

DRAFT AIA® Document A201™ - 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

«MKE Streetcar»

Milwaukee Streetcar Project – CM/GC Construction Services

THE OWNER:

(Name, legal status and address)

City of Milwaukee Department of Public Works (DPW)

841 N. Broadway, Room 501

Milwaukee, Wisconsin 53202

THE ARCHITECT:

(Name, legal status and address)

HNTB Corporation

11414 West Park Place, Suite 300

Milwaukee, Wisconsin 53224

THE OWNER'S DESIGNATED REPRESENTATIVE

The Concord Consulting Group of Illinois, Inc.

241 North Broadway, Suite 302

Milwaukee, Wisconsin 53202

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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.

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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 Owner; or (5) a Field Change (as defined herein). Contract Documents are defined as the Agreement (consisting of the *Standard Form of Agreement Between the Owner and Construction Manager as Constructor* and the *General Conditions of the Contract for Construction*), the Request for Proposals, the exhibits to the Request for Proposals, any addenda issued to the Request for Proposals, the Contractor's Proposal, Modifications issued after execution of the Agreement, and the General Specifications of the Department of Public Works dated January 31, 1992 and all subsequent addenda (http://www.mpw.net/services/bids_home). In the event of a conflict between any the Contract Documents, the documents shall govern in the following order:

- 1) Federal Transit Administration Provisions
- 2) Modifications (including the Guaranteed Maximum Price amendment to Agreement)
- 3) Agreement *General Conditions of the Contract for Construction*
- 4) Agreement *Standard Form of Agreement Between the Owner and Construction Manager as Constructor* (as finalized to incorporate compensation for Preconstruction Phase services)
- 5) Request for Proposals as modified by any addenda
- 6) General Specifications of the Department of Public Works dated January 31, 1992 and all subsequent addenda (http://www.mpw.net/services/bids_home)
- 7) Remaining Exhibits to the Request for Proposals

§ 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 Final Designer or the Final Designer's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Final Designer or the Final Designer's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Final Designer shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Final Designer's duties, and the Owner shall be entitled to performance and enforcement of obligations under the agreement between Contractor and Subcontractors intended to complete the Work.

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.6.2 Any reference in the Specifications to codes, standard specifications or manufacturer's instructions shall

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

§ 1.1.7 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 Final Designer and the Final Designer'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 Commissioner of Department of Public works is the person identified in the Agreement to render recommendations on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 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.

§ 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.

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

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

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

§ 1.2.7 Unless otherwise specifically indicated, all references to "days" refers to calendar days. If a deadline falls on a weekend or a legal holiday (as defined by Wisconsin Statutes §895.20), the deadline shall be extended to the next business day.

§ 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 Final Designers.

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Commissioner of the Department of Public Works of the City of Milwaukee, the Commissioner's authorized representative, the Owner's Representative, or the Owner's Representative's authorized representative. The Owner shall render decisions in a timely manner and in accordance with the Contractor's schedule submitted to the Owner.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

§ 2.2.2 The Contractor shall apply for and secure building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections. The Contractor is responsible to identify all necessary permits, licenses, inspections and certificates for construction and occupancy of the Project.

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

§ 2.2.4 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 that is necessary for completion of and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

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

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a fifteen day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Final Designer's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.5 ADMINISTRATION OF THE CONTRACT

§ 2.5.1 The Owner will provide administration of the Contract as described in the Contract Documents (1) during construction, (2) until the date the Owner issues the final Certificate for Payment and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2.2.

§ 2.5.2 The Owner will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, (1) to become generally familiar with the progress and quality of the portion of the Work completed, (2) to inspect the Work, (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents and, (4) when applicable, to determine whether to issue a Certificate for Payment. However, the Owner will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

§ 2.5.4 The Owner has authority to reject Work that does not conform to the Contract Documents. Whenever the Owner considers it necessary or advisable, the Owner will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner 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 Owner to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 2.5.6 The Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8 upon compliance with the requirements of the Contract Documents.

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

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

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

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

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

§ 3.1.4 The Contractor acknowledges that Owner has an independent party to assist Owner during the Project and to serve as "Owner Representative" with respect to the Project. The Contractor shall cooperate and work with Owner's Representative designated by the Owner.

§ 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. Notwithstanding such observations, the Contractor shall nevertheless be entitled to rely upon any Owner provided information about the Project, Work or site, including, but not limited to, surveys, subsurface tests and data, the identification and location of hazardous substances and the condition and characteristics of structures on the site, unless Contractor has specific knowledge that the Owner provided information contrary to existing conditions. If that occurs, then Contractor shall ask for clarification from Owner or Final Designer. Whenever possible, the Contractor and all of its necessary Subcontractors, as appropriate, shall endeavor to verify existing field conditions that are visible (i.e., accessible through normal and customary methods of observation and investigation). Where existing field conditions are not visible (e.g., below grade) or concealed within construction assemblies, and existing items are indicated on the drawings, such items shall be considered as being shown schematically only, if so represented or designated as such by Final Designer.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents. The Contractor shall promptly report to the Final Designer any errors, inconsistencies or omissions discovered including design errors or omissions, by or made known to the Contractor as a request for information in such form as the Final Designer may require. The Contractor shall halt all affected work until such discrepancies have been corrected or until directed otherwise by Owner or Final Designer. The direct out-of-pocket costs related to this Work stoppage shall be reimbursed to the Contractor and, if the Work stoppage results in a delay in the Project Schedule, the Completion Date shall be extended by change order. 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 Except as specifically set forth in the Contract Documents, the Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner may require.

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

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

§ 3.2.6 The Contractor shall meet with the Owner periodically to review progress of the design and construction documents and shall, upon Owner's request, attend and make presentations at meetings of the Common Council of the City of Milwaukee, its Committees, and Boards. Progress meetings between the Contractor and Owner shall be weekly and may occasionally occur every two weeks if mutually agreed upon between Owner and Contractor in advance of the next scheduled meeting.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

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

§ 3.4 LABOR AND MATERIALS

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

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

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

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

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

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Owner in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions of specified materials or equipment only with the consent and approval of the Owner, after evaluation and recommendation by the Final Designer 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. The Contractor shall promptly remove any persons of whom Owner or Final Designer has a reasonable objection to their fitness for work.

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

§ 3.5 WARRANTY

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

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

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

§ 3.6 TAXES

§ 3.6.1 Unless authorized under Wisconsin Statute 77.54 (9m), the Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.1.1 Contractor shall implement and maintain traffic control and coordinate with affected City facilities as necessary (signage, parking meters, etc) in accord with Contract Documents and shall not be required to secure City of Milwaukee permits for traffic control.

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

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

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner will promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment Contract Time. Any adjustment to the Contract Sum recommended by the Owner will be based on the factors set forth in Section 7.3.7.1 to 7.3.7.5. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Owner's determination, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately

suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. If requested by Contractor, any adjustment to the Contract Sum or Contract Time will be based on the factors set forth in Section 7.3.7.1 to 7.3.7.5.

§ 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 are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

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

§ 3.9 CONTRACTORS STAFF

§ 3.9.1 The Contractor shall employ a competent superintendent, safety engineer, corporate safety director, and if necessary, assistants, who shall be in attendance at the Project site during performance of the Construction Portion 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. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

§ 3.9.2 The Contractor shall not replace project managers, superintendents or other key employees working on the Project, or reassign such employees to other projects in a manner that affects their ability to perform their duties on the Project, unless the Owner has pre-approved such replacement or reassignment in writing, which approval shall not be unreasonably withheld. In the event that any Subcontractor, supplier, employee, agent, or Consultant of the Contractor, or any other person or entity for which it is responsible, fails to properly perform or otherwise hinders the Project's progress, the Contractor shall replace such person or entity as reasonably requested by the Owner in writing.

§ 3.9.3 During the Construction Portion of the Work, the Contractor shall conduct a regularly scheduled weekly progress meeting at the Project site with representatives of the various Subcontractors and suppliers and the Contractor shall record and issue minutes for each meeting to all attendees and the Owner within five (5) days of such meeting.

§ 3.9.4 During all tasks and phases of the Work, the Contractor shall attend regularly scheduled weekly progress meetings at the Project site with representatives of the Owner. These Owner/Contractor Meetings shall be in addition to those required in Section 3.9.3. The Contractor shall make available any members of the Contractor's team including but not limited to the Designer of Record, any Consultant(s), or Subcontractors for attendance at

these meetings as determined necessary by the Owner. The Owner shall record and issue minutes for each meeting within five (5) days of such meeting.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's review and approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Designer and approved by Owner. § 3.11 DOCUMENTS AND SAMPLES AT THE SITE § 3.11.1 The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Final Designer and shall be delivered to the Final Designer for submittal to the Owner upon completion of the Work as a record of the Work as constructed, and prior to final payment (i.e., final retainage). Owner may, at its option, release final retainage for that portion of the Work for which all contract close-out requirements have been satisfied.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

- .1 Furnish Samples for all items called out in the various sections of the Specifications and all other samples that may be required to establish the character, physical characteristics, and quality of materials to be used in the Work.
- .2 A label on each Sample shall bear the following information: name of Project, name of Final Designer and Owner, the Contractor and Subcontractor; name, quality and finish of material; name of manufacturer and/or source; date of submission; and Contractor submittal number.
- .3 Submit samples in duplicate unless a greater number is specified. In case samples are rejected, resubmit the same number of samples originally required. One Sample will be retained by the Final Designer, the balance will be returned to the Contractor.

§ 3.12.4 The purpose of Shop Drawings, Product Data, Samples and similar submittals is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the

Final Designer is subject to the limitations of Section 4.2.7. Informational submittals upon which the Final Designer 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 Final Designer without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Final Designer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Final Designer and Owner or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents or the Final Designer's requirements and approved by the Contractor may be returned by the Final Designer without action.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Final Designer 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 Final Designer.

§ 3.12.8 The Work shall be in accordance with approved submittals. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Final Designer's approval thereof.

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Final Designer will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Final Designer. The Owner and the Final Designer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Final Designer have specified to the Contractor appropriate performance and design criteria that such services must satisfy. The Final Designer will review, approve or reject or take other appropriate action on submittals (i.e., "revise and resubmit" or "proceed as revised") in accordance with Section 4.2.7 herein.

§ 3.12.11 Contractor shall furnish three (3) complete sets of manuals containing the manufacturers' warranties and instructions necessary for maintenance and operation of each item of equipment and apparatus it furnishes under the Contract Documents, warranty information and any additional data specifically requested under the various sections of the Specifications for each division of the Work to the Final Designer for subsequent conveyance with all Contractors' manuals to the Owner at or before Final Payment. Each manual shall be arranged in logical order, indexed and suitably bound.

§ 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, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 The Contractor shall store materials on the site where directed and in such a manner as will not damage the area in which they are stored. Material deliveries shall be scheduled so that they are not stored longer than necessary. All items furnished to the site by the Owner shall be stored as directed. All work performed or material storage on the OMF site (parcel bounded by 4th, 5th, Clybourn, and east-west alley, and parcel bounded by 3rd, 4th, Clybourn and east-west alley) shall be performed in accord with the Occupancy Permit between the City of Milwaukee and WISDOT and related Work-in-Right-of-Way Permits issued by WISDOT associated with the site and other locations within WISDOT right-of-way.

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

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

§ 3.18.1

To the fullest extent permitted by law, the Contractor shall defend, indemnify, defend and hold harmless Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, fines, penalties, losses and expenses, including, but not limited to actual attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to (1) bodily injury, sickness, disease or death or to (2) injury or destruction of tangible property other than the Work itself, but only to the extent caused by Contractor's breach or a negligent or intentional act or omission of the Contractor, Designer of Record, Consultant, 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 3.18.1.

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

§ 3.18.3 The Contractor shall ensure that the Contractor's agreement with the Designer of Record, Consultant(s) and Subcontractors contains language substantially similar to that of Section 3.18.1 by which the Designer of Record, Consultant(s) and Subcontractors will be responsible to defend, indemnify and hold harmless the Owner.

§ 3.18.4 If any claim for which indemnification is required under Section 3.18.1 has not been settled or discharged when the Work is completed, Final Payment shall be deferred until such claim is paid or settled, or until the Contractor provides a bond or other security reasonably acceptable to the Owner in a sum equal to the amount of such claim

§ 3.19 OWNER DIRECT PURCHASES

To the extent allowed by Wisconsin Statute 77.54, the Contractor shall follow the Direct Purchase Procedures as adopted by Owner in order to utilize Owner's sales tax exemptions.

§ 3.20 REPORTS

In the normal course of doing business, certain reports will be used in the construction process, any of which will be furnished to Final Designer and Owner upon request.

ARTICLE 4 FINAL DESIGNER

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain a Final Designer lawfully licensed to practice applicable disciplines or an entity lawfully practicing the applicable discipline in the jurisdiction where the Project is located. That person or entity is identified as the Final Designer in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Final Designer" means the Final Designer or the Final Designer's authorized representative. Any references to Architect within the Contract Documents shall refer to the Final Designer.

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

§ 4.1.3 If the employment of the Final Designer is terminated, the Owner shall employ a successor Final Designer whose status under the Contract Documents shall be that of the Final Designer.

§ 4.1.4 The Final Designer will review and approve or reject or take other appropriate action (i.e., "revise and resubmit" or "proceed as revised") upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Final Designer's action will be taken as expeditiously as possible and in accordance with the submittal schedule approved by the Final Designer or, in the absence of an approved submittal schedule, with reasonable promptness as to cause no delay in the Work or the Project Schedule or in the activities of the Owner, Contractor or separate contractors while allowing sufficient time in the Final Designer'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 Final Designer'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 Final Designer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Final Designer, of any construction means, methods, techniques, sequences or procedures. The Contractor shall be entitled to rely upon Final Designer's review and approval but the Final Designer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.1.5 The Final Designer's recommendations on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 10 days to the Contractor in writing and stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner or to reply within the 10-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection. It shall be considered reasonable for the Contractor to reject a Subcontractor who fails or refuses to sign a form of subcontract reasonably acceptable to the Contractor.

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

§ 5.3 SUBCONTRACTUAL RELATIONS

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

assumes toward the Owner and Final Designer. Each subcontract agreement shall preserve and protect the rights of the Owner and Final Designer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor 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 under the subcontract.

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

§ 5.4.3 Upon such 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 Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

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

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contracts stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

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

§ 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 will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Final Designer; a Construction Change Directive requires agreement by the Owner and Final Designer 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 Final Designer alone.

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

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

§ 7.1.5 If the Owner directs a Change in Work (through either a proposed Change Order or a Construction Change Directive) for which there is no agreement between the Owner and the Contractor as to the modification (if any) of the Contract Sum or the Contract Time, Contractor shall proceed with the Work. Owner will pay Contractor for the Change in Work in accordance with Section 7.3.7. Such payment shall not serve as a waiver of the right of either party with respect to the Change in Work. Any disputes shall then be subject to the provisions of Article 15 herein.

§ 7.2 CHANGE ORDERS

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

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

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

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon in accordance with Section 7.3.5.1;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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

§ 7.3.5.1 Unit Price of Lump Sum Adjustment

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

- .1 Upon receipt of a Construction Change Directive, the Contractor must submit promptly to the Final Designer and Owner for review and consideration a written proposal to cover the adjustment of the Contract Sum for changes in the Work. The proposal must be in a format acceptable to the Owner and based on agreed upon unit prices (as set forth in Section 7.3.5.1.2 below), or in their absence, a detailed cost estimate of labor, insurance (itemized separately, and subject to the provisions of the Agreement between Owner and Contractor), payroll taxes, material, equipment, and premium on bond of the changed work. If after receipt of the Contractor's proposal Owner accepts the proposal or the parties agree on an equitable lump sum adjustment of the Contract Sum, a Change Order will be issued establishing the adjustment.
- .2 Where the change in the Work involves items for which agreed upon unit prices have been established and where the net aggregate quantity of the items is in excess of the Contract requirements, payment for the items will be at the established unit prices.

When the net aggregate quantity is less than the Contract requirement, a Change Order will be issued for a credit equal to the sum of: (i) the product derived by multiplying the established unit price times the net decrease in units and (ii) an amount equal to 10% of the product. Where the "agreed upon unit price" is a unit price bid on the estimated quantities, then the Owner may, as its option, demand a readjustment of the "agreed upon unit price" in any case where the requirements for the particular unit price item exceeds 125% of the estimated quantity bid.

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

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

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

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

§ 7.3.7 If the Contractor and Owner agree or if the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, or the Contract Time Owner shall determine the method and the adjustment shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount, all on a not to exceed basis unless otherwise agreed. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Actual costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance (itemized separately and subject to the provisions of the Agreement), permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs overhead and profit as allowed under Section 7.3.5.1.4.

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

§ 7.3.10 When the Owner and Contractor reach an agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order. The Contractor shall be responsible for preparation of the Change Order. The Contractor's agreement to a Change Order constitutes a waiver and release by the Contractor and its Subcontractors and suppliers for any claim for delay, cumulative impact, cost of extended general conditions, and any other indirect cost associated with the Owner-directed change in Work.

§ 7.4 MINOR CHANGES IN THE WORK

The Owner has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Final Designer and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

§ 7.4 FIELD CHANGES

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

- .1 the proposed Field Change is consistent with the intent of the Contract Documents;
- .2 the proposed Field Change will not result in an extension of the Contract Time;

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

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

§ 8.1.2 The date of commencement of the Work is the date established a Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Owner-Contractor Agreement or such other date as may be established therein.

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

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

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or negligence of the Owner or Final Designer, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation or litigation; or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

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

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Contractor's remedy for delays caused by the Owner or Final Designer shall be limited solely to (a) extra time; and (b) any applicable "general conditions" expenses allowed by Section 9.7.1 and Section 14.3 of the General Conditions. With respect to any delays caused by Owner or Final Designer, if Owner contends that acceleration of the Work is necessary, Contractor shall accelerate the Work as directed by Owner. Owner shall pay Contractor only the Contractor's extra labor cost over the amount for regular time during the period of such overtime, including additional insurance and taxes incurred by the Contractor with respect thereto. Time slips covering said overtime must be submitted to Owner's designated representative for checking and approval.

Contractor's sole remedy in the event of (i) any delay not caused by or attributable to the Owner; or (ii) an otherwise excusable delay (i.e., force majeure) shall be an equitable extension of the Contract Time and Contractor shall not obtain any monetary damages for the delay or any addition to the Contract Sum or Guaranteed Maximum Price; however, Contractor shall be entitled to use Contractor's construction contingency funds (if any) to cover additional costs incurred as a result of any such delay.

Notwithstanding any implication to the contrary in Section 8.3.1 of the General Conditions, Contractor shall not be entitled to any time extension for any delay that is the fault of any of its Subcontractors or suppliers, or their Subcontractors or suppliers at any level. However, Contractor shall be entitled to use Contractor's construction contingency funds to cover additional costs incurred as a result of any such delay.

§ 8.3.4 If there is a delay or anticipated delay of the Construction Schedule because of the actions or omissions of the Contractor or any Subcontractor and the Contractor is unable to produce within fifteen (15) working days after notice by the Owner a recovery schedule for its Work to address such delay or anticipated delay acceptable to the Owner, then the Owner shall have the right to order the Contractor to take such actions as may be necessary, consistent with the same performance of the Work affected thereby, to recapture the time lost by any such delay. Such action shall include increasing staff; increase in shifts or hours worked per day, or performance of work on Saturdays, Sundays or national holidays; use of any available work float in the Project schedule; and changing the sequence of work activities. Owner shall pay Contractor only the Contractor's extra labor cost over the amount for regular time during the period of such overtime, including additional insurance and taxes incurred by the Contractor with respect thereto. Time slips covering said overtime must be submitted to Owner's designated representative for checking and approval.

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

§ 8.3.5 If Contractor intends to claim an extension of time to perform as a result of a delay not caused by Contractors or any of its Subcontractors or suppliers, Contractor must give Owner written notice within fifteen (15) days after the event giving rise to the claim and follow the procedures in Article 7 for securing a Change Order; otherwise such a claim shall be deemed waived.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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.

§ 9.2 SCHEDULE OF VALUES

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

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least five (5) days before the date established for each progress payment, the Contractor shall submit to the Owner a pencil copy Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

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

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

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **§ 9.3.4** With each Application for Payment, the Contractor shall provide to Owner; all required certified payrolls, worksheets, and workforce participation information as required to satisfy Agreement requirements for prevailing wage, DBE and RPP.

§ 9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT

§ 9.4.1 The Owner shall, on or before the date payment is due, inform the Contractor of the amount Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Owner may withhold a Payment in whole or in part, to the extent reasonably necessary to protect the Owner due to the Owner's. The Final Designer may also withhold a Payment or, because of subsequently discovered

evidence, may nullify the whole or a part of an Application for Payment previously issued, to such extent as may be necessary to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions, because of the following:

- .1 defective Work not remedied;
- .2 third party claims filed not resulting from the Owner's failure or refusal to pay Contractor or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor caused by Contractor and not covered by insurance;
- .6 reasonable evidence that the Work will not be completed within the Contract Time as a result of Contractor's fault, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.
- .8 failure of the Contractor to comply with the most current approved Project construction schedule; or
- .9 the existence of any event of material default under the Contract Documents.

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

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

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Owner has issued a written acknowledgment or receipt of the Contractors Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Contract Documents.

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

§ 9.6.3 INTENTIONALLY OMITTED

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. The Owner shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

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

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any

fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 INTENTIONALLY OMITTED.

§ 9.8 SUBSTANTIAL COMPLETION

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

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Final Designer a comprehensive list of items to be completed or corrected prior to final payment. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Observation by the Owner during the construction shall not be considered as acceptance of any part of the Work, and the conditions found when final inspection is made shall be taken as governing the fitness of the Work and whether or not it conforms with the provisions of the Contract.

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Owner will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list 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 Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 Immediately prior Final Completion, the Owner, Contractor and Final Designer 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.

§ 9.9.2 Unless otherwise agreed upon in writing and signed by Owner, Final Completion shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection and, when the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner 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 Owner's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and

noted in the final Certificate is due and payable. The Owner'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 Final Designer (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), a marked-up version of all Construction Documents showing the record condition of the Work; if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees unless Contractor is proceeding diligently and in good faith to contest such lien and has furnished to Owner reasonable security, such as a bond, title insurance, or letter of credit to reasonably protect Owner against such lien.

§ 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 Owner so confirms, the Owner shall, upon application by the Contractor, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, Designer of Record or Consultant shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Acceptance of such final payment shall further operate as, and shall be, a release to the Owner and its representatives from all claims by that payee for anything done or furnished for or relating to the Work or for an act or neglect of the Owner or of any person relating to or affecting the Work.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

- .1 employees on the Work, Owner, Owner's Consultant(s), Contractors, building/facility occupants, the general public in the vicinity of the Project and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

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

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

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 to the extent caused by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Final Designer 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 Final Designer.

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

§ 10.3 HAZARDOUS MATERIALS

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

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Final Designer the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The

Contractor and the Final Designer will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Final Designer has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Final Designer have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor.

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

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents and are used, stored, transported, handled and installed properly by Contractor. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use, handling, storage, transportation or installation of such materials or substances. Unless required by the Contract Documents, the Contractor shall not be required to perform without its consent any Work relating to a hazardous material or substance, provided that such Contractor consent shall not be unreasonably withheld.

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

§ 10.3.6 Owner assumes the risk of, and shall indemnify, defend and hold Contractor harmless against any and all liabilities, damages, losses, costs, penalties, expenses or responsibilities, including reasonable attorneys' fees and disbursements, sustained in connection with any request or order arising directly or indirectly out of the release, threatened release, or handling of hazardous substances or materials at the Project site or at any site to which a hazardous substance is moved or alleged to have been moved provided that Contractor provides written notice to Owner of any such claim, demand, cause of action, suit, judgment, subpoena or administrative proceeding within 5 days of receipt of same. The duties and responsibilities of the Owner as set forth in this section shall not apply to the extent that the liability, damage, loss, economic loss, cost, penalty, expense or responsibility results from hazardous substances or material brought onto the Project site by Contractor or arises out of negligence of Contractor after the hazardous substance or materials is discovered on the Project site and, if applicable, written notice of the discovery along with documents identifying the materials provided to the Contractor. If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.
- .9 claims arising out of or relating to the use of Contractor's autos, trucks and other vehicles in connection with the Project; and
- .10 claims arising from Contractor's professional services, if any.

The Owner, its directors, officers, agents (including the Final Designer) and employees; We Energies, its directors, officers, agents and employees; and WISDOT, its directors, officers, agents and employees, shall be named as additional insureds, on a primary and non-contributory basis, on all insurance policies providing coverage for the claims identified in Sections 11.1.1.3 through 11.1.1.9 above, including the completed operations coverage therein and the endorsements thereto. (See Exhibit to Owner/Contractor Agreement and/or Owner/Construction Manager Agreement (as applicable) for the Certificate of Insurance). Any insurance maintained by Owner will be in excess of and not contribute with additional insured coverage provided by Contractor regardless of any "other insurance" clause. "Vertical exhaustion" shall apply when determining responsibility for coverage.

For the avoidance of doubt, no language within this Contract requires the Contractor to provide professional liability insurance for the Final Designer unless such Final Designer was retained by Contractor.

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

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

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

§ 11.1.5 Workers' Compensation and Employers' Liability: Contractor agrees that it and all its Subcontractors will comply with all statutes and law with regard to Workers' Compensation/Occupational Disease applying to employees or their beneficiaries. Minimum limits shall be:

- .1 Workers' Compensation-Statutory Limits
- .2 Employers' Liability

	Not Less Than:
Bodily Injury by Accident	\$100,000 Each Accident
Bodily Injury by Disease	\$100,000 Each Employee
	\$500,000 Policy Limit

This insurance shall contain provisions waiving each underwriter's rights of subrogation against Owner.

§ 11.1.6 Other insurance required is as follows:

.1 Commercial General Liability

Limits not less than:

- Bodily Injury and Property \$1,000,000 Each Occurrence
- Damage Combined Single Limit: \$2,000,000 Annual General Aggregate – Per Policy
\$2,000,000 Products Liability/Completed Operations
- Fire Damage \$50,000
- Medical Payment \$5,000

Personal Injury and Advertising Injury \$1,000,000

Commercial General Liability coverage must provide:

- General Aggregate Limit must apply per project
- Premises and Operations
- Products Liability/Completed Operations Liability
- Contractual Liability
- XCU Coverage (explosion, collapse and underground property damage)

Note: Products Liability/Completed Operations Coverage shall continue in force for two (2) years from the earlier of 90 days following Substantial Completion or final payment by the Owner.

.2 Auto

Limits not less than:

- Bodily injury and Property Damage \$1,000,000 Each Accident
- Combined Single Limit Policy must be intended to cover all owned, Non-owned and hired vehicles: \$1,000,000 Each Accident

.3 Contractor's Pollution Liability

- Each Occurrence \$5,000,000
- Aggregate – per project \$5,000,000

To include:

- Coverage of legal liability, including bodily injury, property damage and environmental damage
- Coverage of emergency response costs
- Coverage for subcontractors in addition to the Contractor

.4 Umbrella Liability

Not less than:

Bodily Injury and Property Damage	\$10,000,000 Each Occurrence
Combined Single Limit	\$10,000,000 Annual

§ 11.1.7 Insurance required of Subcontractors:

- .1 All MEP Subcontractors and any other Subcontractor who will perform Work on the Project Site where the aggregate amount to be paid to the Subcontractor totals \$1,000,000.00 or more of the construction budget shall:
 - (a) Maintain the same limits as the Contractor for insurance required under Sections 11.1.5, 11.1.6.1 and 11.1.6.2 herein; and
 - (b) Umbrella coverage of \$5,000,000.00.
- .2 Any other Subcontractor who will perform Work on Site shall maintain the same insurance as the Contractor for insurance required under Sections 11.1.5, and 11.1.6 excluding pollution liability, but for per occurrence amounts of not less than \$250,000.00 up to the amount of Subcontractor's contract, whichever is more; and maintain umbrella coverage of not less than \$1,000,000.00.
- .3 All other Subcontractors (not performing Work on site) shall have adequate insurance coverage up to the minimum amount required by law. If a Subcontractor does not have the insurance required above, then Contractor shall advise Owner and Owner may, in its sole discretion, waive and/or modify the above insurance requirements for Subcontractors.

§ 11.1.8 The Owner and Final Designer assume no responsibility for Contractor's or Subcontractors' liabilities in the event that the limits set above are not adequate or coverage is not properly obtained by either of them.

§ 11.1.9 Contractor's insurance policies, terms and conditions shall govern unless otherwise modified, in writing, by the parties.

§ 11.1.10 Unless otherwise agreed by Owner, Contractor shall ensure that the insurance required of Subcontractors in Section 11.1.7 be maintained in an insurance company or companies rated A- or better by A.M. Best and lawfully authorized to do business in the jurisdiction in which the Project is located.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 The Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests as named insureds, but not as "first-named insureds" of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any

applicable legal requirements, and shall cover reasonable compensation for Final Designer's and Contractor's services and expenses required as a result of such insured loss.

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

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

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

§ 11.3.3 LOSS OF USE INSURANCE

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

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

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

§ 11.3.5.1 Except to the extent covered by insurance, the Owner shall not be liable for loss or damage to any tools owned by mechanics, any other tools, equipment, staging, towers, and forms owned or rented by the Contractor, the capital value of which is not included in the Cost of the Work, or any shanties, houses or other temporary structures.

§ 11.3.6 The Owner shall provide the Contractor with a certificate of insurance for of each policy that includes insurance coverages required by this Section 11.3. Complete policies will be made available for inspection and copying at a reasonable location upon request. Each policy made available for inspection and copying shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall not be canceled or allowed to expire, and its limits will not be reduced (except by payment of claims),, until at

least 30 days' prior written notice has been given to the Contractor or final payment has been made to Contractor, whichever is earlier.

§ 11.3.7 WAIVERS OF SUBROGATION

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

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

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

§ 11.3.10 The Owner shall have power to adjust and settle a loss with insurers if Owner desires to use such powers, Owner shall advise Contractor and all interested parties of its decision writing, Contractor and all interested parties shall have fifteen (15) days to object in writing to the Owner's exercise of this power. If such objection is made, the dispute shall be resolved as provided in Article 15.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. Bid security in the form of a bond, certified check, cashier's check or cash in the amount of 5% of the construction budget shall be furnished by the Contractor with his proposal. The Contractor shall provide a performance bond in the amount of 100% of the GMP to the Owner within 7 days of execution of the GMP amendment. A payment bond in the amount of \$2.5M shall be furnished to the Owner within 7 days of execution of the GMP amendment All bonds must be executed by a surety company authorized to do business in the State of Wisconsin and must be accompanied by a Power-of-Attorney for the Attorney-in-Fact. The performance bond and the payment bond must be submitted as separate instruments. The performance bond shall also cover all work required under the guarantee provisions of the contract.

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the, the Owner may correct it in accordance with Section 2.4.

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

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

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

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

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

§ 13.1.1 The Contract shall be governed by the law of the Any litigation relating to the formation, interpretation or alleged breach of this Agreement must be brought in the state and federal courts.

§ 13.1.2 Contractor understands that Owner is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 91.21, et seq. Contractor acknowledges that is obligated to assist the Owner in retaining and producing records that are subject to Wisconsin Public Records Law, and that failure to do so shall constitute a material breach of this Agreement, and that the Contractor must indemnify, defend and hold the Owner harmless from liability under that law. Except as otherwise authorized by Owner, those records shall be maintained for a period of seven (7) years after receipt of final payment under this Agreement.

§ 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 such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 WRITTEN NOTICE

§ 13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individuals identified below, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, each party to the following persons and addresses.

§ 13.3.2 Written notice shall be deemed duly delivered if given to the following parties in person or if sent by registered or certified mail to those parties at the addresses set forth below:

If to the Owner:

Ghassan Korban
Commissioner of Public Works
841 N. Broadway, Room 501
Milwaukee, WI 53202

Phone: 414-826-3301
Fax: 414-286-3953
E-mail: ghassan.korban@milwaukee.gov

and

Attn:

John Duggan
The Concord Group
330 East Kilbourn Ave, Suite 565
Milwaukee, WI 53202

Phone: 414-305-7955
Fax: 414-225-5308
E-mail: jduggan@concord-cc.com
and

Jeffery Polenske
Department of Public Works
841 N. Broadway, Room 501
Milwaukee, WI 53202

Attn: City Engineer

Phone: 414-286-2400

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. 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 Final Designer timely notice of when and where tests and inspections are to be made so that the Final Designer 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.

§ 13.5.2 If the Final Designer, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Final Designer 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 Final Designer of when and where tests and inspections are to be made so that the Final Designer may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated testing, inspection or approval procedures and compensation for the Final Designer's services and expenses shall be at the Contractor's expense.

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

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

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

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is 6%.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time 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 13.7.

13.8 ACCOUNTING RECORDS; RIGHT TO AUDIT

§ 13.8.1 For any (1) GMP contract or (2) time and material change orders, Contractor agrees to make, keep and maintain in accordance with generally accepted accounting principles and practices consistently applied, complete books, records, invoices and records of payments relating to the Work while it is being performed and for a period

of seven (7) years following Final Completion of the Work.

§ 13.8.2 Owner shall have the right to examine and/or audit, either directly or through its authorized representatives or agents, during business hours and for a reasonable period of time, all nonfinancial records, correspondence, instructions, specifications, plans, drawings, receipts, subcontracts, purchase orders, invoices, manuals and memoranda insofar as they are pertinent to any question relating to an Audit. This right of inspection shall not apply to Contractor's trade secrets or other proprietary information properly designated or asserted as such, or to any documents protected in good faith by Attorney-Client or Attorney Work Product privileges provided such claim of Attorney-Client or Attorney Work Product privilege is not made for purposes of thwarting the intent of this Section.

§ 13.8.3 For any time and material change orders, access shall be granted Owner to all of Contractor's internal audit information relating to this Agreement, including reports of corrective actions taken as a result of such audit, but access shall not be granted to (i) general financial records not related to this Agreement except as may be solely necessary to verify the audit; or (ii) documents or other items protected in good faith by Attorney-Client or Attorney Work Product privileges provided such claim of Attorney-Client or Attorney Work Product privilege is not made for purposes of thwarting the intent of this Section.

§ 13.8.4 Regardless of the time when the audit referenced above is conducted in the four year audit period, if the audit determines overcharges by Contractor, Contractor shall repay Owner the amount of said overcharges.

§ 13.9 PAYMENT MONITORING REQUIREMENTS

The contractor represents the entire agreement between the Owner and the Contractor and supersedes prior negotiations, representations or agreements, either written or oral. This Contractor Contract may be amended only by written instrument and signed by both the Owner and the Contractor.

§ 13.10 PUBLIC RECORDS

Records shall be maintained in accordance with requirements prescribed by the Owner with respect to all matters covered by this agreement. Both parties understand that the Owner is bound by the Wisconsin Public Records Law and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. Section 19.21, et seq. Contractor acknowledges that it is obligated to assist the Owner in retaining and producing records that are subject to Wisconsin Public Records Law, and that failure to do so shall constitute a material breach of this Agreement, and that the Contractor must defend and hold the Owner harmless from liability under that law. Except otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of the final payment under this Agreement.

§ 13.11 CONFLICT OF INTEREST

§ 13.11.1 Interest in Agreement. No officer, employee or agent of the Owner who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Agreement pertains, shall have any personal interest, direct or indirect in this Agreement.

§ 13.11.2 Interest in Other Local Public Officials. No member of the governing body of the Owner and no other public official of Owner who exercises any functions or responsibilities in the review or approval of the carrying out of this Agreement shall have any personal interest, direct or indirect, in this Agreement.

§ 13.11.3 Interest in Contractor and Employees. The Contractor covenants that no person described in Sections 13.11.1 and 13.11.2 above who presently exercises any functions or responsibilities in connection with the Agreement has any personal financial interest, direct or indirect, in this Agreement. The Contractor further covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. An interest on the part of the Contractor or its employees must be disclosed to the Owner. Provided, however, that this section shall be interpreted in such a manner so as not to unreasonably impede that statutory requirement that maximum opportunity be provided for employment of and participation by residents of the area.

§ 13.12 DISCRIMINATION

§ 13.12.1 In all hiring or employment made possibly or by resulting from this Agreement there will not be any discrimination against any qualified employee or qualified applicant for employment because of sex, race, religion,

color, national origin or ancestry, age, disability, lawful source of income, marital status or sexual orientation or familial status, (Section 109-45 of the Milwaukee Code of Ordinances). This requirement shall apply to but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. There shall be posted in conspicuous place available to employees and applicant for employment, notices requires or to be provided by federal or state agencies involved setting forth the provisions of the clause. All solicitations for employment without regard to sex, race, religion, color, nation origin or ancestry, age, disability, lawful source of income, marital status or sexual orientation or familial status.

§ 14.1 TERMINATION BY THE OWNER FOR CAUSE

§ 14.1.1 The Owner may terminate the Contract if the Contractor

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

§ 14.1.2 When any of the above reasons exist, the Owner, upon certification by the Owner that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice and provided the Contractor, within such seven (7) day period, has not cured such cause or breach, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

§ 14.1.3 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.

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

§ 14.2 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.2.1 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.

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

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.3 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

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

- .1 cease operations as directed by the Owner in the notice;
- .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.

§ 14.3.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, (including Contractor's fee for the Work completed), and costs incurred by reason of such 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, adjustment or interpretation of Contract terms, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to Final Designer. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

Subject to all other applicable provisions of the Contract Documents, if the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

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

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

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Owner for initial recommendation. Except for those Claims excluded by this Section 15.2.1, an initial recommendation shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no recommendation having been rendered. Unless the Owner and all affected parties agree, the Owner will not make recommendations regarding disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Owner will review Claims and within ten days of the receipt of a Claim take one or more of the following Recommendations: (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 Owner is unable to make a recommendation of how to resolve the Claim if the Owner lacks sufficient information to evaluate the merits of the Claim or if the Owner concludes that, in the Owner's sole discretion, it would be inappropriate for the Owner make a recommendation.

§ 15.2.3 In evaluating Claims, the Owner 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 Owner in making a recommendation. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

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

§ 15.2.5 The Owner will make a recommendation regarding the Claim, or indicating that the Owner is unable to make a recommendation. This initial recommendation shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, of any recommended change in the Contract Sum or Contract Time or both.

§ 15.2.6 Either party may file for mediation at any time, after notice of the Owner's recommendation or notice that the Owner is unable to make a recommendation

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

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

§ 15.3 MEDIATION/LITIGATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to litigation. The venue of any litigation shall be Milwaukee, Wisconsin.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation and each party shall be required to ensure that a representative with full and absolute decision-making authority attend the mediation. Upon the request of either party, a neutral mediator shall be retained. If the parties cannot agree on a mediator, the demand for mediation shall be filed with the American Arbitration Association by the party requesting the neutral mediator.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Milwaukee, Wisconsin.

