

**SECTION 00 72 00  
GENERAL CONDITIONS – GC**

**WASHTENAW COMMUNITY COLLEGE  
GENERAL CONDITIONS OF THE  
CONTRACT FOR CONSTRUCTION - GC  
SMALL PROJECTS**

**OWNER:**                   **WASHTENAW COMMUNITY COLLEGE**  
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P.O. Box D-1  
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**GENERAL CONDITIONS**

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**GENERAL CONDITIONS OF THE  
CONTRACT FOR CONSTRUCTION – SMALL PROJECTS**

**ARTICLE 1: CONTRACT DOCUMENTS**

1.1 DEFINITIONS

1.1.1 The Contract Documents. The Contract Documents consist of (i) the Construction Contract; (ii) this document entitled “Washtenaw Community College General Conditions of the Contract for Construction-GC – Small Projects”; (iii) the Special Conditions, if any; (iv) the CPM Schedule or other schedule approved pursuant to the provisions of the Construction Contract; (v) the Schedule of Values submitted pursuant to Subparagraph 9.2.1 hereof; (vi) the Drawings and Specifications enumerated in the Construction Contract, (vii) the Payment Procedures referred to in the Construction Contract; (viii) the Bid Documents, including Invitation to Bid, Instructions to Bidders, and Bid form; (ix) labor and material and performance bonds (for projects over \$50,000); and (x) all Addenda issued prior to and all Modifications issued after execution of the Construction Contract. A Modification is (1) a written amendment to the Construction Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, (4) a written interpretation issued by the Architect, or (5) a written order for a minor change in the Work.

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 all prior negotiations, representations, or agreements, either written or oral. The contract may be amended or modified only by a Modification as defined in Subparagraph 1.1.1 hereof. The Contract Documents shall not be construed to create any contractual relationship of any kind (1) between the Architect and the Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, or (3) between any persons or entities other than the Owner and Contractor.

1.1.3 The Work: The term “Work” means the construction and services required by and reasonably inferable from the Contract Documents. “Work” includes all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations under the Contract Documents, and all work, whether on or off the Site, which is necessary to carry it forward.

1.1.4 The Project. The term “Project” means 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 other Contractors and by the Owner’s own forces including persons or entities under separate contracts.

1.1.5 Drawings and Plans: The terms “Drawings” and “Plans” are used interchangeably and shall mean and refer to the portion of the Contract Documents, wherever located and whenever issued, that give a graphic representation of the design, scope, location, dimensions, and arrangement of construction, materials and equipment.

1.1.6 Specifications: The term “Specifications” means the written description of the requirements for the performance of the Work, which may be in the Drawings or in a separate document.

## 1.2 INTENT

1.2.1 The intention of the Contract is to include all labor, materials, equipment, insurance, taxes and other items necessary for the proper execution and completion of the Work. It is intended that all work required for the construction and administration of the Project shall be supplied by the Contractor, including all such Work that is in the Contract Documents or is reasonably inferable from the Plans and Specifications and the Contract Documents as being necessary to produce the intended result. Lists of “Work Included,” “Scope” or “Description of Work” are not intended to enumerate each and every item of Work or appurtenances required. Words that have well-known technical or trade meanings are used herein in accordance with such recognized meanings.

## 1.3 USE OF DOCUMENTS

1.3.1 The Drawings show the general arrangement, design and extent of the Work and are partially diagrammatic. The Drawings shall not be scaled for rough-in measurements, nor serve as Shop Drawings.

1.3.2 Drawings and Specifications and other documents are complementary and what is called for by one shall be as binding as if called for by both. Should the Drawings, Specifications and/or other instructions be contradictory in any particular or should there be any doubt as to the meaning of either, the Contractor shall refer the matter to the Architect, if any, or to the Owner who shall make a decision. The Architect’s (or, if none, the Owner’s) decision thereon shall be conclusive.

1.3.3 The Drawings and Specifications shall have equal authority and priority. In the event of any conflict between the Drawings and Specifications, the most expensive combination of quality and quantity of Work indicated shall prevail, and the appropriate Work shall be determined by the Owner. With respect to the Drawings and Specifications:

1.3.6.1 Figures take precedence over scale measurements.

1.3.6.2 Large scale details take precedence over smaller scale details.

1.3.6.3 Architectural Drawings take precedence in regard to dimensions when in conflict with Mechanical and Structural Drawings, except for the size of structural members.

1.3.6.4 Specifically titled Drawings and sections of the Specifications take precedence over indication of the item in a collateral way.

1.3.6.5 Existing conditions take precedence over Drawings and Specifications for dimensions.

1.3.6.6 When multiple requirements are given for any item, all requirements shall be met.

1.3.6.7 Terms such as "as shown," "as indicated" and "as noted" mean there are additional requirements given elsewhere in the Contract Documents.

## **ARTICLE 2: OWNER**

### **2.1 OWNER'S RIGHT TO STOP THE WORK**

2.1.1 If the Contractor fails to carry out the Work or to supply labor, materials and equipment in accordance with the Contract Documents, the Owner may provide a written order for the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

### **2.2 OWNER'S RIGHT TO CARRY OUT THE WORK**

2.2.1 The Owner shall at all times have access to the work wherever it is, whether in preparation or progress.

2.2.2 If the Contractor:

2.2.2.1 Fails to pay Subcontractors, vendors, materialmen and equipment lessors within ten (10) days of receipt of payment of Applications for Payment which reflect amounts owing to such parties; or

2.2.2.2 Fails to supply the quantity of properly skilled workmen necessary to complete the Work in accordance with the CPM Schedule; or

2.2.2.3 Fails to supply materials and equipment as necessary to complete the Work in accordance with the CPM Schedule; or

2.2.2.4 Fails to properly coordinate the work of any of its Subcontractors, vendors, materialmen and equipment lessors or the Owner's other contractors; or

2.2.2.5 Fails to maintain any insurance coverages required under this Contract; or

2.2.2.6 Fails to pay workers' compensation or other employee benefits; or

2.2.2.7 Fails to pay withholding or other taxes; or

2.2.2.8 Fails to perform any other obligation under the Contract Documents,  
then

the Owner may, after seven (7) days' written notice to Contractor and without prejudice to any other remedy the Owner may have, make good such deficiencies or otherwise rectify such situations to the satisfaction of the Owner. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies or otherwise rectifying such situations to the satisfaction of the Owner, including compensation for the Architect's or the Owner's or other Contractors' or consultants' additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

### **ARTICLE 3: CONTRACTOR**

#### **3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS**

3.1 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to the Owner and Architect at once. The Contractor shall also acquaint itself with the character and extent of the Owner's operations in the area of work, so that it may make its construction plans accordingly.

#### **3.2 SUPERVISION AND CONSTRUCTION PROCEDURES**

3.2.1 The Contractor shall use his best skill and attention to provide competent supervision, coordination and related services for construction of, and shall cause to be completed, the Work in accordance with the Contract Documents. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

3.2.2 The Contractor shall be as fully responsible to the Owner for the acts and omissions of its Subcontractors, Sub-Subcontractors, their agents and persons directly or indirectly employed by them, and other persons performing any of the Work as it is for the acts and omissions of persons directly employed by the Contractor.

### 3.3 LABOR AND MATERIALS

3.3.1 Unless otherwise specifically noted in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, insurance, taxes, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.3.2 The Contractor covenants that all Work shall be done in a competent and professional, workmanlike manner in accordance with the Contract Documents and that all materials furnished and used in connection therewith shall be new and approved by the Architect, except as otherwise expressly provided for in the Plans and Specifications.

3.3.3 No substitutions or variations from the Specifications and Drawings will be permitted after the Contract is executed by the Owner.

### 3.4 WARRANTY

3.4.1 All materials furnished or installed shall be subject to a guaranty of the longer of (a) twelve (12) months from the Date of Final Completion or (b) such longer period as may be provided in the Plans and Specifications or other Contract Documents. This guaranty of the Contractor shall cover all work under the Contract, whether or not any portion or trade has been assigned or subcontracted. Any warranties of more than twelve (12) months shall be pass through warranties from the manufacturers of the equipment or materials as to any period in excess of twelve (12) months. In addition to the foregoing, any equipment warranties and warranties from Subcontractors, secured by the Contractor, including those in excess of twelve (12) months, and any additional bond or guaranty which may be required under the Plans and Specifications, shall also inure to the benefit of the Owner, its successors and assigns. The Contractor shall require that each Subcontractor provide a similar warranty and guaranty for the benefit of the Contractor and the Owner. The Contractor shall acquire, catalog and deliver to the Owner all bonds and guarantees under Subcontracts and from material suppliers.

3.4.2 The Contractor's express warranty herein shall be in addition to, and not in lieu of, any other warranties, guaranties or remedies the Owner may have under the Contract Documents and this Contract, at law, or in equity for defective work.

### 3.5 PERMITS, FEES AND NOTICES

3.5.1 The Contractor shall secure and pay for the building permit and certificates of occupancy. The Contractor shall secure and pay for all other permits and governmental fees and assessments, licenses, and inspections and shall post all bonds, secure and pay for all permits, and pay all fees for work on or in connection with public property necessary for the proper execution and completion of the Work which are legally required at the time the Contract is executed.

3.5.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

3.5.3 If the Contractor performs, or allows any Subcontractor to perform, any of the Work knowing, or when, with the exercise of due care it would have known, such Work to be subject to an error, inconsistency or omission in the Drawings and Specifications, or contrary to applicable laws, ordinances, rules, regulations, codes or orders of any public authority, and fails to give the Owner notice thereof prior to performance thereof, the Contractor shall bear all costs arising therefrom.

### 3.6 CONTRACTOR'S CONSTRUCTION SCHEDULE

3.6.1 After being awarded the Contract, the Contractor shall promptly, but no later than ten (10) days after the award, prepare and submit for the Owner's and Architect's approval a CPM Schedule (or other schedule as requested and approved by the Owner) for the Work. Such 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 construction schedule to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.6.2 The Contractor shall cooperate with the Owner in scheduling and performing the Contractor's Work to avoid conflict, delay in or interference with the Work of other Contractors or the construction or operations of the Owner's own forces.

3.6.3 The Contractor shall conform to the most recent schedules.

### 3.7 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.7.1 The Contractor shall review, approve and only then submit, with reasonable promptness and in orderly sequence so as to cause no delay in the Work or in the work or activities of the Owner or any other contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents or subsequently required by the Architect or the Owner. Submittals shall be processed in accordance with the procedures implemented by the Contractor pursuant to the provisions of the Construction Contract. Shop Drawings, Product Data and Samples shall be properly identified as specified, or as the Architect or the Owner may require. At the time of submission, the Contractor shall inform the Architect and the Owner in writing of any deviation in the Shop Drawings, Product Data or Samples from the requirements of the Contract Documents.

### 3.8 USE OF SITE

3.8.1 The Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits, the Contract Documents and directions of the Owner and shall

not unreasonably encumber the Site with any materials or equipment. The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Owner before using any portion of the site. The Contractor shall abide by and enforce the Owner's rules, regulations and instructions, if any, regarding the use of the Site. The Contractor shall provide weather protection of all materials and the Work. Upon receipt of a Temporary Certificate of Occupancy and occupation of the Site by the Owner, the Owner may require that all work remaining on the project be performed between the hours of 10:00 p.m. and 5:00 a.m.

### 3.9 CUTTING AND PATCHING OF WORK

3.9.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly and, to the extent required by the Contract Documents, for all cutting, fitting, or patching required in connection with work done by the Owner or other Contractors

### 3.10 CLEANING UP

3.10.1 The Contractor, at all times, shall keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Work, it shall (i) remove all its waste materials and rubbish from and about the Project, as well as all tools, construction equipment, machinery, surplus materials and temporary installations and facilities, and (ii) shall clean and protect all finished surfaces in accordance with Project Specifications.

3.10.2 If the Contractor fails to clean up after request from the Owner, the Owner may do so as provided in Paragraph 2.2 and the cost thereof shall be charged to the Contractor.

### 3.11 INDEMNIFICATION

3.11.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold the Owner and the Architect and the consultants, agents, and employees of any of them harmless from all claims, loss, costs and expenses (including but not limited to attorney fees) that may arise, or be alleged to have arisen, from the Contractor's negligence or willful or wanton misconduct (whether or not also caused in part by the Owner), and from all claims for nonpayment, breach of contract, third party beneficiary claim by Subcontractors, Sub-Subcontractors, laborers, vendors and materialmen for labor or material, and shall indemnify, defend and hold the Owner harmless from any construction or mechanics lien, builders trust fund or similar claims.

3.11.2 The obligations of the Contractor under this Paragraph 3.11 shall survive the termination of the Contract as to all matters arising prior to the date of termination.

## **ARTICLE 4 LEFT INTENTIONALLY BLANK**

## **ARTICLE 5: SUBCONTRACTORS**

### **5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

5.1.1 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 and Architect, the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or Architect, after due investigation, has objection to any proposed person or entity. Failure of the Architect to reply within 10 days of such written notice shall constitute notice of no objection and agreement to use said proposed person(s) or entity(ies).

5.1.2 The Contractor shall not contract with any proposed person or entity to which the Owner or Architect objects. After receiving such objection the Contractor shall within 5 days submit a substitution to whom the Owner and Architect have no objection.

5.1.3 The Contractor shall make no substitution for any Subcontractor, person or entity previously selected without the written approval of the Owner.

5.1.4 The Contractor hereby assigns to the Owner, as security for the Contractor's performance hereunder, all Subcontracts and all other contracts and agreements entered into in connection with the Work, and appoints the Owner its attorney to enforce said contracts according to their terms. Such assignment shall be operative only upon notice by Owner in the event of default by, or termination of, the Contractor under this Contract. The Owner retains the right to accept or reject assignments of Subcontracts at the time notice is given. All Subcontracts shall provide that the Subcontractor consents to the assignment of the Subcontract to the Owner pursuant to this Subparagraph 5.1.4 and agrees, in the event such assignment becomes effective, to recognize the Owner as the successor to the Contractor and to complete the Work under the Subcontract.

## **ARTICLE 6: WORK BY OWNER OR BY OTHER CONTRACTORS**

### **6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS**

6.1.1 The Owner reserves the right to (i) perform work related to the Project with its own forces and (ii) to award separate contracts to other Contractors in connection with other portions of the Project or other work on the Site under these or similar Conditions of the Contract..

## 6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner's own forces and the Owner's other Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work related to the Project, and shall properly connect and coordinate its Work with theirs. The Contractor shall consult with the Owner regarding coordination of work.

6.2.2 Should the Contractor cause damage to the work or property of the Owner, or to other work on the Site, the Contractor shall promptly remedy such damage.

6.2.3 Should the Contractor cause damage to the work or property of any other Contractor, the Contractor shall upon due notice promptly settle with such other contractor by agreement, if he will so settle. If such other Contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings at the Contractor's expense, and if any judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or arbitration costs which the Owner has incurred.

## **ARTICLE 7: CHANGES IN THE WORK**

### 7.1 CHANGE ORDERS

7.1.1 A "Change Order" is a written order to the Contractor signed by the Owner and the Architect (if any), issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum, the Contract Time or the CPM Schedule. The Contract Sum, the Contract Time, and the CPM Schedule may be changed only by Change Order. A Change Order signed by the Contractor indicates its agreement therewith, including the adjustment in the Contract Sum, the Contract Time, and the CPM Schedule.

7.1.2 The Owner, without invalidating the Contract, may order changes in the Work at any time within the general scope of the Contract consisting of additions, deletions or other revisions. All such changes in the Work shall be authorized by Change Order and shall be performed under the applicable conditions of the Contract Documents. The Contractor shall implement the Owner's Change Order procedures as provided in the Construction Contract. Change Orders shall be processed using a change order form to be supplied by the Owner. A Change Order shall be initiated by a directive issued to the Contractor by the Architect, either in the form of a Proposal Request or a Construction Change Directive. Promptly after receipt of a Proposal Request, the Contractor shall submit to the Owner a detailed statement showing the adjustment to the Contractor Sum (if any) computed in accordance with Subparagraph 7.1.7 hereof, and the adjustment in the Contract Time and the CPM Schedule, if any, such change would entail. The amount and adjustment of time set forth in such statement shall be deemed to cover all costs and delays to Contractor associated with the changed work, including impact costs and delays and no

further or subsequent adjustments to the Contract Sum, the Contract Time, or the CPM Schedule shall be allowed on account thereof. The Owner shall promptly notify the Contractor whether the adjustment is acceptable and, if it is, authorize the change to be made by executing the Change Order. Owner reserves the right to reject any such proposal and to have the Work done by others.

7.1.3 The Owner shall, at all times, have the right to order changes in the Work to be performed on the basis of (a) a Lump Sum Proposal; (b) a Unit Price Basis; or (c) a Time-and-Material Basis. Credits for deductions from the Work shall be determined on the same basis as charges for additions to the Work and the affected Contractor or Subcontractor shall be allowed any restocking or material and equipment cancellation charges payable to suppliers and vendors for the purpose of computing the credit resulting from deductions from the Work. The Owner's choice of the manner in which the changed Work is to proceed is described as follows:

7.1.3.1 Lump Sum Proposal: Should the Owner elect to have changed Work performed on a Lump Sum Proposal, the Contractor will, with reasonable promptness after receipt of a notice from Owner, but in any event prior to proceeding with the changed Work, transmit his Lump Sum Proposal detailing the proposed adjustment to the Contract Sum. The Lump Sum Proposal shall be based solely upon the affected Subcontractors' estimated net cost for labor and materials and increased bond premiums, if any, plus the percentages for overhead and profit as hereinafter set forth. This Proposal shall be itemized and segregated by labor and material for the various components of the changed Work and no aggregate figures for labor and material will be acceptable. The Contractor shall furnish, with his Proposal, supporting data consisting of Subcontractor, Sub-subcontractor and vendor executed proposals. If the Contractor is not performing the changed Work, the Contractor shall be permitted a handling charge of not more than five percent (5%). The Contractor or Subcontractor actually performing the changed Work shall be permitted not more than fifteen (15%) percent for overhead and profit; Subcontractors of the next lower tier only shall be allowed a handling charge of not more than five (5%) percent. The Contractor or Subcontractors may include in their labor proposal only those workmen directly involved in the changed Work. All other supervision is included in the percentages for overhead and profit allowed, unless (i) additional foremen are required in connection with the changed Work who were not otherwise on the site or (ii) the total Contract Time is extended as a result of the Changed Work, in which event an equitable amount shall be allowed for supervision during the extended period. The Contractor or Subcontractors will be entitled to payment for labor, union fringe benefits, insurance, unemployment insurance, Social Security and taxes paid on labor (but no overhead or profit will be allowed on such items). Subcontractor's material costs will include invoiced costs, transportation and applicable sales or use taxes. Use of small tools is included in the overhead and profit. Equipment rental may be included only if the equipment will be required on the Site for a longer duration solely because of the changed Work. No overhead and profit will be allowed on equipment rental. Overhead and profit, as

outlined above, includes all other costs whatsoever beyond those enumerated. If any of the changed Work included in the Lump Sum Proposal is covered by Contract Unit Prices, the Owner may elect to use these Unit Prices within the Lump Sum Proposal. No overhead and profit may be applied to these Unit Prices.

7.1.3.2 Unit Price: Should the Owner elect to have changed Work performed on a Unit Price Basis, the Contractor will submit, with reasonable promptness after receipt of a notice from Owner, a written proposal itemizing the quantities of each item of changed Work for which there is an applicable Unit Price contained in the Contract or applicable subcontracts. The quantities must be itemized in relation to each specific item in the Contract Documents. The Unit Prices will also be applied to net increases in quantities of the same item. The Unit Prices will also be applied to net decreases in quantities of the same item.

7.1.3.3 Time and Material: Should the Owner elect to have any changed Work performed on a Time and Material Basis, the affected Contractor or Subcontractors shall perform such changed Work at actual cost as defined in Subparagraph 7.1.3.1 hereof plus the percentages for overhead and profit set forth in Subparagraph 7.1.3.1 hereof. The Contractor will submit to the Owner daily time and material tickets for all changed Work, including changed Work performed by Subcontractors. These tickets will include the identification number assigned to this Work, the location and description of the changed Work, the classification of labor employed including the applicable Subcontractor, workers' names and social security numbers, the materials used, the equipment rented (not tools) and any other information ordered by the Owner.

7.1.4 Where any such changed Work is ordered as provided in this Contract, the Contractor shall, for such purposes, permit the Owner to audit its books and shall require all Subcontractors to permit the Owner and the Contractor to audit their books. The Contractor shall produce, and shall cause any Subcontractors to produce, any and all data which the Owner may request for the purpose of determining the correctness of the charges. The Owner, its agents and employees, shall be afforded access at all reasonable times to the Contractor's books, correspondence, instructions, receipts, vouchers, memoranda and records of all kinds, relating to all changed Work under this Contract as well as to such charges and extras.

7.1.5 In the case of disagreement as to the amount to be adjusted, credited, or paid for changed Work, the Contractor shall promptly comply with the order and adjustment, and payment or credit shall be made in accordance with the Contract payment provisions up to the reasonable estimated value of the change as determined by the Owner.

7.1.6 Unless and until Owner shall elect either the Lump Sum Proposal, the Unit Price Basis or the Time and Material Basis, the Contractor shall maintain and submit daily records of labor, material and equipment used in the changed Work which have been acknowledged thereon daily by the Owner. In any event, the Owner shall have the right to order such changes in the Work to proceed promptly prior to the submission of a Lump

Sum Proposal and/or the Owner's election of the method by which the cost of the changed Work shall be determined.

7.1.7 The Contract Sum shall not be increased in connection with Change Orders unless (i) the total Contract Time is extended by a significant period as a result of a Change Order; or (ii) significant additional on-site resources of the Contractor are required during the original Contract Time as a result of a Change Order. If the Owner and the Contractor agree that a Change Order results in one or both of the situations described in clauses (i) and (ii) above, the Contract Sum will be increased by a mutually acceptable amount which will be based on the additional resources of the Contractor and not on the value of the changed work.

## 7.2 CONCEALED CONDITIONS

7.2.1 Should concealed conditions encountered in the performance of the Work below the surface of the ground be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, be encountered, the Contract Sum may be adjusted on the Unit Price Basis established in the Subcontract for subsurface, foundation or excavation work, and in the absence of a Unit Price Basis in the Subcontract for the work, as provided in Subparagraph 7.1.3 hereof. The Contract Sum shall not be increased unless the Contractor gives the Owner and Architect written notice and an opportunity to observe the condition prior to disturbing it. If the Contractor wishes to make a claim for an increase in the Contract Sum pursuant to this Subparagraph 7.2.1, it shall give the Owner written notice thereof within forty-eight (48) hours after the occurrence of the event giving rise to such claim. This notice must be given by the Contractor before disturbing the condition and before proceeding to execute the Work, except in an emergency endangering life or property. Failure of the Contractor to give written notice as required by this paragraph shall constitute a waiver by the Contractor of any rights arising out of or relating to the concealed condition.

## ARTICLE 8: TIME

### 8.1 DEFINITIONS

8.1.1 Unless otherwise provided, the "Contract Time" is the period of time allotted in the Contract Documents for Final Completion of the Work as defined in Subparagraph 8.1.4 hereof, including authorized adjustments thereto.

8.1.2 The date of commencement of the Work is the date established in a notice to proceed. If there is no notice to proceed, it shall be the date of the Construction Contract 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 upon which both of the following conditions have been satisfied: (i) the

Architect shall have certified, and the Owner shall have agreed, that 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, and (ii) either a final, unconditional certificate of occupancy shall have been issued or the Work has passed inspection by all of the authorities having jurisdiction..

8.1.4 The “Date of Final Completion” of the Work is the Date on which the Work shall be fully, completely and finally completed in accordance with the Contract Documents and all of the following have been completed:

8.1.4.1 A final, unconditional Certificate of Occupancy has been issued or the Work has passed inspection by the authority having jurisdiction;

8.1.4.2 Contractor has completed all Punch List Items to the satisfaction of Owner, including providing Owner with the results of any and all tests that may be required;

8.1.4.3 Contractor has marked all utilities and tagged all electrical switches and valves to designate the purpose of such electrical switches and valves and, to the extent applicable, marked the base of structures where parking lot lighting and other utility leads enter the structure; and

8.1.4.4 The Contractor has complied with all close-out requirements of the Contract Documents.

8.1.5 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

## 8.2 SUSPENSION BY OWNER

8.2.1 The Owner may order the Contractor in writing to suspend all or any part of the Work on the Project for such period of time as it may determine to be appropriate for the convenience of the Owner.

8.2.2 If the performance of all or any part of the Work on the Project is suspended by an act of the Owner in the administration of the Project:

8.2.2.1 If such act causes delays in the critical path activity, then the CPM Schedule shall be adjusted, subject to the provisions of the Construction Contract, as necessary to compensate for such delay; and

8.2.2.2 An equitable adjustment shall be made to the Contract Sum to cover any increase in the cost of performance of this Contract to the Contractor necessarily caused by such suspension, not to exceed the direct, unavoidable expenses incurred by the Contractor which shall, in all cases, exclude lost profits and consequential damages.

8.2.3 Any claims for extension of time or an equitable adjustment pursuant to Subparagraph 8.2.2 hereof shall be made in writing to the Owner no more than two (2) days after the commencement of the delay; otherwise they shall be waived. In the case of a continuing cause of delay, only one claim is necessary. Any delay of less than twenty-four (24) hours duration shall not be justification for adjusting the CPM Schedule.

8.2.4 To the extent practical, the Contractor shall reduce the size of its Site staff and equipment upon notice from the Owner of any Owner-caused suspension which is likely to exceed thirty (30) days to reduce costs and expenses to the Owner. Upon the termination of the suspension or as otherwise directed by the Owner, the Contractor shall restore the Site staff and equipment to its former size.

8.2.5 No adjustments shall be made under this Paragraph 8.2 for any suspension (i) to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or (ii) for which an equitable adjustment is provided or excluded under any other provision of this Contract. The Owner's exercise of any of its rights under this Contract, Change Orders, regardless of the extent or numbers of such changes, or Owner's requirement of correction or re-execution of any defective Work shall not, under any circumstances, be construed as interference with the Contractor's performance of the Work.

8.2.6 All Subcontracts shall contain the foregoing provisions.

### 8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor shall be delayed by: (1) the combined action of workers (either those employed on the Work or in any industry essential to the conduct of the Work) in no way caused by or resulting from default or collusion on the part of the Contractor, (2) by strikes, lockouts, embargoes, fire, unavoidable casualties, unusual delays in transportation, national emergency, unusually severe and adverse weather conditions not reasonably anticipatable, or (3) by any other causes which the Contractor could not reasonably control or circumvent, and if such delay affects the critical path activity, then the CPM Schedule shall be adjusted, subject to the provisions of the Construction Contract, as necessary to compensate for such delay (but the total extension of all critical path activities may not exceed the length of the delay).

8.3.2 Extension of time shall be the Contractor's sole remedy for any delay unless the same shall have been caused by suspension by the Owner, as provided by Paragraph 8.2 hereof.

8.3.3 All claims for extension of time pursuant to Subparagraph 8.3.1 hereof shall be made in writing to the Owner no more than ten (10) days after the commencement of the delay; otherwise they shall be waived. In the case of a continuing cause of delay only one claim is necessary. Any delay of less than twenty-four (24) hours duration shall not be justification for adjusting the CPM Schedule.

8.3.4 No adjustments shall be made under this Paragraph 8.3 for any suspension, delay or interruption (i) to the extent that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or (ii) for which an equitable adjustment is provided or excluded under any other provision of this Contract. The Architect's or Owner's exercise of any of its rights under this Contract, Change Orders, regardless of the extent or numbers of such changes, or the Owner's requirement of correction or re-execution of any defective Work shall not, under any circumstances, be construed as interference with the Contractor's performance of the Work.

8.3.5 All Subcontracts shall contain the foregoing provisions.

#### 8.4 ACCELERATION OF PERFORMANCE

8.4.1 In the event the Architect or Owner determines and the CPM Schedule substantiates, that the Contractor has failed to adhere to the CPM Schedule, and if the Architect or Owner determines that the Contractor has not taken adequate steps to bring Work on schedule after three days' notice from the Architect or Owner, the Contractor shall, without affecting or abridging the rights of the Owner set forth in this Contract, upon receipt of a written notice from the Architect or Owner, promptly work such additional time over regular hours, including Saturdays, Sundays and holidays and/or supply such additional workers as may be required to bring work on schedule, without additional cost or expense to the Owner, including claims for inefficiency due to the use of overtime or additional labor.

8.4.2 All Subcontracts shall contain the foregoing provisions.

### **ARTICLE 9: PAYMENTS AND COMPLETION**

#### 9.1 CONTRACT SUM

9.1.1 The "Contract Sum" is stated in the Construction Contract and, including authorized adjustments thereto strictly in accordance with the terms hereof, is the total amount payable by the Owner to the Contractor for the performance of the Work, including all risks, hazards and difficulties in connection therewith assumed by the Contractor under the Contract.

## 9.2 SCHEDULE OF VALUES

9.2.1 Within 10 days of execution of the Construction Contract, the Contractor shall submit to the Architect (or, if none, to the Owner), on the form provided by the Architect, a Schedule of Values, aggregating the total Contract Sum divided into the categories shown on the form and supported by such data to substantiate its accuracy as the Architect and Owner may require. This schedule, when approved by the Owner, shall be used as a basis for the Contractor's Applications for Payment.

## 9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least 30 days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment on a form approved by the Owner for Work completed in accordance with the schedule of values. Such application shall be notarized. The issuance of an Application for Payment will constitute a representation by the Contractor to the Owner that the Work has progressed to the point indicated; that the quality of the Work is in accordance with the Contract Documents; and that Contractor is entitled to payment in the amount certified. The Application shall be supported by such data as the Owner or Architect may require.

9.3.2 Such applications shall not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

9.3.3 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work and delivered and suitably stored at the Site, or at some other location, but only with the prior written approval of the Owner and shall be conditioned upon submission by the Contractor of the following: (1) the notarized bill of sale to the Owner executed by an officer of the selling corporation; (2) a certificate of insurance covering the material for fire, theft and vandalism naming the Owner as the insured party; (3) an affidavit from an officer of the selling corporation stating that he is an officer and giving the complete address of the specific location where the material is stored; (4) a certification authorizing inspection by the Owner or its representative at the storage location; and (5) such other evidence as the Owner may reasonably require demonstrating that it is the owner of such material free and clear of all rights in others.

9.3.4 The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the Owner upon the receipt of payment by the Contractor, free and clear of all liens, claims, security interests, encumbrances or rights in others, hereinafter referred to in this Article 9 as "liens."

#### 9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Architect, if any, will review the Contractor's applications. If no Architect is engaged on the Project, no Certificate for Payment will be required.

9.4.2 The Architect will, with reasonable promptness but not later than 15 days after receipt of the Application for Payment, either issue a Certificate for Payment to the Owner for approval, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and the Owner in writing of its reasons for withholding a Certificate. The Architect's Certificates shall be recommendations only and shall be subject to the Owner's review and approval for payment.

9.4.3 The issuance of a Certificate for Payment will constitute a representation made by the Architect to the Owner, based on its observations at the Site the data comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the best of its knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in its Certificate); and that the Contractor is entitled to payment in the amount certified. In addition, the Architect's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor being entitled to final payment have been fulfilled.

#### 9.5 PROGRESS PAYMENTS

9.5.1 After the Architect has issued a Certificate for Payment, the Owner shall review it and either approve it or notify the Architect and the Contractor of its reason for withholding approval. The Owner shall make payment upon, and only upon, receiving and approving a Certificate for Payment which complies with all requirements of (i) this Contract, (ii) any financing agency with respect to disbursement of loan proceeds and (iii) the title insurance company with respect to date-down of title insurance policies, if any.

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

9.5.3 The Architect or the Owner may, on request and at their discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Architect on account of Work done by such Subcontractor.

9.5.4 Neither the Owner nor the Architect shall have any obligation to pay or to see to the payment of any moneys to any Subcontractor.

9.5.5 No Certificate for a progress payment, nor any progress payment, nor any approval of either by the Architect or the Owner, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

## 9.6 PAYMENTS WITHHELD

9.6.1 The Architect may decline to certify payment and may withhold its Certificate in whole or in part, to the extent necessary reasonably to protect the Owner, if in its opinion it is unable to make representations to the Owner as provided in Subparagraph 9.4.3 hereof. If the Architect is unable to make representations to the Owner as provided in Subparagraph 9.4.3 hereof and to certify payment in the amount of the Application, it will notify the Contractor as provided in Subparagraph 9.4.2 hereof. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which it is able to make such representations to the Owner.

9.6.2 The Owner may withhold payment and the Architect may decline to certify payment or, because of subsequently discovered evidence or subsequent observations, they may nullify the whole or any part of any Certificate for Payment previously issued, to such extent as may be necessary in their opinion to protect the Owner from loss because:

9.6.2.1 The Contractor is in default of any of obligations under this Contract or otherwise is in default under any of the Contract Documents;

9.6.2.2 The Contractor has not remedied defective work;

9.6.2.3 The Contractor has caused damage to the Owner or another contractor;

9.6.2.4 Any part of such payment is attributable to Work which is defective or not performed in accordance with the Plans and Specifications, as determined by the Architect or the Owner; provided, however, such payment shall be made as to the part thereof attributable to Work which is performed in accordance with the Plans and Specifications and is not defective, reserving, however, such amount as the Architect or the Owner shall determine necessary to protect the Owner with respect to defective Work;

9.6.2.5 The Contractor has failed to make payments promptly to Contractor's Subcontractors, Sub-Subcontractors, laborers or materialmen or for material or labor used in the Work;

9.6.2.6 Any part of such payment is attributable to Work with respect to which the Owner has been notified of a claim or dispute or has received reasonable evidence indicating the existence of such a claim or dispute;

9.6.2.7 The Owner has reasonable indication that the Work will not be completed within the Contract Time or in accordance with the CPM Schedule; or

9.6.2.8 The Owner determines that the portion of the Contract Sum then remaining unpaid will not be sufficient to complete the Work in accordance with the Plans and Specifications, whereupon no additional payments will be due the Contractor hereunder unless and until the Contractor, at no cost to the Owner, performs, and pays in full for, a sufficient portion of the Work so that such portion of the Contract Sum then remaining unpaid is determined by the Owner to be sufficient to so complete the Work.

9.6.3 If the Owner determines that the Contractor has failed to make proper payments to Contractor's Subcontractors, Sub-Subcontractors, laborers, or materialmen, the Owner may, at its option and with notice to Contractor, make the payments directly and deduct the amount of the payments from payments then or thereafter due to Contractor.

## 9.7 FAILURE OF PAYMENT

9.7.1 The Contractor shall carry on the Work and maintain its progress during the existence of any payment disputes and the Owner shall continue to make payments to the Contractor over which there is no good faith dispute.

## 9.8 SUBSTANTIAL COMPLETION

9.8.1 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Owner, is substantially complete as defined in Subparagraph 7.1.3 hereof, the Contractor shall promptly notify the Architect by submitting a "Certificate of Substantial Completion.." The Architect, in consultation with the Owner, shall prepare a comprehensive list of items to be completed or corrected ("Punch List"). The Contractor shall proceed promptly to complete and correct items on the list. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Architect, on the basis of an inspection, determines that the Work or designated portion thereof is substantially complete, the Architect will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. The Certificate of Substantial Completion shall be submitted to the Owner for review and approval and, upon approval, the Owner and the

Contractor shall execute such Certificate to indicate their acceptance of the responsibilities assigned to them in such Certificate.

#### 9.9 FINAL COMPLETION, CERTIFICATE OF FINAL COMPLETION, FINAL PAYMENT AND RELEASE OF RETENTION

9.9.1 Upon completion of the Work, the Contractor shall forward to the Architect and the Owner a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Architect a final Contractor's Application for Payment. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of the final Application for Payment, the Architect will promptly make such inspection and when he finds the Work acceptable under the Contract Documents, all items on the Punch List completed to the Owner's satisfaction and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of its knowledge, information and belief, and on the basis of its observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate, is due and payable. The final Certificate for Payment shall be accompanied by a Certificate of Final Completion, prepared by the Architect, which shall establish the Date of Final Completion. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.9.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Warranties required by the Contract documents shall commence on the Date of Final Completion of the Work or designated portion thereof unless otherwise approved in writing by the Owner. If the Architect is unable to issue its final Certificate for Payment and is requested to repeat its final inspection of the Work, the Contractor shall bear the cost of such inspection(s), which may be deducted by the Owner from the Contractor's final payment.

9.9.2 Neither the final payment nor the retained percentage shall become due until the Contractor submits to the Owner, in a form acceptable to the Owner, (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or its property might in any way be responsible, 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 release of retention, (5) final, unconditional general releases and final affidavits and waivers of lien from Contractor and all Subcontractors, Sub-Subcontractors, laborers and material suppliers in the form attached hereto as Exhibit 1, and (6) Contractor has satisfied the conditions of Paragraph 7.1.4 hereof. Notwithstanding the foregoing, the Contractor's final waiver and unconditional release is not required to be submitted in advance of final payment but may be exchanged for final payment.

## **ARTICLE 10: PROTECTION OF PERSONS AND PROPERTY**

### **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

10.1.1 The Contractor shall develop a comprehensive project safety program and require each separate Subcontractor to adhere to such program. The Contractor shall submit the Contractor's safety program to the Owner for coordination with other safety programs of other Contractors. The Contractor shall appoint a safety officer who shall be responsible for administering the comprehensive safety program. The Contractor shall assume responsibility for full and violation free compliance with all applicable laws, rules and regulations pertaining to job and project safety. The Owner's safety engineer shall have the right to make periodic inspections of the Site. The Contractor shall cooperate in correcting any deficiencies found by the Owner's safety engineer.

## **ARTICLE 11: INSURANCE**

### **11.1 INSURANCE OF CONTRACTOR**

11.1.1 Until completion and final acceptance of the Work and for the Correction Period defined in Subparagraph 12.2.2, the Contractor shall purchase and maintain insurance from an insurance provider acceptable to the Owner. The insurance shall be in at least the amounts required by the Contract or by law, whichever is greater. The Contractor shall provide the Owner (with a copy to the Architect) with certificates of insurance (and copies of the policies if requested) prior to commencement of the Work. The insurance shall be adequate to protect the Contractor, the Subcontractors, and anyone directly or indirectly employed by them.

Workers' Compensation Insurance, Employer's Liability Insurance, Commercial Liability Insurance for Contractor's own operations, Contingent Liability Insurance for the operations of Subcontractors and Contractual Liability Insurance to insure the indemnifying portions of this Contract, such insurance to include Bodily Injury Liability and Property Damage Liability. Certificates of such insurance (and copies of policies if requested) shall be filed with the Owner and shall be subject to its approval for adequacy of protection and the satisfactory character of the insurer, but in no case shall they be less than the following limits:

11.1.1.1 Workers' Compensation: Statutory;

11.1.1.2 Employer's Liability: \$500,000 Each Accident  
\$500,000 Disease-Policy Limit  
\$500,000 Disease-Each Employee

11.1.1.3 Commercial General Liability (including Premises Operations; Independent Contractors' Protective; Products and Completed

Operation; Broad Form Property Damage, Contractual Liability) or a combination of Commercial General Liability and an Umbrella/Excess Liability Policy:

- (i) General Aggregate per Location: \$2,000,000
- (ii) Products/Completed Operations  
Aggregate \$2,000,000 Each Occurrence
- (iii) Personal and Advertising Injury \$2,000,000 Each Occurrence
- (iv) Products and Completed Operations to be maintained for two (2) years after final payment.

11.1.1.4 Comprehensive Automobile Liability and Umbrella/Excess Liability:

Bodily Injury and Property Damage: \$2,000,000

11.1.1.5 Subcontractor's Public Liability and Property Damage Insurance and Vehicle Liability Insurance: The Contractor shall either:

- (i) Require each of its Subcontractors to procure and to maintain during the life of its Subcontract, Subcontractor's Commercial General Liability Insurance, Vehicle, and Worker's Compensation Liability Insurance of the type and in the amounts specified for the Contractor herein, or
- (ii) Insure the activities of its Subcontractors in its policy as specified herein.

11.1.2 All of the above insurance shall include the Owner, the Owner's lender(s), and others designated by the Owner as additional named insureds. Each such policy shall contain the following cross-liability wording: "In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder." All such insurance shall be primary and any similar or additional insurance maintained by the Owner shall be secondary and excess to that carried by the Contractor or any Subcontractor. Before commencing the Work, the Contractor shall furnish a certificate from its insurance carrier showing that it has complied with the provisions of this Paragraph 11.1, and providing that the said insurance policies will not be changed or cancelled during their term until after at least thirty (30) days' prior notice by registered mail to the Owner. In the event of failure of the Contractor to furnish and maintain such insurance or to furnish a satisfactory certificate therefor, the Owner shall have the right to take out and maintain the said insurance for and in the name of the Contractor, and the Contractor agrees to furnish all necessary information to permit the Owner to take out and maintain such insurance for the

account of the Contractor and to pay the cost thereof to the Owner immediately upon presentation of a bill. Compliance by the Contractor with the foregoing requirements as to carrying insurance and furnishing certificates, shall not relieve the Contractor from liability under this Contract.

11.1.3 All insurance required to be maintained by Contractor shall be written on an Occurrence basis.

11.1.4 The Contractor shall require all Subcontractors performing design and other architectural or engineering services hereunder to maintain professional errors and omissions coverage in connection with subcontracted work. All professional errors and omissions insurance shall be endorsed to provide contractual liability coverage, shall be in amounts approved by Owner prior to the execution of any Subcontract including design or engineering responsibilities, and shall be maintained for such period as may be specified by Owner (which will extend, at a minimum, through the applicable warranty period). Certificates of such coverage shall be filed with the Owner.

## 11.2 INSURANCE OF OWNER

11.2.1 The Owner shall be responsible for purchasing and maintaining its own liability insurance and, at its option, may purchase and maintain such insurance as will protect it against claims which may arise from operations under the Contract.

## 11.3 WAIVER OF SUBROGATION

11.3.1 The Owner and the Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance required under this Article 11 or any other insurance actually carried by the Owner or the Contractor, respectively. The Contractor shall waive all rights against the Architect for such damages to the extent covered by such insurance. The Contractor shall require similar waivers by Subcontractors and Sub-Subcontractors in accordance with Article 5 hereof. All Insurance policies required hereunder shall permit and recognize such waivers of subrogation.

## 11.4 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

11.4.1 If the Contract Sum is Fifty Thousand Dollars (\$50,000.00) or more, or upon the request of the Owner, the Contractor shall post Payment and Performance Bonds, in a form approved by the Owner, issued by a licensed commercial surety, each in the amount of one hundred (100%) percent of the Contract Sum. The bonds shall be executed by a surety named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," as published in Circular 570 (as amended) by the Audit Staff, Bureau of Government Financial Operations, and U.S. Treasury Department. These bonds shall remain in effect at least until one year after the date when final payment becomes due. In the event that the Contract Sum is increased pursuant to the provisions of this Contract, the Contractor shall immediately cause the face amount of said bonds to be increased to the amount of the

increased Contract Sum. If the surety on any Bond furnished by the Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated, Contractor shall within ten days thereafter substitute another bond and surety acceptable to owner. The current AIA Performance and Payment Bond forms shall be used for the Contractor's Performance and Payment Bonds, unless the Owner specifies a different form.

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 permit a copy to be made.

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

### **12.1 UNCOVERING OF WORK**

12.1.1 If any portion of the Work is covered contrary to the request of the Architect or the Owner or to requirements specifically expressed in the Contract Documents, it must, if required by either, be uncovered for observation and shall be replaced at the Contractor's expense. In such event, the Contractor shall not be entitled to any additional compensation or extension of time.

12.1.2 If any other portion of the Work has been covered which the Architect or the Owner has not specifically requested to observe prior to being covered, the Owner and, with the Owner's approval, Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs and maintain the schedule unless it is found that this condition was caused by the Owner or other Contractor as provided in Article 6, in which event the Owner shall be responsible for the payment of such costs.

### **12.2 CORRECTION OF WORK**

12.2.1 The Contractor shall promptly correct all Work rejected by the Owner or the Architect, if the Owner agrees, as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion or Final Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work and maintaining the schedule, including compensation for the Architect's additional services made necessary thereby.

12.2.2 Correction Period: If, within twelve (12) months after the Date of Final Completion of the Work or designated portion thereof or within twelve (12) months after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor agrees to make any and all repairs or replacements and further agrees to commence such repair or replacement and the

replacement of any and all damage caused thereby at any time or times during the guarantee period, within seven (7) days from receipt of written notice and to faithfully and diligently prosecute the same to conclusion, without cost to, and to the satisfaction of, the Owner. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

12.2.3 The Contractor shall remove from the Site all portions of the Work which are defective or non-conforming and which have not been corrected under Subparagraph 12.2.1 hereof, unless removal is waived in writing by the Owner and the Work shall be corrected to comply with the Contract Documents without cost to the Owner.

12.2.4 If the Contractor fails to correct defective or nonconforming Work, the Owner may correct it in accordance with Paragraph 2.4 hereof.

12.2.5 If the Contractor does not remove defective or non-conforming Work within a reasonable time fixed by written notice from the Owner, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days thereafter, the Owner may sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Architect's additional services. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

12.2.6 The Contractor shall bear the cost of making good all of its work, the work of the Owner or other Contractors and any other facilities destroyed or damaged by such deficiencies and their removal or correction.

12.2.7 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 3.5 hereof. The establishment of the Correction Period of twelve (12) months after the Date of Final Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his 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 his obligations other than specifically to correct the Work.

### 12.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

12.3.1 If the Owner prefers to accept defective or nonconforming Work, it may do so instead of requiring its removal and correction, in which case a Change Order will

be issued to reflect a reduction in the Contract Sum, or, if the amount is determined after final payment, it shall be paid by the Contractor.

## ARTICLE 13

### MISCELLANEOUS PROVISIONS

#### 13.1 GOVERNING LAW

13.1.1 The Contract shall be governed by the law of the State of Michigan.

#### 13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and the Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Owner has relied upon the creditworthiness, experience, reputation and professional ability of the Contractor; accordingly, the Contractor shall not assign, subcontract or transfer any interest in this Contract without the prior written consent of the Owner. The Owner reserves the right to assign both the benefits and/or obligations of the Owner under this Contract, in whole or in part, absolutely or as security, to any party reasonably capable of performing the Owner's executory obligations under this Contract at any time.

#### 13.3 WRITTEN NOTICE

13.3.1 Written notice shall be deemed to have been duly served if delivered in person or sent by registered or certified mail as follows:

If to Owner: Washtenaw Community College  
4800 E. Huron River Drive  
P.O. Box D-1  
Ann Arbor, MI 48106  
Attention: Damon B. Flowers

If to Contractor:

Attention:

Notices shall also be deemed to have been duly served if delivered personally in writing to the Owner's or the Contractor's on-site representative. Either party may change its address or designee for purposes of this Subparagraph in a writing complying with the provisions of this Subparagraph.

#### 13.4 CLAIMS FOR DAMAGES OR INCREASES IN THE CONTRACT SUM OR AMOUNT DUE CONTRACTOR FROM THE OWNER

13.4.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, claim shall be made in writing to such other party within such time as may be provided in the Contract, or if no time is so specified, within a reasonable time after the first observance of such injury or damage. Unless otherwise provided by the Contract Documents or other provisions hereof, claims by the Contractor which would increase the Contract Sum or the amount due the Contractor from the Owner must be submitted to the Owner in writing within 14 days of the date the claim arises. Claims which are not readily discoverable will be deemed to arise on the date the Contractor discovers or reasonably should have discovered the conditions, event, or occurrence leading to the claim. Failure of the Contractor to submit a claim in writing within 14 days of the date the claim arises shall constitute a waiver of the right to an increase in the Contract Sum or for any amount allegedly due for such claim.

### 13.5 RIGHTS AND REMEDIES

13.5.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law except as expressly stated in this Contract to the contrary.

13.5.2 No failure by the Owner to insist upon strict performance of any covenant, agreement, term or condition of this Contract or to exercise any right, term or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Contract, but each and every covenant, agreement, term and condition of this Contract shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

### 13.6 ARBITRATION

13.6.1 At the option of the Owner in the exercise of its sole, unilateral, and unrestricted discretion (and not otherwise), any claim, dispute or any other matter in question between the Contractor and the Owner arising out of, or relating to, this Contract or the breach thereof, except with respect to the Owner's decisions on matters relating to artistic effect, and except for claims which have been waived as provided by Subparagraph 8.9.2 hereof or otherwise, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then applying. Arbitration arising out of or relating to the Contract Documents shall include, by consolidation, joinder or joint filing, any other person or entity whose presence is required if complete relief is to be accorded in the arbitration. It is further agreed that any sureties under any bonds required or permitted hereunder shall be bound by any arbitration award to the same extent as their principal is bound. The Contractor agrees that, in the event arbitration is elected by the Owner with respect to a claim or dispute, the award rendered by the arbitrator shall be specifically enforceable under the prevailing arbitration law and

shall be final and binding, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

13.6.2 Unless otherwise agreed in writing, the Contractor shall diligently carry on the Work and maintain its progress during any dispute and/or arbitration proceedings, and the Owner shall continue to make payments to the Contractor over which there is no dispute in accordance with the Contract Documents.

13.6.3 In case of arbitration under this Contract, the arbitration locale shall be at Washtenaw Community College, in Ann Arbor, Michigan.

## **ARTICLE 14: TERMINATION OF THE CONTRACT**

### **14.1 TERMINATION BY THE OWNER**

14.1.1 The Owner shall have the right, without prejudice to any other right or remedy it may have to terminate the Contract and take immediate possession of the Site and of all materials, tools and appliances thereon and finish the Project by whatever method the Owner may deem expedient by written notice to the Contractor upon the occurrence of any of the following events of default:

14.1.1.1 The occurrence of any event set forth in Subparagraph 2.2 hereof;

14.1.1.2 The Contractor files a voluntary petition in bankruptcy; be adjudicated insolvent; obtain an order for relief under the Bankruptcy Code; file any petition or fail to contest any petition filed against it seeking any reorganization or similar relief under any laws relating to bankruptcy, insolvency or other relief for debtors; or seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of any of its property or assets; make an assignment for the benefit of creditors; or make an admission in writing of its inability to pay its debts generally as they become due and shall fail to cause the same to be set aside, vacated, dismissed or otherwise remedy such default as may be appropriate under the circumstances within seven (7) days after written notice thereof from Owner;

14.1.1.3 The Contractor makes any unauthorized changes in the Subcontractor approved pursuant to Article 5. hereof;

14.1.1.4 The filing of claims with the Owner by third parties alleging failure to pay any amount due (except disputed claims);

14.1.1.5 The Contractor fails to complete the Work within the Contract Time as specified in the Construction Contract.

14.1.1.6 The imposition of a lien against any property of, or sum due to, the Contractor by the Internal Revenue Service or any state or local tax collection agency; or

14.1.1.7 The acceleration, prior to scheduled maturity of any loan, line of credit or other financing arrangement of the Contractor.

14.1.1.8 Any other substantial failure of Contractor to perform any of Contractor's obligations under the Contract, these General Conditions, or any of the Contract Documents.

In such case, the Contractor shall not be entitled to receive any further payment until the Project is finished. If the unpaid balance of the Contract Sum shall exceed the expense of finishing the Project, including compensation for the Owner's and Architect's additional services, such excess shall be paid to the Contractor but only to the extent of the costs incurred by the Contractor prior to the termination of the Contract. If the expense of finishing the Project shall exceed the unpaid balance of the Contract Sum, the Contractor shall pay such excess to the Owner. This obligation for payment shall survive termination of the Contract.

14.1.2 The Owner may also terminate the Contract without cause at any time for convenience. The Owner shall give written notice of termination to Contractor specifying when the termination becomes effective. The Contractor shall incur no further obligations in connection with the Work and shall stop Work when the termination becomes effective. In such case, the Contractor shall be entitled to receive, as total compensation for all services performed hereunder, (i) payment for all proper Applications for Payment reflecting Work performed prior to the effective date of termination, plus the appropriate holdbacks, plus (ii) a percentage of the Contract Sum equal to the percentage of completion of the Work as of the effective date of termination, less prior amounts paid therefor, plus (iii) any restocking or material and equipment cancellation charges payable to suppliers and vendors (unless the Contractor shall have assigned to the Owner, at the request of the Owner, the agreements pursuant to which such material and equipment was ordered and the Owner shall have indemnified the Contractor as provided hereinafter in connection therewith). Payment of such compensation is the sole and exclusive remedy of the Contractor for a termination of this Contract by Owner without cause and the Contractor shall not be entitled to, and hereby waives, claims for lost profits and all other damages and expenses. The Contractor shall execute a waiver and general release of claim as a condition of payment. At the Owner's option, the Contractor shall assign to the Owner all approved subcontracts and the Owner shall indemnify and defend the Contractor against all claims for payment thereunder in respect of Work performed after the date of termination. The Contractor shall remain responsible for all liability and obligations of the Contractor under such subcontracts arising prior to the date of termination, notwithstanding the assignment of any such subcontracts to the Owner as provided herein.

## **ARTICLE 15: AUDIT**

15.1 OWNER'S ACCESS TO CONTRACTOR'S RECORDS

15.1.1 The Contractor agrees that the Owner or any of his duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine and audit any directly pertinent books, documents, papers and records of the Contractor involving transactions related to this Agreement.

EXHIBIT 1

CONTRACTOR'S RECEIPT OF FINAL PAYMENT;  
RELEASE AND WAIVER OF LIEN

WHEREAS, \_\_\_\_\_ (hereinafter the "Contractor") and \_\_\_\_\_ (hereinafter the "Owner") are parties to an agreement dated \_\_\_\_\_ (hereinafter the "Contract") pursuant to which Contractor has furnished labor, materials, supplies and/or other goods or services in connection with construction work performed at the Owner's property (hereinafter the "Property"), which Property is described on Exhibit A attached hereto; and

WHEREAS, there remains to be paid under the terms of the Contract for work performed the sum of \_\_\_\_\_ Dollars, designated by the terms of the Contract as the Final Payment, and the Contractor has requested the Owner to make such Final Payment.

NOW, THEREFORE, as an inducement to the Owner to make the Final Payment to the Contractor, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Contractor covenants and agrees as follows:

(1) The Contractor covenants on behalf of himself and all those claiming by, through, or under the Contractor that the Contractor shall not file or permit to be filed any mechanic's lien or other lien or notice of intention to file any such liens against the Property or to make any claim against the Owner, personal or otherwise, or against the Property or any part of the Property for any Work the Contractor may at any time have performed or have authorized or requested any subcontractor, supplier, materialman, laborer, or anyone claiming by, through, or under the Contractor to perform.

(2) The Contractor further warrants and represents that no subcontractor, supplier, materialman, laborer, employee, or any other person claiming by, through, or under the Contractor has any right to file any mechanic's lien or notice of intention to file a mechanic's lien against the Property or to make any claim against the Owner by reason of the Work. All materialmen, laborers, employees, subcontractors, suppliers and all other parties who performed the Work or any part of the Work have been fully paid, and there is not now due or owing any amount of money or wages to any party who performed the Work or any part of the Work.

(3) The Contractor, on behalf of himself and all subcontractors, suppliers, materialmen, laborers, employees and all others claiming by, through, or under the Contractor, covenants and agrees to release and does release and forever discharge the Owner, its successors and assigns, of and from all manner

of actions, suits, debts, dues, sums of money, accounts, records, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, expenses, executions, claims and demands whatsoever, in law or in equity, that the Contractor or anyone claiming by, through, or under the Contractor shall ever have had, does now have, or may have against the Owner by reason of the Work or in any manner connected with the Work, including, but not limited to change orders, delays and field conditions.

(4) The Contractor covenants and agrees to indemnify and hold the Owner harmless from and against any losses, costs, and expenses (including attorney fees and expenses) incurred in connection with or by reason of the Work performed by the Contractor or anyone claiming by, through, or under the Contractor, or incurred by reason of a breach by Contractor of any covenant contained in this agreement or the failure or inaccuracy of any warranty or representation contained in this Agreement.

IN WITNESS WHEREOF, the Contractor has executed this Release this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Witness:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
"Contractor" By:  
Its: