRE TO BID. ☐ Do you require a hard copy of verbal orders? Yes ____ No ____ Do you accept Procurement Cards? Yes ____ No ____ ☐ Electronic Disk Catalog ☐ Electronic Ordering			
Please complete the following: STANDARD PAYMENT TERMS: _____ PROMPT PAY DISCOUNT: _____ STANDARD DELIVERY TIME: _____			
PLEASE COMPLETE BELOW Please list percentage and circle category that applies: MINORITY OWNED: ____% Native-American Asian-Pacific American African-American Hispanic-American Asian-Indian American WOMEN OWNED: ____% White Native-American Asian-Pacific American African-American Hispanic-American Asian-Indian American DISABLED: ____% SMALL BUSINESS: Yes ____ No ____ Business located within LANSING SCHOOL District Yes ____ No ____ Are you certified? If so, list agencies _____ Certificate Number: _____ _____ _____ _____			
SIGNATURE OF PERSON AUTHORIZED TO SIGN THIS APPLICATION _____ NAME AND TITLE OF PERSON SIGNING (Please type or print) _____			

COMMODITY LIST

Please place a checkmark (✓) by the appropriate code and provide a detailed description of the commodities and/or services offered. If the complete NAICS Code is known please include this number in the description area.
Website URL address for NAICS is: <http://www.census.gov/epcd/www/naics.html>

NAICS CODE	DESCRIPTION
____11 – Agriculture, Forestry, Fishing and Hunting	
____21 – Mining	
____22 – Utilities	
____23 – Construction	
____31-33 – Manufacturing	
____42 – Wholesale Trade	
____44-45 – Retail Trade	
____48-49 – Transportation and Warehousing	
____51 – Information	
____52 – Finance and Insurance	
____53 – Real Estate and Rental and Leasing	
____54 – Professional, Scientific and Technical Services	
____55 – Management of Companies and Enterprises	
____56 – Administrative & Support, Waste Management & Remediation Services	
____61 – Educational Services	
____62 – Health Care and Social Assistance	
____71 – Arts, Entertainment and Recreation	
____72 – Accommodation and Foodservices	
____81 – Other Services (except Public Administration)	
____92 – Public Administration	
____99 – Unclassified Establishments	

CATEGORY (Check below the category which applies to the applicant)

- ☐ (A) Manufacturer or Producer ☐ (B) Wholesaler ☐ (C) Retailer ☐ (D) Mfg'r's Agent ☐ (E) Distributor
☐ (F) Service Establishment



Committed to Quality

STATEMENT OF NO BID

NOTE: IF YOU DO NOT INTEND TO BID, PLEASE RETURN THIS FORM ONLY TO:

Lansing School District
519 W KALAMAZOO ST
LANSING, MI 48933

BID NO: # _____

PHONE: 517-755-3030
FAX: 517-755-3019

We, the undersigned, have declined to bid on the above noted bid for the following reasons:

_____ Insufficient time to respond to the invitation to Bid.

_____ Request for Proposal is unclear.

_____ Do not offer this product or service.

_____ Our schedule will not permit us to perform.

_____ Unable to meet the specifications

_____ Specifications are unclear (Please explain below)

_____ Remove us from your Bidder Mailing List

_____ Other (Please specify below)

REMARKS:

Company Name: _____

Signature: _____

Date: _____ Telephone: _____ Fax: _____

AFFIDAVIT OF BIDDER

The undersigned, the owner or authorized officer of _____ (the "Bidder), pursuant to the familial disclosure requirement provided in the _____ (the "School District") advertisement for construction bids, hereby represent and warrant, except as provided below, that no familial relationships exist between the owner(s) or any employee of _____ and any member of the Board of Education of the School District or the Superintendent of the School District.

List any Familial Relationships:

BIDDER:

By: _____

Its: _____

STATE OF MICHIGAN)
)ss.
COUNTY OF _____)

This instrument was acknowledged before me on the _____ day of _____, 20____, by
_____.

, Notary Public

_____ County, Michigan

My Commission Expires: _____

Acting in the County of: _____

NON-DISCRIMINATION IN EMPLOYMENT CERTIFICATION

**Lansing School District
Certificate of Intent to Comply with
“NON-DISCRIMINATION IN EMPLOYMENT” POLICY**

I have read Lansing School District’s Policy #3122, including paragraph #13 and hereby state my intent to comply with the terms and conditions contained therein. Further I agree to furnish the Michigan Civil Rights Commission with such data and records concerning employment as may be requested by that agency in determining compliance with the policy.

Print or type name of Contact Person:

Signed: _____

Title: _____

Company: _____

Date: _____



Book	Policy Manual
Section	3000 Professional Staff
Title	NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY
Code	po3122
Status	Active
Adopted	November 1, 2016
Last Revised	December 2, 2021

3122 - **NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY**

The Board of Education does not discriminate on the basis of race, color, national origin, sex (including sexual orientation and gender identity), disability, age, religion, height, weight, marital or family status, military status, ancestry, genetic information, or any other legally protected category, (collectively, "Protected Classes"), in its programs and activities, including employment opportunities.

Definitions:

Words used in this policy shall have those meanings defined herein; words not defined herein shall be construed according to their plain and ordinary meanings.

Race is inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles. For purposes of this definition, "protective hairstyles" includes, but is not limited to, such hairstyles as braids, locks, and twists.

Complainant is the individual who alleges, or is alleged, to have been subjected to unlawful discrimination/retaliation, regardless of whether the person files a formal complaint or is pursuing an informal resolution to the alleged discrimination/retaliation.

Respondent is the individual who has been alleged to have engaged in unlawful discrimination/retaliation, regardless of whether the Reporting Party files a formal complaint or is seeking an informal resolution to the alleged discrimination/retaliation.

School District community means students and Board employees (i.e., administrators, and professional and classified staff), as well as Board members, agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.

Third Parties include, but are not limited to, guests and/or visitors on School District property (e.g., visiting speakers, participants on opposing athletic teams, parents), vendors doing business with, or seeking to do business with, the Board, and other individuals who come in contact with members of the School District community at school-related events/activities (whether on or off District property).

Day(s): Unless expressly stated otherwise, the term "day" or "days" as used in this policy means a business day(s) (i.e., a day(s) that the Board office is open for normal operating hours, Monday - Friday, excluding State-recognized holidays).

For purposes of this policy, "military status" refers to a person's status in the uniformed services, which includes the performance of duty, on a voluntary basis, or involuntary basis, in a uniformed service including active duty, active duty for training, initial active duty for training, inactive duty for training, full-time National Guard duty. It also includes the period of time for which a person is absent from employment for the purpose of an examination to determine the fitness of the person to perform any such duty as listed above.

District Compliance Officers

The Board designates the following individuals to serve as the District's "Compliance Officers" (also known as "Civil Rights Coordinators") (hereinafter referred to as the "COs").

Michael Jones

Title IX Coordinator
517-755-2832
519 W Kalamazoo
Lansing, MI 48933
michael.jones@lansingschools.net

Unaa Holiness
Human Resources Manager
517-755-2010
519 W Kalamazoo
Lansing, MI 48933
unaa.holiness@lansingschools.net

The names, titles, and contact information of these individuals will be published annually on the School District's web site and in the staff handbooks and in the School District Annual Report to the public

The COs are responsible for coordinating the District's efforts to comply with applicable Federal and State laws and regulations, including the District's duty to address in a prompt and equitable manner any inquiries or complaints regarding discrimination/retaliation or denial of equal access. The COs shall also verify that proper notice of nondiscrimination for Title II of the Americans with Disabilities Act (as amended), Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 (as amended), and the Age Discrimination in Employment Act of 1975 is provided to staff members and the general public. A copy of each of the Acts and regulations on which this notice is available upon request from the CO.

Reports and Complaints of Unlawful Discrimination and Retaliation

Employees are required to report incidents of unlawful discrimination and/or retaliation to an administrator, supervisor, or other District-level official so that the Board may address the conduct. Any administrator, supervisor, or other District-level official who receives such a report shall file it with the CO within two (2) days.

Employees who believe they have been unlawfully discriminated/retaliated against are entitled to utilize the complaint process set forth below. Initiating a complaint, whether formally or informally, will not adversely affect the Complainant's employment. While there are no time limits for initiating complaints under this policy, individuals should make every effort to file a complaint as soon as possible after the conduct occurs while the facts are known and potential witnesses are available.

The COs will be available during regular school/work hours to discuss concerns related to unlawful discrimination/retaliation. COs shall accept reports of unlawful discrimination/retaliation directly from any member of the School District community or a Third Party, or received reports that are initially filed with another Board employee. Upon receipt of a report of alleged discrimination/retaliation, the CO will contact the Complainant and begin either an informal or formal complaint process (depending on the Complainant's request and the nature of the alleged discrimination/retaliation), or the CO will designate a specific individual to conduct such a process. The CO will provide a copy of this policy to the Complainant and the Respondent. In the case of a formal complaint, the CO will prepare recommendations for the Superintendent or oversee the preparation of such recommendations by a designee. All members of the School District community must report incidents of discrimination/retaliation that are reported to them to the CO within two (2) business days of learning of the incident/conduct.

Any Board employee who directly observes unlawful discrimination/retaliation is obligated, in accordance with this policy, to report such observations to one of the COs within two (2) business days. Additionally, any Board employee who observes an act of unlawful discrimination/retaliation is expected to intervene to stop the misconduct, unless circumstances make such an intervention dangerous, in which case the staff member should immediately notify other Board employees and/or local law enforcement officials, as necessary, to stop the misconduct. Thereafter, the CO or designee must contact the Complainant within two (2) business days to advise of the Board's intent to investigate the alleged wrongdoing.

Investigation and Complaint Procedure (See Form 3122 F2)

Except for sex discrimination and/or Sexual Harassment that is covered by Policy 2266 - Nondiscrimination on the Basis of Sex in Education Programs or Activities, any employee who alleges to have been subjected to unlawful discrimination or retaliation may seek resolution of the complaint through the procedures described below. The formal complaint procedures involve an investigation of the individual's claims of discrimination/retaliation and a process for rendering a decision regarding whether the charges are substantiated.

Due to the sensitivity surrounding complaints of unlawful discrimination or retaliation, timelines are flexible for initiating the complaint process; however, individuals are encouraged to file a complaint within thirty (30) days after the conduct occurs. Once the formal complaint process is begun, the investigation will be completed in a timely manner (ordinarily, within fifteen (15) business days of the complaint being received).

The procedures set forth below are not intended to interfere with the rights of any individual to pursue a complaint of unlawful discrimination or retaliation with the United States Department of Education Office for Civil Rights or Equal Employment Opportunity Commission ("EEOC").

Informal Complaint Procedure

The goal of the informal complaint procedure is to promptly stop inappropriate behavior and facilitate resolution through an informal means, if possible. The informal complaint procedure is provided as a less formal option for an employee who alleges unlawful discrimination or retaliation. This informal procedure is not required as a precursor to the filing of a formal complaint. The informal process is only available in those circumstances where the Complainant and the Respondent mutually agree to participate in it.

The Complainant may proceed immediately to the formal complaint process and individuals who participate in the informal procedure may request that the informal process be terminated at any time to move to the formal complaint process.

All complaints involving a District employee or any other adult member of the School District community and a student will be formally investigated.

As an initial course of action, if a Complainant feels comfortable and safe doing so, the individual should tell or otherwise inform the Respondent that the allegedly discriminatory/retaliatory conduct that it is inappropriate and must stop. The Complainant should address the alleged misconduct as soon after it occurs as possible. The COs are available to support and counsel the Complainant when taking this initial step or to intervene on behalf of the individual if requested to do so. A Complainant who is uncomfortable or unwilling to directly approach the Respondent about the inappropriate conduct may file an informal or a formal complaint. In addition, with regard to certain types of unlawful discrimination (e.g., sex discrimination), the CO may advise against the use of the informal complaint process.

A Complainant who alleges unlawful discrimination/retaliation may make an informal complaint, either orally or in writing: (1) to a building administrator; (2) directly to one of the COs; and/or (3) to the Superintendent or other District-level employee.

All informal complaints must be reported to one of the COs who will either facilitate an informal resolution as described below, or appoint another individual to facilitate an informal resolution.

The School District's informal complaint procedure is designed to provide the Complainant with a range of options aimed at bringing about a prompt resolution of their concerns. Depending upon the nature of the complaint and the wishes of the Complainant, informal resolution may involve, but not be limited to, one or more of the following:

- A. Advising the Complainant about how to communicate concerns to the Respondent.
- B. Distributing a copy of Policy 3122 – Non-Discrimination and Equal Employment Opportunity to the individuals in the school building or office where the Respondent works.
- C. If both parties agree, the CO may arrange and facilitate a meeting or mediation between the Complainant and the Respondent to work out a mutual resolution.

While there are no set time limits within which an informal complaint must be resolved, the CO or designee is directed to attempt to resolve all informal complaints within fifteen (15) business days of receiving the informal complaint. If the Complainant is dissatisfied with the informal complaint process, the Complainant may proceed to file a formal complaint and, as stated above, either party may request that the informal process be terminated at any time to move to the formal complaint process.

Formal Complaint Procedure

If a complaint is not resolved through the informal complaint process, if one of the parties requested that the informal complaint process be terminated to move to the formal complaint process, or if the Complainant, from the outset, elects to file a formal complaint, or the Compliance Officer(s) determines the allegations are not appropriate for resolution through the informal process, the formal complaint process shall be implemented.

A Complainant may file a formal complaint, either orally or in writing, with a principal, the CO, Superintendent, or other District official. Due to the sensitivity surrounding complaints of unlawful discrimination and retaliation, timelines are flexible for initiating the complaint process; however, individuals should make every effort to file a formal complaint within thirty (30) days after the conduct occurs. If a Complainant informs a principal, Superintendent, or other District official, either orally or in writing, about any complaint of discrimination/retaliation, that employee must report such information to the CO/designee within two (2) business days.

Throughout the course of the process, the CO should keep the parties reasonably informed of the status of the investigation and the decision-making process.

All formal complaints must include the following information to the extent known: the identity of the Respondent; a detailed description of the facts upon which the complaint is based (i.e., when, where, and what occurred); a list of potential witnesses; and the resolution sought by the Complainant.

If the Complainant is unwilling or unable to provide a written statement including the information set forth above, the CO shall ask for such details in an oral interview. Thereafter, the CO will prepare a written summary of the oral interview, and the Complainant will be asked to verify the accuracy of the reported charge by signing the document.

Upon receiving a formal complaint, the CO will consider whether any action should be taken in the investigatory phase to protect the Complainant from further discrimination or retaliation, including, but not limited to, a change of work assignment or schedule for the Complainant and/or the Respondent. In making such a determination, the CO should consult the Complainant to assess whether the individual agrees with the proposed action. If the Complainant is unwilling to consent to the proposed change, the CO may still take whatever actions deemed appropriate in consultation with the Superintendent.

Within two (2) business days of receiving the complaint, the CO or designee will initiate a formal investigation to determine whether the Complainant has been subjected to unlawful discrimination/retaliation.

Simultaneously, the CO will inform the Respondent that a formal complaint has been received. The Respondent will be informed about the nature of the allegations and provided with a copy of any relevant policies and/or administrative guidelines, including Policy 3122 - Non- Discrimination and Equal Employment Opportunity. The Respondent must also be informed of the opportunity to submit a written response to the formal complaint within five (5) days.

Although certain cases may require additional time, the CO or a designee will attempt to complete an investigation into the allegations of discrimination/retaliation within fifteen (15) business days of receiving the formal complaint. The investigation will include:

- A. interviews with the Complainant;
- B. interviews with the Respondent;
- C. interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations;
- D. consideration of any documentation or other information presented by the Complainant, Respondent, or any other witness that is reasonably believed to be relevant to the allegations.

At the conclusion of the investigation, the CO/designee shall prepare and deliver a written report to the Superintendent that summarizes the evidence gathered during the investigation and provides recommendations based on the evidence and the definition of unlawful discrimination/retaliation as provided in Board policy and State and Federal law as to whether the Respondent has engaged in unlawful harassment/retaliation of the Complainant. The CO's recommendations must be based upon the totality of the circumstances. In determining if discrimination or retaliation occurred, a preponderance of evidence standard will be used. The CO may consult with the Board's legal counsel before finalizing the report to the Superintendent.

Absent extenuating circumstances, within five (5) business days of receiving the report of the CO or the designee, the Superintendent must either issue a written decision regarding whether the charges have been substantiated or request further investigation. A copy of the Superintendent's final decision will be delivered to both the Complainant and the Respondent.

If the Superintendent requests additional investigation, the Superintendent must specify the additional information that is to be gathered, and such additional investigation must be completed within five (5) business days. At the conclusion of the additional investigation, the Superintendent must issue a final written decision as described above.

If the Superintendent determines the Respondent engaged in unlawful discrimination/retaliation toward the Complainant, the Superintendent must identify what corrective action will be taken to stop, remedy, and prevent the recurrence of the discrimination/retaliation. The corrective action should be reasonable, timely, age-appropriate, and effective, and tailored to the specific situation.

The Board reserves the right to investigate and resolve a complaint or report of unlawful discrimination/retaliation regardless of whether the employee alleging the unlawful discrimination/retaliation pursues the complaint. The Board also reserves the right to have the formal complaint investigation conducted by an external person in accordance with this policy or in such other manner as deemed appropriate by the Board or its designee.

The right of a person to a prompt and equitable resolution of the complaint shall not be impaired by the person's pursuit of other remedies such as the filing of a complaint with the Office for Civil Rights, the filing of charges with local law enforcement, or the filing of a civil action in court. Use of this internal complaint process is not a prerequisite to the pursuit of other remedies.

Privacy/Confidentiality

The District will employ all reasonable efforts to protect the rights of the Complainant, the Respondent(s), and the witnesses as much as possible, consistent with the Board's legal obligations to investigate, to take appropriate action, and to conform with any discovery or disclosure obligations. All records generated under the terms of this policy shall be maintained as confidential to the extent permitted by law. Confidentiality, however, cannot be guaranteed. Additionally, the Respondent must be provided the Complainant's identity.

During the course of a formal investigation, the CO or designee will instruct each person who is interviewed about the importance of maintaining confidentiality. Any individual who is interviewed as part of an investigation is expected not to disclose to third parties any information that is learned or provided during the course of the investigation.

Sanctions and Monitoring

The Board shall vigorously enforce its prohibitions against unlawful discrimination/retaliation by taking appropriate action reasonably calculated to stop and prevent further misconduct. While observing the principles of due process, a violation of this policy may result in disciplinary action up to and including the discharge of an employee. All disciplinary action will be taken in accordance with applicable State law and the terms of the relevant collective bargaining agreement(s). When imposing discipline, the Superintendent shall consider the totality of the circumstances involved in the matter. In those cases where unlawful discrimination/retaliation is not substantiated, the Board may consider whether the alleged conduct nevertheless warrants discipline in accordance with other Board policies, consistent with the terms of the relevant collective bargaining agreement(s).

Where the Board becomes aware that a prior remedial action has been taken against an employee, all subsequent sanctions imposed by the Board and/or Superintendent shall be reasonably calculated to end such conduct, prevent its recurrence, and remedy its effect.

Retaliation

Retaliation against a person who makes a report or files a complaint alleging unlawful harassment/retaliation or participates as a witness in an investigation is prohibited. Neither the Board nor any other person may intimidate, threaten, coerce or interfere with any individual because the person opposed any act or practice made unlawful by any Federal or State civil rights law, or because that individual made a report, formal complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, or hearing under those laws and/or this policy, or because that individual exercised, enjoyed, aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by those laws and/or this policy.

Retaliation against a person for making a report of discrimination, filing a formal complaint, or participating in an investigation or meeting is a serious violation of this policy that can result in imposition of disciplinary sanctions/consequences and/or other appropriate remedies.

Formal complaints alleging retaliation may be filed according to the internal complaint process set forth above.

The exercise of rights protected under the First Amendment of the United States Constitution does not constitute retaliation prohibited under this policy.

Education and Training

In support of this policy, the Board promotes preventative educational measures to create greater awareness of unlawful discriminatory practices. The Superintendent shall provide appropriate information to all members of the School District community related to the implementation of this policy and shall provide training for District students and staff where appropriate. All training, as well as all information provided regarding the Board's policy and discrimination in general, will be age and content appropriate.

Retention of Investigatory Records and Materials

The Compliance Officer(s) is responsible for overseeing retention of all records that must be maintained pursuant to this policy. All individuals charged with conducting investigations under this policy shall retain all documents, electronically stored information ("ESI"), and electronic media (as defined in Policy 8315) created and/or received as part of an investigation, which may include but not be limited to:

- A. all written reports/allegations/complaints/grievances/statements/responses pertaining to an alleged violation of this policy;
- B. any narratives that memorialize oral reports/allegations/complaints/grievances/statements/responses pertaining to an alleged violation of this policy;
- C. any documentation that memorializes the actions taken by District personnel or individuals contracted or appointed by the Board to fulfill its responsibilities related to the investigation and/or the District's response to the alleged violation of this

policy;

- D. written witness statements;
- E. narratives, notes from, or audio, video, or digital recordings of witness interviews/statements;
- F. e-mails, texts, or social media posts that directly relate to or constitute evidence pertaining to an alleged violation of this policy (i.e., not after-the-fact commentary about or media coverage of the incident);
- G. notes or summaries prepared contemporaneously by the investigator in whatever form made (e.g., handwritten, keyed into a computer or tablet, etc.), but not including transitory notes whose content is otherwise memorialized in other documents;
- H. written disciplinary sanctions issued to students or employees and other documentation that memorializes oral disciplinary sanctions issued to students or employees for violations of this policy;
- I. dated written determinations/reports (including summaries of relevant exculpatory and inculpatory evidence) and other documentation that memorializes oral notifications to the parties concerning the outcome of the investigation, including any consequences imposed as a result of a violation of this policy;
- J. documentation of any supportive measures offered and/or provided to the Complainant and/or Respondent, including no-contact orders issued to both parties, the dates the no-contact orders were issued, and the dates the parties acknowledged receipt of the no-contact orders;
- K. documentation of all actions taken, both individual and systemic, to stop the discrimination or harassment, prevent its recurrence, eliminate any hostile environment, and remedy its discriminatory effects;
- L. copies of the Board policy and/or procedures/guidelines used by the District to conduct the investigation, and any documents used by the District at the time of the alleged violation to communicate the Board's expectations to students and staff with respect to the subject of this policy (e.g., Student Codes of Conduct and/or Employee Handbooks);
- M. copies of any documentation that memorializes any formal or informal resolutions to the alleged discrimination or harassment.

The documents, ESI, and electronic media (as defined in Policy 8315) retained may include public records and records exempt from disclosure under Federal (e.g., FERPA, ADA) and/or State law – e.g., student records and confidential medical records.

The documents, ESI, and electronic media (as defined in Policy 8315) created or received as part of an investigation shall be retained in accordance with Policy 8310, Policy 8315, Policy 8320, and Policy 8330 for not less than three (3) years, but longer if required by the District's records retention schedule.

Revised 10/19/17

Revised 11/15/18

T.C. 3/8/21

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Legal

M.C.L. 37.2101 et seq., 37.1101 et seq.

Fourteenth Amendment, U.S. Constitution

20 U.S.C. Section 1681, Title IX of Education Amendment Act

20 U.S.C. Section 1701 et seq., Equal Educational Opportunities Act of 1974

20 U.S.C. Section 7905, Boy Scouts of America Equal Access Act

42 U.S.C. 6101 et seq., Age Discrimination Act of 1975

42 U.S.C. 12101 et seq., The Americans with Disabilities Act of 1990, as amended

34 C.F.R. Part 110 (7/27/93)

42 U.S.C. 2000ff et seq., The Genetic Information Nondiscrimination Act

42 U.S.C. 2000e et seq., Civil Rights Act of 1964

29 U.S.C. 701 et seq., Rehabilitation Act of 1973 as amended

29 C.F.R. Part 1635

AFFIDAVIT OF BIDDER - NON-COLLUSION

Lansing School District
AFFIDAVIT OF BIDDER
SWORN STATEMENT
“Non-Collusion”

DATE: _____

The Bidder, by its officers and agents or representatives, present at the time of filing this bid, being duly sworn, on their oaths, say that neither they nor any of them, have in any way, directly or indirectly, entered into any arrangement or agreement with any other Bidder, whereby such affiant or affiants or either of them has paid or is to pay to such other Bidder any sum of money, or has given, or is to give, to such other Bidder anything of value whatever, or such affiant or affiants or either of them has not, directly or indirectly, entered into any arrangement or agreement with any other Bidder or Bidders, which tends to or does lessen or destroy free competition in the letting of the Contract sought for by the attached bids; that no inducement of any form or character other than that which appears upon the face of the bid, will be suggested, offered, paid or delivered to any person whomsoever to influence the acceptance of the said bid or awarding of the Contract, nor has this Bidder any agreement or understanding of any kind whatsoever, with any person whomsoever to pay, deliver to, or share with any other person in any way or manner, any of the proceeds of the Contract sought by this bid.

IN TESTIMONY WHEREOF, the Bidder (an authorized individual) has agrees to the above:

(Company Name)

By: _____
(Authorized Signer)

Print or type Name and Title of Signer

Address: _____

Notary Public: _____

Subscribed and sworn to before me on this _____ day of _____, 2016

County of: _____ My Commission expires: _____

Telephone number: _____

IRAN ECONOMIC SANCTIONS ACT CERTIFICATE

In accordance with the Iran Economic Sanctions Act, Michigan 2012 PA 517, effective April 1, 2013, (MCL 129.311, *et seq.*), (the "Act"), the undersigned certifies in support of its bid or proposal that it is not an Iran linked business as such is defined in the Act.

Contractor: _____

By: _____

Dated: _____

Name: _____

Title: _____

Act No. 517
Public Acts of 2012
Approved by the Governor
December 28, 2012
Filed with the Secretary of State
December 28, 2012
EFFECTIVE DATE: April 1, 2013

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senators Kahn, Marleau, Brandenburg, Anderson, Green and Booher

ENROLLED SENATE BILL No. 1024

AN ACT to prohibit persons who have certain economic relationships with Iran from submitting bids on requests for proposals with this state, political subdivisions of this state, and other public entities; to require bidders for certain public contracts to submit certification of eligibility with the bid; to require reports; and to provide for sanctions for false certification.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "Iran economic sanctions act".

Sec. 2. As used in this act:

- (a) "Energy sector of Iran" means activities to develop petroleum or natural gas resources or nuclear power in Iran.
- (b) "Investment" means 1 or more of the following:
 - (i) A commitment or contribution of funds or property.
 - (ii) A loan or other extension of credit.
 - (iii) The entry into or renewal of a contract for goods or services.
- (c) "Investment activity" means 1 or more of the following:
 - (i) A person who has an investment of \$20,000,000.00 or more in the energy sector of Iran.
 - (ii) A financial institution that extends \$20,000,000.00 or more in credit to another person, for 45 days or more, if that person will use the credit for investment in the energy sector of Iran.
- (d) "Iran" means any agency or instrumentality of Iran.
- (e) "Iran linked business" means either of the following:
 - (i) A person engaging in investment activities in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran.
 - (ii) A financial institution that extends credit to another person, if that person will use the credit to engage in investment activities in the energy sector of Iran.
- (f) "Person" means any of the following:
 - (i) An individual, corporation, company, limited liability company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group.
 - (ii) Any governmental entity or instrumentality of a government, including a multilateral development institution, as defined in section 1701(c)(3) of the international financial institutional act, 22 USC 262r(c)(3).

(iii) Any successor, subunit, parent company, or subsidiary of, or company under common ownership or control with, any entity described in subparagraph (i) or (ii).

(g) "Public entity" means this state or an agency or authority of this state, school district, community college district, intermediate school district, city, village, township, county, public authority, or public airport authority.

Sec. 3. (1) Beginning April 1, 2013, an Iran linked business is not eligible to submit a bid on a request for proposal with a public entity.

(2) Beginning April 1, 2013, a public entity shall require a person that submits a bid on a request for proposal with the public entity to certify that it is not an Iran linked business.

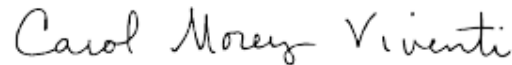
Sec. 4. If a public entity determines, using credible information available to the public, that a person has submitted a false certification under section 3(2), the public entity shall provide the person with written notice of its determination and of the intent not to enter into or renew a contract with the person. The notice shall include information on how to contest the determination and specify that the person may become eligible for a future contract with the public entity if the person ceases the activities that cause it to be an Iran linked business. The person shall have 90 days following receipt of the notice to respond in writing and to demonstrate that the determination of false certification was made in error. If a person does not make that demonstration within 90 days after receipt of the notice, the public entity may terminate any existing contract and shall report the name of the person to the attorney general together with information supporting the determination.

Sec. 5. The attorney general may bring a civil action against any person reported under section 4. If a civil action results in a finding that the person submitted a false certification, the person is responsible for a civil penalty of not more than \$250,000.00 or 2 times the amount of the contract or proposed contract for which the false certification was made, whichever is greater, the cost of the public entity's investigation, and reasonable attorney fees, in addition to the fine. A person who submitted a false certification shall be ineligible to bid on a request for proposal for 3 years from the date the public entity determines that the person has submitted the false certification.

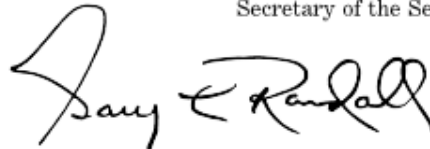
Sec. 6. The provisions of this act are effective only if Iran is a state sponsor of terror as defined under section 2 of the divestment from terror act, 2008 PA 234, MCL 129.292.

Enacting section 1. This act takes effect April 1, 2013.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

LEGAL STATUS OF BIDDER

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS.

The Vendor and/or Bidder certifies to the best of its knowledge and belief that it and its principals: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency; Have not within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated above in this certification; and Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State, or local) terminated for cause or default; is not now or has been, within a three-year period preceding this date, been listed on the Excluded Parties List System website (EPLS).

Vendor/contractor will notify the Lansing School District Purchasing Office immediately upon becoming suspended or debarred if there is any current or ongoing contract or agreement in place between the district and the vendor/contractor.

Firm Name:

Address:

Phone &

E-mail:

Name, title and signature of individual duly authorized to execute contracts:

The Owner, Principal, or Corporate Office of the responding firm is also attesting that all the information provided within this response is true.

Name:

Title:

Signature:

**A Corporation organized and existing under the laws of the
State of _____**

General Conditions and Instructions to Bidders

1. Proposals shall be submitted on forms furnished by the owner. The proposal shall be in accordance with the specifications listed, which are available at the Lansing School District Purchasing Office.

Any variance from the specifications shall be fully explained in writing by the bidder and all prices quoted shall be on a unit price basis.

2. MAILING OF PROPOSALS:

Proposals shall be mailed in an opaque, sealed envelope and shall be clearly marked describing the project upon which the bid is made.

3. No oral, telegraphic facsimile, or electronic mail proposals or modifications will be considered.

4 WITHDRAWAL OF BIDS:

Any bidder may withdraw their bid at any time prior to the scheduled time of opening the bids upon the presentation of proper identification. After the opening of the bids, no proposal shall be withdrawn for a period of ninety (90) days.

5. PROPOSAL FORMS AND SIGNATURES:

Proposals shall be made on the proper forms provided by the owner. All spaces shall be properly filled in with ink or typewriter. The signatures shall be in longhand in ink by an authorized representative.

6. BRANDS:

The naming of a manufacturer, brand or model number shall not be considered as excluding other brands or models. Specifically, similar products with comparable construction, material and workmanship shall be considered as equal. However, the Board of Education of the Lansing School District shall evaluate the merits of all bids submitted and reserves the right to accept or reject any or all bids.

It is the intent of the attached specifications to define the minimum quality of equipment acceptable. The product lines of nationally recognized manufacturers who regularly advertise, promote and distribute catalog products to the school market are required.

7. SAMPLES:

Samples shall be submitted upon request at the expense of each bidder. These samples will be retained as control items until the completion of the delivery and installation.

8. AGENDA:

Any modifications of contract documents will be issued in the form of an addendum.

All addenda issued during the bidding time shall become part of the specifications. A copy of the addendum shall be sent to all bidders. No verbal statements by the owner shall be considered as authoritative. No request for explanations can be processed within four (4) days immediately prior to the bid opening date.

9. VARIATIONS FROM MATERIALS SPECIFIED:

All variations from the specified material or equipment shall be fully explained and included with the bid. Manufacturer numbers shall be used in all cases.

10. ROYALTIES AND PATENTS:

The contract shall pay for all royalties and patents, and shall defend all suits for claims or infringements on patent rights and save the owner harmless from loss on account thereof.

11. CLEAN-UP:

The contractor shall at all times, keep the premises free from accumulations of waste materials or same caused by the work; and upon completing the work, shall remove all work related rubbish from and about the building and shall leave the work broom clean, or it equivalent. In the case of dispute, the owner may remove the rubbish and charge the cost to the contractor, as the owner shall determine.

12. FEDERAL, STATE AND MUNICIPAL TAXES:

Each proposal submitted shall include, and the contractor shall pay, all taxes which are levied by the Federal, State and Municipal Governments, on labor, and for materials entering into the work. The owner reserves the right to require evidence of payment of such taxes prior to final payment. The school district is exempt from Federal Excise Tax.

General Conditions and Instructions to Bidders

13. QUALIFICATIONS OF BIDDERS:

The owner may request any or all bidders to submit any of the following information before the award of the contracts.

- A. A bidder's performance record
- B. The address and description of bidder's equipment, plant or permanent place of business.
- C. An itemized list of the bidder's equipment, plant and personnel.
- D. A bidder's financial statement.
- E. A description of any project which the bidder has completed.
- F. Such additional information as will satisfy the owner that the bidder is adequately prepared to fulfill the contract.
- G. Description of work which will be done simultaneously with the owner's project.

14. NOTICE OF AWARD:

The contracts shall be deemed as having been awarded when the formal notice of acceptance of their proposal has been duly served upon the intended awardees (normally by purchase order) by some officer or agent of the owner duly authorized to give such notice.

15. GUARANTEE:

Each contract shall furnish the owner a written guarantee running for one (1) year, or longer as required herein, after the final payment covering all work in the contract. Any defects in workmanship or materials for which a claim is submitted within this period shall be corrected.

16. DOCUMENTS:

The Proposals submitted shall be based upon the specifications contained herein.

17. RIGHTS OF ACCEPTANCE OR REJECTION:

The Board of Education of the Lansing School District reserves the right to reject any or all bids in whole or in part and to accept the bid or portion of bid that, in their opinion, best serves the interest of the School District.

18. Contractors and subcontractors are required not to discriminate against any employee or applicant for employment, to be employed in the performance of this contract, with respect to hire, tenure, terms, conditions or privileges of employment because of race, color, religion, national origin, or ancestry or also because of age or sex, except based on a bona fide occupational qualification. Breach of this covenant of purchasing agreement as provided in the Michigan Fair Employment Practices Act and may be processed there under. See Policy 6320.

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**BOARD OF EDUCATION
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PURCHASING

Procurement of all supplies, materials, equipment, and services paid for from District funds shall be made in accordance with all applicable Federal and State statutes, Board policies, and administrative procedures. Standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts are established in Policy 1130, Policy 3110, and Policy 4110 – Conflict of Interest.

All procurement transactions shall be conducted in a manner that encourages full and open competition and in accordance with good administrative practice and sound business judgement.

Each year the State of Michigan informs the School of the legal amount for purchases which require a formal bidding process of a single item.

It is the policy of the Board that the Superintendent adhere to the following:

- A. Seek informal price quotations on purchases in excess of \$3,000.
- B. When the purchase of, and contract for, single items of supplies, materials, or equipment is less than the amount allowed by State statute, but exceeds \$10,000 the Superintendent shall whenever possible, require three (3) competitive price quotations.

Purchases in a single transaction that are in excess of the dollar amount permitted by State statute shall require competitive bids and, whenever possible, have at least three (3) such bids for substantiation of purchase and shall require approval of the Board prior to purchase.

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Competitive Bids

Competitive bids are not required for items purchased through the cooperative bulk purchasing program operated by the Michigan Department of Management and Budget pursuant to M.C.L. 18.1263.

Competitive bids are not required for food purchases, unless food purchased in a single transaction costs \$100,000 or more.

When food purchased in a single transaction exceeds \$100,000, the Superintendent shall, whenever possible, require three (3) competitive price quotations.

Bids shall be sealed and shall be opened by the Director of Purchasing in the presence of at least one (1) witness. All orders or contracts should be awarded to the lowest responsible bidder; however, consideration can be given to:

- A. the quality of the item(s) to be supplied;
- B. its conformity with specifications;
- C. suitability to the requirements of the school;
- D. delivery terms;
- E. past performance of vendor.

In addition to the factors above, the Board may consider and provide a preference to bidders

- A. which use a Michigan-based business as the primary contractor.
- B. which use one (1) or more Michigan-based business as subcontractors.

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For purposes of this preference a Michigan-based business means a business that would qualify for a Michigan preference for procurement contracts under M.C.L. 18.1268, which requires that the businesses certify that since inception or during the last twelve (12) months it has done one of the following:

- A. have filed a Michigan business tax return showing an allocation of income tax base to Michigan
- B. have filed a Michigan income tax return showing income generated in or attributed to Michigan
- C. withheld Michigan income tax from compensation paid to the bidder's owners and remitted the tax to the Michigan Department of Treasury

This preference shall not apply to any procurement or project using Federal funds, nor shall it be used if it would violate any Federal law or requirements.

The Board reserves the right to reject any and all bids.

Contracts may be awarded by the Superintendent without Board approval for any single item or group of identical items costing less than the dollar amount permitted by State Statute. All other contracts require Board approval prior to purchase.

Bid Protest

A bidder who wishes to file a bid protest must file such notice and follow procedures prescribed by the Request For Proposals (RFP) or the individual bid specifications package, for resolution. Bid protests must be filed in writing with the Office of the Superintendent within seventy-two (72) hours of the opening of the bids in protest.

Within five (5) days of receipt of a protest, the Superintendent shall review the protest as submitted and render a decision regarding the merits of the protest and any impact on the acceptance and rejection of bids submitted. Notice of the filing of a bid protest shall be communicated to the Board and shall be so noted in any subsequent recommendation for the acceptance of bids and awarding of contracts.

Failure to file a notice of intent to protest, or failure to file a formal written protest within the time prescribed, shall constitute a waiver of proceedings.

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BOARD OF EDUCATION LANSING SCHOOL DISTRICT

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General Provisions

The Superintendent is authorized to purchase all items within budget allocations.

The Board should be advised, for prior approval, of all purchases of equipment, materials, and services when the purchase

- A. was not contemplated during the budgeting process.
- B. exceeds the previously Board approved amount by ten percent (10%).

The Superintendent is authorized to make emergency purchases, without prior approval, of those goods and/or services needed to keep the school in operation. Such purchases shall be brought to the Board's attention at the next regular meeting.

In order to promote efficiency and economy in the operation of the school, the Board requires that the Superintendent periodically estimate requirements for standard items or classes of items and make quantity purchases on a bid basis to procure the lowest cost consistent with good quality.

Whenever storage facilities or other conditions make it impractical to receive total delivery at any one time, the total quantity to be shipped but with staggered delivery dates, shall be made a part of the bid specifications.

Before placing a purchase order, the Superintendent shall check as to whether the proposed purchase is subject to bid, whether sufficient funds exist in the budget, and whether the material might be available elsewhere in the school. All purchase orders shall be numbered consecutively.

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**BOARD OF EDUCATION
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The Superintendent shall determine the amount of purchase which shall be allowed without a properly signed purchase order. Employees may be held personally responsible for anything purchased without a properly signed purchase order or authorization.

The Board may acquire office equipment as defined in law by lease, by installment payments, by entering into lease-purchase agreements, or by lease with an option to purchase, provided the contract sets forth the terms of such a purchase.

Procurement – Federal Grants

The Superintendent shall maintain a procurement and contract administration system in accordance with the USDOE requirements (34 CFR 80.36) for the administration and management of Federal grants and federally-funded programs. The District shall maintain a compliance system that requires contractors to perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Except as otherwise noted, procurement transactions shall conform to the provisions of this policy and administrative guidelines (AG 6320).

M.C.L. 380.1267, 380.1274 et seq.

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policy

**BOARD OF EDUCATION
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NEW SCHOOL CONSTRUCTION, RENOVATION

Before beginning construction of a new school building, or an addition, repair or renovation of an existing school building, except emergency repairs, the Board of Education, shall obtain competitive bids on all the material and labor required for the complete construction of a proposed new building or addition to or repair or renovation of an existing school building which exceeds the State statutory limit.

This policy does not apply to buildings, renovations, or repairs costing less than the statutory limit or to repair work normally performed by District employees.

The Board shall advertise for the bids required under subsection:

- A. By placing an advertisement for bids at least once in a newspaper of general circulation in the area where the building or addition is to be constructed or where the repair or renovation of an existing building is to take place and by posting an advertisement for bids for at least two (2) weeks on the Department of Management and Budget website on a page on the website maintained for this purpose or on a website maintained by a school organization and designated by the Department of Management and Budget for this purpose.
- B. By submitting the request for bids for placement on the Michigan Department of Management and Budget's website for school organizations, including a link to the District's website.
- C. The advertisement for bids shall do all of the following:
 - 1. specify the date and time by which all bids must be received by the Board at a designated location;
 - 2. state that the Board will not consider or accept a bid received after the date and time specified for bid submission;
 - 3. identify the time, date, and place of a public meeting at which the Board or its designee will open and read aloud each bid received by the Board by the date and time specified in advertisement;

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4. state that the bid shall be accompanied by a sworn and notarized statement disclosing any familial relationship that exists between the owner or any employee of the bidder and any member of the Board or the Superintendent of the District. A Board shall not accept a bid that does not include this sworn and notarized disclosure statement.
- D. The Board shall require each bidder for a contract under this policy, to file with the Board security in an amount not less than 1/20 of the amount of the bid conditioned to secure the District from loss or damage by reason of the withdrawal of the bid or by the failure of the bidder to enter a contract for performance, if the bid is accepted by the Board.
- E. The Board shall not open, consider, or accept a bid that the Board receives after the date and time specified for bid submission in the advertisement for bids as described in subsection C of this policy.
- F. At a public meeting identified in the advertisement for bids described in subsection C of this policy, the Board or its designee shall open and read aloud each bid that the Board received at or before the time and date for bid submission specified in the advertisement for bids. The Board may reject any or all bids, and if all bids are rejected, shall readvertise in the manner required by this policy.

The Board may consider and provide a preference to bidders:

1. which use a Michigan-based business as the primary contractor.
2. which use one (1) or more Michigan-based business(es) as subcontractors.

policy

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For purposes of this preference a Michigan-based business means a business that would qualify for a Michigan preference for procurement contracts under M.C.L. 18.1268, which requires that the businesses certify that since inception or during the last twelve (12) months it has done one of the following:

1. have filed a Michigan business tax return showing an allocation of income tax base to Michigan
2. have filed a Michigan income tax return showing income generated in or attributed to Michigan
3. withheld Michigan income tax from compensation paid to the bidder's owners and remitted the tax to the Michigan Department of Treasury

This preference shall not apply to any procurement or project using Federal funds, nor shall it be used if it would violate any Federal law or requirements.

- G. The competitive bid threshold amount specified in this policy (\$20,959 for 2009) is adjusted each year by multiplying the amount for the immediately preceding year by the percentage by which the average consumer price index for all items for the twelve (12) months ending August 31st of the year in which the adjustment is made differs from that index's average for the twelve (12) months ending on August 31st of the immediately preceding year and adding that product to the maximum amount that applied in the immediately preceding year, rounding to the nearest whole dollar. The current exempt amount must be confirmed with the Michigan Department of Education prior to issuing contracts for construction, renovation, or repair which exceed the amount listed in this policy.

M.C.L. 380.1267

NEW POLICY - VOL. 30, NO. 2

PROCUREMENT – FEDERAL GRANTS/FUNDS

Procurement of all supplies, materials, equipment, and services paid for from Federal funds or District matching funds shall be made in accordance with all applicable Federal, State, and local statutes and/or regulations, the terms and conditions of the Federal grant, Board of Education policies, and administrative procedures.

The Superintendent shall maintain a procurement and contract administration system in accordance with the USDOE requirements (2 CFR 200.317-.326) for the administration and management of Federal grants and Federally-funded programs. The District shall maintain a contract administration system that requires contractors to perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Except as otherwise noted, procurement transactions shall conform to the provisions of the District's documented general purchasing Policy 6320 and AG 6320.

All District employees, officers, and agents who have purchasing authority shall abide by the standards of conduct covering conflicts of interest and governing the actions of its employees, officers, and agents engaged in the selection, award, and administration of contracts as established in Policy 1130, Policy 3110 and Policy 4110 – Conflict of Interest.

The District will avoid acquisition of unnecessary or duplicative items. Additionally, consideration shall be given to consolidating or breaking out procurements to obtain a more economical purchase. And, where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach. These considerations are given as part of the process to determine the allowability of each purchase made with Federal funds.

To foster greater economy and efficiency, the District may enter into State and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.

Competition

All procurement transactions shall be conducted in a manner that encourages full and open competition and that is in accordance with good administrative practice and sound business judgement. In order to promote objective contractor

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performance and eliminate unfair competitive advantage, the District shall exclude any contractor that has developed or drafted specifications, requirements, statements of work, or invitations for bids or requests for proposals from competition for such procurements.

Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

- A. unreasonable requirements on firms in order for them to qualify to do business;
- B. unnecessary experience and excessive bonding requirements;
- C. noncompetitive contracts to consultants that are on retainer contracts;
- D. organizational conflicts of interest;
- E. specification of only a “brand name” product instead of allowing for an “*or equal*” product to be offered and describing the performance or other relevant requirements of the procurement; and
- F. any arbitrary action in the procurement process.

Further, the District does not use statutorily or administratively imposed State, local, or tribal geographical preferences in the evaluation of bids or proposals, unless (1) an applicable Federal statute expressly mandates or encourages a geographic preference; or (2) the District is contracting for architectural and engineering services, in which case geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

To the extent that the District uses a pre-qualified list of persons, firms or products to acquire goods and services, the pre-qualified list includes enough qualified sources as to ensure maximum open and free competition. The District allows vendors to apply for consideration to be placed on the list annually.

Solicitation Language

The District shall require that all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, shall set forth those minimum essential characteristics and standards to which it shall conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible.

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which shall be met by offers shall be clearly stated; and identify all requirements which the offerors shall fulfill and all other factors to be used in evaluating bids or proposals.

The Board will not approve any expenditure for an unauthorized purchase or contract.

Procurement Methods

The District shall utilize the following methods of procurement:

Micro-purchases

Procurement by micropurchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$3000. To the extent practicable, the District shall distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be made without soliciting competitive quotations if Superintendent considers the price to be reasonable. The District maintains evidence of this reasonableness in the records of all purchases made by this method.

Small Purchases

Small purchase procedures provide for relatively simple and informal procurement methods for securing services, supplies, and other property that does not exceed the competitive bid threshold established annually by the State. Small purchase procedures require that price or rate quotations shall be obtained from an adequate number of qualified sources.

Sealed Bids

Sealed, competitive bids shall be obtained when the purchase of, and contract for, single items of supplies, materials, or equipment which amounts to the amount allowed by Michigan statute and when the Board determines to build, repair, enlarge, improve, or demolish a school building/facility the cost of which will exceed the amount allowed by Michigan statute.

In order for sealed bidding to be feasible, the following conditions shall be present:

1. a complete, adequate, and realistic specification or purchase description is available;
2. two (2) or more responsible bidders are willing and able to compete effectively for the business; and
3. the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

When sealed bids are used, the following requirements apply:

1. Bids shall be solicited in accordance with the provisions of State law and Policy 6320. Bids shall be solicited from an adequate number of qualified suppliers, providing sufficient response time prior to the date set for the opening of bids. The invitation to bid shall be publicly advertised.
2. The invitation for bids will include product/contract specifications and pertinent attachments and shall define the items and/or services required in order for the bidder to properly respond.
3. All bids will be opened at the time and place prescribed in the invitation for bids; bids will be opened publicly.

4. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine the low bid when prior experience indicates that such discounts are usually taken.
5. The Board reserves the right to reject any or all bids for sound documented reason.

Competitive Proposals

Procurement by competitive proposal, normally conducted with more than one source submitting an offer, is generally used when conditions are not appropriate for the use of sealed bids or in the case of a recognized exception to the sealed bid method.

If this method is used, the following requirements apply:

1. Requests for proposals shall be publicized and identify all evaluation factors and their relative importance. Any response to the publicized requests for proposals shall be considered to the maximum extent practical.
2. Proposals shall be solicited from an adequate number of sources.
3. The District shall use its written method for conducting technical evaluations of the proposals received and for selecting recipients.

4. Contracts shall be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

The District may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E that firms are a potential source to perform the proposed effort.

Noncompetitive Proposals

Procurement by noncompetitive proposals allows for solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

1. the item is available only from a single source
2. the public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation
3. the Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the District
4. after solicitation of a number of sources, competition is determined to be inadequate

Contract/Price Analysis

The District shall perform a cost or price analysis in connection with every procurement action in excess of \$150,000, including contract modifications. A cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price, without looking at the individual cost elements.

The method and degree of analysis is dependent on the facts surrounding the particular procurement situation; however, the District shall come to an independent estimate prior to receiving bids or proposals.

When performing a cost analysis, the District shall negotiate profit as a separate element of the price. To establish a fair and reasonable profit, consideration is given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Time and Materials Contracts

The District uses a time and materials type contract only (1) after a determination that no other contract is suitable; and (2) if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to the District is the sum of the actual costs of materials, and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, the District sets a ceiling price for each contract that the contractor exceeds at its own risk. Further, the District shall assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

Suspension and Debarment

The District will award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of the proposed procurement. All purchasing decisions shall be made in the best interests of the District and shall seek to obtain the maximum value for each dollar expended. When making a purchasing decision, the District shall consider such factors as (1) contractor integrity; (2) compliance with public policy; (3) record of past performance; and (4) financial and technical resources.

The Superintendent shall have the authority to suspend or debar a person/corporation, for cause, from consideration or award of further contracts. The District is subject to and shall abide by the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR Part 180.

Suspension is an action taken by the District that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended. (2 CFR Part 180 Subpart G)

Debarment is an action taken by the Superintendent to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1). A person so excluded is debarred. (2 CFR Part 180 Subpart H)

The District shall not subcontract with or award subgrants to any person or company who is debarred or suspended. For contracts over \$25,000, the District shall confirm that the vendor is not debarred or suspended by either checking the Federal government's System for Award Management, which maintains a list of such debarred or suspended vendors at www.sam.gov; collecting a certification from the vendor; or adding a clause or condition to the covered transaction with that vendor. (2 CFR Part 180 Subpart C)

Bid Protest

The District maintains the following protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the awarding agency.

A bidder who wishes to file a bid protest shall file such notice and follow procedures prescribed by the Request For Proposals (RFPs) or the individual bid specifications package, for resolution. Bid protests shall be filed in writing with the Superintendent within seventy-two (72) hours of the opening of the bids in protest.

Within five (5) days of receipt of a protest, the Superintendent shall review the protest as submitted and render a decision regarding the merits of the protest and any impact on the acceptance and rejection of bids submitted. Notice of the filing of a bid protest shall be communicated to the Board and shall be so noted in any subsequent recommendation for the acceptance of bids and awarding of contracts.

Failure to file a notice of intent to protest, or failure to file a formal written protest within the time prescribed, shall constitute a waiver of proceedings.

Maintenance of Procurement Records

The District maintains records sufficient to detail the history of all procurements. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price (including a cost or price analysis).

Applicable laws and regulations:
2 C.F.R. 200.317 - .326

policy

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PREVAILING WAGE COORDINATOR

It is the purpose of this policy to comply with State and Federal regulations concerning prevailing wage rate.

The Michigan Department of Consumer and Industry Services; Wage and Hour Division will determine the prevailing wage rate in the locality where the work is to be performed.

The Superintendent shall designate a Prevailing Wage Coordinator for this District.

The Prevailing Wage Coordinator will submit to the Superintendent, for Board of Education approval, procedures for monitoring compliance with prevailing wage laws. S/He will request the Michigan Department of Consumer and Industry Services; Wage and Hour Division to establish the prevailing wage rate in this District for school construction or renovation projects. A schedule of those wages must be attached to the specifications for the work, and printed on any bidding blanks. A copy of the bidding blank must be filed with the Michigan Department of Consumer and Industry Services; Wage and Hour Division prior to the award of any contract. Thereafter, any contract which is awarded must include a provision that each laborer, workman, or mechanic employed by the contractor will be paid at a rate not less than the prevailing wage rate. On the first pay date, the contractors and subcontractors must provide each employee with written notification of his/her job classification and the prevailing wage rate for his/her job classification, unless the employee is covered by a collective bargaining agreement.

M.C.L. 408.551 et seq.

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policy

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COOPERATIVE PURCHASING

The Board of Education recognizes the advantages of centralized purchasing in that volume buying tends to maximize value for each dollar spent. The Board, therefore, encourages the administration to seek advantages in savings that may accrue to this District through joint agreements for the purchase of supplies, equipment, or services with the governing body(ies) of other governmental units.

The Board authorizes the Business Manager to negotiate such joint purchase agreements for services, supplies, and equipment which may be determined to be required from time to time by the Board and which the Board may otherwise lawfully purchase for itself, with governmental contracting units as may be appropriate in accordance with State law, the policies of this Board, and the dictates of sound purchasing procedures.

Cooperative or joint purchases require an agreement approved by the Board and the participating contracting body(ies) which shall specify the categories of equipment and supplies to be purchased; the manner of advertising for bids and of awarding contracts; the method of payment by each participating party and such other matters as may be deemed necessary to carry out the purposes of the agreement. Such agreements are subject to all legal bidding requirements.

M.C.L. 124.1 et seq.

policy

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LOCAL PURCHASING

The Board of Education recognizes its position as a major purchaser in this community, and while it is the intention of the Board to purchase materials and supplies of quality at the lowest possible cost through widespread competition, if all other considerations are equal, the Board prefers to purchase within the District from established local merchants.

The Board authorizes the Superintendent to award purchases placed in accordance with law, this policy, and all policies of the Board otherwise applicable to local merchants when

- A. their quotation is competitive, within a percentage determined by the Board,
- B. freight charges are a factor,
- C. maintenance service may be required,
- D. promptness of delivery is a consideration,

provided that all statutes pertaining to public purchasing are duly observed.

policy

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VENDOR RELATIONS

The Board of Education shall not enter a contract knowingly with any supplier of goods or services to this District under which any Board member or officer, employee, or agent of this School District has any pecuniary or beneficial interest, direct or indirect, unless the person has not solicited the contract or participated in the negotiations leading up to the contract. This prohibition shall not prevent any person from receiving royalties upon the sale of any textbook of which s/he is the author and which has been properly approved for use in the schools of this District.

For the purpose of this policy "beneficial interest" shall be determined in accordance with M.C.L. 15.321 et seq.

Board members and school personnel shall not accept any gifts or favors from vendors which might, in any way, influence their recommendations on the eventual purchase of equipment, supplies, or services.

All sales persons, regardless of product, shall clear with the Superintendent's Office before contacting any teachers, students, or other personnel of the School District. Purchasing personnel shall not show any favoritism to any vendor. Each order shall be placed in accordance with policies of the Board on the basis of quality, price, and delivery with past service a factor if all other considerations are equal.

M.C.L. 15.321 et seq.



In order to maintain the public trust, your local school district Board of Education should consider and adopt a resolution containing at least some, if not all, of the factors listed below.

Each factor should be discussed thoroughly by school board members, the architects and construction managers involved in any school construction because of the potential impact they will have on a project.

Your construction manager and design professional will then include these factors in the construction bid documents so all bidders know that in addition to price these items will be considered when construction bids are reviewed.



EXPERIENCE. Institutional building projects are expected to last 50-75 years. Therefore school board members should review the past experience of all construction professionals to ensure that they have pertinent experience on similar institutional projects. In so doing, the board members can evaluate whether local contractors should be considered for the project and only if they have the required experience should they be considered.



REFERENCES. School board members should investigate the references of their construction professionals from past clients doing similar institutional work. Construction professionals must supply pertinent references from their past clients, including information regarding performance and jobsite cooperation.





FINANCIAL CONDITION. A good financial rating means stability on the job and all through the project. Construction professionals must show they are financially prepared to perform the work they are bidding on. School boards must obtain information concerning a bidder's financial capability, any outstanding claims against them and bank references. A poor financial condition can affect the quality of materials, equipment and workers used on the project. It also can result in substantial project delays and unsafe schools.



SAFETY & ACCIDENTS. Construction professionals with a good safety and EMR record will be more productive. An employer has an obligation according to the Michigan Occupational Safety and Health Act (MIOSHA) to provide a place of employment free from recognized hazards likely to cause death or serious physical harm. Every employee has the right to a safe and healthy workplace. An employer must provide training in the recognition and avoidance of hazards and specific training called for in the MIOSHA standards.



RESUME OF SUPERVISORY PERSONNEL. Beyond a construction professional's experience with similar institutional projects, it is important for board members to evaluate the resumes of the supervisory personnel of all construction professionals on their project. All supervisory personnel should have pertinent experience and adequate education and training to complete your project.



INSURANCE & SURETY BONDING. Construction professionals must show proof of adequate and relevant insurance coverage for a particular project and must prove their compliance with workers' compensation statutes. School boards must set minimum standards for insurance coverage. Construction professionals that cannot provide proper coverage may be unable to fulfill project obligations. A measure of a construction professional's stability is shown in the ability to secure the required bonding.



USE OF A TRAINED LOCAL WORKFORCE. Employing local construction professionals and skilled craft workers on a project can be an attractive goal for school boards. Local craft workers, their friends and family, in all probability use those schools. However, it is necessary to determine if the construction professional has ready access to a qualified, experienced workforce to build your project.



PREVAILING WAGE. Use of prevailing wage requirements ensures that school boards secure the best qualified construction professionals to perform work on their projects. Construction professionals should compete for projects on the basis of their management practices, not by paying sub-standard wages. Utilization of prevailing wage will allow the construction professional to pay locally determined wages and benefits to attract qualified skilled craft workers.



EMPLOYEE HEALTH INSURANCE & PENSION BENEFITS. School districts can maintain and promote their community's health care and craft employees by requiring the construction professional to use prevailing wage, which includes health insurance and pension benefits. Construction professionals who provide such benefits to their craft personnel demonstrate a commitment to developing a stable workforce, which is a key component to a quality project and to the health of the community.



WORKFORCE SOURCE & PROPER EMPLOYEE CLASSIFICATION. School boards can ensure that their project will be built by qualified construction professionals by ensuring contractor access to a skilled workforce. School districts should examine carefully the source of building trades craft employees. School districts should ask prospective construction professionals to identify the source of the workforce they intend to use on the project. Construction professionals who staff the project with personnel hired from help-wanted ads or employment agencies might not have sufficient competence and ability to complete a quality project on schedule.



REGISTERED UNITED STATES DEPARTMENT OF LABOR, BUREAU OF

APPRENTICESHIP & TRAINING PROGRAMS. School boards know the value of high quality training and education. Responsible contractors know that better training equals better buildings. Bureau of Apprenticeship and Training (BAT) approved training programs create more productive craft workers. A construction professional's ability to staff a school construction project with qualified trades' workers is the key to success. Contractors, who bid on school construction projects should maintain, participate in and contribute to bona fide apprentice training programs recognized by the U.S. D.O.L./B.A.T. Trained craft workers promote cost effectiveness, timeliness, safety and quality on school construction work. Companies who employ skilled and trained workers, educated in their trade, deliver exceptional work. Moreover, every registered U.S. D.O.L./B.A.T., program must meet twenty-two standards of apprenticeship regulated and audited by the U.S. D.O.L./B.A.T., as outlined in 29 CFR 29.5.



LICENSING. School boards get a better building when highly competent construction professionals and tradespersons build it to code. State law establishes licensing requirements for

electrical, mechanical, plumbing, boiler and elevator contractors, and electrical,

elevator and plumbing craft workers. Proper licensing and certification,

when applicable, show school boards that construction

professionals bidding the job have been tested and are

competent to perform the work. All responsible construction

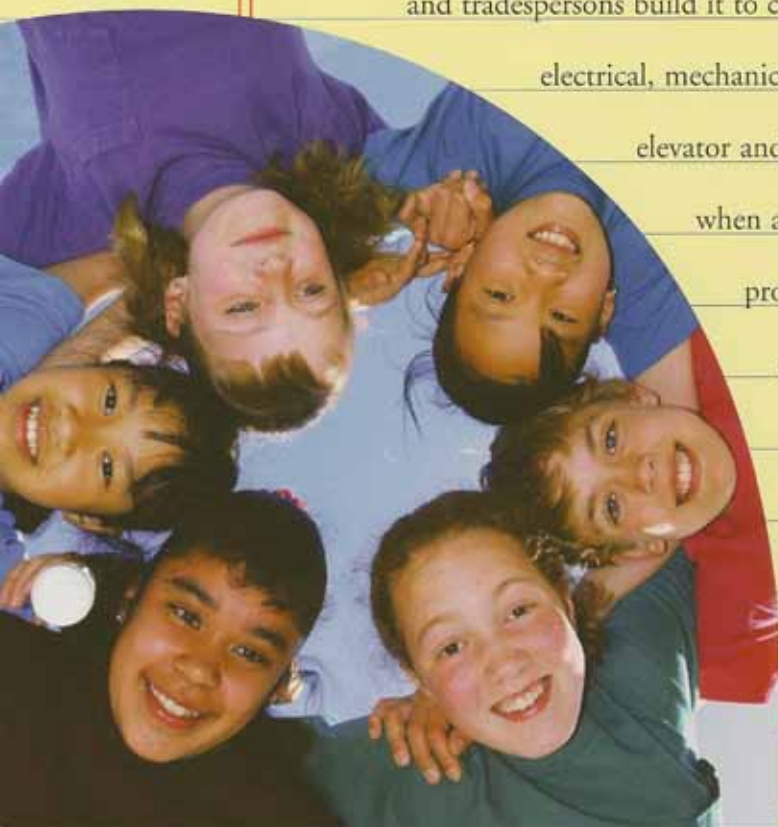
professionals must provide documented proof of licensing

and certification. This will allow school boards to contact

licensing and certification agencies to verify the bidder's

history and determine if any complaints or judgments

have been filed against them.





COMPLIANCE WITH REGULATORY AGENCIES. School boards get a higher quality building when local, state and federal regulations are followed. Compliance with the EPA, MIOSHA, OSHA and other agencies helps school boards evaluate the construction professional's willingness to follow rules. It also ensures that the bidding contractors are aware of the policies that affect them. Contractor adherence to wage and hour standards, record keeping guidelines, child labor regulations and other components of the Fair Labor Standards Act are good indicators of a stable workforce. Construction craft workers who are treated fairly and receive proper pay and benefits are more likely to produce high quality work which helps ensure a safe learning environment for Michigan children.



CIVIL SUITS/ARBITRATION/HISTORY. A school board will have their building projects completed without costly legal entanglements if they select a responsible contractor with a 'clean' legal history. School boards should contract with construction professionals that build according to contract – not in spite of the contract. School districts should carefully examine a contractor's litigation history and the final disposition of any arbitration claims brought against him/her. A contractor with an unusually high level of adverse claims might indicate that the school board should disqualify the contractor.



Michigan Association for Responsible Contracting

phone: 1-866-YES-MARC • fax: 517-372-0402 • www.miarc.org



SECTION 01 20 00.01 - PRICE AND PAYMENT PROCEDURES

PART 1 GENERAL

1.1 CASH ALLOWANCES

- A. Cash Allowances: The following allowances are to be included in the base bid for the respective work categories listed below. Allowances can only be utilized at the owner's discretion and written authorization.

- **Work Category 31A-Concrete, Excavation, Asphalt and Striping**
Allowance #1: \$100,000 for CM contingency

1.2 UNIT PRICES

- A. Unit Prices: The following unit prices will be used to establish rates for extra work and/or evaluation of bids by the CM.

- Not Used

1.3 ALTERNATES

- A. Alternates: The following mandatory bid alternates are to be provided:

- **None**

1.4 PRODUCT SUBSTITUTIONS

- A. Substitutions during Bidding: Only substitutions submitted and approved via written addendum PRIOR TO SUBMISSION OF BIDS.
- B. Submit substitution requests to Laux Construction via e-mail to estimating@lauxconstruction.com
- C. Requests are to be submitted on the form provided in Section 01 2519.01

1.5 REQUESTS FOR INFORMATION (RFI)

- A. Definition: Request from trade contractors/vendors seeking interpretation or clarification of Contract Documents not involving Substitutions or changes to Contract Sum or Contract Time.



- B. Do not submit RFI's to request approval of Substitution, request changes involving changes to Contract Sum or Contract Time, request approval of submittals, or to submit Project Record Documents.
- C. Submit electronically via email to estimating@lauxconstruction.com

1.6 CONTRACT MODIFICATION PROCEDURES

- A. Bulletins:
 - 1. Construction Manager may issue a bulletin detailing a proposed change with supplemental or revised Drawings and Specifications.
 - 2. Submit estimate of any change to Contract Sum or Contract Time within 5 days after receipt.
 - 3. Submit electronically in Adobe PDF format.
 - 4. Do not proceed with change until a written authorization from Laux Construction is received.
- B. Contractor Proposed Changes:
 - 1. Describe proposed change, reason for change, effect on Work, and any changes to Contract Sum or Contract Time.
 - 2. Document proposed substitutions in accordance with Section 01 20 00.
 - 3. Submit electronically in Adobe PDF format.
- C. Construction Change Directive: Construction Manager may issue a directive, pre-approved by Owner, instructing Trade Contractor/Vendor to proceed with a change for subsequent inclusion in a Change Order.
- D. Change Orders: Change Orders will be prepared by the construction manager for signature of parties as provided in Conditions of the Contract.

1.7 SCHEDULE OF VALUES

- A. Submit Schedule of Values to construction manager within 5 days of receipt of contract.
 - 1. If requested, furnish data to support values given.
 - 2. Approved Schedule of Values will be used as basis for reviewing trade contractors'/vendors' Applications for Payment.
- B. Format: Use Table of Contents of Project Manual as basis for listing costs of work.
 - 1. List values in sufficient detail to serve as basis for computing values for progress payments.
 - 2. SOV must provide a separate breakdowns for each cabin. Any trades that have work associated with the dorm will also need to break out those costs.
 - 3. When payment is requested for stored materials, break down value into cost of materials and total installed value.
 - 4. Total of costs listed in Schedule shall equal Contract Sum.



- C. Review and Resubmittal:
 - 1. After review by Owner and CM/Design Professional, revise and resubmit if required.
 - 2. Resubmit along with next Application for Payment when Change Orders are issued. List each Change Order as new line item.

1.8 APPLICATIONS FOR PAYMENT

- A. Format: AIA Document G702 - Application and Certification for Payment, supported by AIA Document G703 - Continuation Sheet.
- B. Use data from approved Schedule of Values as basis. Provide dollar value in each column for each line item representing portion of work performed.
- C. List each authorized Change Order as separate line item.
- D. When Owner or CM/Design Professional require substantiating information, submit data justifying dollar amounts in question.
- E. Only work that has been completed or stored can be invoiced for. Projections will not be permitted on monthly pay applications.
- F. Ten (10%) percent retainage will be required on monthly pay applications.
- G. Further information regarding pay application process will be provided at the project kickoff meeting.

PART 2 PRODUCTS

Not used

PART 3 EXECUTION

Not used

END OF SECTION



SECTION 01 25 19.01 - SUBSTITUTION REQUEST FORM

DATE: _____

TO: Laux Construction

FROM: _____

ATTENTION: Chais VanDeventer estimating@lauxconstruction.com

PROJECT: **Lyons Asphalt Replacement
Bid Package 1**

We submit for your consideration the following product as a substitution for the specified product:

Section No.	Paragraph	Specified Product
_____	_____	_____

Proposed Substitution:

Reason for Substitution:

Product Data:

Attach complete technical data for both the specified product and the proposed substitution. Include information on changes to Contract Documents that the proposed substitution will require for its proper installation.

Samples:

☐ Attached ☐ Will be furnished upon request

Does the substitution affect dimensions shown on Drawings?

☐ No ☐ Yes (explain)



Effects of proposed substitution on other Work:

Differences between proposed substitution and specified Product:

Manufacturer's warranties of the proposed substitution are:

☐ Same ☐ Different (explain)

Maintenance service and spare parts are available for proposed substitution from:

Previous installations where proposed substitution may be seen:

Project: _____

Project: _____

Owner: _____

Owner: _____

Architect: _____

Architect: _____

Date Installed: _____

Date Installed: _____



Cost savings to be realized by Owner, if proposed substitution is approved:

Change to Contract Time, if proposed substitution is approved:

___ No Change ___ Add _____ days ___ Deduct _____ days

Submittal constitutes a representation that Contractor has read and agrees to the provisions of Section 01 20 00.

Submitted by Contractor:

Firm Name _____ Date _____

Name _____ Signature _____

For Use by Design Professional:

Based on the information supplied by the Contractor the Design Professional has reviewed the proposed substitution on the basis of design concept of the Work and conformance with information given in Contract Documents.

___ Approved ___ Approved as Noted ___ Rejected

Submit Additional Information:

Firm Name _____ Date _____

Name _____ Signature _____

END OF SECTION



SECTION 01 50 00.01 - TEMPORARY FACILITIES AND CONTROLS

PART 1 GENERAL

1.1 CONSTRUCTION FACILITIES AND UTILITIES

- A. Field Offices and Sheds: Areas within existing building/on site designated by Owner may be used for field office and storage of materials.
- B. Temporary Fence and Barricades: Laux Construction will provide and install temporary fencing and barricading unless noted otherwise in WC descriptions.
- C. Dumpsters: Laux Construction will place a container(s) on site for disposal of all debris generated by construction activities.
- D. Temporary Sanitary Facilities: Laux Construction will provide temporary sanitary facilities throughout the duration of the project. Use of existing restroom facilities inside of building during construction will not be permitted.
- E. Temporary Electricity: Connect to existing electrical system. Cost of electricity will be paid for by Owner. Temporary power will be established by the EC.
- F. Temporary Lighting: Temporary lighting will be provided by the EC. Lighting, to meet MiOSHA standards, will be provided in each interior space during construction.
- G. Temporary Heat: Use of permanent HVAC equipment for conditioning of space will not be permitted until primer/first coat of paint has been applied. Any temporary heat sources during construction will be paid for by the CM on an as-needed basis. Trade contractors are to obtain authorization from Laux construction prior to implementing these measures and are to provide a detailed accounting of all costs associated with them as requested by Laux Construction.
- H. Temporary Ventilation: Ventilate areas to facilitate curing of materials, disperse humidity, and prevent accumulations of dust, fumes, vapors, or gases. Each work category will be responsible for providing means of ventilation during the course of their work.
- I. Temporary Telephone: Provide temporary telephone service during construction.

1.2 TEMPORARY CONTROLS



- A. Water Control: Maintain excavations free of water. Provide, operate, and maintain pumping equipment.
- B. Erosion and Sediment Control: Provide temporary measures including silt fences, dikes, berms, settlement basins, and drainage systems to prevent water flow and sedimentation. WC 31A
- C. Dust Control: Minimize dust from construction operations. Prevent dust from dispersing into atmosphere. Each WC is responsible for dust control and mitigation during the course of their work.
- D. Mold and Mildew Control (All WC's):
 - 1. Prevent formation of mold and mildew on surfaces within interior of structures.
 - 2. Do not install materials sensitive to mold and mildew growth until protection can be provided.
 - 3. Promptly remove and replace materials exhibiting mold and mildew growth.
- E. Protection of Existing Finishes: Protect surrounding finishes from effects of construction activities. Each trade contractor is responsible for protection measures for their own work.

1.3 TEMPORARY PROJECT SIGN

- A. Not used

1.4 REMOVAL

- A. Remove temporary facilities and controls when construction needs can be met by use of permanent construction or upon completion of Project.

PART 2 PRODUCTS

Not used

PART 3 EXECUTION

Not used

END OF SECTION



General Requirements for All Trades

Extents of Work

- Removal of existing asphalt parking lot and (2) basketball courts, 4 inch asphalt replacement, catch basin repairs, striping, concrete approach, and (4) new acrylic basketball hoops.

Comprehensive Work Scope

- Each work category is to provide all labor, materials, tools, and equipment necessary to complete their scope of work, including any incidental items that may not explicitly be shown on the plans.
- All work is to be installed according to the manufacturers' recommendations so as to not void any warranties.
- Each work category is responsible for determining the means and methods of installation of their respective work. The means and methods must be safe and consistent with MiOSHA standards and not adversely affect the site or work of other work categories.

Schedule

- June 2025 to end of July 2025

Work by Others

- The construction manager will provide the following:
 - Temporary construction fencing
 - All dumpsters for debris generated by construction activities.
 - Temporary Fire Extinguishers
 - Outhouse
 - Building permit from SOM Bureau of Construction Codes
 - Final cleaning

Supervision of Work

- Construction manager will provide an on-site superintendent that will be responsible for scheduling and coordination of all on-site activities, quality control, and safety enforcement.
- Each work category contractor is to assign a foreman/superintendent that will be responsible for all work performed for their WC. This person is to be on-site when work is being performed and is solely responsible for any 2nd/3rd tier subcontractors contracted to perform any tasks under this WC. The CM will NOT be responsible for overseeing or coordinating 2nd/3rd tier subcontractors.



Safety

- All contractors will be required to submit a copy of their company safety plan within 5 working days of notice of award.
- All workers will be required to wear work boots, sleeved shirt (short sleeve minimum), long pants, hard hats, and safety glasses.
- All workers will be required to be equipped and use any PPE required for the task they are performing.
- All workers using lifts or other motorized equipment must be trained and certified for the specific piece of equipment they are using. Certification cards must be on their person at time of use.
- Ladders are to be in good condition, compliant for the work they are being used for, and workers are to use proper safety.
- All workers are to follow OSHA/MiOSHA standards for safety.
- Any worker refusing to comply with safety standards/expectations will be removed from the site.
- All contractors will be responsible for submitting hard copies and an electronic copy of Safety Data Sheets for all materials used on the project PRIOR TO STARTING THEIR WORK.

Schedule

- Start June 2026
- With the input of the trade contractors, the CM will issue a detailed baseline schedule prior to the start of the project.
- The CM will distribute three-week look ahead schedules on a weekly basis detailing the schedule for all upcoming tasks during that period.
- Trade contractors are expected to provide adequate manpower, work hours, and tools/equipment necessary to meet the schedules.
- Should a trade contractor not meet their schedule obligations, the CM will issue ONE warning and request a written recovery plan from that subcontractor which will be submitted within 24 hours of the warning. Should the trade contractor not provide a recovery plan or successfully implement the recovery plan, the CM will supplement their work force/resources in order to meet the project schedule set forth. All costs incurred by the CM will be at the expense of the trade contractor in default and will be deducted from their contract in a change order.

Clean up/Site Organization

- All workers are to provide a means of securing and storing tools on site. Any tools not in use are to be stored in a secure location.
- All workers are to maintain an orderly site free of trip hazards, falling materials, excessive clutter, etc.



- Each trade is responsible for protecting surrounding finishes, fixtures, etc. from dust, debris, and damages during the course of their work.
- All trades are to provide regular cleanup of debris generated by their work (definable). Debris to be placed in a dumpster on site provided by the construction manager.
- Should the construction manager be required to perform definable cleaning, the cost of these efforts will be deducted from the contract of the WC responsible for the debris on a change order.

Conduct

- No tobacco products will be allowed on the premises, including chewing tobacco, cannabis, vaping, e-cigarettes, cigarettes, or cigars.
- Workers are to refrain from horseplay.
- Workers are to refrain from using profane language and/or displaying any offensive messages/language on their person, tool storage, hard hats, clothing, etc.
- There is to be no food or drink inside of the building.
- There is to be no interaction between contractors and LSD or Bergmann staff members unless facilitated by Laux Construction.

Construction Management Software

- The construction manager will provide free access to Procore project management software to all stakeholders of the project.
- All contractors are required to utilize Procore for submittals, RFI's, and closeout documents.

Submittals

- Shop drawings and product data are to be submitted to the construction manager via Procore.
- The construction manager will issue submittal packages to each work category that will include submittals required for the project.
- Contractors will have access to all submittals for the project, via Procore, and will be expected to coordinate with other trade's submittals as necessary to perform their work.
- Required finish samples are to be hand delivered/mailed to the office of the construction manager. Sample cards can be used for preliminary selections; however, actual/physical samples are to be provided for verification.
- All work category contractors whose work requires field verification of dimensions and/or site conditions will be required to provide their own field verifications.
- Any work installed without reviewed submittals will be at the risk of the contractor installing the work. The CM, AE, or owner will not be held responsible for any materials that do not comply with the documents should submittals not have been provided by the trade contractor.
- Submittal packages for closeout materials will be issued shortly after the PD/SD process is underway. Contractors are responsible for submitting closeout materials by the deadline noted in the submittal package.
- As-builts, start up reports, TAB reports, final inspection approvals, etc. will be due at the end of the project at a date/time to be established by the construction manager.



RFI's

- Any requests for interpretation of the documents or additional information from contractors is to be directed to the construction manager in writing via email or via Procore.

Meetings

- The construction manager will host weekly progress meetings at a time and location to be determined at the project site.
- A representative from work category is to be in attendance at each progress meeting and be prepared to discuss status of material deliveries, schedule, coordination with other trades, etc. Should a contractor not be able to attend a progress meeting, a written notification is to be forwarded to the CM at least 24 hours prior to the meeting.

Warranty

- In addition to manufacturer's warranties, all work categories are to include a one-year warranty on all labor and materials provided under this contract.
- Warranty will begin at the date of substantial completion.

END OF GENERAL REQUIREMENTS



Work Category 31A: Concrete, Excavation, Asphalt and Striping

Sections Included:

- Site Plan/Overview
- HMA Pavement Section
- Basketball Hoops
- Project Manual

Specific Notes/Scope:

The following is to be used for clarification of the intent of this work category. This is not a comprehensive list of scope items and work category will be responsible to provide all work for the sections listed above.

1. Layout/Staking to include all costs associated with recording existing spot elevations/grades of existing parking lots prior to removal and install of new parking surface to match existing grades to drain to existing catch basins/drainage structures.
2. Furnish and install all barricades and traffic control devices.
3. Soil erosion measures and dust control.
4. Sawcut and removal of existing concrete approach at North drive.
5. New concrete pad for dumpster and new concrete approach.
6. Perform all removal and off-site disposal of all asphalt paving for parking lots and courts.
7. Remove and replace unsuitable subbase materials as determined in field, limits of removal and replacement to be paid for under Allowance.
8. Haul all spoils off site.
9. New ADA parking signage as required
10. Perform fine grading of subgrade that is placed +/- .10'
11. Furnish and install asphalt in two lifts (leveling course & wearing course)
12. Furnish and install all pavement markings/striping.
13. Adjust catch basin structures.
14. Remove and replace catch basin casting and reseal structure.
15. Restoration to be determined at time of completion, and cost to be taken from Allowance.
16. Furnish and install acrylic basketball hoops.

BIDDER TO HOLD PRICES UNTIL AUGUST 2026

Exclusions/Work by Others:

1. None

Allowances:



Lansing School District
Lyons Asphalt Replacement Bid Package 1
Work Category Description

Allowances are to be utilized at the owner's discretion and by their authorization only.

1. CM Contingency Allowance: This WC to include an allowance of **\$100,000** to be used as directed by the construction manager.

Alternates:

1. NOT USED

Unit Prices:

1. NOT USED

END OF WORK CATEGORY



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SUBCONTRACTOR AGREEMENT

Contract Date:

Job No:

Subcontractor:

Project Name:

ARTICLE 1 – WORK

- The Subcontractor is bound to Laux Construction, LLC (Laux) by the terms of this Subcontractor Agreement and all bidding documents, General Conditions, and/or Special Conditions related to the above-listed project, except as modified herein. The subcontractor assumes toward Laux, except as specially stipulated to the contrary, all obligations and responsibilities that Laux, by said documents, assume towards the project owner. The subcontractor agrees to provide all labor, materials, tools, equipment, transportation, supervision, insurance, taxes, permits, fees, and other things necessary to complete the above-listed project according to all bidding documents.

Inclusions: The work includes but is not limited to the following scope of work:

- Per the attached quote dated

ARTICLE 2 – CONTRACT PRICE

- Work must be approved and accepted by Laux and Owner; Contractor shall pay to Subcontractor:

CONTRACT PRICE: *xxx Dollars 00/100* **\$0.00**

ARTICLE 3 – CONTACT INFORMATION/LINES OF COMMUNICATION

- All communication/correspondence from subcontractors must be directed to Laux. Subcontractors are not to contact the owner/architect directly for any reason.

Laux Project Manager / Emergency Contact (RFI's, submittals, etc.):

TBD
Fax:
Cell:
Email:

Laux Project Controller (Pay Applications, Contracts, Certified Payroll, General Billing Questions):

TBD
Office: 517-694-0117
Email:

Laux Site Superintendent (scheduling, site issues, site access, etc.):

TBD
Cell:
Email:



ARTICLE 4 – ASSIGNMENT

- The Subcontractor shall **not** assign or sublet the performance of its obligations under this Agreement/Order without the prior written consent of Laux Construction. Submit all Second-Tier subcontract requests to Laux Construction in writing prior to Second Tier Subcontractor performing any work on site. Failure to request Second Tier Subcontractor approval will result in Breach of Contract.

ARTICLE 5 – PROJECT SCHEDULE

- The Laux Site Superintendent will handle the scheduling of all work and will contact each subcontractor individually. A printed schedule will be periodically forwarded via e-mail/fax.
- Subcontractor is expected to be on-site at the date and time determined by Laux Site Superintendent. Please contact Laux Site Superintendent twenty-four (24) hours in advance if there is going to be a change in arrival time.
- Workers are to notify Laux Site Superintendent when leaving the site for any reason.
- Subcontractor is to arrive at the site on time/as scheduled and prepared with a proper number of workers needed to complete work as scheduled. The subcontractor is to arrive at the site fully prepared with security clearances, permits (if required), and all tools and equipment necessary to complete their work as scheduled by Laux.
- Subcontractor agrees to perform its obligations and fully staff the project always expeditiously. The subcontractor acknowledges receipt of the construction schedule and agrees that it may be modified from time to time with forty-eight (48) hours' notice. Subcontractor agrees that by commencing the physical on-site work, that it has accepted the site and the work of any prior subcontractors, suppliers, or tradespeople, and that the site is acceptable for its performance.

ARTICLE 6 – PROJECT PROCEDURES

- No payments will be made to subcontractors until this agreement is signed and returned to Laux.
- Contract Price includes all applicable state sales and use taxes
- Submittals
 - Submittals to be forwarded to Laux via e-mail in PDF format
 - Three (3) sets of samples to be forwarded to the Project Manager, listed above, at Laux Construction (if applicable)
 - Submittals shall reflect all work as specified by the project Bid Documents. Any materials or equipment installed that have not been approved through formal submittals are the Subcontractor's responsibility. Any materials installed that do not meet the requirements of the project Bid Documents and/or were not formally submitted/approved will be removed and replaced by the Subcontractor at the sole expense of the Subcontractor and at no cost to Laux, owner, or architect. This Subcontractor Agreement assumes that all work proposed by the Subcontractor meets all criteria set forth in the project Bid Documents.
- RFI's: All RFI's to be forwarded to Laux Project Manager via email or fax
- Field Decisions/Bulletins/Change Orders
 - Subcontractor is not to proceed with any changes unless and until Laux Project Manager gives it written notice to do so. Neither Laux nor owner will pay for any changes to work performed by the Subcontractor that were not previously approved by Laux in writing.
 - To avoid any potential delays, Laux requests that pricing for any changes be forwarded with all required backup information within three (3) calendar days of issuance of the bulletin(s).
- Progress Meetings
 - Subcontractor must attend meetings as requested.
- As-Builts/Record Documents
 - Subcontractor is to keep current as-built drawings throughout the project. A set of plans designated for as-builts will be kept at the Laux field office for changes to be documented on. The subcontractor must keep these current throughout the project and will document all changes neatly in red pencil/pen.
 - **Three (3) copies** of close-out documents as required by project Bid Documents will be required at end of the project. Hard copies are required for submission. Any printing costs incurred by Laux, if hard copies are not received, will be back charged to the Subcontractor.



- Close-out documents must be received by Laux two (2) weeks after the substantial completion date or by another date established by Laux Construction. If these documents are not delivered to Laux within this time frame, the subcontractor will be charged \$100.00 per day until they are received.
- Final payment will not be made until all closeout materials are received.

ARTICLE 7 – APPLICATION FOR PAYMENTS

Laux shall pay the Subcontractor pursuant to the terms and conditions below:

- A schedule of values for your work is to be submitted to Laux Construction for review/approval.
- Monthly pay apps to be submitted to Laux Construction Project Accountant via email or fax no later than the 15th of each month. Pay apps are to be submitted in AIA format based on the approved schedule of values.
- Laux pay applications will be submitted to the architect on the 25th of each month.
- Payment from the owner to Laux for the Subcontractor's work is a condition precedent to Laux's obligation to pay the Subcontractor for its work. Laux shall have no liability to the Subcontractor if Laux does not receive payment from the owner for the Subcontractor's work.
- Subcontractor's work must be accepted by Laux, owner, and architect/engineer prior to payment.
- **10% retainage** will be held per specifications, project manual, and/or contract with the owner.
- The Subcontractor shall be paid only if the necessary documentation has been received pursuant to Article 6 herein below, and as required by the owner and/or Laux, and upon fulfillment of the terms and conditions above and the absence of any notice of default or termination.
- Any delay which is determined to be the fault of the Subcontractor will be the basis of assessing all or part of the liquidated damages incurred. Laux may assess and deduct from any payment the Subcontractor's proportionate share of any liquidated damages assessed by the owner to Laux.
- Laux, in its sole discretion, may withhold payment, and pay over to sub-subcontractors, suppliers, or laborers if Laux reasonably believes the Subcontractor is in financial jeopardy or if the project is in jeopardy.
- **The following items need to be submitted with all monthly Pay Applications:**
 - A Sworn Statement pursuant to Michigan's Construction Lien Act, MCL 570.1101, et seq. (CLA)
 - Conditional Lien Waivers for current pay application.
 - Lien Waivers from laborers, suppliers, and/or sub-subcontractors pursuant to the CLA
 - Any evidence required by the owner and/or any applicable provisions of any other construction lien law, bond law, or similar applicable law.
 - Certified Payroll Reports (if applicable)
 - Final retainage billings must be submitted on a separate payment application.
- The Pay App will be rejected if any of the above items are not submitted with the Subcontractor's Pay Applications.
- Final invoicing/pay applications must be submitted to Laux Construction within 30 days after subcontractor work is complete. Any invoices/pay applications submitted by the subcontractor after 90 days will be null and void.

ARTICLE 8– CONSTRUCTION SITE, FACILITIES, ETC.

- Access to Site: Staging and access as determined by Site Superintendent/owner
- Staging Area/Material Storage/Dumpsters: As directed by the Site Superintendent/owner
- Working Hours
 - Normal working hours will be Monday through Friday, 7:00 am to 4:30 pm.
 - Any work to be done outside of this time to be approved by Laux Site Superintendent at least twenty-four (24) hours in advance
- Other
 - There will be no smoking allowed on-site
 - There will be no profane language used on-site
 - There is to be no interaction with occupants/staff by any subcontractor
 - Subcontractor to notify Laux of any utility shutdowns at least three (3) days in advance



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- Any damages to the site, facilities, layout stakes, etc. caused by the Subcontractor or its agents, employees, or independent contractors will be the responsibility of the Subcontractor and the cost to replace/repair the damage may be deducted from the Contract Price.
- Subcontractor will take all necessary precautions to limit disturbance/damage to existing fireproofing on structural members of the site-building. Any fireproofing replacement costs caused by the Subcontractor will be back charged to the Subcontractor.
- Clean-up
 - Laux will provide a dumpster for all debris generated by this project. A subcontractor may utilize this dumpster for its debris. Boxes are to be broken down prior to disposal.
 - Subcontractor must maintain a neat and orderly job site always. Daily clean-up is required
 - Subcontractor to protect surrounding areas from airborne dust/debris, etc. while working.
- Subcontractor agrees to perform its obligations and fully staff the project always expeditiously. The subcontractor acknowledges receipt of the construction schedule and agrees that it may be modified from time to time with forty-eight (48) hours' notice. The subcontractor agrees that by commencing work, it has accepted the site and the work of any prior subcontractors, suppliers, or tradespeople and that the site is acceptable for its performance.

ARTICLE 9 – APPLICABLE LAW, LIMITATION OF ACTIONS, VENUE

- This Subcontractor Agreement is made and delivered in the State of Michigan and shall be construed in accordance with the laws of the State of Michigan.
- Any claims by the Subcontractor against Laux related to this Subcontractor Agreement and/or the project must be brought within one (1) year from the date of the subcontractor's last performance.
- Any action arising out of or in any way related to this Subcontractor Agreement and/or the project shall be brought in a court of the State of Michigan located in the county of Ingham. Non-prevailing party shall pay all costs, including actual, reasonable attorney fees, court costs, actual expert and consultant costs and fees, and other expenses incurred by Laux to enforce and/or defend its rights under any part of this Subcontractor Agreement.

ARTICLE 10 – INSURANCE

- The Subcontractor shall provide general comprehensive liability insurance, public liability and property damage insurance, and worker's compensation coverage on all its employees or its subcontractors' employees engaged in the performance of this Subcontractor Agreement. Proof of this insurance shall be provided to Laux before the work commences, as set forth below.

Commercial General Liability Insurance

\$1,000,000 Each Occurrence Limit (Bodily Injury and Property Damage)
\$2,000,000 General Aggregate per Project
\$2,000,000 Products & Completed Operations Aggregate
\$1,000,000 Personal and Advertising Injury Limit

Business or Commercial Automobile Liability Insurance

\$1,000,000 combined single limit per accident

Worker's Compensation and Employers' Liability Insurance

\$100,000 Each Accident
\$100,000 Each Employee for Injury by Disease
\$500,000 Aggregate for Injury by Disease

Excess or Umbrella Liability

\$1,000,000 occurrence/aggregate



- Laux and owner, along with their respective officers, agents, and employees, shall be named as additional insured for Ongoing Operations and Products/Completed Operations on the Subcontractor's and any Sub-Subcontractor's Commercial General Liability Policy, which must be primary and noncontributory with respect to the additional insureds.
- It is expressly understood by the parties to this Subcontract that it is the intent of the parties that any insurance obtained by Laux is deemed excess, non-contributory, and not co-primary in relation to the coverage(s) procured by the Subcontractor, the Sub-Subcontractor or any of their respective consultants, officers, agents, subcontractors, employees, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of the aforementioned may be liable by operation of the statute, government regulation or other applicable law.

ARTICLE 11 – LABOR

- The Subcontractor shall employ at the worksite only such labor as shall avoid all union jurisdictional disputes and cause no delay in executing this Subcontractor Agreement. Laux Construction reserves the right to replace the Subcontractor's employees and employees of any sub-subcontractors if such employees are not acceptable to Laux or the owner.

ARTICLE 12 – TAXES

- The Subcontractor shall pay for themselves and its sub-subcontractors if any, all unemployment compensation, old age, or other social security taxes and income taxes and withholding taxes due in relation to work done under this Subcontractor Agreement and agrees to defend, indemnify, and hold harmless the owner and Laux for any such taxes.

ARTICLE 13 – MATERIALS

- The Subcontractor agrees that Laux shall not be liable for any material, either raw or processed, provided by the Subcontractor more than this Subcontractor Agreement.

ARTICLE 14 – SAFETY

- The Subcontractor shall take all safety precautions required by code, regulation, statute, or law with respect to the performance of the work required for the project and this Subcontractor Agreement. The Subcontractor shall comply with safety measures initiated by Laux and with applicable laws, ordinances, rules, regulations, and orders of public authorities for the safety of persons and property. The Subcontractor shall report to Laux within twenty-four (24) hours any injury to person or property which occurred at the site.
 - All workers and visitors on site must always wear hard hats. Anyone on-site without a hard hat will be required to leave the site.
 - All workers on site must always wear work boots, shirts, and long pants. Any worker on-site without any one of these items will be removed from the job site.
 - Material Safety Data Sheets must be submitted by the Subcontractor to Laux for any chemical-based products (i.e., adhesives, paints, etc.) prior to the start of any work using such products. Each worker to provide all necessary personal safety equipment as required by MIOSHA.

ARTICLE 15 – CLEAN-UP

- The Subcontractor shall maintain the Project premises in a clean and orderly manner always. If the Subcontractor fails to do so, Laux may clean up and charge the Subcontractor for the Subcontractor's share of clean-up costs.

ARTICLE 16 – TERMINATION

- Laux may cancel this Subcontractor Agreement without any liability to Subcontractor if Subcontractor does not perform as specified herein. Any additions or deletions by the Subcontractor to the conditions set forth herein must be accepted in writing by Laux. Laux may cancel and/or terminate this Subcontractor Agreement without any liability to the Subcontractor if the owner cancels and/or terminates the Contract with Laux. Laux additionally reserves the right to terminate this Subcontractor Agreement if the Subcontractor:



- a. fails to provide submittals, labor, materials, or equipment as required by this Subcontract Agreement and in accordance with the project Bid Documents.
- b. fails to furnish Laux with assurances satisfactory to Laux that evidence the Subcontractor's ability to complete the work in compliance with all the requirements of this Subcontract Agreement.
- c. fails to pay its debts as they come due, including but not limited to failing to make payments to sub-subcontractors/suppliers for materials or labor in accordance with the respective agreements between the Subcontractor and sub-subcontractors/suppliers.
- d. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials for the project.
- e. permits construction and/or bond liens to be filed by the said subcontractor and or any of their vendors or subcontractors regarding the project.
- f. fails to correct any defective work within a reasonable time.
- g. fails to honor any warranty supplied by the Subcontractor within a reasonable time.
- h. voluntarily or involuntarily files for any bankruptcy protection.
- i. incur judgments against it; or
- j. permits any third-party garnishment to be issued against Laux.
- k. if any of the terms and conditions are edited in any way this Subcontract Agreement will become null and void.

ARTICLE 17 – DEFAULT

- If the Subcontractor fails to carry out the work in accordance with this Subcontract Agreement or otherwise fails to comply with the terms and conditions of this Subcontract Agreement, Laux will issue a written notice of default. If within twenty-four (24) hours after issuance of written notice from Laux Construction, the Subcontractor fails to commence and continue correction of such default, Laux may, at its option, terminate the Subcontract Agreement and correct such deficiencies and deduct the actual cost thereof from the payments then or thereafter due to the Subcontractor, if any. However, in the case of the events listed in Article 16(g), through (i), the termination will be automatic and immediate. The remedies set forth in this Subcontract Agreement for Laux are cumulative to Laux's other rights and remedies at law, in equity, or otherwise and are not intended to be exclusive.

ARTICLE 18 – ARBITRATION

- In the event Laux is obligated to arbitrate claims with the owner, the Subcontractor agrees to arbitrate all claims that arise out of the same transaction or occurrence as claims in the same arbitration. Any arbitration award will be enforceable in any court of competent jurisdiction.

ARTICLE 19 – INDEMNIFICATION

- To the fullest extent permitted by law, the Subcontractor shall defend, indemnify, and hold harmless Laux and its agents, employees, officers, owners, successors, and assigns from and against any and all liabilities, claims, causes of action or lawsuits arising out of or in any way related to or caused by (i) Subcontractor's default or breach of this Subcontract Agreement or failure to perform the terms and conditions of this Subcontract Agreement; (ii) third party claims or claimed extras of a sub-subcontractor/supplier of Subcontractor (iii) Subcontractor's violation of safety requirements (iv) personal injury or death to any person, including employees of the Subcontractor, its agents or invitees, or property damage (including the work itself), including claims for loss of use (v) the operations or acts of commission or omission of the Subcontractor, including those of its employees, agents or officers, of its sub-subcontractors, or sub-subcontractors' employees, agents, or officers, unless the injuries are caused by the sole negligence of a party indemnified hereunder, and/or (v) any other claims which arise out of or result from, or are in any way connected with Subcontractor's work covered by this Subcontract Agreement.
- The Subcontractor's indemnification obligation shall include indemnity for all damages, interests, costs, fees, expert witness fees, expenses, and reasonable attorney fees, including prosecuting or defending a claim or incurred in securing the indemnity from the Subcontractor if it refuses to defend or pay any of the indemnity obligations above.
- The Subcontractor's obligation to indemnify shall not include any obligation to indemnify which is prohibited by MCLA 691.991 or other comparable state law.



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ARTICLE 20 – ELECTRONIC OR DIGITAL COMMUNICATION

- Laux may rely upon any electronic and/or digital communication.

ARTICLE 21 – SUBCONTRACTOR'S ABILITY TO COMPLETE THE PROJECT

- The Subcontractor, by executing this Subcontractor Agreement, provides assurances to Laux, upon which Laux relies, that Subcontractor can complete the project in a timely manner, is financially capable of completing the project, and is intimately familiar with the project and all Bid Documents.

ARTICLE 22 – CLOSE-OUT DOCUMENTS

- Subcontractor will forward all appropriate close-out documents required per project Bid Documents or as requested by Laux project manager. Close-out documents must be submitted in the format requested by the project manager (ie, hard copies, etc.). If the deadline date established by Laux does not receive these documents, **Laux will deduct \$100.00 per day from the final invoice.** Should Laux be required to print hard copies of close-out documents, the Subcontractor will be billed at \$1.00 per page.

ARTICLE 23 – TERMS AND CONDITIONS INCLUDED IN SUBCONTRACTS

- The Subcontractor shall include the terms and conditions of this Subcontractor Agreement in all its subcontracts with third parties related to this project.

It is understood that in accepting this offer, you (the Subcontractor) agree to the terms and conditions set forth in this Subcontractor Agreement.

Job Name:

Laux Job #:

Subcontractor:

Contractor: Laux Construction

Signature: _____

Signature: _____

By: _____

By: David Laux

Title: _____

Title: CEO/President

Date Signed: _____

Date Signed: _____

DRAFT AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

2023 Sinking Fund Program, in accordance with the Owner-approved plans and specifications, all applicable laws, the Owner's fixed budget, and as otherwise approved by the Owner.

THE OWNER:

(Name, legal status and address)

Lansing School District
519 West Kalamazoo Street
Lansing, Michigan 48933
Telephone Number: (517) 755-1000

THE ARCHITECT:

(Name, legal status and address)

Bergmann Associates
560 5th Street NW
Suite 305
Grand Rapids, Michigan 49505
Telephone Number: (616) 827-4270

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ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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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. Unless specifically enumerated in the Agreement in writing, the Contract Documents also 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, accepted portions of the Contractor's bid or proposal, and portions of Addenda relating to bidding or proposal requirements. The Contractor's execution of the Owner/Contractor Agreement and the Architect's execution of the Owner/Architect Agreement shall constitute their respective acceptance of all provisions of the Drawings, Addenda, and all Contract Documents as of the revision applicable to the date of such signature.

§ 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 the Contractor's performance of its duties.

§ 1.1.3 The Work

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

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions or interpretations, as applicable, on Claims in accordance with Section 15.2.

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

§ 1.1.10 The terms “Warranty” and “Guarantee” as used in the Contract Documents shall have the same meaning and shall be defined as “legally enforceable assurance of satisfactory performance or quality of a product or Work,” but in all events subject to the terms and qualifications of the Contract Documents.

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

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

§ 1.1.13 The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 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. If the Drawings and Specifications conflict with each other regarding the quality or quantity of Work required, the better quality and/or the greater quantity shall govern, and shall be provided, unless instructions are otherwise furnished to the Contractor by the Architect in writing with the Owner’s consent.

§ 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. Where responsibility for particular Work is required of the Contractor, the Contractor shall not be released from that responsibility by reason of the location of the Specification, Drawing, or other information that establishes the responsibility. Thus, for example, the Contractor shall be responsible for all Work required of it, even though that responsibility may be shown only in that portion of the Contract Documents typically pertaining to another contractor or trade.

§ 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.

§ 1.2.4 If there should be a conflict between two or more of the Contract Documents, the following order of interpretation shall apply.

- .1 Where requirements specifically set forth in the Agreement are in conflict with other Contract Documents, including, but not limited to, these General Conditions, the Agreement shall govern.
- .2 In all other instances, the conflict shall be resolved by complying with the provision that is most favorable to the Owner, as determined in the Owner’s sole discretion.
- .3 When a duplicate of material or equipment occurs in the Drawings, the Specifications or other Contract Documents, each Contractor shall be deemed to have bid on the basis of each furnishing such material or equipment. The Owner will decide which Contractor shall furnish the same.

§ 1.2.4.1 Without limiting the applicability of Section 1.2.4, if there should be conflict or ambiguity within any single Contract Document (for example, these General Conditions, as modified), the conflict or ambiguity shall be resolved by complying with the provision that is most favorable to the Owner, as determined in the Owner’s sole discretion.

§ 1.2.5 It is the intent of the Contract Documents to accomplish a complete and workmanlike installation in which there shall be installed new products of the latest and best design and manufacture, and workmanship shall be thoroughly first class, executed by competent and experienced workmen.

- .1 Details of preparation, construction, installation, and finishing encompassed by the Contract Documents shall conform to the industry standards of the respective trades, and that workmanship and construction methods shall be of workmanlike quality so as to accomplish a neat and finished job, consistent with industry standards.
- .2 Where specific recognized standards are mentioned in the Specifications, it shall be interpreted that such requirements shall be complied with.

§ 1.2.6 The Contractor acknowledges that there may be items of the Work that the Contractor is responsible to provide under the Contract Documents that are not drawn or specified in the design but are necessary for the proper execution and completion of the Work, and are consistent with, and reasonably inferable from, the Drawings and Specifications. Provided the necessary work or materials does not materially increase the cost of the Work, all such items shall be provided as part of the Work without delay in its progress and without any increase in the Contract Sum.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

§ 1.5.1 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and unless otherwise indicated in the Contract Documents or the Owner/Architect Agreement, the Architect and the respective consultants will retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. 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, subject to any protocols established pursuant to Section 1.7, 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 the Architect’s consultants.

§ 1.5.3 The Drawings, Specifications, and other documents and all data used in compiling any tests, surveys, or inspections at the Project Site and the results therefrom, as well as all photographs, drawings, specifications, schedules, data processing output, computer-aided design/drafting (CADD) system disks/tapes, computations, studies, audits, reports, models and other items of like kind, and all intellectual property, prepared or created for or in connection with the Project and required by the Owner, the Contractor, or a third party, belong to the Owner. The Contractor may retain one record set. All copies of them, except Contractor’s record set, shall be returned or suitably accounted for upon completion of the Work. They are for use solely with respect to the Project. The Contractor shall not, without the prior written consent of the Owner, use or permit anyone to use any Drawings, Specifications, or other documents prepared for or in connection with the Project, or any concepts or ideas developed in connection with the Project, for any purpose other than the Project. The Owner shall at all times have access to and control over the disposition of any Drawings, Specifications, and other documents pertaining to the Project.

§ 1.6 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 an appropriate representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by registered or certified mail, by courier, or by electronic transmission if an acknowledgment of receipt is received from the recipient or proof of receipt is otherwise established. The parties acknowledge that an appropriate representative of the Owner shall have authority only to the extent provided by the Owner's Board of Education.

§ 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 an appropriate representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery. The parties acknowledge that an appropriate representative of the Owner shall have authority only to the extent provided by the Owner's Board of Education.

§ 1.7 Digital Data Use and Transmission

The parties may agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

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 a representative who shall have express authority to bind the Owner with respect to matters requiring the Owner's approval or authorization subject to parameters of authority established by the Owner's Board of Education as provided in writing to Contractor. Benjamin Shuldiner or his designee shall serve as initial Owner representatives and shall be reasonably available to Contractor. 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 NOT USED.

§ 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, as applicable, 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 by a mutual agreement in writing by the Owner and Contractor.

§ 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 immediately notify the Owner that the Work has stopped and state with specificity why any evidence provided (or not provided) by the Owner is insufficient. 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. The parties' disagreement as to the appropriateness of payment for services performed shall not constitute the Owner's failure to make financial arrangements to fulfill the Owner's obligations under 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 information is protected by law and/or 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 such “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. To the extent permitted by law, the Contractor may also disclose such “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, but not limited to, 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 State of Michigan. 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.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 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. Taking into account the Contractor’s experience and expertise, and exercise of professional caution, the Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Contractor shall not be entitled to additional compensation resulting from its failure to confirm the location of site utilities or existing structures prior to the opening of the Contractor’s bid.

§ 2.3.5 Upon specific written request by the Contractor, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Contractor’s performance of the Work with reasonable promptness after receiving the Contractor’s written request for such information or services. Contracts with other Contractors alone shall not constitute sufficient Owner control for purposes of this Section.

§ 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

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

§ 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 and fails within a three business day period after receipt of notice from the Owner or the Owner’s designee (including, for this purpose, the Architect) 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, including any claim against the Contractor’s Performance Bond, correct such default or neglect. In the event the Contractor’s default or neglect results in a threat to the safety of persons or property, the Contractor shall immediately commence and continue correction; otherwise, the Owner may undertake the same actions as permitted in the prior sentence. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner’s expenses, including any and all legal expenses incurred to effectuate and enforce this provision, and compensation for the Architect’s and/or other Contractor’s additional services made necessary by such default, neglect, or failure. If the Contractor does not agree to a Change

Order as described in the preceding sentence, the Owner may nevertheless withhold the reasonable cost of correcting such deficiencies and the expenses identified in the preceding sentence (including, but not limited to, all legal expenses incurred to effectuate and enforce this provision). Exercise of such rights shall in no way limit or jeopardize the Owner's right to any claim against the Performance Bond or Contractor. The Architect may also, 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 the aforementioned 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 the event the Owner directs another entity to perform Work pursuant to this Section that otherwise is the obligation of the Contractor, including correction of safety violations, either at the Contractor's request or as a result of the Contractor's failure to perform such Work, the Owner may withhold any payments due Contractor to cover all costs for labor, material, and equipment plus that other entity's administrative, profit, and overhead costs. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the 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 shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

§ 3.1.3 The Contractor shall not be relieved of 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.

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

§ 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. The Contractor shall independently verify all information related to utilities prior to beginning the Work. The Contractor shall make careful investigation to establish the exact location of any such items indicated on the Drawings (e.g., locate via hand digging before excavating). The Contractor shall be responsible for all costs arising out of damage to such items or additional construction costs incurred because Contractor failed to verify said information.

§ 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 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 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 any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require, with a copy of same to be forwarded to the Owner.

§ 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 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.

§ 3.2.5 Prior to submitting its bid, the Contractor shall have studied and compared the Contract Documents and shall have reported to the Architect any error, inconsistency or omission in the Contract Documents. It will be presumed that the Contractor's bid and the Contract Sum include the cost of correcting any such error, inconsistency or omission, which could have been discovered by the exercise of reasonable diligence. Unless the Contractor establishes that such error, inconsistency or omission could not have been discovered by the exercise of reasonable diligence, the Contractor will make such corrections without additional compensation so that the Work is fully functional.

§ 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. The Contractor shall immediately notify the Architect and Owner of delays of any other Contractors that could impact timely coordination and completion of the Work.

§ 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. The Contractor shall be deemed to have accepted prior work when it commences provision of subsequent Work and shall be responsible for the cost of repair, replacement, or reconstruction if the prior work is found to be improper.

§ 3.4 Labor and Materials and Utilities

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Such provision of labor and materials shall occur

in sufficient time to satisfy the existing Project schedule. The Contractor bears the risk of any failure to timely provide such labor and materials for any reason. The Contractor agrees to execute the appropriate UCC forms to effectuate the Owner's ownership of the material and equipment furnished pursuant to this Agreement.

§ 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 only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

§ 3.4.4 The Contractor agrees that neither it nor its Subcontractors will discriminate against any employee or applicant for employment, to be employed in the performance of this Contract, with respect to hire, tenure conditions or privilege of employment, or any matter directly or indirectly related to employment, because of race, age, sex, color, religion, national origin, ancestry or physical disability. Breach of this covenant may be regarded as a material breach of this Contract.

§ 3.4.5 Immediately after "award of the Contract," the Contractor shall provide the Architect a list showing the name of the manufacturer proposed to be used for each of the product(s) identified in the Specifications and, where applicable, the name of the installing Subcontractor.

§ 3.4.6 The Architect will reply in writing to the Contractor stating whether the Owner or the Architect, after due investigation, has reasonable objection to any such proposal. If adequate data on any proposed manufacturer or installer is not available, the Architect may state that action will be deferred until the Contractor provides further data.

§ 3.4.7 In all cases involving utilities, unless the Contract Documents specifically provide otherwise, it shall be the Contractor's responsibility to coordinate the Work with the owners of such utilities for the protection of such utilities and for the safety associated with working with or in the vicinity of such utilities. The Contractor shall coordinate any work required by private and/or public utility companies to provide utilities to the Work and/or shall coordinate relocation of utilities as required by the Work. Any reference to the Owner being responsible for the coordination of, the paying for, or the relocation of any utility or associated equipment, which it does not own or control, requires only reasonable efforts by the Owner to coordinate such activity.

§ 3.4.8 Asbestos-Free Product Installation

§ 3.4.8.1 It is hereby understood and agreed that no product and/or material containing asbestos, including chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos and any combination of these materials that have been chemically treated and/or altered shall be installed or introduced into the Work by the Contractor or its employees, agents, Subcontractors, or other individuals or entities over whom the Contractor has control. The Contractor shall be required to provide a signed certification statement ensuring that all products or materials installed or introduced into the Work will be asbestos-free.

§ 3.4.8.2 The Contractor also shall be required to furnish certified statements from the manufacturers of supplied materials used during construction verifying their products to be asbestos-free in accordance with the requirements of Section 3.4.8.1.

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

§ 3.4.9 Asbestos may be present within the construction areas. Contractors are to become aware of Owner's hazardous material report prior to construction. Work is not to disturb any in-place hazardous materials. The Contractor must immediately stop all Work and notify the Owner if it reasonably suspects the presence of unknown hazardous materials and/or has disturbed any materials reasonably suspected to be hazardous materials.

§ 3.5 Warranty

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

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

Upon notice of the breach of any of the foregoing warranties or guarantees or any other warranties or guarantees under the Contract Documents, the Contractor, in addition to any other requirements in the Contract Documents, will commence to correct such breach within 72 hours after written notice thereof and thereafter will use its commercially reasonable best efforts to correct such breach to the satisfaction of the Owner; provided that if such notice is given after final payment hereunder, such 72 hour period shall be extended to seven (7) days. The foregoing warranties and obligations of the Contractor shall survive the final payment and/or termination of the Contract.

The Contractor shall, at the time of final completion of the Work and as a condition precedent to final payment to the Contractor, assign to the Owner all manufacturers' warranties related to the materials and labor used in the Work. The Contractor further agrees to perform the Work in such manner as to preserve any and all such manufacturers' warranties and deliver to the Architect the warranties, project manuals, operating procedures, and other materials related to each of the building systems and materials included in the Contractor's Work and as required by the Specifications.

Notwithstanding anything contrary in the foregoing or in any other Contract Document(s), labor shall be warranted for one year, commencing as of the date specified in the Architect's Certificate of Substantial Completion, and the manufacturer warranties applicable to the materials integrated into the Work shall commence and end as provided in the such warranty documents, provided to Owner in accordance with this Section 3.5.1.

§ 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.

§ 3.6 Taxes

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. The Contractor shall pay all local, state and federal taxes levied on its business, income or property and shall make all contributions for social security and other wage or payroll taxes. The Contractor shall be solely responsible for such payments and shall indemnify the Owner and hold it harmless from same.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 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.

§ 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 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.

§ 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 written and dated 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 Owner and 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, they will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Owner and Architect determine 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 Contractor in writing, stating the reasons. If Contractor disputes the determination or recommendation, the Contractor shall submit a Claim as provided in Article 15. The requirements of Section 2 of 1998 PA 57, as amended, are hereby incorporated into this document. The Contractor shall be alert to any indication or evidence of existing underground or concealed utilities or structures not shown on the Contract Documents and shall immediately notify the Owner of discovery of such evidence. If the Contractor encounters such utilities or structures, it shall cease operations immediately to minimize damage and shall notify the Owner and Architect. The Contractor shall bear the cost of damage resulting from its failure to exercise reasonable care in its construction activity or from continuing operations without notifying the Owner.

§ 3.7.4.1 The Contractor bidding on the Work is responsible for visiting the site and determining all local conditions that may in any way affect its Work.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall provide written and dated notification to 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. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features shall be made, as needed, as provided in Article 15.

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances 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 differ from allowances, the Contract Sum may 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.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent shall be satisfactory to the Owner in all respects, and the Owner shall have the right to require the Contractor to

remove any superintendent from the Project whose performance is not satisfactory to the Owner and to replace such superintendent with a superintendent who is satisfactory to the Owner.

§ 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. Within 14 days of receipt of the information, the Owner and/or the Architect may notify the Contractor, stating whether the Owner and/or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent .

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. 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 required under the Contract Documents or any scheduling updates issued by the Architect or Owner. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. In no event shall the Contractor's Construction Schedule be extended due to action or inaction of the Contractor, except with prior written approval of the Owner within the Owner's sole, reasonable discretion.

The Contractor shall cooperate with the Architect and Owner in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other contractors or the construction or operations of the Owner's own forces. The Contractor acknowledges and understands that the work schedule will be modified from time-to-time with the Owner's approval to coordinate with the work of others and that such schedule changes do not give rise to a claim for damages or additional compensation by the Contractor for delay or otherwise. The Contractor shall be required to conform to the most recent Owner-approved schedule and acknowledges that fact was taken into account when it agreed to the Contract Sum and entered into this Contract.

§ 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 Owner's and Architect's approval. The Owner's and the Architect's approvals shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, (2) allow for a reasonable amount of time to review submittals, and (3) shall provide for expeditious and practical execution of the Work. 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 approved Project schedules and the most recent Work schedule submitted to the Owner and Architect consistent therewith.

§ 3.10.4 Progress Meetings: Meetings of representatives of the various Contractors may be held for the purpose of coordination and furthering the progress of the Work. Contractor and Subcontractor attendance is mandatory. Meetings shall be held at regular intervals as provided in the General Requirements; special meetings may be held if deemed necessary by the Owner and/or Architect.

§ 3.10.5 The Contractor shall proceed in accordance with the critical path set forth in the Construction Schedule. The Contractor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Owner of any delays or potential delays. If any progress report indicates any delays, the Architect shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment of the Contract Time or any Milestone Date or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order.

§ 3.11 Documents and Samples at the Site

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.

§ 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 for submittal to and review by the Architect to illustrate some portion of the Work.

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate 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 that are not required by the Contract Documents may be returned by the Architect without action.

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

Because the schedule does not allow for the resubmission of any Shop Drawing, Project Data, Sample or similar submittals, the Contractor agrees to ensure that its first submissions shall comply with all the requirements of the Contract Documents. It is further agreed that if, for whatever reason, any Shop Drawing, Project Data, Sample, or similar submittals require more than one resubmission to secure the approval of the Architect, the Contract amount may be reduced by (1) the amount of the actual delay damages charged or suffered by the Owner, but in any event not less than \$100 per day, plus (ii) the actual cost of the Architect's review(s) for each subsequent resubmission necessary to secure the aforementioned approval(s). Without limiting the foregoing, the Contractor's obligation to hold the Owner harmless from and bear the costs for any delay, good faith rejection of or resulting from any Shop Drawing, Project Data, Sample or similar submittal by Architect is conditioned on such delay or rejection being attributable to an act or omission of Contractor.

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

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

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

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such 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. Subject to its professional skill and expertise, 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 take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 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.

§ 3.13 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.

§ 3.13.2 Anything contained in the Contract Documents to the contrary notwithstanding, no one except the Owner shall be permitted to disrupt the operation of any building system or any other services without the Owner's prior written consent. Any request to perform such work shall be in writing, received by the Owner no less than five (5) days prior to the commencement of the requested disruption, and shall detail (1) the exact nature and duration of such interruption, (ii) the area affected, and (iii) any impact upon the Construction Schedule caused by such proposed temporary disruption. Unless otherwise approved by the Owner, all work shall be performed during the hours and on the days set forth in the Specifications, in accordance with the most-recent project schedule, and/or as directed by the Owner or Architect. The Contractor's failure to comply with the notice provisions of this section shall constitute a waiver by the Contractor of any right it may have to an adjustment of the Contract Time, on account of any postponement, rescheduling, or other delays ordered by the Owner in connection with any Work for which appropriate notice was not furnished.

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

§ 3.14 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.

§ 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 and its Subcontractors, under the Contractor's direction, 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.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.15.3 Any areas and/or concurrently occupied space both occupied by the Owner and used in the progress of the Work, both within the limits of the construction site and the adjacent areas leading to it, shall be maintained, opened to travel and kept in a clean condition. Failure by the Contractor to maintain said areas will result in the Owner's cleaning of same, at the expense of the Contractor.

§ 3.15.4 In addition to removal of rubbish, the Contractor and its Subcontractors, under the Contractor's direction, shall replace any broken glass, remove stains, spots, marks, and dirt from decorated work, clean hardware, and/or remove spots and smears from all surfaces which were affected by the Work.

§ 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 indemnify and hold harmless the Owner and Architect from any and all cost, damages, or loss on account thereof, including, but not limited to, actual attorneys' fees, 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. The review by the Owner or Architect of any method of construction, invention, appliance, process, article, device or materials of any kind shall be for its adequacy in the Work and shall not be an approval for the use thereof by the Contractor in violation of any patent or other rights of any third person.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the

negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In addition to and not in limitation of the Contractor's other indemnity obligations, the Contractor hereby accepts and assumes exclusive liability for and shall indemnify, protect, and hold harmless the Owner and Architect from and against the payment of the following:

- .1 all contributions, taxes, or premiums (including interest and penalties thereof) which may be payable under the unemployment insurance law of any state, the federal Social Security Act, federal, state, county, and/or municipal tax withholding laws, or any other law, measured upon the payroll of or required to be withheld from employees by whomsoever employed, engaged in the Work to be performed and furnished under this Contract;
- .2 all sales, use, personal property and other taxes (including interest and penalties thereof) required by any federal, state, county, municipal, or other law to be paid or collected by the Contractor or any of its Subcontractors or vendors or any other person or persons acting for, through or under it or any of them, by reason of the performance of the Work or the acquisition, ownership, furnishing, or use of any materials, equipment, supplies, labor, services, or other items for or in connection with the Work; and
- .3 all pension, welfare, vacation, annuity, and other benefit contributions payable under or in connection with respect to all persons by whomsoever employed, engaged in the Work to be performed and furnished under this Contract.

Provided Owner or Architect has, in good faith and to the best of their knowledge, provided Contractor with complete, accurate, reports identifying the presence of any and all hazardous materials on Site as of the date of commencement of the Work, Contractor shall indemnify, defend, and hold the Owner harmless from any claim, damage, loss or expense, including, but not limited to, actual attorney fees, incurred by the Owner related to any hazardous material, condition or waste, toxic substance, pollution, or contamination brought into the Project site or caused or exacerbated by the Contractor or used, handled, transported, stored, removed, remediated, disturbed, or dispersed of by Contractor.

§ 3.18.3 In the event that any claim is made or asserted, or lawsuit filed for damages or injury arising out of or resulting from the performance of the Work, whether or not the Owner or Architect is named as a party, the Contractor shall immediately advise the Owner and Architect, in writing, of such claim or lawsuit and shall provide a full and complete copy of any documents or pleadings thereto, as well as a full and accurate report of the facts involved.

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. The Term "Architect," "Architect/Engineer," "Engineer," or "Design Professional" as used herein means the Architect or the Architect's authorized representative.

§ 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 Architect.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment and with the Owner's written concurrence during the correction period. 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 more frequently as agreed with the Owner or required by law, to become familiar with the progress and quality of the portion of the Work completed, and to determine if the Work, when fully completed, will be in accordance with the Contract Documents. Except as otherwise set forth herein or in the Owner/Architect Agreement, 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. The Architect shall provide all services and duties that may be performed by an "Architect" or "Engineer" in 1937 PA 306 and 1980 PA 299, including but not limited to supervision of construction.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner informed about the progress and quality of the portion of the Work completed, will guard the Owner against defects and deficiencies in the Work, 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. Except as required by the Owner/Architect Agreement or other Contract Documents, the Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and, except as provided in the agreement between Owner and Architect or this document, 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. The Architect shall provide all services and duties that may be performed by an "Architect" or "Engineer" in 1937 PA 306 and 1980 PA 299, including but not limited to supervision of construction.

§ 4.2.4 Communications

The Owner and Contractor shall endeavor to 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 materially affecting the Project. 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 will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 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 take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Owner and Architect or, in the absence of an approved submittal schedule, with reasonable promptness as to cause no delay in the Work while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or 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. However, should the Architect discover during the course of such review any inaccuracies, incompleteness, or other irregularities, the Architect shall immediately notify the Owner of the same to determine an appropriate corrective course of action or notify the Contractor of the same to correct the irregularities.

§ 4.2.8 The Architect will review and recommend for approval 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, with the Owner's concurrence, the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to

Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site.

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

§ 4.2.12 Interpretations of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations, the Architect will endeavor to secure faithful performance by Contractor, and will not be liable for results of interpretations or decisions rendered in good faith and without negligence.

§ 4.2.13 The Architect's interpretations 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 given the particular circumstances. 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. The term "Subcontractor" shall also include Sub-subcontractors at any tier and material and equipment suppliers. Each and every subcontract shall be understood to have the Owner as a third-party beneficiary, and the Owner shall enjoy all third-party beneficiary rights permitted by law.

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect in writing 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. All contractual agreements with additional persons or entities serving as a Subcontractor or supplier shall expressly identify the Owner as a third-party beneficiary, and the Owner shall enjoy all third-party beneficiary rights not prohibited by law.

§ 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, despite the Architect's or Owner's

reasonable objection, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution. The Contractor shall notify the Owner and Architect of any proposed substitution a minimum of ten (10) days prior to such proposed change.

§ 5.3 Subcontractual Relations

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.

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation may be adjusted as negotiated by the parties.

§ 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.

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. The Contractor shall be responsible for coordinating the Work and with the work of other Contractors, including the Owner's own forces or Separate Contractors, so as to complete the Work in accordance with the Project time schedule.

§ 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 Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in 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 NOT USED.

§ 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 reasonably discoverable.

§ 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.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor 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 allocate the cost among those responsible. The Owner's right to clean up shall in no event be deemed a duty, and should the Owner choose not to pursue this remedy, the Contractor necessitating such action shall remain fully responsible for the same.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive may be issued 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.

§ 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 Unless expressly stated otherwise in the Change Order, an agreement on any Change Order shall constitute the Contractor's final position on all matters relating to the change in the work that is subject to the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Contract Time.

§ 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 or more of the following methods:

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

However, the Contract Time shall be adjusted only if the Contractor demonstrates to the Owner that the changes in the Work required by the Construction Change Directive adversely affect the critical path of the Work.

§ 7.3. If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine, with the Owner's approval, the 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. 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 7.3.6 shall be limited to a reasonable amount of the following that are actually incurred by the Contractor:

- .1 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, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 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, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 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 Architect of the Contractor's agreement or disagreement with the method, if any,

provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. Contractor agreements to a Construction Change Directive shall require a follow-up writing or signature as contemplated in Section 7.3.7.

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

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

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

§ 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. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall either (i) file a Claim in accordance with Article 15 and continue to implement the change in the Work, or (ii) notify the Owner and Architect in writing and shall not proceed to implement the change in the Work. Without limiting other restrictions on payment, if the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the 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.

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 Agreement.

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

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

§ 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 obtaining all supplies, materials, tools and equipment necessary to perform the Work and for properly performing the Work.

§ 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. All work shall be completed in sufficient time to allow for clean-up and preparation for Owner move-in prior to the Date of Substantial Completion.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 Provided the Contractor submits a written request for an extension not more than fourteen (14) days after the occurrence that gives rise to the delay, 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 fire, government-declared emergencies, unavoidable casualties, significant and unusual 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 litigation, mediation, arbitration or binding dispute resolution, as applicable; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine and with which the Owner agrees. Failure of the Contractor to submit a timely request for an extension shall irrevocably waive the Contractor's right to such an extension of time. If the Contract Time is subject to extension pursuant to this subparagraph, such extension shall be the exclusive remedy of the Contractor and the Contractor shall not be entitled to recover damages from the Owner.

§ 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 precludes recovery of damages for delay by the Contractor under other provisions of the Contract Documents. Under no circumstances may the Contractor assert a Claim, cause of action, or other relief against the Owner for delay damages.

§ 8.4 Delay Damage Claims

§ 8.4.1 In the absence of a delay caused by something outside the Contractor's reasonable control, if the Contractor fails to complete its Work on time resulting in loss or damage to the Owner, whether or not liquidated damages are called for in the Contract Documents, the Owner shall be entitled to make a Claim for direct damages caused by the Contractor's delay.

§ 8.4.2 In the event the Contractor is hindered in the commencement or progress of the Work for any reason by someone other than the Owner, and in the event the Contractor claims damages as a direct and proximate consequence thereof (including, but not limited to, extended general conditions, overhead, profit, overtime, interest, supervision or other costs or profits whatsoever), then the Contractor shall not assert such claims against the Owner, and as to the Owner, the Contractor's claims of delay damages are hereby waived. The Contractor's sole and exclusive remedy regarding such claims for such delay damages shall be to pursue such claims directly against the individual or entity which caused the delay.

For any delay claims raised against the Owner for any reason, the Contractor's sole and exclusive remedy is an extension of time to perform the Work not to exceed the time frame of any proven delay. Under no circumstances is the Contractor entitled to monetary delay damages from the Owner.

§ 8.4.3 Notwithstanding the foregoing, in the event of any delay in the completion of the Contractor's Work or scheduling of the Contractor's Work, including the sequence of that Work which is attributable to the Owner, and if it is determined by a court of competent jurisdiction that the Owner is liable for such delay despite the other terms of this Contract barring any Owner liability for damages for delay, then the Owner shall be liable to the Contractor for liquidated damages in the amount of not to exceed One Hundred Dollars (\$100) per day, maximum, which shall include all of the Contractor's claims, including by way of example, delays, compressions of schedule, lost productivity, lost profits, lost opportunities, out of sequence work, overhead, crowding, tools, equipment, rentals, etc.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum 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

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 Architect. This schedule, unless objected to by the 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 or Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.2.1 The schedule of values shall be prepared in such manner that the value associated for each major item of work and each subcontracted item of work is shown with materials and labor indicated separately on AIA Document G702 - Application and Certificate of Payment, and AIA Document G703 - Continuation Sheet, or otherwise.

§ 9.3 Applications for Payment

§ 9.3.1 At least fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values 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. The form of Application and Certificate for Payment shall be AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet, unless otherwise agreed by the Owner. Applications for Payment are due to the office of the Architect by the designated day of the month. Applications for Payment that are received after the specified date will not be processed until the following month.

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

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

§ 9.3.1.3 The Contractor shall submit with each monthly Application for Payment (1) an Affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the previous application was submitted and for which the Owner might in any way be responsible have been paid or otherwise satisfied, and (2) a release or waiver of liens arising out of the Contract from each Contractor and/or Subcontractor, materialman, supplier and laborer for the Contractor addressing all previous Applications for Payment submitted for the Project.

§ 9.3.1.4 The Contractor must provide copies of the insurance certificates, bonds, and the same for all of the Subcontractors prior to submitting the first Application for Payment.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location

agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. Payment to Contractor for materials stored off site is discouraged. When circumstances indicate that the Owner's best interest is served by off-site storage, the Contractor shall make written request to the Owner for approval to include such material costs in the next progress payment. The Contractor's request shall include the following information:

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

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

§ 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 determines is properly due, and notify the Contractor and Owner of the Architect'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 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 to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect'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, in writing, together with the certification to which it pertains. However, unless otherwise required by the Owner/Architect Agreement, any other Contract Document, or applicable law, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and 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. Nothing in this Section 9.4.2 shall be interpreted to reduce or eliminate the Architect's duties as set forth in Section 3.1.9 of the Owner/Architect Agreement, including supervision of construction.

§ 9.5 Decisions to Withhold Certification

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

- .1 defective Work not remedied, or the Contractor is in uncured default on the Agreement;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or 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, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents;
- .8 the Work not having progressed to the extent set forth in the Application for Payment;
- .9 representations of the Contractor are untrue;
- .10 failing to conform to Project Schedule;
- .11 default in the performance of any obligation to the Owner under another contract; or
- .12 failure to provide sufficiently skilled workers.

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

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or 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.

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

§ 9.5.6 Notwithstanding anything herein to the contrary, the Owner has no obligation to pay the Contractor absent receipt of a Certificate for Payment for the requested amount, and neither the Architect's failure to issue a Certificate for Payment nor the Architect's failure to notify the Contractor and/or Owner of a withheld Certificate for Payment creates an obligation on the Owner to pay the Contractor. The foregoing sentence shall not operate to limit the right of the Owner to dispute amounts requested by the Contractor or to withhold payments from the Contractor as provided in the Contract Documents.

§ 9.6 Progress Payments

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

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

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

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

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors 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 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.

§ 9.6.9 Subject to applicable law, if a petition in bankruptcy or any other arrangement or proceeding regarding insolvency, assignment for the benefit of creditors, trust, chattel mortgage, or similar state or federal proceeding, whether voluntary or involuntary, shall be filed with respect to the Contractor, the Owner may withhold the final balance, or any other payments, whether or not an application for progress payment has been properly filed, until expiration of the period of any guarantees or warranties required for the Contractor, and the Owner may pay out such funds the amount necessary to satisfy any claims or costs that otherwise would have been covered by such guarantees or warranties.

§ 9.7 Failure of Payment

If without justifiable basis under the Contract Documents, including these General Conditions, the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the undisputed amount asserted by the Contractor in its Application for Payment or awarded by a court, then the Contractor may, upon twenty-one (21) additional days' written notice to the Owner and Architect, stop the Work until payment of the undisputed 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. The Contractor acknowledges the Owner's right to dispute in

good faith any amount requested by the Contractor, and, irrespective of the Architect's issuance of a Certificate for Payment, the Owner's right to withhold payments from the Contractor, including, without limitation, to correct Work that fails to conform with the Contract Documents or as an offset or recoupment to recover the cost of damages incurred by the Owner due to the Contractor's breach of the Contract or a wrongful or negligent act or omission of the Contractor.

§ 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 and when all required occupancy permits, if any, have been issued, so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. 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.

§ 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 immediately. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; 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 Notwithstanding Sections 9.8.1 and 9.8.2, as a condition precedent to establishing the date of Substantial Completion, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected (a "punch list"). The Contractor shall respond immediately to correct Work deficiencies and/or punch list items. Should the Contractor fail to make corrections in a timely fashion, but not later than fifteen (15) calendar days from the date of Substantial Completion or notification of the required corrections, whichever is earlier, such Work may be corrected by the Owner at the Contractor's sole expense, and any remaining payments due the Contractor shall be withheld by the Owner.

§ 9.8.7 The Contractor shall promptly notify the Architect, in writing, when the Work deficiencies and/or punch list items are completed. Upon the review of the Work by the Architect after such notification by the Contractor, if Work deficiencies and/or punch list items shall continue to exist, the Contractor shall reimburse the Owner its cost plus ten percent (10%) overhead and profit on any cost incurred by the Owner, including the Architect's fees for re-inspection of the Work. Failure to pay such costs within ten (10) days of receipt of a demand regarding the same shall permit the Owner to pay such costs out of retainage held by the Owner on the Contractor's contract.

§ 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. The Contractor shall proceed with the Work in such a manner as reasonably directed and shall cooperate with the Owner to limit interruptions.

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

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

§ 9.9.4 Any agreement as to the acceptance of non-conforming Work not complying with the requirements of the Contract Documents shall be in writing in the form of a Change Order, acceptable to the Owner's authorized representative and signed by all parties.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. 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 that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (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, (6) an affidavit that states the Work is fully completed and performed in accordance with the Contract Documents, (7) in the event of Contractor bankruptcy, at the Owner's option, an order entered by the court having jurisdiction of the Contractor's insolvency proceeding authorizing such payment, (8) a general release executed by the Contractor on a form provided by the Architect, (9) all close-out documents, (10) all warranties collected and provided in an acceptable manner, and (11) 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 actual attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, 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 Claims already asserted as of the date of final payment and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents and resulting demands and Claims asserted in accordance with the Contract Documents;

- .3 terms of all warranties required by the Contract Documents or provided at law or in equity; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of all claims of the Contractor except those previously made by the Contractor in writing, including Claims pending as of the final payment date, or identified by the Contractor as unsettled at the time of final Application for Payment and specifically referenced as being an exception to the waiver contained in this section.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall continuously maintain adequate protection of all Work from damage and shall protect the Owner's property from injury or loss. The Contractor shall make good any such damage, injury or loss at no cost to the Owner, except to the extent directly caused by agents or employees of the Owner. The Contractor shall adequately protect the Work and adjacent property as required by law, the Contract Documents, or as otherwise required, to cause no damage to the Work and adjacent property during the execution of the Work. This requirement shall also apply to structures above and below ground as conditions of the site require. The Contractor shall also provide recommendations and information to the Owner regarding (a) the assignment of responsibilities for safety precautions and programs by the Subcontractors and responsibilities for safety precautions and programs by the Subcontractors and the Owner for the safety of the Owner, and the general public; (b) temporary facilities; and (c) equipment, materials and services for common use of Subcontractors. The Contractor shall verify that the requirements and assignment of responsibilities are included in the proposed Contract Documents.

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

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

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take every reasonable precaution 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 take all reasonable safety precautions with respect to its Work and work of others, shall comply with all standard industry safety measures and shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority and all other requirements of the Contract Documents, including those applicable to the safety of persons or property. The Contractor shall be responsible for the safety of all of the Contractor's employees and the safety of all of the Contractor's Subcontractors, suppliers, and their employees. The Contractor shall report in writing to the Architect any injury to any of Contractor's or its Subcontractor's employees at the site within one (1) day after the occurrence of such injury.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable, necessary and appropriate 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. The Contractor shall be solely and fully responsible for any and all damage claims and for defense of all actions against the Owner relating to such explosives, hazardous materials and/or unusual methods.

§ 10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. 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

If the Contractor suffers injury or damage to person or property because of an act or omission of the Owner, or of others for whose acts the Owner is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the Owner within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the Owner to investigate the matter. This provision shall be for investigative purposes only and shall not eliminate or reduce a party's obligation to pursue Claims. The Contractor's failure to do so shall be an irrevocable waiver of any Claim arising out of such injury or damage. Injury or damage to persons or property suffered by the Owner because of an act or omission of the Contractor, or others for whose acts the Contractor is legally responsible, shall be subject to the limitation periods established by Michigan law.

§ 10.2.8.1 The Contractor causing damage to the Work of another shall be responsible for the repair and replacement of such damaged Work. Back charges shall be made against the Contract Sum of the damaging Contractor when corrections are not made promptly.

§ 10.2.8.2 If the Contractor or any Subcontractor chooses to use any systems, equipment, facilities, or services which have been incorporated in the Project as a permanent part thereof by any other, the Contractor shall assume full responsibility for damages caused to said systems, equipment, facilities or services, and have damages repaired as required, so that in no case will the performance of the used systems, equipment, facilities or services be diminished from the specified criteria as a result of such use.

§ 10.2.9 The Contractor acknowledges that the safety of the Owner's students, employees and guests is of the utmost importance. The Contractor will take no action which would jeopardize the safety of the Owner's students, employees and guests and, without the Owner's written approval, shall take no action which would interfere with the Owner's activities. Without limiting the foregoing sentence, the Contractor shall comply with all laws applicable to student and/or school safety.

§ 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 in writing of the condition.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner, in its discretion, 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, as a courtesy, 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. 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 to address shutdown, delay, and start-up.

§ 10.3.3 NOT USED.

§ 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. To the extent the Contract Documents require the removal, transport and disposal of hazardous materials, the Contractor agrees that it assumes responsibility for said tasks as part of the Contract.

§ 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.

§ 10.3.6 NOT USED.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's reasonable 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. Nothing in this paragraph will be construed as relieving Contractor from the cost and responsibilities for emergencies covered hereby.

§ 10.5 Notification of Utility Companies

§ 10.5.1 At least five (5) working days prior to the start of work in areas which may involve existing utility lines, the Contractor shall notify the MISS DIG notification system, as legally required and, if applicable, any Registered Utility Protection Service of the utility company possibly affected by the planned work by certified mail with return receipt requested.

§ 10.5.2 The utility company should, upon receipt of notice, stake, mark or otherwise designate the location (and depth) of their lines, or temporarily move the line(s). The Contractor shall wait for the applicable utility to stake and/or mark its utility lines before commencing the relevant Work

§ 10.5.3 The Contractor shall immediately report to the respective utility company any break or leak in its lines, or any dent, gouge, groove or other damage to the utility line or to its coating or cathodic protection made or discovered in the course of the Work.

§ 10.5.4 The Contractor shall immediately alert the Owner, Architect and occupants of nearby premises of any and all emergencies caused or discovered in the utility line(s) in the course of the Work.

§ 10.6 Security

§ 10.6.1 All construction participants, including the Contractor, Architect, Subcontractors, etc., shall cooperate with the Owner's security personnel and shall comply with all of the Owner's security requirements. Such requirements shall include, without limitation, if requested by the Owner, delivering to the Owner's security personnel, prior to the commencement of the Work on each day, a list of all personnel who will be permitted access to the Work. The foregoing, however, shall not relieve the Contractor of any obligation to provide a safe and secure workplace for all

parties entering the Project Site. The Contractor shall be responsible to implement commercially reasonable data security protection measures to protect the Owner's networks and data when performing technology-related Work.

§ 10.7 Fire Protection

§ 10.7.1 The Contractor shall maintain free access to the building areas for firefighting equipment and shall at no time block off main roadways or fire aisles without providing adequate auxiliary roadways and means of entrance for firefighting equipment, including heavy fire department trucks, where applicable.

§ 10.7.2 The Contractor shall at all times cooperate with the Owner and kept the municipal fire department informed of the means of entrance and changes to the roadways or fire aisles as needed to provide fire department access to or around the Project Site.

§ 10.7.3 The Contractor shall, during the entire construction period and until the completion of the Work, provide and maintain all material, equipment, and services necessary for an adequate fire protection system, which shall meet the approval of the Owner and/or the Architect. The system shall, at a minimum, meet the requirements set forth in the Contract Documents and of applicable laws. These requirements shall be augmented and/or the installations relocated, as may be necessary to meet, at all time, the demands of adequate protection in all areas and shall not be reduced prior to the completion of the Work with the written approval of the Owner and/or the Architect.

§ 10.8 Environmental Statement and Responsibility of Contractors and Sub-Contractors

§ 10.8.1 It shall be the responsibility of the Contractor to pay any and all costs incurred in any way related to clean up related to any environmental hazard created by means of release, spill, leak or any other means of contamination caused by accident or negligence that is the responsibility of Contractor or its subcontractors or other agents.

§ 10.8.2 It shall be the responsibility of the Contractor to dispose of any product(s) and/or material in strict compliance with applicable federal, state, and local laws (e.g., Environmental Protection Agency, Michigan Department of Natural Resources, etc.).

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 required by law and as otherwise 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 Company 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 Owner hereby requires the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder, each in the penal sum of 100% of the Contract Sum and in accordance with applicable law, on the date of execution of the Contract. The Owner may also require, through the Contract Documents or otherwise, that any contract valued at \$50,000 or less shall also include payment and performance bonds each in the penal sum of up to 100% of the Contract Sum. 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. The Contractor shall obtain and provide to the Owner copies of any and all bonds required by the Contract prior to Contractor beginning performance pursuant to the Contract. The Contractor's obligation to provide such bonds shall not be waived in any fashion, including any failure to secure such bonds prior to Contractor beginning performance pursuant to the Agreement.

§ 11.1.2.1 The Contractor's liability insurance shall be not less than the following:

- | | | |
|-----------|--|-----------------------------|
| .1 | General Requirements | |
| a. | Worker's Compensation | - Statutory |
| b. | Employer's Liability | - \$1,000,000 Each Accident |
| | | - \$1,000,000 Each Employee |
| | | - \$1,000,000 Policy Limit |
| .2 | Comprehensive General Liability | |

	a.	Bodily Injury	-	\$1,000,000 Each Occurrence
			-	\$2,000,000 Aggregate
	b.	Personal Injury	-	\$1,000,000 Each Occurrence
			-	\$2,000,000 Aggregate
.3		Automobile Liability		
	a.	Bodily Injury	-	\$1,000,000 Each Person
			-	\$1,000,000 Each Occurrence
	b.	Property Damage	-	\$1,000,000 Each Occurrence
.4		Independent Contractors	-	\$1,000,000 Each Occurrence
.5		Products and Complete Operations	-	\$1,000,000 for one (1) year, commencing with issuance of final Certificate for Payment
.6		Contractual Liability	-	\$1,000,000 Each Occurrence
.7		Asbestos Abatement Liability	-	\$1,000,000 Per Claim
			-	\$2,000,000 Aggregate
.8		Pollution	-	\$1,000,000
.9		Umbrella Coverage	-	\$4,000,000

§ 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 For all insurances for which the Contractor is obligated to have its insurance company name the Owner, Architect and Architect's consultants as additional insured, the Contractor shall require such insurance company to add to the policy the following clause: "The insurance afforded to the Additional Insured is primary insurance. If the Additional Insureds have other insurance which is applicable to the loss on an excess or contingent basis, the amount of the insurance company's liability under this policy shall not be reduced by the existence of such other insurance." Should the Contractor's insurance costs increase due to adding the Architect and/or Architect's Consultants as additional insureds, and should such costs be passed on to the Owner, the Architect and Architect's Consultants, as applicable, shall reimburse the Owner for such additional costs.

§ 11.1.5 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Immediately after the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, but in no event less than the sooner of three (3) days after becoming aware or the coverage actually lapsing, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration, including the Contractor's plan to immediately procure replacement insurance as required by the Contract Documents to avoid any lapse in coverage. Contractor's failure to do so is a material breach of this Agreement, shall entitle the Owner to purchase replacement insurance at Contractor's sole cost, and shall subject the Contractor to any and all damages related to its failure to comply with its required insurance obligations. Further, 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, but not the obligation, 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. This policy will exclude any tools, equipment, scaffolding, glass breakage, etc., owned or rented by the Contractor or Subcontractors and materials stored on the site, but not incorporated into the Project. The Contractor shall be responsible for protecting all product until the Date of Final Completion is established by the Architect/Engineer. The Contractor shall replace any Work if damaged before Final Completion. The Contractor may assume the risk itself or obtain insurance in amounts it deems sufficient.

§ 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 obtain insurance of reasonable type and coverage amount that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work and the parties shall negotiate an adjustment to the Contract Sum and Contract Time. Property Insurance provided by the Owner will cover only Work incorporated into the construction and will not cover tools, equipment, or other property owned, leased, rented, or borrowed by the Contractor, Subcontractor, Sub-Subcontractor, or others.

§ 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 and (2) the Contract Time and Contract Sum shall be negotiated. 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 All parties referenced in this General Conditions or otherwise related to this Project acknowledge and agree that the Owner is not waiving any rights its insurer(s) may have to subrogation. To the extent any term in the Contract Documents contrary to this provision, such term is void and unenforceable.

§ 11.3.2 NOT USED.

§ 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.

§ 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. The Owner shall use its best efforts, with consultation of the Architect, to reach a quick and fair settlement for all interested parties, with the insurance companies after a loss.

§ 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 if the Contractor timely and properly files a claim under 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 request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time or Contract Sum.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request with the Owner's consent 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 a negotiated adjustment to the Contract Sum and Contract Time as may be appropriate. At the time the Owner's consent is sought as described herein, the Architect shall notify the Owner that additional costs may apply if the Work is in accordance with the Contract Documents. 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

It is understood that the correction of work, either before or after Substantial Completion, shall occur without extension of the Contract Time, without increase in the Contract Sum, and without use of any contingency.

§ 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 work of other Contractors and Subcontractors, compensation of consultants, any delay or related damages, attorneys' fees incurred by the Owner, 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. The Owner shall have the right to charge the Contractor for any such costs and expenses and to deduct such amounts from any future payments due the Contractor.

§ 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. 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.

§ 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 or other provisions of the Contract Documents establishing a "correction warranty" or other similar concept shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents, including, without limitation, Section 3.5. 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 The Contractor shall respond immediately to correct Work deficiencies and/or punch list items. Failure to correct Work deficiencies and/or punch list items in a timely fashion shall be a substantial breach, and the Owner

may terminate the Contract immediately. The Owner's right of termination in this Section 12.2.6 is separate and distinct from the right of termination in Section 14.2. Whether or not the Contract is terminated, if the Contractor fails to make corrections in a timely fashion, such Work may be corrected by the Owner, in its sole discretion, at the Contractor's expense and the Contract Sum may be adjusted by back charge and/or withholding future payments due the Contractor accordingly. The Contractor shall promptly notify the Architect in writing when Work deficiencies and/or punch list items are completed. If upon review of the Work by the Architect, after such notification by the Contractor, Work deficiencies and/or punch list items shall continue to exist, the Contractor shall reimburse the Owner for any costs incurred by the Owner, plus ten percent (10%) overhead and profit, as well as the Architect's fees for reinspections of the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. The acceptance of nonconforming Work by the Owner shall be by written Change Order signed by the Owner's authorized representative. Acceptance of nonconforming Work may only occur pursuant to such written Change Order.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the State of Michigan in all respects, except that Claims and causes of action for breach of the Contract Documents brought by the Owner shall not be deemed untimely if filed within six (6) years of Substantial Completion of the entire Project.

§ 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.

§ 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 Contractor 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 or applicable law, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 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. For any late payments by the Owner, the interest rate shall not exceed five percent (5%) per annum (see MCL 438.31).

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days for reasons within the Owner's control and 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
- .3 Because the Owner has not made payment on an undisputed Certificate for Payment within the time stated in the Contract Documents, subject to justifiable withholding of payment as described herein or in the Contract Documents; 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' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days for reasons within the Owner's control and 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' written notice to the Owner and the Architect, 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 refuses or fails to supply enough properly skilled workers or proper materials to the point of negatively impacting the Project and/or the related schedule;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents; or
- .5 the Contractor fails to prosecute the Work or any part thereof with promptness and diligence, or goes into bankruptcy, liquidation, makes an assignment for the benefit of creditors, enters into a composition with its creditors, or becomes insolvent.

§ 14.2.2 When any of the 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, three (3) business days' notice, terminate the Contractor's right to proceed with the Work, or such part of the Work as to which such defaults have occurred, and may take any one or more of the following actions:

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

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

The three (3) day notice period identified in this Section does not give rise to an opportunity for the Contractor to cure the cause for termination. Further, the Owner's failure to properly follow the termination procedure shall not be a substantial or material breach of the Contract or the Owner's obligations.

§ 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 in pursuing termination and completion of the Work, including actual attorney and legal fees and costs, 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.

§ 14.3 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.

§ 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.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed and costs incurred by reason of the termination.

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, including, but not limited to, additional sums, additional time for performance, or damages for delay. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. 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. The Contractor shall not knowingly (as "knowingly" is defined in the Federal False Claims Act, 31 USC 3729, *et seq.*) present or cause to be presented a false or fraudulent Claim. As a condition precedent to making a Claim by the Contractor, the Claim shall be accompanied by an affidavit sworn to before a notary public or other person authorized to administer oaths in the State of Michigan and executed by an authorized representative of the Contractor, which states that, "The Claim which is submitted herewith complies with subparagraph 15.1.1 of the General Conditions, as amended, which provides that the Contractor shall not knowingly present or cause to be presented a false or fraudulent claim." Claims of the Owner shall be governed by the relevant Michigan statutory limitations period, excepting Warranty claims which shall be controlled by the warranty documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims as set forth herein and subject to law and shall pursue all 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. The Owner shall commence all claims and causes of action in accordance with Section 13.1 and Section 15.1.2.1, regardless of any other time frames identified in the Contract Documents. The Contractor shall commence all Claims and causes of action in accordance with Section 15.1.2 and Section 15.1.3, other provisions of the Contract, and in accordance with Michigan law.

§ 15.1.2.1 Regardless of any provisions to the contrary, the limitations period with respect to any Claim or cause of action by the Owner with respect to defective or nonconforming Work shall not commence until the discovery of such defective or nonconforming Work by the Owner. See also Section 13.1.

§ 15.1.2.2 Surety Notice and Prior Approval

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

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by the 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 Owner 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 the Contractor shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. The Contractor's failure to timely and properly initiate a Claim shall be an absolute and irrevocable waiver of such Claim and any cause of action. Claims and causes of action by the Owner shall be governed by the applicable statute of limitations period, except when a provision of the Contract Documents provides a longer period. The parties acknowledge, understand, and agree that the Contractor's required prompt filing of a Claim is critical to the Project, as Contractor Claims often affect the Project schedule and/or Project budget, and that the deadline and waiver applicable to Contractor Claims is a material inducement to the Owner entering into an agreement with the Contractor.

§ 15.1.3.2 NOT USED.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim or cause of action, including mediation, arbitration and/or litigation, as applicable, 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 undisputed payments in accordance with the Contract Documents.

§ 15.1.4.2 NOT USED.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written 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. Failure to provide such notice shall serve as an absolute bar against a Claim or cause of action for such an increase in the Contract Sum. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. A Project delay shall not be a basis for a Claim or cause of action for additional cost by the Contractor. Delays may be remedied only through an extension of time per Sections 8.3.4 and 15.1.6.

§ 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, written notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of probable effect of delay on progress of the Work due to the increase in Contract Time sought. 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, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor waives Claims and/or causes of action against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes, without limitation 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 waiver is applicable, without limitation, to all consequential damages due to either party's termination. 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 of the Contractor shall, and Claims of the Owner may, be referred to the Initial Decision Maker for initial interpretation. The Architect will serve as the Initial Decision Maker. Except for those Claims excluded by this Section 15.2.1, an initial interpretation shall be required as a condition precedent to mediation, arbitration and/or litigation of any Claim brought by the Contractor against the Owner. If an initial interpretation has not been rendered within 30 days after a Contractor-required or Owner-requested Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without an interpretation

having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to interpret the Claim. Within ten (10) days of a written request, the Contractor shall make available to the Owner or its representative all of its books, records, or other documents in its possession or to which it has access relating to a Claim and shall require its Subcontractors, regardless of tier, and suppliers to do the same.

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

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

§ 15.2.5 The Initial Decision Maker will render an initial interpretation approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial interpretation 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 recommended change in the Contract Sum or Contract Time or both. If the Claim is timely and properly asserted, the initial interpretation shall be subject to the parties' agreed-upon dispute resolution process.

§ 15.2.6 NOT USED.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner, Architect or Initial Decision Maker 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, Architect or Initial Decision Maker may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.3 Mediation

§ 15.3.1 Except as stated in this Agreement or otherwise agreed in writing by the parties, 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 and 9.10.5, shall be subject to mediation as a condition precedent to the parties' agreed-upon dispute resolution process.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the commencement of the parties-agreed-upon dispute resolution proceedings but, in such event, mediation shall proceed in advance of such 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. All limitations periods shall be tolled during the mediation process.

§ 15.3.3 NOT USED.

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

§ 15.4.4 Consolidation or Joinder

The Contractor further agrees to include similar dispute resolution provisions in all agreements with the Subcontractors, suppliers, and independent contractors and consultants retained for the Project and to require them to include a similar dispute resolution provision in all agreements with Subcontractors, all subconsultants, suppliers or fabricators so retained, thereby providing for a consistent method of dispute resolution between the parties to those agreements. Subject to the other limitations periods identified in these General Conditions which are understood to govern over this sentence, no demand for mediation or arbitration shall be made after the date when the applicable statutes of limitation would bar legal or equitable proceedings. During the pendency of any mediation or arbitration, all applicable limitations periods shall be tolled until the conclusion of that process.

With the exception of matters solely dealing with the Contract, the Owner reserves the right in its discretion to require consolidation or joinder of any mediation or arbitration arising out of or relating to this Agreement with another mediation or arbitration involving a person or entity not a party to this Agreement in any event the Owner believes such consolidation or joinder is necessary in order to resolve a dispute or avoid duplication of time, expense or effort. With the exception of matters solely dealing with the Contract, in the event the Owner is involved in a dispute which is not subject to mediation or arbitration involving a person or entity not a party to this Agreement, the mediation and arbitration provisions of this article shall be deemed to be void and nonexistent in the event Owner, in its discretion, determines the Contractor should become a party to that dispute by joinder or otherwise. Any mediation or arbitration hearing shall be held in the general location where the Project is located, unless another location is mutually agreed upon.

Modified: 7/25/22; 5:31 pm



Approx. 7,000 sqft
Include 10' x 18'
concrete dumpster
pad

Approx. 2,225 sqft

New concrete
approach required

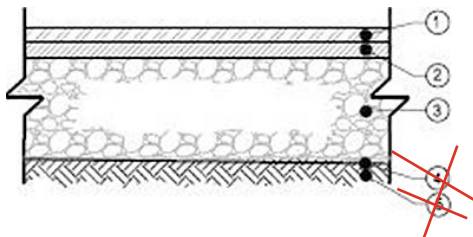
BIDDER TO VERIFY
EXACT SQFT AND
QUANTITIES

4" Mill and Pave.
Striping everywhere
necessary

2 new acrylic
basketball hoops

Approx. 8,100 sqft

Approx. 30,500 sqft
Adjust 3 catch
basins and add
concrete around



- ① 2" HMA, MDOT 5EML HMA WEARING COURSE
- ② 2" HMA, MDOT 4EML HMA LEVELING COURSE
- ③ EXISTING S1BASE TO REMAIN AND WILL BE EVALUATED BY TESTING COMPANY PRIOR TO INSTALLATION OF BASE COAT.



LIGHT-DUTY HMA PAVEMENT SECTION

N.T.S.

Heavy Duty Outdoor Fixed Post Backstops

by **DRAPER**

Specifications—Heavy Duty Outdoor Fixed Post Backstops

Product Description

_____ Heavy duty outdoor fixed post backstops shall be [506995 with single acrylic backboard] [506996 back-to-back with two acrylic backboards] [506997 with single steel backboard] [506998 back-to-back with two steel backboards] by Draper, Inc., Spiceland, IN.

Vertical pole shall be 6" square $\frac{3}{16}$ " wall steel tubing and allow for burying 48" in concrete. Pole shall have a welded watertight steel cap to seal out moisture.

Main 45 degree extension arm tube shall be 6" square $\frac{3}{16}$ " wall steel tubing and provide for a 66" extension from front of pole to face of backboard. Arm shall be designed to allow backboard to be mounted at four places top and bottom to eliminate rust streaks from forming on face of board. Structures designed to bolt through face of backboard are not considered equal.

The backboard mounting plate on the pole shall be $\frac{1}{4}$ " thick and extend the full height of the backboard. A 4" square, $\frac{1}{8}$ " wall secondary arm tube shall further support the backboard mounting plate.

Arm shall be attached to the pole by means of two $\frac{1}{2}$ " thick steel plates sandwiched around the 6" pole. One plate shall be welded to the arm, the other used as a crimp plate on the backside of the pole. Six $\frac{5}{8}$ " high strength bolts shall pass through the two plates and when tightened shall bolt the arm at the desired height.

All steel pole components shall be welded using maximum penetration, continuous weld, MIG procedure. Pole components shall have a polyester powder coated black finish.

Clear acrylic backboards shall be 42" x 72" rectangular $\frac{1}{2}$ " thick clear acrylic framed in a competition grade anodized aluminum framework with bright white 2" border and official size shooter's square screen-printed on backside to eliminate wear. Acrylic backboards supplied with breakaway rims of a flexible type so as to absorb the stress of player contact. Spring action shall be provided by a heavy duty compression wire spring. A steel coverplate must enclose entire internal mechanism.

Rectangular steel backboards shall be 42" x 72" rectangular steel with white finish and orange 2" border and official size shooter's square. Super playground rims shall be provided with steel backboards. All structural components shall be built of no less than $\frac{3}{16}$ " steel. Rim shall be of institutional quality with an official $\frac{5}{8}$ " diameter high strength steel ring supported by a $\frac{3}{16}$ " brace supporting 60% of the ring. Rim shall be punched to mount either a 3" x 4" or 5" x 5" hole pattern. Orange powder coat finish.

Rim and backboard shall be attached to the pole by passing four high strength steel bolts through the rim, backboard, and pole so that weight suspended from the rim is transferred directly to the pole structure. The backboard shall also be mounted to the pole at four places along the top and bottom, eliminating common rust streaks found on units where backboard is bolted through face.

Pole, backboard, and standard rim shall carry a Lifetime Unconditional Warranty. Entire system weight shall be approximately 470 lbs.

506995—single acrylic backboard with breakaway goal.

506996—back-to-back acrylic backboards with breakaway goals.

506997—single steel backboard with super playground goal.

506998—back-to-back steel backboards with super playground goals.



Optional Post Padding

506982 heavy duty 6" square premium pole pad for outdoor posts. Foam pad, 2" thick, with sewn vinyl cover. All-weather. Hook & Loop wrap around.

Outdoor Backboard Edge Padding

506986 72" padding of molded urethane construction. Padding secures to backboard with self-drilling screws. Fits most 72" backboards.

Please Mark Appropriate Selections

Select Heavy Duty Post Set

☐ **506995** (single acrylic backboard)

How Many?

2

DRAPER

411 S. Pearl St., Spiceland, IN 47385 USA ■ 765-987-7999

www.draperinc.com ■ fax 765-987-7142

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PROJECT: _____

ARCHITECT: _____

CONTRACTOR: _____

SUPPLIER: _____

DATE: _____ REVISED: _____

Installation Instructions

Heavy Duty Outdoor Basketball Backstop by Draper

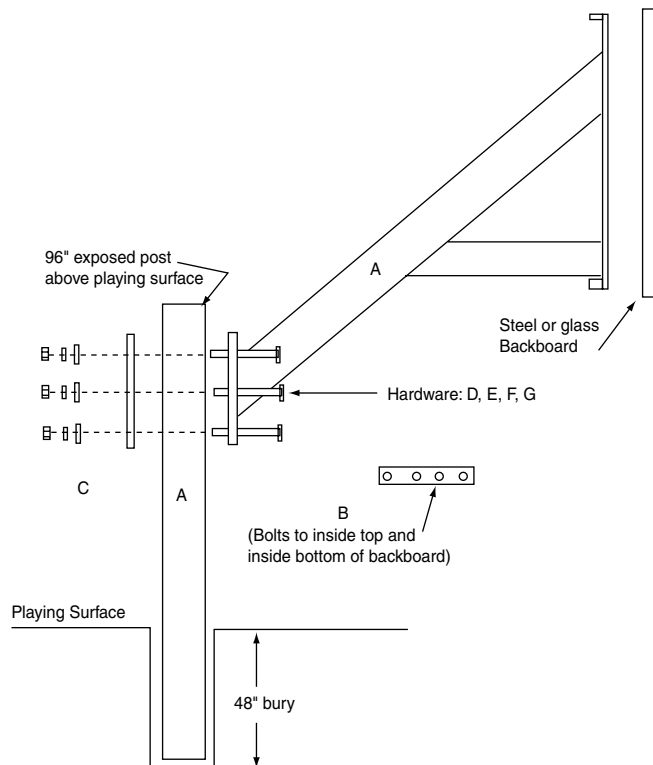
Caution

- ① Immediately unpack all components and cross check against bill of materials.
- ② The extension arm will not balance by itself, serious injury may occur if arm is allowed to fall.
- ③ Allow 48 hours of drying time for concrete before completing installation. It is advisable to wait up to two weeks to allow the anchor footing to fully cure before aggressive play.
- ④ Follow instructions carefully.

Bill of Materials

A (1) Vertical Post	H (2) Backboard Frame Support
B (1) 45 Degree Extension Arm	I (8) $\frac{3}{8}$ " x $1\frac{1}{4}$ " Hex Bolt
C (1) Mounting Plate	J (8) $\frac{3}{8}$ " Flatwasher
D (6) $\frac{5}{8}$ " x 8" Hex Bolt	K (8) $\frac{3}{8}$ " Lockwasher
E (6) $\frac{5}{8}$ " Hex Nut	L (8) $\frac{3}{8}$ " Hex Nut
F (6) $\frac{5}{8}$ " Flatwasher	M (2) $\frac{3}{8}$ " x $2\frac{1}{2}$ " Hex Bolt
G (6) $\frac{5}{8}$ " Lockwasher	

NOTE: Immediately unpack all components and cross check against bill of materials.



- ① Position the hole taking into consideration that the backboard will be approximately 66" from the front of the vertical post.
- ② Dig a hole 18" in diameter and 48" deep.
- ③ Install post in wet concrete with capped end up. Be sure that at least 96" of post extends above the playing surface to insure adjustment to 10'. Make sure post is installed straight and plumb, brace if necessary while cement cures.
- ④ After allowing 48 hours drying time for the concrete, mount the 45 degree extension arm as shown. Arm can be mounted loosely at ground level and

slid up the pole or mounted at correct height depending on lifting equipment available. Use hardware D, E, F and G.

Caution: The extension arm will not balance by itself, serious injury may occur if arm is allowed to fall. Making sure to keep the rim holes in the backboard in line with the rim holes in the extension arm faceplate, use a $\frac{3}{8}$ " drill bit to drill two attachment holes through the backboard at points N & O shown in Fig. C (if necessary).

- ⑤ Loosely attach both backboard frame supports (part H) to the inside top and bottom of your backboard using the $\frac{3}{8}$ " hex bolts, etc. as shown in figure A. Note: for this step only attach the backboard frame supports using the two outermost holes. Do not bolt the support at the center two holes.

ATTENTION: If your backboard is tempered glass or acrylic check to make sure all four steel grommets are located in the rim holes, if any are missing check in the box. If grommets are missing and cannot be located DO NOT proceed with assembly, call Draper immediately. Additionally, if your backboard is acrylic you will find two black rubber gaskets packaged in with your backboard. Disregard these gaskets, you will not need them.

- ⑥ Lift and slide backboard onto extension arm aligning the attachment holes at the top and bottom of extension arm with the holes in the backboard frame.

- ⑦ Bolt backboard to extension arm at all points along the top and bottom using the remaining $\frac{3}{8}$ " x $1\frac{1}{4}$ " hex bolts, etc. Make sure rim hole pattern in the extension arm faceplate lines up with the rim hole pattern in the backboard, then tighten all $\frac{3}{8}$ " hardware.

- ⑧ Attach rim using the hardware provided in the rim box. Level rim with backboard, tighten rim hardware and attach net. Check over entire unit and make sure all hardware has been tightened.

Tip: If you are setting the unit at 10', the bottom of the 45 degree extension arm will be bolted 75½" up the vertical post.

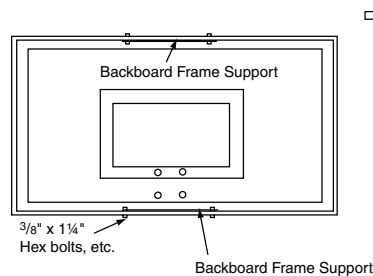


Figure A

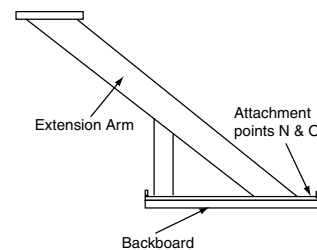


Figure B

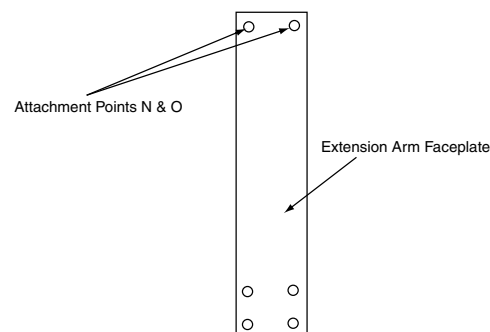


Figure C

DRAPER

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