

# GREATER DAYTON PREMIER MANAGEMENT

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## Invitation for Bid

IFB# 24-04

Huffman Parnell Preservation RAD Rehabilitation

<b>Issue Date</b>	Friday, May 3, 2024
<b>Pre-Bid Meeting</b>	Monday, May 13th, 2024 at 11am
<b>Questions from Contractors Due</b>	Tuesday, May 20th, 2024 at 5pm
<b>Responses from GDPM to Be Posted By</b>	Monday May 27th, 2024
<b>Bids Due</b>	Thursday, June 6th, 2024 at 10am
<b>Bid Opening</b>	Thursday, June 6th, 2024 at 11am

**Pre-Bid Meeting:** Pre-bid meeting will be located at 9 Parnell Avenue, Dayton, OH on the following date: May 13th, 2024 at 11am.

**Bid-Opening:** The Bid-Opening will also be held virtually. Please use the following information in order to access the bid opening: <https://www.gdpm.org/development-construction/construction-opportunities/>

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### How to Submit Bids:

**Option 1:** Mail to or drop off at GDPM. The envelope must be filled out exactly as follows:

GDPM

**ATTN: Procurement**

**SEALED BID** Huffman Parnell Rehabilitation

400 Wayne Avenue

Dayton, Ohio 45410

**Option 2:** Email GDPM:

[ebid@gdpm.org](mailto:ebid@gdpm.org)

The subject line must state **SEALED BID** Huffman Parnell Rehabilitation

**Questions about this Bid Shall be Submitted Electronically to:** [procurement@gdpm.org](mailto:procurement@gdpm.org).

Greater Dayton Premier Management reserves the right to reject any or all bids, or waive any informality in the bidding. No bids shall be withdrawn for a period of ninety (90) days subsequent to the opening of bids.

All bidders shall be required to meet Affirmative Action requirements and Equal Opportunity requirements. Each bidder must insure that all employees and applicants for employment are not discriminated against because of race, color, religion, national origin, disability, age, ancestry, creed, or military status.

# Greater Dayton Premier Management

Huffman Parnell RAD Rehabilitation

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24-04

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## Table of Contents

**The below items are part of the Bidder's Packet.** *Most of these items must either be completed or signed or both and submitted with your sealed bid. Please submit forms in order.*

Item 1 .....	Summary & Specifications
Item 2 .....	Invitation to Bid Form
Item 3 .....	Bid Form
Item 4 .....	Representations, Certifications & Statement of Bidders
Item 5 .....	Bid Guaranty & Bond Form
Item 6 .....	Non-Collusive Affidavit and Full Disclosure
Item 7 .....	W-9
Item 8 .....	Section 3 Application
Item 9 .....	Section 3 Supplemental Instructions
Item 10 .....	Is Your Bid Packet Complete?
Item 11 .....	Wage Determination
Item 12 .....	AIA Construction Contract
Item 13 .....	GDPM Construction Contract



# Greater Dayton Premier Management

Enhancing Neighborhoods • Strengthening Communities • Changing Lives

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## Huffman Parnell Preservation

### Rehabilitation

#### IFB 24-04

Greater Dayton Premier Management (GDPM) is an Ohio political subdivision and an award-winning, nationally recognized public housing authority in Montgomery County, Ohio. Additionally, GDPM is Montgomery County's largest landlord and serves approximately 16,000 individuals annually.

Built in 1952, Huffman Parnell is an affordable housing development that contains 12 two-bedroom units (10 townhomes and two flats). The property is in need of substantial rehabilitation. In 2023, GDPM received an award of Ohio Housing Trust Funds and National Housing Trust Fund to assist with funding the rehabilitation. In conjunction with the rehabilitation, GDPM will be converting the Huffman Parnell development from the public housing program to the RAD Project Based Voucher Program.

GDPM seeks proposals from experienced contractors to complete a substantial rehabilitation of Huffman Parnell. As a result of this solicitation, GDPM intends to award the contract to the lowest, most responsible bidder and GDPM will give preference points to Section 3 Contractors (*see below*). GDPM's architect of record is the RDA Group, LLC. Residents have been relocated and construction will be completed in one phase.



**I. Project Description:**

<see specifications and drawings>

**II. Bid Guarantee/Payment & Performance Bonds**

All bids must be accompanied by a bid guarantee equivalent to 5% of the bid price; and at least one of the following:

- A. A performance bond and payment bond for 100% of the contract price;
- B. A performance bond and a payment bond, each for 50% or more of the contract price;
- C. 20% cash escrow;
- D. A 10% irrevocable letter of credit with terms acceptable to GDPM;
- E. Any other payment method acceptable to GDPM.

The bid guarantee may be a certified check, bank draft, U.S. Government Bonds at par value, or a bid bond secured by a surety company acceptable to the GDPM and authorized to do business in the State of Ohio. Certified checks and bank drafts must be made payable to the order of GDPM. The guarantees shall insure the execution of the contract and the furnishing of a method of assurance of completion by the successful bidder. Failure to submit a bid guarantee with the bid may result in the rejection of the bid. Guarantees submitted by unsuccessful bidders will be returned as soon as practicable after bid opening. For your convenience, a GDPM's Form of Bid Guarantee and Payment & Performance Bond is included in this packet.

**III. Davis Bacon/Prevailing Wages:**

Prevailing wage requirements of the Davis-Bacon and related Acts (DBRA) apply to laborers and mechanics on federal construction and most federally assisted construction projects in excess of \$2,000. Davis Bacon Wage Rates apply to this project. Therefore, the Contractor shall follow all requirements including, but not limited to, submitting required documentation to evidence compliance. A copy of the most recent wage determination is attached hereto. The Wage Determination in effect on the date of the bid opening will apply to this project.<sup>1</sup>

**IV. Section 3**

The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent possible, provide training, employment, contracting and other economic opportunities to low- and very low-income persons, especially recipients of government assistance for housing, and to businesses that provide economic opportunities to low- and very low-income persons. GDPM provides preferences to business that are registered as Section 3. For more information on Section 3 or how to register to become a Section 3 business please visit: <https://www.hud.gov/section3> or contact GDPM's Procurement Department at [procurement@dmha.org](mailto:procurement@dmha.org).

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<sup>1</sup> Project must start within 90 days of "lock-in" date or a new Wage Determination may apply

For this solicitation, **Section 3 Contractors will receive 5% price consideration added to their final bid amount.** (A Section 3 Contractor may be awarded the Contract and not be the lowest, most responsible, responsive bidder as long as the Section 3 Contractor is within 5% of the low bid amount).

- V. **BUILD AMERICA BUY AMERICIA BABA REQUIREMENTS:** Pursuant to the Build America, Buy America Act (BABA), enacted as part of the Infrastructure Investment and Jobs Act (IIJA). Pub. L. 117-58, 41 U.S.C. § 8301 note, the Federal Financial Assistance used to fund this infrastructure project is required to apply a domestic content procurement preference (the “Buy America Preference” or “BAP”) for all construction, alteration, maintenance, or repair of infrastructure, including buildings and real property, unless application of the BAP has been waived by HUD. Additional details on fulfilling the BABA requirements can be found at:

<https://www.gdpm.org/build-america-buy-america/>

BABA requires any “infrastructure project” funded by any “Federal Financial Assistance” (FFA) apply a domestic content procurement preference, meaning that all iron, steel, manufactured products, and construction materials used in the infrastructure project have been produced in the United States, unless the awarding agency has issued a waiver of this requirement. This is called the “Buy American Preference” (BAP).

In order to ensure compliance with BABA requirements, Contractor will required to:

- Request waiver will be required if the contractor cannot fulfill BABA requirements.
- Provide sufficient product purchase info to enable GDPM to comply with the documentation requirements. Sufficient documentation may include:
  - A certificate from the manufacturer or reseller that the product complies with BABA;
  - For products that cost less than \$100 per product, a copy of a label that indicates the product was made in the United States; or
  - For small purchases of product that are less than the simplified acquisition threshold either a copy of a product specification that provides sufficient detail to conclude that the product complies with BABA or a communication other than a certification from a manufacturer or reseller of a product that confirms that the product is BABA compliant.

VI. **Bid Preparation & Submission Requirements:**

To be considered, Contractor’s bid packet must be fully completed. Please read all the Instructions carefully and contact GDPM if you have any questions. Prior to submission, ensure that the following forms are fully completed, signed and included in your Bid Packet:

- Invitation to Bid Form
- Bid Form
- Representations, Certifications, and Other Statements of Bidders

- Bid Guaranty
- Non-Collusive Affidavit & Full Disclosure
- Section 3 Form
- W-9

The Submission is in sealed bid form and may be mailed to **GDPM ATTN: Procurement BID Huffman Parnell Preservation, 400 Wayne Ave, Dayton, Ohio, 45410**. The Submission may be made via the lockbox located outside the main entrance of GDPM. Bids may also be submitted electronically to [ebid@gdpm.org](mailto:ebid@gdpm.org). The subject line of the email must include the words: **SEALED BID Huffman Parnell Preservation**. Electronic Bids shall be in pdf format. GDPM's bid packet is in a pdf fillable format and may be signed electronically.

**VII. GDPM General Terms & Conditions for Construction Services:**

Please carefully read and review the relevant terms and conditions prior to submitting your proposal. GDPM's General Terms and Conditions for Construction Services is available for review at <https://www.gdpm.org/development-construction/documents/>.

For this project, the construction contract will include AIA A101 Standard Form of Agreement Between Owner and Contractor, AIA A201 General Conditions of the Contract for Construction, and GDPM's General Terms and Conditions for Construction Services. A draft of the contract is attached hereto and, by submitting a bid, Contractor agrees to the terms and conditions contained within.

**VIII. Additional Information May Be Required:**

If you are new to doing business with GDPM or it's been more than five years since you've worked on a GDPM related project, prior to Contract Award GDPM may require additional information including, but not necessarily limited to, references and evidence of capacity to perform. GDPM will request this information only if Contractor is selected for the award. Contractor will then have 72 hours to provide the requested information. If Contractor fails to provide the requested information, the information is inadequate or the information proves disqualifying in GDPM's discretion, GDPM will cancel the award and select the next lowest bidder for the Contract Award.

**IX. Licensees & Permits:**

During the term of the Contract, the Contractor shall ensure that all required licensing requirements and permitting requirements are met. The Contractor and Contractor's employees and agents shall secure and maintain in force such licenses and permits as are required by law and shall conform to all Federal, State, and local laws, ordinances, and regulations covering the Work. Failure to maintain items such as licenses or permits during the term of the Contract shall constitute a material breach thereof.

**X. Reservation of Rights:**

GDPM reserves the right to reject the low bid, if, in its sole discretion, that bidder is determined not to be the best-qualified bidder or to be deficient in experience, technical proficiency or unable

to provide qualified manpower to meet the specifications. GDPM reserves the rights to reject and or all bids, to waive any informality in the IFB process, or to terminate the IFB process at any time, if deemed by GDPM to be in its best interests. GDPM reserves the right not to award a contract pursuant to this IFB. GDPM reserves the right to change, modify, amend, revise or alter any of the instructions, terms, conditions, and/or specifications identified in the IFB documents within any attachment or drawing, or within any addenda issued. All addenda will be posted to GDPM's website at [www.gdpm.org](http://www.gdpm.org).

**XI. Questions regarding this Solicitation:**

Any procedural questions regarding this Invitation for Bid shall be submitted electronically to [procurement@dmha.org](mailto:procurement@dmha.org). Any questions related to the scope and specifications shall be submitted electronically to [housingdevelopment@dmha.org](mailto:housingdevelopment@dmha.org). If you'd like to receive notifications concerning this solicitation, please send a request with your name and email address to [housingdevelopment@dmha.org](mailto:housingdevelopment@dmha.org).



# INVITATION FOR BID GENERAL CONSTRUCTION SERVICES

IFB Name	Huffman Parnell Preservation RAD Rehabilitation	Solicitation No.	IFB 24-04
Prevailing Wage?	Yes	Proposal Due Date	June 6, 2024
		Contract Term	

### Contractor Information

Name of Business:		Primary Contact	
Street Address:		Street Address Line 2:	
City:		State:	<input style="width: 100%;" type="text"/>
		Zip Code:	
Contact Number:		E-mail:*	

Check at Least one of the Following:*	<input type="checkbox"/> Section 3 <input type="checkbox"/> MBE/WBE <input type="checkbox"/> Veteran <input type="checkbox"/> None Apply	Are you currently suspended, debarred or otherwise deemed ineligible for a federal contract award?	<input style="width: 100%;" type="text"/>	Check box if addendum was reviewed ( <i>don't check if not applicable</i> )	<input type="checkbox"/> Addendum 1 <input type="checkbox"/> Addendum 2 <input type="checkbox"/> Addendum 3 <input type="checkbox"/> Addendum 4 <input type="checkbox"/> Other	
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By signing below, Contractor attests that he/she has the legal power, right, and authority to make this Agreement. Contractor agrees that if selected for the Contract Award, Contractor is qualified to perform all work necessary to complete the services as specified in the Contract Documents at Contractor's quoted price. Further, Contractor has reviewed, acknowledges and accepts the provisions within the Contract Documents including, but not limited to, the Specifications, Contractor's bid, and the GDPM General Terms and Conditions for General Construction Services. Unless otherwise specified in writing by GDPM on GDPM letterhead and signed by both parties, during the term of the Contract, if any provision within the Contract Documents is in conflict with, or inconsistent with any provision with the GDPM General Terms and Conditions, the GDPM General Terms and Conditions shall prevail. Terms that conflict with and/or are inconsistent with the GDPM General Terms and Conditions are hereby revoked, rejected and void, even if the contract documents containing such terms are executed after the GDPM General Terms and Conditions, this includes, but is not limited to indemnification, warranty, payment, order of precedence, and integration provisions. By signing signing below, Contractor acknowledges that GDPM reserves it right to reject any and/or all bid or to cancel the solicitation at any time and for any reason(s). Contractor's bid shall be valid for at least 120 days subsequent to the bid opening date. GDPM Contract Documents are available at <https://www.gdpm.org/development-construction/documents/>.

Contractor Signature of Acceptance	Date
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**Acceptance of Proposal:**  
GDPM accepts your proposal and the Master Agreement containing the solicitation, General Terms and Conditions, and cost catalog are hereby in effect.

GDPM Signature of Acceptance	Date
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# Bid Form

## IFB No. 24-04: Huffman Parnell RAD Rehabilitation

### Total Bid Price (GDPM is Tax Exempt)

Total Bid Price of:	\$ _____ (Numeric amount)	
	_____ (Written amount)	
<i>Written amount prevails if any discrepancy exists.</i>		

### Bid Elements – The Total Bid Price includes the following elements:

Item	Description	Amount
1	Labor	\$
2	Materials	\$
	<b>Contractor Base Bid</b>	<b>\$</b>
3	Permit Allowance	<b>\$20,000</b>
4	Building & Systems / Unforeseen Conditions Allowance:	<b>\$100,000</b>
	<b>Total Bid Price (Should match Total Bid Price Above)</b>	<b>\$</b>

This project is funded in part by the U.S. Department of Housing and Urban Development and is subject to the following contractor cost limits: Profit: 6%; Overhead: 2%; General Requirements: 6% of hard construction costs.

**Alternates: None**

#### Allowances:

1. Buildings & Systems/Unforeseen Conditions Allowance: the bid amount above reflects a draw down allowance in the amount of \$100,000 (one hundred thousand dollars) for Buildings &



## Bid Form

Systems/Unforeseen Conditions to address existing building/site/systems conditions as they interface with the project.

2. Permit Allowance: the bid amount above reflects a draw down allowance in the amount of \$20,000 for building permits. Allowance shall be for actual/direct costs only, all labor, coordination, etc. shall be included in the bid amount.
3. Contractor's costs for Products, delivery, installation, labor, insurance, payroll taxes, binding, equipment rental, overhead and profit are included in Change Order authorizing expenditure of funds from this project allowance
4. Any expenditure from this allowance shall be reviewed and approved by Architect and GDPM prior to executing the work.
5. Any amounts unused will be credited back to GDPM at the completion of the project by change order.

### Time for Completion

Time for completion of this contract work is **Three Hundred Sixty Five (365)** calendar days.

By signing below, Contractor attests that he/she has the legal power, right, and authority to make this Bid. Contractor agrees that if selected for the Contract Award, Contractor is qualified to perform all work necessary to complete the services as specified in the Contract Documents at Contractor's quoted price. Further, Contractor has reviewed, acknowledges and accepts the provisions within the Contract Documents including, but not limited to, the Specifications, Contractor's bid, and the GDPM General Terms and Conditions for General Construction Services. Unless otherwise specified in writing by GDPM on GDPM letterhead and signed by both parties, during the term of the Contract, if any provision within the Contract Documents is in conflict with, or inconsistent with any provision with the GDPM General Terms and Conditions, the GDPM General Terms and Conditions shall prevail. Terms that conflict with and/or are inconsistent with the GDPM General Terms and Conditions are hereby revoked, rejected and void, even if the contract documents containing such terms are executed after the GDPM General Terms and Conditions, this includes, but is not limited to indemnification, warranty, payment, order of precedence, and integration provisions. By signing below, Contractor acknowledges that GDPM reserves it right to reject any and/or all bid or to cancel the solicitation at any time and for any reason(s). Contractor's bid shall be valid for at least 120 days subsequent to the bid opening date.

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Signature

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Date

**U.S. Department of Housing  
and Urban Development**  
Office of Public and Indian Housing

**Representations, Certifications,  
and Other Statements of Bidders**  
**Public and Indian Housing Programs**

# Representations, Certifications, and Other Statements of Bidders

## Public and Indian Housing Programs

### Table of Contents

Clause	Page
1. Certificate of Independent Price Determination	1
2. Contingent Fee Representation and Agreement	1
3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions	1
4. Organizational Conflicts of Interest Certification	2
5. Bidder's Certification of Eligibility	2
6. Minimum Bid Acceptance Period	2
7. Small, Minority, Women-Owned Business Concern Representation	2
8. Indian-Owned Economic Enterprise and Indian Organization Representation	2
9. Certification of Eligibility Under the Davis-Bacon Act	3
10. Certification of Nonsegregated Facilities	3
11. Clean Air and Water Certification	3
12. Previous Participation Certificate	3
13. Bidder's Signature	3

### 1. Certificate of Independent Price Determination

(a) The bidder certifies that--

(1) The prices in this bid have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other bidder or competitor relating to (i) those prices, (ii) the intention to submit a bid, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this bid have not been and will not be knowingly disclosed by the bidder, directly or indirectly, to any other bidder or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a competitive proposal solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the bidder to induce any other concern to submit or not to submit a bid for the purpose of restricting competition.

(b) Each signature on the bid is considered to be a certification by the signatory that the signatory--

(1) Is the person in the bidder's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

\_\_\_\_\_ [insert full name of person(s) in the bidder's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the bidder's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the bidder deletes or modifies subparagraph (a)2 above, the bidder must furnish with its bid a signed statement setting forth in detail the circumstances of the disclosure.

[Contracting Officer check if following paragraph is applicable]

(d) Non-collusive affidavit. (applicable to contracts for construction and equipment exceeding \$50,000)

(1) Each bidder shall execute, in the form provided by the PHA/IHA, an affidavit to the effect that he/she has not colluded with any other person, firm or corporation in regard to any bid submitted in response to this solicitation. If the successful bidder did not submit the affidavit with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the affidavit by that date may render the bid nonresponsive. No contract award will be made without a properly executed affidavit.

(2) A fully executed "Non-collusive Affidavit"  is,  is not included with the bid.

### 2. Contingent Fee Representation and Agreement

(a) Definitions. As used in this provision:

"Bona fide employee" means a person, employed by a bidder and subject to the bidder's supervision and control as to time, place, and manner of performance, who neither exerts, nor proposes to exert improper influence to solicit or obtain contracts nor holds out as being able to obtain any contract(s) through improper influence.

"Improper influence" means any influence that induces or tends to induce a PHA/IHA employee or officer to give consideration or to act regarding a PHA/IHA contract on any basis other than the merits of the matter.

(b) The bidder represents and certifies as part of its bid that, except for full-time bona fide employees working solely for the bidder, the bidder:

(1)  has,  has not employed or retained any person or company to solicit or obtain this contract; and

(2)  has,  has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(c) If the answer to either (a)(1) or (a)(2) above is affirmative, the bidder shall make an immediate and full written disclosure to the PHA/IHA Contracting Officer.

(d) Any misrepresentation by the bidder shall give the PHA/IHA the right to (1) terminate the contract; (2) at its discretion, deduct from contract payments the amount of any commission, percentage, brokerage, or other contingent fee; or (3) take other remedy pursuant to the contract.

### 3. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions (applicable to contracts exceeding \$100,000)

(a) The definitions and prohibitions contained in Section 1352 of title 31, United States Code, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The bidder, by signing its bid, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that:

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the bidder shall complete and submit, with its bid, OMB standard form LLL, "Disclosure of Lobbying Activities;" and

(3) He or she will include the language of this certification in all subcontracts at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(d) Indian tribes (except those chartered by States) and Indian organizations as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) are exempt from the requirements of this provision.

#### 4. Organizational Conflicts of Interest Certification

The bidder certifies that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed contract and the bidder's organizational, financial, contractual, or other interests may, without some restriction on future activities:

- (a) Result in an unfair competitive advantage to the bidder; or,
- (b) Impair the bidder's objectivity in performing the contract work.

[ ] In the absence of any actual or apparent conflict, I hereby certify that to the best of my knowledge and belief, no actual or apparent conflict of interest exists with regard to my possible performance of this procurement.

#### 5. Bidder's Certification of Eligibility

(a) By the submission of this bid, the bidder certifies that to the best of its knowledge and belief, neither it, nor any person or firm which has an interest in the bidder's firm, nor any of the bidder's subcontractors, is ineligible to:

(1) Be awarded contracts by any agency of the United States Government, HUD, or the State in which this contract is to be performed; or,

(2) Participate in HUD programs pursuant to 24 CFR Part 24.

(b) The certification in paragraph (a) above is a material representation of fact upon which reliance was placed when making award. If it is later determined that the bidder knowingly rendered an erroneous certification, the contract may be terminated for default, and the bidder may be debarred or suspended from participation in HUD programs and other Federal contract programs.

#### 6. Minimum Bid Acceptance Period

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the PHA/IHA for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The PHA/IHA requires a minimum acceptance period of [Contracting Officer insert time period] calendar days.

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the PHA's/IHA's minimum requirement. The bidder allows the following acceptance period: calendar days.

(e) A bid allowing less than the PHA's/IHA's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) above or (2) any longer acceptance period stated in paragraph (d) above.

#### 7. Small, Minority, Women-Owned Business Concern Representation

The bidder represents and certifies as part of its bid/ offer that it --

(a)  is,  is not a small business concern. "Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b)  is,  is not a women-owned business enterprise. "Women-owned business enterprise," as used in this provision, means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

(c)  is,  is not a minority business enterprise. "Minority business enterprise," as used in this provision, means a business which is at least 51 percent owned or controlled by one or more minority group members or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority group members, and whose management and daily operations are controlled by one or more such individuals. For the purpose of this definition, minority group members are:

(Check the block applicable to you)

- |   |   |
|---|---|
| <input type="checkbox"/> Black Americans    | <input type="checkbox"/> Asian Pacific Americans  |
| <input type="checkbox"/> Hispanic Americans | <input type="checkbox"/> Asian Indian Americans   |
| <input type="checkbox"/> Native Americans   | <input type="checkbox"/> Hasidic Jewish Americans |

#### 8. Indian-Owned Economic Enterprise and Indian Organization Representation (applicable only if this solicitation is for a contract to be performed on a project for an Indian Housing Authority)

The bidder represents and certifies that it:

(a) [] is, [] is not an Indian-owned economic enterprise. "Economic enterprise," as used in this provision, means any commercial, industrial, or business activity established or organized for the purpose of profit, which is at least 51 percent Indian owned. "Indian," as used in this provision, means any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act.

(b)  is,  is not an Indian organization. "Indian organization," as used in this provision, means the governing body of any Indian tribe or entity established or recognized by such governing body. Indian "tribe" means any Indian tribe, band, group, pueblo, or

community including Native villages and Native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

**9. Certification of Eligibility Under the Davis-Bacon Act** (applicable to construction contracts exceeding \$2,000)

(a) By the submission of this bid, the bidder certifies that neither it nor any person or firm who has an interest in the bidder's firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of the contract resulting from this solicitation shall be subcontracted to any person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U.S.C. 1001.

**10. Certification of Nonsegregated Facilities** (applicable to contracts exceeding \$10,000)

(a) The bidder's attention is called to the clause entitled **Equal Employment Opportunity** of the General Conditions of the Contract for Construction.

(b) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(c) By the submission of this bid, the bidder certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The bidder agrees that a breach of this certification is a violation of the Equal Employment Opportunity clause in the contract.

(d) The bidder further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) prior to entering into subcontracts which exceed \$10,000 and are not exempt from the requirements of the Equal Employment Opportunity clause, it will:

- (1) Obtain identical certifications from the proposed subcontractors;
- (2) Retain the certifications in its files; and
- (3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities**

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Employment Opportunity clause of the prime contract. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

**Note:** The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

**11. Clean Air and Water Certification** (applicable to contracts exceeding \$100,000)

The bidder certifies that:

(a) Any facility to be used in the performance of this contract  is,  is not listed on the Environmental Protection Agency List of Violating Facilities:

(b) The bidder will immediately notify the PHA/IHA Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the Environmental Protection Agency, indicating that any facility that the bidder proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and,

(c) The bidder will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

**12. Previous Participation Certificate** (applicable to construction and equipment contracts exceeding \$50,000)

(a) The bidder shall complete and submit with his/her bid the Form HUD-2530, "Previous Participation Certificate." If the successful bidder does not submit the certificate with his/her bid, he/she must submit it within three (3) working days of bid opening. Failure to submit the certificate by that date may render the bid nonresponsive. No contract award will be made without a properly executed certificate.

(b) A fully executed "Previous Participation Certificate"  is,  is not included with the bid.

**13. Bidder's Signature**

The bidder hereby certifies that the information contained in these certifications and representations is accurate, complete, and current.

\_\_\_\_\_  
(Signature and Date)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Company Address)

# Greater Dayton Premier Management Bid Guaranty

*(Ohio revised Code Section 153.571)*

KNOW ALL PERSONS BY THESE PRESENTS, that we, the undersigned \_\_\_\_\_

as **PRINCIPAL**, and \_\_\_\_\_

as **SURETIES**, are hereby held and firmly bound unto **The Dayton Metropolitan Housing Authority d/b/a Greater Dayton Premier Management (GDPM)**, as Obligee, in the penal sum of the dollar amount of the bud submitted by the Principal to GDPM on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ to undertake the Project known as:

**PROJECT NAME:** \_\_\_\_\_

**Solicitation No.:** \_\_\_\_\_

The penal sum referred to herein shall be the dollar amount of the Principal's bid to GDPM, incorporating any additive or deductive alternate bids made by the Principal on the date referred to above to GDPM, which are accepted by GDPM. In no case shall the penal sum exceed the amount of \_\_\_\_\_ dollars. (If the foregoing blank is not filled in, the penal sum will be the full amount of the Principal's bid, including alternates. Alternatively, if the blank is filled in, the amount stated must not be less than the full amount of the bid including alternates, in dollars and cents. A percentage is not acceptable.) For the payment of the penal sum well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above-named Principal has submitted a bid for the above referenced Project.

**NOW, THEREFORE,** if GDPM accepts the bid of the Principal and the Principal fails to enter into a proper contract in accordance with the bid, plans, details, specifications, bills of material and all other solicitation documents; and in the event the Principal pays GDPM the difference not to exceed ten per cent of the penalty hereof between the amount specified in the bid and such larger amount for which GDPM may in good faith contract with the next lowest bidder to perform the work covered by the bid; or in the event GDPM does not award the contract to the next lowest bidder and resubmits the Project for bidding, the Principal pays to GDPM the difference not to exceed ten per cent of the penalty hereof between the amount specified in the bid, or the costs, in connection with the resubmission, of printing new contract documents, required advertising, and printing and mailing notices to prospective bidders, whichever is less, then this obligation shall be null and void, otherwise to remain in full force and effect; if GDPM accepts the bid of the Principal and the Principal within ten days after the awarding of the Contract enters into a proper Contract in accordance with the bid, plans, details, specifications, bills of material and all other solicitation documents which said Contract is made a part of this bond the same as though set forth herein;

**AND FURTHER,** if the said Principal shall well and faithfully do and perform the things agreed by GDPM to be done and performed according to the terms of said Contract; and shall pay all lawful claims of subcontractors, materials suppliers, and laborers, for labor performed and materials furnished in the carrying forward, performing, or completing of said Contract; we agreeing and assenting that this undertaking shall be for the benefit of any materials suppliers or laborer having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

**AND FURTHER,** the Principal will correct or replace any defective work or materials discovered by GDPM within a period of one year from the date of acceptance of such work or material by GDPM, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

**THE SAID** Surety hereby stipulates and agrees that no modifications, omissions, or additions, in or to the terms of the said Contract or in the Plans and Specifications therefor shall in any wise affect the obligations of said Surety on its bond, and it does hereby waive notice of any such modifications, omissions, or additions, in or to the terms of the Contract, the Work or the Contract Documents, including, without limitation the Plans and Specifications.

*< Remainder of page intentionally left blank >*



**PRINCIPAL:**

\_\_\_\_\_  
Principal Signature

By: \_\_\_\_\_

Title: \_\_\_\_\_

**SURETY:**

\_\_\_\_\_  
Surety Signature

By: \_\_\_\_\_  
Attorney-in-Fact

***Surety Agent's Information:***

\_\_\_\_\_  
Agency Name

\_\_\_\_\_  
Street

\_\_\_\_\_  
City                      State      Zip

\_\_\_\_\_  
Telephone No.

(Attach hereto the current Power of Attorney of the person executing this bond for the Surety.)

## Non-Collusive Affidavit and Full Disclosure Statement

**Non-Collusive Affidavit:** The undersigned party hereby certifies that this proposal/bid is genuine and not collusive or sham; that said offeror has not colluded, conspired, connived or agreed, directly or indirectly, with any offeror or person to put in a sham bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference, with any person, to fix the bid price or any other offeror, or to fix any overhead, profit or cost element of said bid price, or of that of any other offeror, or to secure any advantage against the Greater Dayton Premier Management or any person interested in the proposed contract; and that all statements in said proposal or bid are true.

**Disclosure:** The undersigned certifies that I, nor any member of my immediate family does not now, and has not for the preceding two years, had any interest, whatsoever, whether direct, or indirect, in GDPM or any of its members or officials including but not limited to any interest which yields or has the potential of yielding directly or indirectly a monetary or other material gain or benefit with any employees, officers and commissioners of GDPM and members of their immediate family, or any interest arising from blood or marriage or from close business association, notwithstanding whether any financial interest is involved with any employees, officers and commissioners of GDPM members of their families or employment or services rendered as a member, official or officer of GDPM.

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
(Company Name)

# Request for Taxpayer Identification Number and Certification

**Give Form to the  
requester. Do not  
send to the IRS.**

▶ Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Print or type.  
See Specific Instructions on page 3.

<p><b>1</b> Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.</p> <hr/> <p><b>2</b> Business name/disregarded entity name, if different from above</p> <hr/> <p><b>3</b> Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only <b>one</b> of the following seven boxes.</p> <p><input type="checkbox"/> Individual/sole proprietor or single-member LLC     <input type="checkbox"/> C Corporation     <input type="checkbox"/> S Corporation     <input type="checkbox"/> Partnership     <input type="checkbox"/> Trust/estate</p> <p><input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____</p> <p><b>Note:</b> Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is <b>not</b> disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.</p> <p><input type="checkbox"/> Other (see instructions) ▶ _____</p>	<p><b>4</b> Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):</p> <p>Exempt payee code (if any) _____</p> <p>Exemption from FATCA reporting code (if any) _____</p> <p style="font-size: small;">(Applies to accounts maintained outside the U.S.)</p>
<p><b>5</b> Address (number, street, and apt. or suite no.) See instructions.</p> <hr/> <p><b>6</b> City, state, and ZIP code</p> <hr/> <p><b>7</b> List account number(s) here (optional)</p>	<p>Requester's name and address (optional)</p> <hr/>

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

<b>Social security number</b>															
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<b>Employer identification number</b>															
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**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

## Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
------------------	----------------------------	--------

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

### Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.*

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

**Note:** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

## Backup Withholding

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

## What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

## Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

**Note: ITIN applicant:** Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or “doing business as” (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity’s name as shown on the entity’s tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a “disregarded entity.” See Regulations section 301.7701-2(c)(2)(iii). Enter the owner’s name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner’s name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity’s name on line 2, “Business name/disregarded entity name.” If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

### Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

### Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

### Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

#### Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys’ fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947



The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 5 <sup>2</sup>
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

**Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

**Note:** You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

## Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

## Line 6

Enter your city, state, and ZIP code.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note:** See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at [www.SSA.gov](http://www.SSA.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/Businesses](http://www.irs.gov/Businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. Go to [www.irs.gov/Forms](http://www.irs.gov/Forms) to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to [www.irs.gov/OrderForms](http://www.irs.gov/OrderForms) to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note:** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

**Signature requirements.** Complete the certification as indicated in items 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.**

You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.**

You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.**

You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

**What Name and Number To Give the Requester**

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
6. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup> List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

\*Note: The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

**Secure Your Tax Records From Identity Theft**

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.**

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at [spam@uce.gov](mailto:spam@uce.gov) or report them at [www.ftc.gov/complaint](http://www.ftc.gov/complaint). You can contact the FTC at [www.ftc.gov/idtheft](http://www.ftc.gov/idtheft) or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see [www.IdentityTheft.gov](http://www.IdentityTheft.gov) and Pub. 5027.

Visit [www.irs.gov/IdentityTheft](http://www.irs.gov/IdentityTheft) to learn more about identity theft and how to reduce your risk.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.





# Greater Dayton Premier Management

Enhancing Neighborhoods • Strengthening Communities • Changing Lives

## **Prospective Business Vendor:**

Enclosed, you will find a variety of forms regarding Section 3 (Housing & Urban Development Opportunities Act of 1968, as amended). Please complete and attach the Section 3 forms with your bid submission. **Failure to submit the appropriate forms may jeopardize the proposal/bid up to and including the possibility of said proposal/bid being deemed non-responsive**

**Anyone claiming to be a Section 3 Business Concern shall be required, as set forth by procedure, to provide evidence of such status. Section 3 Business Concerns claiming Section 3 Preference status must meet that status at the time the bid, quote or proposal is submitted to GDPM.**

## **Section 3 Required Forms:**

- 1) Section 3 Assurance of Compliance & Section 3 Clause
- 2) Section 3 Action Plan
- 3) Section 3 Certification for Preference
- 4) Preference Category Acknowledgement S3 Residents

If you need any assistance or help regarding Section 3, feel free to contact us. We look forward to assisting you with Section 3 implementation.

**[Procurement@dmha.org](mailto:Procurement@dmha.org)**



## Greater Dayton Premier Management Section 3 Assurance of Compliance Form

### Training, Employment, and Contracting Opportunities for Section 3 Residents and Section 3 Business Concerns

- A. The project assisted under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 170u. Section 3 requires that to the *greatest extent feasible, newly created opportunities* that are generated by the awarding of this contract be given to:
- Section 3 Workers upon their qualifications. 25% or more of all labor hours worked by all workers employed with PHA financial assistance must be Section 3 workers.
  - 5% or more of all labor hours worked by all workers employed with PHA financial assistance must be Targeted Section 3 workers.
- B. Notwithstanding any other provision of this contract, the applicant shall carry out the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary set forth in 24 CFR Part 75, and all applicable rules and orders of the Secretary issued thereunder prior to the execution of this contract. The requirements of said regulations include but are not limited to development and implementation of a Section 3 Action Plan/Strategy for utilizing Section 3 Business Concerns; the making of a good faith effort, as defined by the regulation, to provide training, employment and business opportunities required by Section 3; and incorporation of the "Section 3 Clause" specified by Section 75.9 and 75.17 of the regulations in all contracts for work in connection with the project. The applicant and recipient agency, certifies and agrees that it is under no contractual or other disability which would prevent it from complying with these requirements.
- C. Compliance with the provision of Section 3, the regulations set forth in 24 CFR Part 75, and all applicable rules and orders of the Secretary issued thereunder prior to approval by the Government of the application of this contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant, its contractors and subcontractors, its successors, and assigns to the sanctions specified by the contract, and to such sanctions as are specified by 24 CFR Section 75.

Applicant: \_\_\_\_\_

Signature: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

## Section 3 Clause

### ***All Section 3 covered contracts shall include the following clause (referred to as the "Section 3 Clause"):***

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, [12 U.S.C. 1701u](#) (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 75, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 75. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 75.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 75.9 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 75.9
- F. Noncompliance with HUD's regulations in 24 CFR part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. In the event of a determination by the Executive Director or his/her designee that the Contractor is not in compliance with the section 3 clause or any rule, regulation, or report submission requirements of the GDPM, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further GDPM contracts for a period of one to three years.



## Contractor

### Section 3 Action Plan Submission

The Section 3 Action Plan is a requirement for contracting opportunities with GDPM. The Section 3 Action Plan must indicate/describe the proposed strategies for achieving the Section 3 training and/or employment goals, and subcontracting numerical goals, when and if **newly created opportunities** are generated upon awarding of contracts. **Failure to submit the Section 3 Action plan may jeopardize the proposal/bid up to and including the possibility of said proposal/bid being deemed non-responsive.**

Please review the Section 3 Action Plan information attached. **All Sections need to be completed and signed.** This information will help to assist you in formulating your Section 3 Action Plan. You will need to address each question and check the appropriate boxes in regards to how your company will strive to achieve Section 3 Compliance to the “**greatest extent feasible**”.

Please identify individual(s) responsible for planning, implementing and tracking the projects’ Section 3 training, employment and/or contracting goals:

Name(s): \_\_\_\_\_

Contact Info: \_\_\_\_\_

Title(s): \_\_\_\_\_

### Section 3 Subcontracting Opportunity Strategies

Please check any and all efforts from the below mentioned categories that your company will utilize to recruit, solicit, encourage, facilitate and contract with Section 3 Business Concerns when new subcontracting opportunities are generated through the awarding of the contract. **Some of the items will be mandatory as denoted with *required*.** Your acknowledgement is still needed, so please check accordingly.

*The Section 3 Action Plan is subject to audit at anytime during the awarding of the contract through the duration of the contract by the Section 3 Compliance Coordinator. **Required***

- Commit that when subcontracting occurs, 10% of the total dollar amount subcontracted out by the company and/or by subcontractors will go to Section 3 Business Concerns. **Required**
- Contact the GDPM Section 3 Compliance Department regarding all new subcontracting opportunities. **Required**
- Provide the GDPM Section 3 Compliance Department with a monthly report listing all subcontracting opportunities. **Required**
- Advertise new contracting opportunities in community (sites) and diversity newspapers/websites.
- Maintain a file of eligible qualified Section 3 Business Concerns for future contracting opportunities.
- Incorporate into contract (after selection of bidders but prior to the execution of contracts), a negotiated provision for a specific amount of work to be contracted with Section 3 Business Concern(s) during the contract.
- Sponsor or participate in minority, women, small business expositions and or conferences in the Dayton, Ohio area to network and promote contracting opportunities with Section 3 Business Concerns.
- Outreach to business assistance agencies, minority contracting associations, community organizations, to network and promote contracting opportunities with Section 3 Business Concerns.
- Contact/Meet with Resident Associations informing them of new contracting opportunities.
- Outreach to trade/labor organizations to network and promote contracting opportunities with Section 3 Business Concerns.
- Host/Facilitate workshops geared to Section 3 Business concerns on contracting procedures and opportunities.

Other:

*Note: You are required to provide opportunities to “the greatest extent feasible” in order to comply with the requirements of Section 3. In the event that you are not able to hire/train and/or contract with Section 3 Residents and/or Section 3 Business Concerns, you will be required to document why you were unable to meet the numerical goals.*

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



## GREATER DAYTON PREMIER MANAGEMENT SECTION 3 CERTIFICATION FOR PREFERENCE

Please note that a contract with Greater Dayton Premier Management is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended **AND** to the Section 3 Action Plan submitted with the proposal for this project.

Type of Business:  Corporation  Partnership  Sole Proprietorship  Joint Venture  LLC  MBE  WBE  
(check all that apply)

Business Name: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_

You self-certify that your business is, documented within the last six months a Section 3 Business Concern based on one of the below eligibility criteria's. (Check the one that qualifies your business):

Category 1

51 percent or more owned and controlled by low- or very low-income persons (based on household income under HUD-income limits); **or**

Category 2

75 percent or more of the business labor hours to perform the business are performed by low-very low income persons; **or**

Category 3

**51 percent owned and controlled by current residents of public housing or Section 8-assisted housing.**

**OR**

My business does not meet the Section 3 eligibility criteria and wishes to forgo Section 3 preferences in the awarding of this contract, but understand that we are still responsible for meeting Section 3 compliance.

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"I hereby certify that the information provided on this form is true and correct, and understand any falsification of any of the information could subject me to punishment under the law."

Signature \_\_\_\_\_ Date \_\_\_\_\_  
**Authorized Signer**

Title: \_\_\_\_\_

If you would like more information or to register your business in the Section 3 program, please send an email to [Procurement@dmha.org](mailto:Procurement@dmha.org).

Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low-or very- low income residents in connection with projects and activities in their neighborhoods.

## **Is your Bid Packet Complete?**



**Are the following forms completed, signed and in your Bid Packet?**

- 1. Invitation for Bid Form**
- 2. Bid Form**
- 3. Representations, Certifications, and other Statements of Bidders**
- 4. Bid Guaranty & Bond Form**
- 5. Non-Collusive Affidavit & Full Disclosure Form**
- 6. Section 3 Form**
- 7. W-9**

# Wage Determination

*Courtesy copy*



"General Decision Number: OH20240018 04/12/2024

Superseded General Decision Number: OH20230018

State: Ohio

Construction Type: Residential

Counties: Greene, Miami, Montgomery and Preble Counties in Ohio.

RESIDENTIAL CONSTRUCTION PROJECTS (consisting of single family homes and apartments up to and including 4 stories).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

<p>If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:</p>	<ul style="list-style-type: none"> <li>. Executive Order 14026 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.</li> </ul>
<p>If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:</p>	<ul style="list-style-type: none"> <li>. Executive Order 13658 generally applies to the contract.</li> <li>. The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.</li> </ul>

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/05/2024
1	04/12/2024

ENGI0018-027 05/01/2019

	Rates	Fringes
POWER EQUIPMENT OPERATOR (Bulldozer).....	\$ 37.02	15.20

\* ENGI0066-026 06/01/2023

	Rates	Fringes
POWER EQUIPMENT OPERATOR Crane.....	\$ 36.92	24.01

LAB00265-004 06/01/2018

	Rates	Fringes
LABORER (Mason Tender-Brick).....	\$ 20.25	16.20

PAIN0707-001 05/01/2019

	Rates	Fringes
PAINTER (Brush and Roller).....	\$ 23.91	16.55

PLAS0109-006 05/01/2018

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 28.86	17.11

SHEE0033-016 06/01/2023

	Rates	Fringes
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 21.62	10.72

\* SUOH2012-020 07/20/2012

	Rates	Fringes
BRICKLAYER.....	\$ 28.40	11.78
CARPENTER.....	\$ 20.19	6.51
ELECTRICIAN.....	\$ 19.68	9.46
LABORER: Common or General.....	\$ 21.50	5.23
OPERATOR: Backhoe/Excavator.....	\$ 25.25	9.38
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 29.49	11.16

PLUMBER.....\$ 20.00 5.52

ROOFER.....\$ 16.85 \*\* 3.83

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example:

PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

---

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination

- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION"

# **Draft Construction Contract**

# DRAFT AIA® Document A101® - 2017

## Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the « » day of « » in the year « »  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, legal status, address and other information)

Invictus Development Group, Inc., an Ohio non-profit corporation and instrumentality of the Dayton Metropolitan Housing Authority d/b/a Greater Dayton Premier Management (GDPM)  
400 Wayne Avenue, Dayton, Ohio 45410«»«»  
«»  
«»  
«»

and the Contractor:  
(Name, legal status, address and other information)

« »« »  
« »  
« »  
« »

for the following Project:  
(Name, location and detailed description)

Huffman Parnell Preservation  
9 Parnell Avenue, Dayton, Ohio 45403«»  
«»  
«»

The Architect:  
(Name, legal status, address and other information)

«»«»RDA Group Architects, an Ohio Limited Liability Company  
7662 Paragon Road, Dayton, Ohio 45459  
«»  
«»  
«»

The Owner and Contractor agree as follows.

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

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

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

### EXHIBIT A INSURANCE AND BONDS

#### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

#### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

#### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:  
(Check one of the following boxes.)

- [ « » ] The date of this Agreement.
- [ « X » ] A date set forth in a notice to proceed issued by the Owner.
- [ « » ] Established as follows:  
(Insert a date or a means to determine the date of commencement of the Work.)
- [ « » ]

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

#### § 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:  
(Check one of the following boxes and complete the necessary information.)



[ « X » ] Not later than « 335 » ( « Three Hundred Thirty Five » ) calendar days from the date of commencement of the Work.

[ « » ] By the following date: « »

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
N/A	

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be « » (\$ « » ), subject to additions and deductions as provided in the Contract Documents.

#### § 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ 4.3 Allowances, if any, included in the Contract Sum: (Identify each allowance.)

Item	Price

#### § 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)

#### § 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

**«If Contractor does not meet substantial completion by the date set forth above, the liquidated damages will be assessed daily as follows:**

<b>Total Contract Sum</b>	<b>Daily Liquidated Damages</b>
<b>Less than \$150,000</b>	<b>\$200</b>
<b>\$150,000-\$500,000</b>	<b>\$400</b>
<b>\$500,000.01 - \$1,000,000</b>	<b>\$500</b>

<u>\$1,000,000.01 - \$2,000,000</u>	<u>\$1,000</u>
<u>More than \$2,000,000</u>	<u>\$2,000</u>

Parties agree that these amounts are reasonable based upon contract price. Please also see GDPM General Terms and Conditions for Construction Services. »

§ 4.6 Other:

*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)*

« »

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the « 30th » day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the «30th » day of the «following » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than «thirty- » ( «30-» ) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;

- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

## § 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

~~«Ten Percent (10%) retainage–»~~

§ 5.1.7.1.1 The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

« »

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

~~«Ten Percent (10%) retainage to be held until 50% completion. Five percent (5%) will be held after 50% completion. Once the project has achieved 50% completion, 50% of any retainage held may be released to the Contractor. See GDPM General Terms and Conditions–»~~

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

« »

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## § 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

« »

## § 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

« ~~zero~~ » % « ~~0~~ »

## ARTICLE 6 DISPUTE RESOLUTION

### § 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

« »  
« »  
« »  
« »

### § 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

[  ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[  ] Litigation in a court of competent jurisdiction

[  ] Other *(Specify)*

« »

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

*(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)*

« »

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

## ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:

*(Name, address, email address, and other information)*

« Kiya Patrick, Vice President of Development »

«GDPM »  
«400 Wayne Avenue »  
«Dayton, Ohio 45410 »  
«kpatrick@dmha.org »  
« »

§ 8.3 The Contractor's representative:  
(Name, address, email address, and other information)

« »  
« »  
« »  
« »  
« »  
« »

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

### § 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

« »

§ 8.7 Other provisions:

« »

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 GDPM General Terms and Conditions for Construction Services in Excess of \$150,000
- .2 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .32 AIA Document A101™-2017, Exhibit A, Insurance and BondsGDPM Bond Forms
- .43 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

« »

### .5 Drawings

Number

Refer to Exhibit F

Title

Date

### .6 Specifications

Section	Title	Date	Pages
<a href="#">Refer to Exhibit F</a>			

.7 Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
*(Insert the date of the E204-2017 incorporated into this Agreement.)*

The Sustainability Plan:

Title	Date	Pages

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.9 Other documents, if any, listed below:

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

[«Exhibit A: GDPM General Terms and Conditions for Construction Services. In case of any conflict between the terms of this Agreement and the terms of the GDPM General Terms and Conditions for Construction Services, the GDPM General Terms and Conditions shall prevail](#)  
[Exhibit B: Davis Bacon Wage Decision](#)  
[Exhibit C: Schedule of Values](#)  
[Exhibit D: Construction Schedule](#)  
[Exhibit E: Proof of Contractor Insurance and Bond Info](#)  
[Exhibit F: Drawings and Specifications »](#)

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
CONTRACTOR (Signature)

«Jennifer N. Heapy; Chief Executive Officer- »« »

(Printed name and title)

« »« »

(Printed name and title)

TELBAR

# DRAFT AIA® Document A201® - 2017

## General Conditions of the Contract for Construction

for the following PROJECT:  
(Name and location or address)

Huffman Parnell Preservation  
9 Parnell Avenue, Dayton, Ohio 45403↔↔  
↔↔

THE OWNER:  
(Name, legal status and address)

Invictus Development Group, Inc., an Ohio Non-profit corporation and instrumentality  
of Dayton Metropolitan Housing Authority d/b/a Greater Dayton Premier Management,  
an Ohio body corporate and politic  
400 Wayne Avenue, Dayton, Ohio 45410↔↔↔↔  
↔↔

THE ARCHITECT:  
(Name, legal status and address)

RDA Group Architects, an Ohio Limited Liability Company  
7662 Paragon Road, Dayton, Ohio 45459↔↔↔↔  
↔↔

### TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS

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

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- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES



## INDEX

(Topics and numbers in bold are Section headings.)

### **Acceptance of Nonconforming Work**

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

### **Access to Work**

**3.16**, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,

10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

### **Additional Inspections and Testing**

9.4.2, 9.8.3, 12.2.1, **13.4**

### **Additional Time, Claims for**

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

### **Administration of the Contract**

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

### **Allowances**

**3.8**

### **Applications for Payment**

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,

3.12.10.1, 4.2.7, 9.3.2, 13.4.1

### **Arbitration**

8.3.1, 15.3.2, **15.4**

## **ARCHITECT**

**4**

**Architect**, Definition of

### **4.1.1**

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,

9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,

13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and

Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2,

4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4,

9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,

7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,

13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,

3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,

3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,

9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

### **Award of Subcontracts and Other Contracts for Portions of the Work**

**5.2**

### **Basic Definitions**

**1.1**

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,

15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

### **Bonds, Performance, and Payment**

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, **11.1.3**, **11.5**

### **Building Information Models Use and Reliance**

**1.8**

Building Permit

3.7.1

### **Capitalization**

**1.3**

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

### **Certificates for Payment**

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7,

9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval  
13.4.4  
Certificates of Insurance  
9.10.2  
**Change Orders**  
1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3,  
7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1,  
9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2  
**Change Orders**, Definition of  
**7.2.1**  
**CHANGES IN THE WORK**  
2.2.2, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1,  
11.5  
**Claims**, Definition of  
**15.1.1**  
Claims, Notice of  
1.6.2, 15.1.3  
**CLAIMS AND DISPUTES**  
3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4  
Claims and Timely Assertion of Claims  
15.4.1  
**Claims for Additional Cost**  
3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**  
**Claims for Additional Time**  
3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**  
**Concealed or Unknown Conditions, Claims for**  
**3.7.4**  
Claims for Damages  
3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3,  
11.3.2, 14.2.4, 15.1.7  
Claims Subject to Arbitration  
15.4.1  
**Cleaning Up**  
**3.15**, 6.3  
Commencement of the Work, Conditions Relating to  
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,  
6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**  
**Commencement of the Work**, Definition of  
**8.1.2**  
**Communications**  
3.9.1, **4.2.4**  
Completion, Conditions Relating to  
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,  
9.10, 12.2, 14.1.2, 15.1.2  
**COMPLETION, PAYMENTS AND**  
**9**  
Completion, Substantial  
3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1,  
9.10.3, 12.2, 15.1.2  
Compliance with Laws  
2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2,  
13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3,  
15.2.8, 15.4.2, 15.4.3  
Concealed or Unknown Conditions  
3.7.4, 4.2.8, 8.3.1, 10.3  
Conditions of the Contract  
1.1.1, 6.1.1, 6.1.4

Consent, Written  
3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2,  
15.4.4.2  
**Consolidation or Joinder**  
**15.4.4**  
**CONSTRUCTION BY OWNER OR BY**  
**SEPARATE CONTRACTORS**  
1.1.4, **6**  
**Construction Change Directive**, Definition of  
**7.3.1**  
**Construction Change Directives**  
1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3,  
**7.3**, 9.3.1.1  
Construction Schedules, Contractor's  
3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2  
**Contingent Assignment of Subcontracts**  
**5.4**, 14.2.2.2  
**Continuing Contract Performance**  
**15.1.4**  
**Contract**, Definition of  
**1.1.2**  
**CONTRACT, TERMINATION OR**  
**SUSPENSION OF THE**  
5.4.1.1, 5.4.2, 11.5, **14**  
Contract Administration  
3.1.3, 4, 9.4, 9.5  
Contract Award and Execution, Conditions Relating  
to  
3.7.1, 3.10, 5.2, 6.1  
Contract Documents, Copies Furnished and Use of  
1.5.2, 2.3.6, 5.3  
**Contract Documents**, Definition of  
**1.1.1**  
**Contract Sum**  
2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4,  
**9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2,  
12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**  
**Contract Sum**, Definition of  
**9.1**  
Contract Time  
1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5,  
7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1,  
8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2,  
14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5  
**Contract Time**, Definition of  
8.1.1  
**CONTRACTOR**  
**3**  
Contractor, Definition of  
**3.1**, **6.1.2**  
**Contractor's Construction and Submittal**  
**Schedules**  
**3.10**, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2  
Contractor's Employees  
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6,  
10.2, 10.3, 11.3, 14.1, 14.2.1.1  
**Contractor's Liability Insurance**  
**11.1**

Contractor's Relationship with Separate Contractors and Owner's Forces  
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4  
Contractor's Relationship with Subcontractors  
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4  
Contractor's Relationship with the Architect  
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1  
Contractor's Representations  
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2  
Contractor's Responsibility for Those Performing the Work  
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8  
Contractor's Review of Contract Documents  
3.2  
Contractor's Right to Stop the Work  
2.2.2, 9.7  
Contractor's Right to Terminate the Contract  
14.1  
Contractor's Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3  
Contractor's Superintendent  
3.9, 10.2.6  
Contractor's Supervision and Construction Procedures  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4  
Coordination and Correlation  
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1  
Copies Furnished of Drawings and Specifications  
1.5, 2.3.6, 3.11  
Copyrights  
1.5, **3.17**  
Correction of Work  
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1  
**Correlation and Intent of the Contract Documents**  
**1.2**  
**Cost**, Definition of  
**7.3.4**  
Costs  
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14  
**Cutting and Patching**  
**3.14**, 6.2.5  
Damage to Construction of Owner or Separate Contractors  
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4  
Damage to the Work  
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4  
Damages, Claims for  
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7

Damages for Delay  
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2  
**Date of Commencement of the Work**, Definition of  
**8.1.2**  
**Date of Substantial Completion**, Definition of  
**8.1.3**  
**Day**, Definition of  
**8.1.4**  
Decisions of the Architect  
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2  
**Decisions to Withhold Certification**  
9.4.1, **9.5**, 9.7, 14.1.1.3  
Defective or Nonconforming Work, Acceptance, Rejection and Correction of  
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1  
Definitions  
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1  
**Delays and Extensions of Time**  
**3.2**, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**, 10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5  
**Digital Data Use and Transmission**  
**1.7**  
Disputes  
6.3, 7.3.9, 15.1, 15.2  
**Documents and Samples at the Site**  
**3.11**  
**Drawings**, Definition of  
**1.1.5**  
Drawings and Specifications, Use and Ownership of  
3.11  
Effective Date of Insurance  
8.2.2  
**Emergencies**  
**10.4**, 14.1.1.2, **15.1.5**  
Employees, Contractor's  
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1  
Equipment, Labor, or Materials  
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2  
Execution and Progress of the Work  
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4  
Extensions of Time  
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.6, **15.2.5**  
**Failure of Payment**  
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2  
Faulty Work  
(See Defective or Nonconforming Work)  
**Final Completion and Final Payment**  
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's

2.2.1, 13.2.2, 14.1.1.4

## **GENERAL PROVISIONS**

### **1**

#### **Governing Law**

##### **13.1**

Guarantees (See Warranty)

#### **Hazardous Materials and Substances**

10.2.4, **10.3**

Identification of Subcontractors and Suppliers

5.2.1

#### **Indemnification**

3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

#### **Information and Services Required of the Owner**

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,

9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,

14.1.1.4, 14.1.4, 15.1.4

#### **Initial Decision**

##### **15.2**

#### **Initial Decision Maker, Definition of**

1.1.8

Initial Decision Maker, Decisions

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

#### **Injury or Damage to Person or Property**

**10.2.8**, 10.4

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,

9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

**Instruments of Service**, Definition of

##### **1.1.7**

Insurance

6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5,

##### **11**

Insurance, Notice of Cancellation or Expiration

11.1.4, 11.2.3

#### **Insurance, Contractor's Liability**

##### **11.1**

Insurance, Effective Date of

8.2.2, 14.4.2

#### **Insurance, Owner's Liability**

##### **11.2**

#### **Insurance, Property**

**10.2.5**, 11.2, 11.4, 11.5

Insurance, Stored Materials

9.3.2

## **INSURANCE AND BONDS**

### **11**

Insurance Companies, Consent to Partial Occupancy

9.9.1

Insured loss, Adjustment and Settlement of

11.5

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13

## **Interest**

### **13.5**

#### **Interpretation**

1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12

Judgment on Final Award

15.4.2

#### **Labor and Materials, Equipment**

1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,

5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,

10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,

9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,

15.4

Liens

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability

3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,

4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,

11.3, 12.2.5, 13.3.1

Limitations of Time

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,

5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,

9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,

15.1.2, 15.1.3, 15.1.5

#### **Materials, Hazardous**

10.2.4, **10.3**

Materials, Labor, Equipment and

1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,

5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,

10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and

Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

#### **Mediation**

8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1,

15.4.1.1

#### **Minor Changes in the Work**

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, **7.4**

## **MISCELLANEOUS PROVISIONS**

### **13**

**Modifications**, Definition of

##### **1.1.1**

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7,

10.3.2

#### **Mutual Responsibility**

##### **6.2**

## **Nonconforming Work, Acceptance of**

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of  
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4,  
12.2

## **Notice**

**1.6**, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4,  
3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4,  
8.2.2 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1,  
13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5,  
15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance  
11.1.4, 11.2.3

## **Notice of Claims**

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5,  
15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections  
13.4.1, 13.4.2

Observations, Contractor's  
3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2,  
14.3.1

## **OWNER**

**2**

**Owner**, Definition of

### **2.1.1**

**Owner, Evidence of Financial Arrangements**  
**2.2**, 13.2.2, 14.1.1.4

**Owner, Information and Services Required of the**  
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5,  
9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1,  
13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2,  
4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1,  
7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2,  
10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4,  
15.2.7

**Owner's Insurance**

### **11.2**

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

**Owner's Right to Carry Out the Work**

**2.5**, 14.2.2

**Owner's Right to Clean Up**

### **6.3**

**Owner's Right to Perform Construction and to  
Award Separate Contracts**

### **6.1**

**Owner's Right to Stop the Work**

### **2.4**

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

## **Ownership and Use of Drawings, Specifications and Other Instruments of Service**

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12,  
5.3

**Partial Occupancy or Use**

9.6.6, **9.9**

**Patching, Cutting and**

**3.14**, 6.2.5

Patents

3.17

**Payment, Applications for**

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1,  
14.2.3, 14.2.4, 14.4.3

**Payment, Certificates for**

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1,  
9.10.3, 14.1.1.3, 14.2.4

**Payment, Failure of**

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

**Payment Bond, Performance Bond and**

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

**Payments, Progress**

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

## **PAYMENTS AND COMPLETION**

**9**

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

**Performance Bond and Payment Bond**

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

**Permits, Fees, Notices and Compliance with Laws**

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

## **PERSONS AND PROPERTY, PROTECTION OF**

**10**

Polychlorinated Biphenyl

10.3.1

**Product Data**, Definition of

**3.12.2**

**Product Data and Samples, Shop Drawings**

3.11, **3.12**, 4.2.7

**Progress and Completion**

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

**Progress Payments**

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

**Project**, Definition of

**1.1.4**

Project Representatives

4.2.10

**Property Insurance**

10.2.5, **11.2**

**Proposal Requirements**

1.1.1

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

Regulations and Laws  
1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,  
10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8,  
15.4  
Rejection of Work  
4.2.6, 12.2.1  
Releases and Waivers of Liens  
9.3.1, 9.10.2  
Representations  
3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1  
Representatives  
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1  
Responsibility for Those Performing the Work  
3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10  
Retainage  
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3  
**Review of Contract Documents and Field  
Conditions by Contractor**  
3.2, 3.12.7, 6.1.3  
Review of Contractor's Submittals by Owner and  
Architect  
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2  
Review of Shop Drawings, Product Data and  
Samples by Contractor  
3.12  
**Rights and Remedies**  
1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,  
6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,  
12.2.4, 13.3, 14, 15.4  
**Royalties, Patents and Copyrights**  
3.17  
Rules and Notices for Arbitration  
15.4.1  
**Safety of Persons and Property**  
10.2, 10.4  
**Safety Precautions and Programs**  
3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4  
**Samples, Definition of**  
3.12.3  
**Samples, Shop Drawings, Product Data and**  
3.11, 3.12, 4.2.7  
**Samples at the Site, Documents and**  
3.11  
**Schedule of Values**  
9.2, 9.3.1  
Schedules, Construction  
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2  
Separate Contracts and Contractors  
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2  
**Separate Contractors, Definition of**  
6.1.1  
**Shop Drawings, Definition of**  
3.12.1  
**Shop Drawings, Product Data and Samples**  
3.11, 3.12, 4.2.7  
**Site, Use of**  
3.13, 6.1.1, 6.2.1

Site Inspections  
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4  
Site Visits, Architect's  
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4  
Special Inspections and Testing  
4.2.6, 12.2.1, 13.4  
**Specifications, Definition of**  
1.1.6  
**Specifications**  
1.1.1, 1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14  
Statute of Limitations  
15.1.2, 15.4.1.1  
Stopping the Work  
2.2.2, 2.4, 9.7, 10.3, 14.1  
Stored Materials  
6.2.1, 9.3.2, 10.2.1.2, 10.2.4  
**Subcontractor, Definition of**  
5.1.1  
**SUBCONTRACTORS**  
5  
Subcontractors, Work by  
1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4,  
9.3.1.2, 9.6.7  
**Subcontractual Relations**  
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1  
Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3,  
9.8, 9.9.1, 9.10.2, 9.10.3  
Submittal Schedule  
3.10.2, 3.12.5, 4.2.7  
**Subrogation, Waivers of**  
6.1.1, 11.3  
**Substances, Hazardous**  
10.3  
**Substantial Completion**  
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3,  
12.2, 15.1.2  
**Substantial Completion, Definition of**  
9.8.1  
Substitution of Subcontractors  
5.2.3, 5.2.4  
Substitution of Architect  
2.3.3  
Substitutions of Materials  
3.4.2, 3.5, 7.3.8  
**Sub-subcontractor, Definition of**  
5.1.2  
Subsurface Conditions  
3.7.4  
**Successors and Assigns**  
13.2  
**Superintendent**  
3.9, 10.2.6  
**Supervision and Construction Procedures**  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4,  
7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

## Suppliers

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

## Surety

5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

## Surety, Consent of

9.8.5, 9.10.2, 9.10.3

## Surveys

1.1.7, 2.3.4

## Suspension by the Owner for Convenience

### 14.3

#### Suspension of the Work

3.7.5, 5.4.2, 14.3

#### Suspension or Termination of the Contract

5.4.1.1, 14

## Taxes

3.6, 3.8.2.1, 7.3.4.4

## Termination by the Contractor

14.1, 15.1.7

## Termination by the Owner for Cause

5.4.1.1, 14.2, 15.1.7

## Termination by the Owner for Convenience

### 14.4

#### Termination of the Architect

2.3.3

#### Termination of the Contractor Employment

14.2.2

## TERMINATION OR SUSPENSION OF THE CONTRACT

### 14

#### Tests and Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, 13.4

## TIME

### 8

#### Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

#### Time Limits

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

## Time Limits on Claims

3.7.4, 10.2.8, 15.1.2, 15.1.3

## Title to Work

9.3.2, 9.3.3

## UNCOVERING AND CORRECTION OF WORK

### 12

#### Uncovering of Work

##### 12.1

#### Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

#### Unit Prices

7.3.3.2, 9.1.2

#### Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

## Use of Site

3.13, 6.1.1, 6.2.1

## Values, Schedule of

9.2, 9.3.1

#### Waiver of Claims by the Architect

13.3.2

#### Waiver of Claims by the Contractor

9.10.5, 13.3.2, 15.1.7

#### Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, 15.1.7

#### Waiver of Consequential Damages

14.2.4, 15.1.7

#### Waiver of Liens

9.3, 9.10.2, 9.10.4

## Waivers of Subrogation

6.1.1, 11.3

## Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2

#### Weather Delays

8.3, 15.1.6.2

#### Work, Definition of

##### 1.1.3

#### Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

#### Written Interpretations

4.2.11, 4.2.12

#### Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1



## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

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

#### § 1.1.2 The Contract

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

#### § 1.1.3 The Work

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

#### § 1.1.4 The Project

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

#### § 1.1.5 The Drawings

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

#### § 1.1.6 The Specifications

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

#### § 1.1.7 Instruments of Service

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

#### § 1.1.8 Initial Decision Maker

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

### § 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 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.

### § 1.3 Capitalization

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

### § 1.4 Interpretation

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

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

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

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

### § 1.6 Notice

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

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

### § 1.7 Digital Data Use and Transmission

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

### § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or

relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 OWNER

### § 2.1 General

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

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

### § 2.2 Evidence of the Owner's Financial Arrangements

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

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

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

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### § 2.3 Information and Services Required of the Owner

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

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

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

§ 2.3.4 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.

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

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

#### § 2.4 Owner's Right to Stop the Work

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

#### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

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

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

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

#### § 3.2 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.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as

the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### § 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 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.

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

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

### § 3.5 Warranty

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

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

### § 3.6 Taxes

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

### § 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.

§ 3.7.2 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.

### § 3.7.4 Concealed or Unknown Conditions

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

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

### § 3.8 Allowances

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

§ 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.

### § 3.9 Superintendent

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

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

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

### § 3.10 Contractor's Construction and Submittal Schedules

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

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

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

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and

similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will



specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

### § 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 Cutting and Patching

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

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

### § 3.15 Cleaning Up

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

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

### § 3.16 Access to Work

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

### § 3.17 Royalties, Patents and Copyrights

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

### § 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

## ARTICLE 4 ARCHITECT

### § 4.1 General

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

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

### § 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

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

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

### § 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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

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

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

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

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

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in

number and means a Subcontractor or an authorized representative of the Subcontractor. The term “Subcontractor” does not include a Separate Contractor or the subcontractors of a Separate Contractor.

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

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

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

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

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

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

## § 5.3 Subcontractual Relations

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

## § 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

### § 6.2 Mutual Responsibility

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

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

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for 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 that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

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

### § 6.3 Owner's Right to Clean Up

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

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

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

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

### § 7.2 Change Orders

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

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

### § 7.3 Construction Change Directives

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

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

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

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

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;

- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

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

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

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

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

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

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

#### § 7.4 Minor Changes in the Work

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

### ARTICLE 8 TIME

#### § 8.1 Definitions

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

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

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

## § 8.2 Progress and Completion

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

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

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

## § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect 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.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

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

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

### § 9.2 Schedule of Values

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

### § 9.3 Applications for Payment

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

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

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



§ 9.3.2 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, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

#### § 9.4 Certificates for Payment

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

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### § 9.5 Decisions to Withhold Certification

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

- .1 defective Work not remedied;
  - .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
  - .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
  - .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
  - .5 damage to the Owner or a Separate Contractor;
  - .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- or

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

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

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

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

#### § 9.6 Progress Payments

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

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

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

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

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

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

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

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

## § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

## § 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 Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

## § 9.9 Partial Occupancy or Use

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

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

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

## § 9.10 Final Completion and Final Payment

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

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

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

### § 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

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

#### § 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

#### § 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed

by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

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

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

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

#### § 10.4 Emergencies

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

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 Contractor's Insurance and Bonds

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

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

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

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the

procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## § 11.2 Owner's Insurance

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

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

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

## § 11.3 Waivers of Subrogation

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

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

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

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

#### §11.5 Adjustment and Settlement of Insured Loss

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

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

### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

#### § 12.1 Uncovering of Work

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

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

#### § 12.2 Correction of Work

##### § 12.2.1 Before Substantial Completion

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

##### § 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.



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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

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

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

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

### § 12.3 Acceptance of Nonconforming Work

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

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

### § 13.2 Successors and Assigns

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

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

### § 13.3 Rights and Remedies

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

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

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect

timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

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

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

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

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

#### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

#### § 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract

Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

## § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

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

## § 14.3 Suspension by the Owner for Convenience

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

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

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

## § 14.4 Termination by the Owner for Convenience

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

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

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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

properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

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

#### § 15.1.2 Time Limits on Claims

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

#### § 15.1.3 Notice of Claims

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

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

#### § 15.1.4 Continuing Contract Performance

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

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

#### § 15.1.5 Claims for Additional Cost

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

#### § 15.1.6 Claims for Additional Time

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

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

#### § 15.1.7 Waiver of Claims for Consequential Damages

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

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

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

## § 15.2 Initial Decision

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

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

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

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

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

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

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

§ 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

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

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

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

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

### § 15.4 Arbitration

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

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

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

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

### § 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party

provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

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



## **Exhibit A**

# **GDPM General Terms and Conditions**





# General Terms & Conditions for Construction Services

# Table of Contents

## Table of Contents

1.	ARTICLE I: CONTRACTOR RESPONSIBILITIES .....	5
2.	ARTICLE II: HOUSING AUTHORITY RIGHTS AND RESPONSIBILITIES .....	8
3.	ARTICLE III: A/E'S DUTY, RESPONSIBILITY AND AUTHORITY .....	8
3.3.	Site Visits and Observation .....	10
3.4.	Testing and Inspection Services .....	10
3.5.	A/E Review and Approval of Work.....	10
3.6.	Limitation of A/E's Authority.....	11
4.	ARTICLE IV: PRECONSTRUCTION ACTIVITIES.....	11
4.1.	Pre-construction Conference .....	11
4.2.	Certificate of Insurance .....	12
4.3.	Building and Trade Permits, Licenses and Codes .....	12
4.4.	Plan Approval and Permits .....	12
4.5.	Trade Permits and Licenses.....	13
4.6.	Local Permits:.....	13
4.7.	National Pollutant Discharge Elimination System (NPDES) Storm Water General Permit: .....	13
5.	ARTICLE V: CONSTRUCTION REQUIREMENTS .....	13
5.2.	Environmental Controls.....	13
5.3.	Construction Procedures.....	14
5.3.5.	Additional Contractor Responsibilities.....	14
5.4.	Utilities .....	15
5.4.4.	Water and Drainage .....	15
5.4.5.	Electric Service .....	16
5.4.6.	Payment of Utility Services.....	17
5.5.	Hoisting Facilities .....	17
5.6.	Interruption of Existing Services.....	17
5.7.	Construction Supervision .....	17
5.8.	Construction Progress Schedule.....	18
5.9.	Progress Meetings .....	21
5.10.	Project Coordination.....	21
5.11.	Additional Tests and Inspections .....	22
5.12.	Review of Contract Documents.....	22
5.14.	Protection of the Project.....	24
5.14.3.	Temporary Heating.....	24
5.14.5.	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.....	24
5.14.6.	Vibration, Noise, and Dust Control.....	26

- 5.15. General Warranty - Materials, Equipment and Workmanship .....26
- 5.15.8. Approval of Equipment and materials .....28
- 5.15.11. Substitutions .....30
- 5.16. Specifications and Drawings for Construction .....30
- 5.18. Project Document Maintenance and Submittal.....31
- 5.19. Temporary Buildings and Transportation of Materials .....33
- 5.20. Facilities .....33
- 5.21. Progress Cleaning .....33
- 5.22. Use of Premises .....34
- 5.23. GDPM Use of Premises / Possession Prior to Completion.....34
- 5.24. Smoking and Tobacco Products .....35
- 5.25. Correction of the Work.....35
- 6. ARTICLE VI: SUBCONTRACTORS.....37
- 6.2. Evaluation and Approval .....37
- 6.3. Suspension/Debarment .....38
- 6.4. Contractor's Responsibility .....38
- 6.5. Mandatory Contract Provisions/Forms .....38
- 6.6. Replacement of Subcontractors.....38
- 6.7. Contingent Assignment of Subcontract ..... 3
- 6.8. Prompt Payment of Subcontracts ..... 3
- 6.9. Subcontracting To Meet Diversity & Contracting Goals ..... 4
- 7 ARTICLE VII: SUBCONTRACTORS ..... 4
- 7.2. Forms..... 4
- 7.3. StepOne-PencilApplication ..... 4
- 7.4. Progress Payments .....41
- 7.5. Allowances.....42
- 7.6. Unit Prices .....42
- 7.7. Schedule of Values .....42
- 7.8. Labor Payments/Retainage .....43
- 7.9. Material Payments/Retainage .....43
- 7.10. Payments Withheld .....44
- 7.11. Payment Request .....45
- 8 Article VIII: Contract Modifications.....45
- 8.2. Change Order .....45
- 8.4. Change Directive .....46
- 8.5. Change Order Procedure .....47
- 8.6. Change Order Proposal .....47
- 8.7. Differing Site Conditions ..... 4

- 8.8. Minor Changes in the Work ..... 4
- 8.9. Change Order Cost or Credit Determination ..... 5
- 8.10. Time Extension .....53
- 8.11. Critical Path .....54
- 9 ARTICLE IX: DISPUTE RESOLUTION & CLAIM PROCEDURE .....54
- 9.2. Initiation of a Claim by Contractor .....55
- 9.3. Substantiation of Claims General .....55
- 9.4. Substantiation of Claims for increase of the Contract Sum .....56
- 9.5. Substantiation of Claims for Extension of the Contract Time .....56
- 9.6. Certification of a Claim .....56
- 9.7. Delay and Delay Damage Limitations .....57
- 9.8. Derivative Claims .....58
- 9.9. Claim Decision .....58
- 9.10. Audit of a Claim .....59
- 9.11. False Certification of a Claim.....60
- 10. ARTICLE X: SUSPENSION AND TERMINATION .....61
- 10.1. Suspension of the Work.....61
- 10.2. Termination for Convenience .....62
- 10.3. Termination for Cause/Default .....63
- 10.6. Contractor Insolvency .....65
- 11 ARTICLE XI: CONSTRUCTION CLOSEOUT .....66
- 11.1. Inspection and Construction of the Work .....66
- 11.2. Routine Inspections .....67
- 11.3. Substantial Completion .....67
- 11.4. Demonstration and Training, Operating Appurtenances .....69
- 11.5. Acceptance of Defective Work.....69
- 11.6. Building Commissioning .....70
- 11.7. Partial Contract Completion .....70
- 11.8. Final Contract Completion.....70
- 12. Article XII: Warranty .....71
- 12.2. Warranty of Construction .....71
- 13 Article XII: Bonds and Insurance .....72
- 13.1. Bid Bond/Guaranty .....72
- 13.2. Payment and Performance Bond.....73
- 13.4. General Insurance Requirements .....74
- 13.5. Minimum Contractor Coverage Requirements .....74
- 13.6. Waivers of Subrogation.....77
- 14. Article XIV: Indemnification.....78

15.	Article XV: Damages .....	78
15.1.	Liquidated Damages .....	78
15.2.	Mutual Waiver of Consequential Damages .....	80
16	Article XVI: Labor Standards Davis-Bacon and Related Acts .....	80
16.17.	<b>Subcontracts</b> .....	<b>86</b>
16.18.	Non-Federal Prevailing Wage Rates .....	87
17	ARTICLE XVIII: SECTION 3 .....	87
18	ARTICLE XVIII: Equal Opportunity Prohibition against Discrimination .....	88
19	ARTICLE XIX: HEALTH, SAFETY, AND ACCIDENT PREVENTION .....	90
19.3.	Notification of Non-Compliance Procedure .....	90
19.4.	Safety Plan .....	90
19.5.	Safety Data Sheets .....	91
19.6.	Hazardous Materials .....	91
19.7.	Fires or Hot-Work .....	91
19.8.	Explosives and Blasting .....	92
20	ARTICLE XX: CONTRACT DOCUMENTS AND CONTRACT RECORDS.....	92
20.1.	Examination and Retention of Contractor's Records .....	92
20.2.	Examination and Audit of Contractor's Records .....	93
20.3.	Ownership of Contract Documents .....	93
20.4.	Intent of Contract Documents .....	94
20.5.	Use of Electronic Files .....	94
20.6.	Order of Precedence.....	95
21	ARTICLE XXI: MISCELLANEOUS .....	95
21.5.	Limitation on Payments Made to Influence Certain Federal Financial Transactions .....	97

## **1. ARTICLE I: CONTRACTOR RESPONSIBILITIES**

- 1.1.** The Contractor shall perform the Work in a workmanlike manner, consistent with the standards of skill and care exercised by entities licensed to perform (where required by Ohio and/or Federal Law) and regularly performing comparable work in the same or similar locality under the same or similar circumstances.
- 1.2.** The Contractor shall perform the Work in accordance with the Contract Documents.
- 1.3.** The Contractor shall furnish all labor, services, materials, tools, equipment, superintendence, and transportation necessary for performance of the Work. Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by GDPM.
- 1.4.** The Contractor shall perform on the site and with its own organization, work equivalent to at least twelve percent (12%) of the total amount of work to be performed under the order. This percentage may reduce by a supplemental agreement to this Construction Contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be the advantage of GDPM.
- 1.5.** At all times during performance of this Construction Contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent whose qualifications and experience are satisfactory to GDPM and has authority to act on behalf of the Contractor. Further, Contractor must remain on-site or be immediately available if contacted.
- 1.6.** The Contractor shall be responsible for all damages, including, but not limited to, damages to persons or property that occur as a result of the Contractor's breach of this Construction Contract, fault or negligence and shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others.
- 1.7.** The Contractor shall also be responsible for all storage, protection and cleaning of materials delivered and Work performed on the Project, until Substantial Completion and acceptance of the entire Project, except for any completed unit of Work which may have not been accepted under the Construction Contract.
- 1.8.** The Contractor shall lay out the work from base lines and bench marks indicated in the drawings and be responsible for all lines, levels, and measurements of all work executed under the Contract Documents.
  - 1.8.1.** The Contractor shall verify the lines, bench marks, figures and dimensions indicated in the Contract Documents before laying out the work and will be held responsible for any error(s) resulting from its failure to do so.
- 1.9.** The Contractor shall confine all operations (including storage of materials) on GDPM's premises to areas authorized or approved by GDPM.
- 1.10.** The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. At no time shall Contractor use GDPM trash receptacles.
  - 1.10.1.** After completing the Work and before final inspection, the Contractor shall:
    - Remove from the premises all scaffolding, equipment, tools, materials (including rejected materials) that are not the property of GDPM and rubbish caused by its work;
    - Leave the work area in a clean, neat, and orderly condition satisfactory to GDPM;

- Perform all specified tests; and
- Deliver the installation in complete and operating condition.

**1.11.** The Contractor must perform the Work so as to not interfere with, disturb, hinder, or delay the services of separate consultants or the work of separate contractors.

**1.11.1.** The intent of this Section, 1.11, is to benefit any separate consultants and separate contractors and to demonstrate that the separate consultants or separate contractors are intended third-party beneficiaries of Contractor's obligations under the Contract.

**1.11.2.** The Contractor must cooperate and coordinate fully with all separate consultants and separate contractors and must freely share all of the Contractor's Project-related information with them to facilitate the timely and proper performance of the Work and of the services and work of the separate consultants and separate contractors.

**1.11.3.** The Contractor must afford every separate consultant and separate Contractor proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of their services and work.

**1.11.4.** If the Contractor damages the property or work of any separate consultant or separate Contractor caused by Contractor or by failure to perform the Work with due diligence, delays, interferes with, hinders, or disrupts the services of any separate consultant or separate Contractor who suffers additional expense and damage as a result, the Contractor is responsible for that damage, injury, or expense.

**1.12.** The Contractor shall remove any snow and ice as may be required for reasonably safe access to the Project, including, without limitation, building entries, driveways, parking lots, and sidewalks.

**1.13.** If the proper execution or result of any part of the Work depends upon work performed or services provided by GDPM, a separate consultant, or a separate Contractor, the Contractor must inspect that other work and appropriate instruments of service, and promptly report to GDPM in writing any defects or deficiencies in that other work or services that render it unavailable or unsuitable for the proper execution and results of the Work.

**1.13.1.** The Contractor's failure to inspect and promptly report any issues in writing will constitute an acceptance of the other work and services as fit and proper for integration with the Contractor's Work unless in the opinion of GDPM, the defects and deficiencies in the other work and appropriate instruments of service were not reasonably discoverable at the time of the Contractor's inspection.

**1.14.** The Contractor shall not delay the Work on account of any claim, dispute, or action between the Contractor and GDPM or the Contractor, a Separate Consultant or Separate Contractor.

**1.15.** The Contractor shall develop and keep a Construction Progress Schedule and prepare and keep current a schedule of submittals that is coordinated with the Construction Progress Schedule for GDPM's acceptance.

**1.16.** The Project's regular work hours shall be between 8:00 am and 5:00 pm, or as determined and approved by GDPM.

**1.16.1.** The Contractor may modify the regular work hours only if Contractor receives written authorization from GDPM's Project Manager and/or Construction Contract Administrator.

- 1.17.** The Contractor shall coordinate the Work with the activities and responsibilities of the Project's architect or engineer ("A/E"), GDPM and Contractor's surety to achieve the Substantial Completion date and Contract Completion.
- 1.18.** The Contractor shall keep a daily log containing a record of weather, number of workers on Site for the Contractor, identification of equipment, Work accomplished, problems encountered and other similar relevant data. Such information must be made available to GDPM immediately upon request.
- 1.19.** The Contractor hereby represents and agrees that, prior to submitting its bid or quote to perform the Work on the Project, it has had a competent person carefully and diligently review each part of the Contract Documents, including the Divisions of the Specifications and parts of the Drawings that are not directly applicable to the Work.
- 1.19.1.** Contractor further represents and agrees that, based upon its careful and diligent review of the Contract Documents, that it is not aware of any conflicts, inconsistencies, errors, or omissions in the Contract Documents for which it has not notified GDPM or the A/E.
- 1.19.2.** If there are any such conflicts, inconsistencies, errors, or omissions in the Contract Documents, the Contractor shall notify GDPM of such in writing and Contractor shall:
- Provide the labor, equipment, or materials of the better quality or greater quantity; and/or
  - Comply with the more stringent requirements.
- 1.19.3.** The Contractor will not be entitled to any additional compensation for any conflicts, inconsistencies, errors, or omissions that would have been discovered by such careful and diligent review.
- 1.20.** The Contractor hereby represents and agrees that the Project is a public project involving public funds.
- 1.20.1.** The Contractor further understands that GDPM expects and requires that each Contractor adhere to the highest ethical and performance standards.
- 1.20.2.** Accordingly, Contractor hereby pledges and agrees that:
- It will act at all times with absolute integrity and truthfulness in its dealings with GDPM and the A/E;
  - It will use its best efforts to cooperate with GDPM and the A/E and all other contractors and consultants on the Project and at all times will act with professionalism and dignity in its dealings with GDPM, the A/E, and other contractors;
  - It will assign only competent supervisors and workers to the Project, each of whom is fully qualified to perform the tasks that are assigned to him/her; and
  - It has read, understands and will comply with the terms of the Contract Documents.
- 1.21.** Emergency
- 1.21.1.** In the event of an emergency affecting the safety of the Project, other property, or individuals, the Contractor, without special instructions or authorization, shall act to prevent the threatened damage, injury, or loss.



**1.21.2.** If the Contractor believes that it is entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of its actions in response to any emergency, the Contractor may request a Change Order by giving written notice no later than 48-hours after the emergency.

**1.22.** The Contractor's responsibilities will terminate when all work has been completed, the final inspection made, and the Work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

## **2. ARTICLE II: HOUSING AUTHORITY RIGHTS AND RESPONSIBILITIES**

**2.1.** GDPM shall designate a Project Manager and/or Construction Contract Administrator for the Project.

**2.2.** GDPM shall have access to the Work and Site at all times, whether the Project is in preparation or progress.

**2.3.** GDPM is not responsible for construction means, methods, manners, techniques, sequences, procedures, or for safety precautions and programs in connection with the Work, or for the Contractor's failure to carry out the Work in conformity with the Contract Documents.

**2.4.** Upon the date indicated in the Notice to Proceed, or other document provided by GDPM that authorizes Contractor to commence Work, GDPM shall provide the Site to the Contractor in a condition to permit the Contractor to perform the Work.

**2.5.** If the Site provided by GDPM is not in a condition to permit the Contractor to perform the Work, Contractor shall notify, in writing, GDPM's Project Manager and/or Construction Contract Administrator within one working day hours of the Notice to Proceed, or other document as applicable, and identify the conditions which are preventing Contractor from performing the Work.

## **3. ARTICLE III: A/E'S DUTY, RESPONSIBILITY AND AUTHORITY**

**3.1.** The A/E for this Contract and any successor shall be designated in writing by GDPM.

**3.2.** The A/E's duties and responsibilities may include, but shall not be limited to:

**3.2.1.** Attend and conduct the Construction Progress Meetings.

**3.2.2.** Making periodic visits to the work site and on the basis of his/her on-site inspections, issuing written reports to GDPM which shall include all observed deficiencies.

**3.2.2.1.** The A/E shall electronically send a copy of the report to GDPM and to the Contractor's designated representative at the site.

**3.2.2.2.** Said report shall include a summary of up-to-date project completion information and summary of any changes to the Work to date.

**3.2.3.** Making modifications in drawings and technical specifications and assisting the Contracting Officer in the preparation of change orders and other contract modifications for issuance to the Contracting Officer.

**3.2.4.** The A/E may authorize minor changes or alterations in the Work that are consistent with the intent of the Contract Documents and do not involve adjustment of the Contract Sum or Contract Time, or both.

**3.2.4.1.** The A/E has no authority to authorize the Contractor to perform additional or extra Work for which the Contractor may seek adjustment of the Contract Sum or the Contract Time, or both.

**3.2.5.** Reviewing and making recommendations with respect to:

- The Contractor's Construction Progress Schedules;
- The Contractor's shop and detailed drawings; and
- The Contractor's price breakdown and progress payment estimates.

**3.2.6.** Assisting in inspections, signing Certificates of Completion, and making recommendations with respect to acceptance of work completed under the contract; and

**3.2.7.** Approve or certify applicable forms required under the Contract Documents.

### **3.3. Site Visits and Observation**

**3.3.1.** The A/E shall notify, advise, and consult with GDPM and protect GDPM against Defective Work throughout completion of the Project, which includes the Correction Period, and for such time period GDPM may extend A/E's services.

**3.3.1.1.** The A/E should designate a field representative, subject to GDPM's approval, to attend meetings, to observe and check the progress and quality of the Work, and to take action as necessary or appropriate to achieve conformity with the Contract Documents.

**3.3.1.2.** The A/E shall have its consultants attend to the Project at intervals required by its agreement or required by GDPM.

**3.3.2.** The A/E is authorized to disapprove or reject Defective Work. The A/E shall immediately notify GDPM, in writing, any time the A/E disapproves or rejects an item of Work.

**3.3.3.** The A/E is not responsible for construction means, methods, manners, techniques, sequences, procedures, or for work safety precautions and programs in connection with the Work, or for the Contractor's failure to carry out the Work in conformity with the Contract Documents.

### **3.4. Testing and Inspection Services**

**3.4.1.** Unless otherwise specified in the Contract Documents, the A/E shall apply for, secure, and pay for the costs of structural testing and special inspections under the Ohio Building Code; testing including geotechnical analysis, environmental testing and analysis, concrete, masonry, structural steel, reinforcing steel, welding, bolts, steel connections, HVAC systems and controls, plumbing and piping, air, and water balancing and testing, or other testing, or approvals required by Applicable Law.

### **3.5. A/E Review and Approval of Work**

**3.5.1.** Any information the Contractor submits to the A/E is for the sole purpose of determining whether the Work and information is generally consistent with the Contract's intent, and will not relieve the Contractor of its sole responsibility for the performance, preparation, completeness, and accuracy of the Work and information.

**3.5.2.** By reviewing information submitted by the Contractor, A/E is not taking on responsibility for construction means, methods, manners, techniques, sequences, procedures, or for work safety precautions and programs in connection with the Work.

### **3.6. Limitation of A/E's Authority**

**3.6.1.** The A/E shall serve as the technical representative for GDPM with respect to architectural, engineering, and design matters related to the Work performed under the Contract.

**3.6.2.** Subject to the Contractor's responsibility under ARTICLE I, the A/E may provide direction on Contract performance.

**3.6.3.** Such direction shall be within the scope of the Contract and may not be of a nature which:

- Institutes additional work outside of the scope of the Contract;
- Constitutes a change (except as provided for in 3.2.4);
- Causes an increase or decrease in the cost of the Contract;
- Alters the Construction Progress Schedule;
- Changes any of the other express terms or conditions of the Contract;
- Accepts any defective or non-conforming services, Work, or vendor-furnished items;
- Makes any settlements on GDPM's behalf;
- Assumes any responsibilities of the Contractor or Subcontractors; or
- Binds GDPM to any authorizations under, modifications of, or amendments to the Contract Documents other than as expressly provided herein.

**3.7.** The Contractor acknowledges and agrees that GDPM's legal counsel may from time to time provide legal services to the Project and that in doing so may communicate with the A/E, as GDPM's representative on the Project.

**3.7.1.** The Contractor agrees that such communications will be privileged communications and, if there is a Claim contemplated or pending, any written communications will be protected by the attorney client privilege and considered confidential work product.

## **4. ARTICLE IV: PRECONSTRUCTION ACTIVITIES**

### **4.1. Pre-construction Conference**

**4.1.1.** Within ten calendar days, unless otherwise indicated by GDPM, of Contract execution, and prior to the commencement of work, the Contractor shall attend a preconstruction conference with GDPM representatives, GDPM's A/E, and other interested parties convened by GDPM.

**4.1.1.1.** The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the Contract.

**4.1.1.2.** The A/E will be responsible for taking minutes and distributing said minutes within seventy-two (72) hours of completion of the meeting.

**4.1.1.3.** GDPM will provide the A/E and Contractor with the date, time, and place of the conference. Generally, the information will be contained in the issued Notice to Proceed.

## **4.2. Certificate of Insurance**

**4.2.1.** Before commencing work, the Contractor and each Subcontractor shall furnish GDPM with certificates of insurance showing the minimum insurance coverage is in force and will insure all operations under the Contract.

## **4.3. Building and Trade Permits, Licenses and Codes**

**4.3.1.** The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules, and regulations.

**4.3.1.1.** Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the Contract, all Work installed shall comply with all applicable laws, ordinances, codes, rules, and regulations, as may be amended by any waivers.

**4.3.1.2.** Before installing the Work, the Contractor shall examine all drawings and the specifications for compliance with applicable laws, ordinances, codes, rules, and regulations bearing on the Work and shall immediately report, in writing, any discrepancy it may discover to GDPM's Project Manager and/or Construction Contract Administrator and the A/E. (HUD term had 'contracting officer')

**4.3.1.3.** If required by any governing jurisdiction, GDPM will modify the Contract by change order so that the Work on the Project will conform to the applicable laws, ordinances, codes, rules, and regulations.

**4.3.1.4.** If the Contractor installs any Work that does not comply with all applicable laws, ordinances, codes, rules, and regulations before providing notice hereunder to GDPM and receiving direction from GDPM, Contractor shall be responsible for all costs resulting from any removal, demolishing, and disposing of any Work that must be replaced or repaired.

**4.3.2.** Notwithstanding the provisions below, the Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of Work.

**4.3.2.1.** Where GDPM can arrange for the issuance of all or part of these permits, fees, and licenses, without cost to the Contractor, the Contract amount shall be reduced accordingly.

## **4.4. Plan Approval and Permits**

**4.4.1.** The A/E shall facilitate the required structural, plumbing, HVAC, and electrical plan reviews during the design phase, as required by the governing jurisdiction for securing an overall building permit to start construction.

**4.4.2.** The Contractor shall schedule and attend all intermediate and final inspections required for any permit applicable to the Work or any governing jurisdiction.

**4.4.3.** If applicable, the Contractor shall schedule with the State Fire Marshal or local fire authority for the life safety inspection for occupancy permits.

**4.4.4.** The Contractor shall give the A/E and GDPM reasonable notice of the dates and times for any inspections.

**4.4.4.1.** The Contractor shall pay for all initial inspections and re-inspections required as a result of Contractor's failure to receive approval for its Work.

#### **4.5. Trade Permits and Licenses**

4.5.1. The Contractor shall secure and pay the fees for any permit, inspection, or license applicable to the Contractor's particular trade.

#### **4.6. Local Permits:**

4.6.1. The Contractor shall secure and pay the fees for any permits, inspections, licenses, capacity charges, or tap fees required by local authorities having jurisdiction over the Work.

4.6.2. The Contractor shall give the A/E and GDPM reasonable notice of the date(s) arranged for inspections.

#### **4.7. National Pollutant Discharge Elimination System (NPDES) Storm Water General Permit:**

4.7.1. If applicable, the A/E shall secure the NPDES general permit by submitting a Notice of Intent (NOI) application form to the Ohio Environmental Protection Agency at least 45 days prior to the start of construction.

4.7.2. The Contractor shall be a co-permittee, if required under Applicable Law.

4.7.3. The A/E shall prepare and certify the storm water pollution prevention plan to provide sedimentation and erosion controls at the Work.

4.8. The A/E shall prepare and process the required Notice of Termination (NOT) prior to Contract Completion.

### **5. ARTICLE V: CONSTRUCTION REQUIREMENTS**

#### **5.1. Commencement of Work on Site**

5.1.1. Unless GDPM agrees otherwise in writing, the Construction Stage will commence with GDPM issuing the Notice to Proceed and will terminate upon Substantial Completion, Certificate of Occupancy issuance, and the Completion of all punch list items delivered to Contractor by GDPM which must occur no later than 10 days after date of Substantial Completion.

5.1.2. Notice to Proceed:

5.1.2.1. The Contractor shall begin work upon the date indicated in a written Notice to Proceed from GDPM or its designee.

5.1.2.2. The Contractor shall not begin work prior to receiving such notice.

5.1.2.3. If GDPM Board of Commissioners' approval is required, the Notice to Proceed shall be issued within 180 days of GDPM Board of Commissioner's approval.

5.1.2.4. When applicable and if the Notice to Proceed is not issued within 180 days of GDPM Board of Commissioners' approval, GDPM may, in its sole discretion, terminate the Contract without recourse from the Contractor.<sup>1</sup>

#### **5.2. Environmental Controls**

5.2.1. The Contractor shall protect its Work and materials from damage from water, moisture, and other weather, including damage from water run-off from other property or structures, and damage from heat, cold, and humidity.

5.2.2. Contractor is not authorized to use permanent HVAC system without express written authorization from GDPM

5.2.3. Until the permanent HVAC system is complete and available for use:

5.2.3.1. The Contractor shall make arrangements and pay for installation and maintenance of temporary heating and ventilating systems; and

5.2.3.2. The Contractor shall pay the costs incurred in operating the temporary heating and ventilating systems.

5.2.4. When the permanent HVAC system is complete and available for use:

5.2.4.1. The Contractor shall start up and maintain operation of the permanent HVAC system, including filters, and promptly remove temporary heating and ventilating systems.

5.2.4.2. If the Project consists entirely of new construction, the Contractor shall pay the costs of energy consumed in operating the permanent HVAC system until Substantial Completion.

5.2.4.3. From the date of Substantial Completion, GDPM shall pay the cost of operating the permanent HVAC system for the occupied portion of the Project.

5.2.4.4. Use of the permanent HVAC system during construction shall not change, modify or reduce the Contractor's warranty and service obligations under the Contract Documents.

### 5.3. Construction Procedures

5.3.1. The Contractor is solely responsible for and has control over all construction means, methods, techniques, sequences, and procedures, for safety precautions and programs in connection with the Work, and for coordinating all portions of the Work.

5.3.2. If the Contract Documents give instructions that affect construction means, methods, manners, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety of them and, except as expressly stated herein, be fully and solely responsible for the jobsite safety of the means, manners, methods, techniques, sequences, or procedures.

5.3.3. If the Contractor determines that the means, methods, manners, techniques, sequences, or procedures specified in the Contract Documents may not be safe, the Contractor shall give timely written notice to GDPM.

5.3.4. The Contractor shall not proceed with that portion of the Work without further written instructions from GDPM.

#### 5.3.5. Additional Contractor Responsibilities

5.3.5.1. The Contractor shall lay out and coordinate all lines, levels, elevations, and measurements for all of the Work, coordinate and verify existing conditions, and notify the A/E and GDPM of discrepancies and conflicts before proceeding with installation or excavation.

5.3.5.2. The Contractor shall perform all cutting, fitting, or patching required for the Work and shall not endanger the Project by cutting, excavating, or otherwise altering the Work or any part of it.

- 5.3.5.3.** If the Design requires sleeves for completing the specified Work, the Contractor and all Subcontractors shall coordinate to furnish and install the sleeves.
- The Contractors are responsible for the exact location of and size of all holes and openings required to be formed or built for the Work.
- 5.3.5.4.** The Contractor's patching shall match and blend with the existing adjacent surfaces.
- 5.3.5.5.** In addition to the items herein, The Contractor is responsible for all items in Article I, Contractor's Responsibilities.

## **5.4. Utilities**

### **5.4.1. Availability and Use of Utilities**

- 5.4.1.1.** If GDPM has existing access to utilities, GDPM shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and service as specified herein so long as the utility use does not interfere with GDPM's operations.
- 5.4.1.2.** Unless otherwise provided in the Contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to GDPM or where the utility is produced by GDPM, at reasonable rates as determined by GDPM.
- 5.4.1.3.** The Contractor shall ~~carefully conserve any utilities furnished~~ provided by GDPM without charge.
- 5.4.1.4.** The Contractor, at its expense and in a manner satisfactory to GDPM, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges.
- 5.4.1.5.** Before final acceptance of the Work by GDPM, the Contractor shall remove all the temporary connections, distribution lines, meters, appurtenances and associated paraphernalia.
- 5.4.2.** The Contractor shall comply with the Ohio Revised Code and any local rules, regulations and ordinances concerning utilities.
- 5.4.2.1.** In addition, before starting excavation or trenching, the Contractor shall determine the location of any underground utilities and notify any public authority or utility having jurisdiction over the Project and secure any required approval.
- 5.4.3.** The Contractor shall give at least 2 business days in advance of excavation to GDPM of underground utilities registered with the Ohio Underground Utility Protection Services ("OUPS").
- 5.4.3.1.** The Contractor is required, within 48 hours' notice, to stake, mark, or otherwise designate the location for its utilities in the construction area together with its approximate depth.
- 5.4.3.2.** In the event Contractor damages a utility line, the Contractor shall immediately notify the appropriate utility company or government official, the A/E and GDPM of the problem.

### **5.4.4. Water and Drainage**

- 5.4.4.1.** The Contractor shall provide water necessary for the Work until the permanent plumbing system is available for use.

**5.4.4.2.** The Contractor shall provide temporary drainage and dewatering necessary for the Work and shall employ pumps, trenches, drains, sumps, and other necessary elements required to provide satisfactory working conditions for the protection, execution, and completion of the Project.

**5.4.4.3.** The Contractor shall make arrangements and pay for installation and maintenance of temporary plumbing systems until the permanent plumbing system is available for use.

**5.4.4.4.** When the permanent plumbing system is complete and available for use:

- The Contractor shall start up and maintain operation of the permanent plumbing systems, and make arrangements and pay for removal of temporary plumbing systems.
- If the Project consists entirely of new construction, the Contractor shall pay the costs of water consumed and sewage charges until Substantial Completion.
- If the Project is a renovation of an existing building or structure, addition(s) to an existing building or structure, or any combination of new construction and renovation work that does not allow separate metering of utilities, GDPM shall pay the costs of water consumed and sewage charges.
- If separate metering of utilities is available, the Contractor and GDPM will pay the costs of their respective use.

**5.4.4.5.** After the date of Substantial Completion, GDPM shall pay the costs of water consumed and sewage charges for the occupied portion of the Project.

**5.4.4.6.** Use of the permanent plumbing system during construction shall not change, modify, or reduce the Contractor's warranty and service obligations under the Contract Documents.

#### **5.4.5. Electric Service**

**5.4.5.1.** The Contractor shall provide temporary light and power; pay the charges for temporary electric service, installation, and removal if required.

**5.4.5.2.** If the Project consists entirely of new construction, the Contractor shall pay the cost of energy consumed until Substantial Completion.

**5.4.5.3.** If the Project is a renovation of an existing building or structure, addition(s) to an existing building or structure, or any combination of new construction and renovation work that does not allow separate metering of utilities, GDPM shall pay the cost of energy consumed. GDPM will charge Contractor the cost of the energy consumed in accordance with 5.4.6.

**5.4.5.4.** If separate metering of utilities is available, the Contractor and GDPM will pay the costs of their respective use.

**5.4.5.5.** From the date of Substantial Completion, GDPM shall pay the cost of energy consumed for the occupied portions of the Project.

**5.4.5.6.** Use of the permanent electrical system during construction shall not change, modify, or reduce the Contractor's warranty and services obligations under the Contract Documents.



#### **5.4.6. Payment of Utility Services**

- 5.4.6.1. Unless otherwise expressly stated in the Contract Documents, Contractor shall reimburse GDPM the cost of utility services during the Construction Period.
- 5.4.6.2. Unless otherwise expressly stated in the Contract Documents, payment for reimbursement of GDPM for the cost of utility services during the Contract Period shall be made directly to GDPM.
- 5.4.6.3. If payment is not received, GDPM may deduct the cost of utility services from payments otherwise due to the Contractor.
- 5.4.6.4. If the payments otherwise due to the Contractor are not sufficient to fully reimburse GDPM, either Contractor or its surety shall make whatever payments are necessary to fully reimburse GDPM.
- 5.4.6.5. **Process for Payment:** Reimbursement from the contractor shall be performed on a quarterly basis unless a more frequent payment schedule is agreed upon between GDPM and the contractor prior to start of the project.

#### **5.5. Hoisting Facilities**

- 5.5.1. The Contractor shall erect and maintain any hoisting equipment required for its Work.
- 5.5.2. If the electric service requirements of hoisting facilities differ from that available at the Site, the Contractor shall provide and pay for all necessary connections.
- 5.5.3. If a permanent elevator is identified in the Contract Documents to be used for hoisting materials or personnel during construction, the Contractor shall furnish an extended warranty and service contract in effect until the expiration of the Correction Period.

#### **5.6. Interruption of Existing Services**

- 5.6.1. Whenever it becomes necessary to interrupt existing services in use by GDPM or its tenants, including, but not limited to, sewer, water, gas, steam lines, electric, telephone, Wi-Fi, and cable service, the Contractor shall continue the associated Work on a non-stop 24-hour per day basis until that Work is completed and the service restored, or perform the associated Work at an alternate time as required by and in coordination with GDPM.
- 5.6.2. Before beginning that Work, the Contractor shall apply in writing to, and receive approval in writing from GDPM to establish a time when interruption of the service will cause a minimum of interference with the activities of GDPM and its tenants.

#### **5.7. Construction Supervision**

- 5.7.1. Unless waived by GDPM in writing, the Contractor shall provide continuous supervision at the Site through a competent project manager or superintendent when any Work is being performed.
- 5.7.2. The Contractor's project manager and superintendent shall each have responsibility and authority to act on behalf of the Contractor.
  - 5.7.2.1. All communication to the Contractor's project manager and superintendent shall be binding as if given directly by the Contractor.
- 5.7.3. The Contractor shall submit an outline of the qualifications and experience of the Contractor's proposed project manager and superintendent, including references, to GDPM no later than 2 days after request from GDPM.

- 5.7.3.1.** The Contractor shall submit an outline of the qualifications and experience of the Subcontractor's proposed project manager and proposed superintendent, including references, to GDPM no later than 2 days after GDPM's request.
- 5.7.3.2.** GDPM may reject the Contractor or Subcontractor's proposed project manager and/or proposed superintendent.
- 5.7.3.2.1.** If GDPM does not notify the Contractor of the rejection within 30 days after receiving the required information, it shall then indicate that GDPM does not have an objection, but does not affect GDPM's rights under the Contract Documents or any other provision relative to the project manager or superintendent.
- 5.7.3.3.** If GDPM rejects the Contractor or Subcontractor's proposed project manager or proposed superintendent, the Contractor shall replace, or cause the Subcontractor to replace the project manager or superintendent (as appropriate) with someone acceptable to GDPM at no additional cost.
- 5.7.4.** If GDPM does not object the proposed project manager or superintendent, the Contractor and its Subcontractor shall not replace their respective project managers and superintendents without prior written approval of GDPM.

## **5.8. Construction Progress Schedule**

- 5.8.1.** The Contractor shall, no later than seven days of the issuance of the Notice to Proceed or another period of time determined by GDPM, prepare and electronically submit to GDPM, for approval viable schedule showing the order in which the Contractor proposes to perform the Work, the dates on which the Contractor contemplates starting and completing the several salient features of the Work (including acquiring labor, materials, and equipment).
- 5.8.2.** The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period.
- 5.8.3.** The Chart must be in a Critical Path Method (CPM) format.
- 5.8.4.** If the Contractor fails to submit a schedule within the time prescribed, GDPM may withhold approval of progress payments or take other remedies under the Contract until Contractor submits the required schedule.
- 5.8.5.** The Contractor shall monitor the Work for conformance with the Construction Progress Schedule and shall initiate revisions as required herein.
- 5.8.6.** The Contractor shall enter the actual progress on the chart as required by GDPM, and immediately provide electronic copies of the annotated schedule to GDPM.
- 5.8.6.1.** If GDPM determines, upon the basis of inspection conducted, herein that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by GDPM, without additional cost to GDPM.
- 5.8.6.2.** In this circumstance, GDPM may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as GDPM deems necessary to demonstrate how the approved rate of progress will be regained.

**5.8.7.** Failure of the Contractor to comply with the requirements of GDPM shall be grounds for a determination by GDPM that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract.

**5.8.7.1.** Upon making this determination, GDPM may terminate the Contractor's right to proceed with the work, or any separable part of it.

**5.8.8.** Unless otherwise agreed to in writing, The Contractor shall develop the Construction Progress Schedule using commercially available, personal computer software acceptable to GDPM and shall submit all baseline and updated schedules to GDPM in the schedule's native format.

**5.8.9.** This submission shall be in electronic format.

**5.8.10.** The Construction Progress Schedule shall not exceed the time limits under the Contract Documents. Further, the Progress Schedule shall provide for reasonable, efficient, and economical execution of the Project and shall relate to the entire project to the extent required by the Contract Documents.

**5.8.10.1.** In the event that a Construction Progress Schedule submitted by Contractor shows a completion date that extends beyond the Contract Time permitted to Contractor in the Contract Documents, such Construction Progress Schedule shall not be deemed to modify the Contract Time permitted in the Contract Documents.

**5.8.10.2.** The Contractor shall use the Construction Progress Schedule to plan, organize, and execute the Project, record and report actual performance and progress, and show how it plans to coordinate and complete all remaining work by contract completion within applicable milestones.

- The Project participants shall use the Construction Progress Schedule as a tool for scheduling and reporting sequences and/or the progress of the Work.
- The Contractor shall provide a clear graphics legend and other data including without limitation, milestone dates, constraints, and other items required by the Project and GDPM.
- Each submission shall show GDPM's contract number and project name.

**5.8.11.** The Contractor shall provide the following in each schedule:

**5.8.11.1.** Activity identification and description of each activity broken down to a maximum duration that is appropriate for the activity;

**5.8.11.2.** Responsibility of the Contractor;

**5.8.11.3.** Contractor's resources and crew size for each activity; and

**5.8.11.4.** Provide early start, early finish, late start, late finish dates.

**5.8.11.5.** The Construction Progress Schedule shall show all submittal dates, review and approval durations for coordination drawings, Shop Drawings, other action submittals and mock-up Work.

**5.8.12.** The Contractor shall submit the initial and all updates of the Construction Progress Schedule in graphic and tabular form to GDPM.

**5.8.12.1.** With each monthly schedule update, the Contractor shall include a list of all changes to the previously approved baseline schedule or monthly updated schedule.

- 5.8.13.** The Construction Progress Schedule shall be managed using early start dates and early finish dates.
- 5.8.13.1.** The Contractor must exhaust all existing float before claiming additional time for a Change Order.
- 5.8.14.** The Contractor's failure to submit and properly maintain an approved Construction Progress Schedule may result in withholding payment in accordance with the Contract Documents.
- 5.8.15.** For each Progress Meeting, the Contractor shall provide a 2-6 week look-ahead schedule, as appropriate for the Project.
- 5.8.16.** On a monthly basis, the Contractor shall prepare and submit to GDPM a written report describing:
- 5.8.16.1.** Activities begun or finished during the preceding month;
- 5.8.16.2.** Activities in progress and expected completion;
- 5.8.16.3.** Activities to be started or finished in the upcoming month including, without limitation, the Contractor's workforce size and total resource hours associated with those activities;
- 5.8.16.4.** Recommendations for adjusting the Construction Progress Schedule to meet Milestone dates and the Substantial Completion date; and
- 5.8.16.5.** Other information requested by GDPM.
- 5.8.17.** If it is apparent that the Contractor may be unable to meet Critical Path activities, Milestone completion dates, or the Substantial Completion date(s), GDPM shall direct the Contractor to submit within 3 days a Recovery Plan to avoid or minimize a delay in the Project.
- 5.8.17.1.** A Recovery Plan shall include, without limitation, adjustments to one or more of the following:
- Workforce
  - Hours per shift
  - Shifts per workday
  - Workdays per week
  - Equipment
  - Activity logic
- 5.8.17.2.** If GDPM approves the Recovery Plan, the Contractor shall prepare a revised Construction Progress Schedule within 3 business days to GDPM.
- If GDPM does not approve the Recovery Plan, the Contractor shall submit within 3 days an alternate Recovery Plan to GDPM in writing for review and in accordance the Contract Documents.
- 5.8.18.** The Contractor shall update the Construction Progress Schedule on a monthly basis, or other interval(s) as approved by GDPM, in accordance with the Contract Documents.
- 5.8.18.1.** The Contractor shall submit a tabular copy showing all changes to the previously approved schedule.

**5.8.18.2.** The original or initially approved Construction Progress Schedule and all subsequent Construction Progress Schedules submitted by the Contractor, and accepted by GDPM, shall serve as an affirmation that the Contractor agrees to meet the applicable requirements and updated Construction Progress Schedule.

**5.8.18.3.** The Contractor's failure to timely submit updated Construction Progress Schedules as deemed necessary by GDPM may result in withholding payments from Contractor.

## **5.9. Progress Meetings**

**5.9.1.** Unless otherwise indicated in writing, GDPM shall schedule bi-weekly Progress Meetings for the Contractor and other persons involved in the Project as deemed necessary for coordination of the Work by GDPM, including Contractor's Subcontractors on the Project.

**5.9.1.1.** The purpose of the Progress Meeting is to review progress on the Project during the previous week, discuss anticipated progress during the following weeks, review critical operations, and discuss critical problems.

**5.9.2.** The Contractor shall be represented at every Progress Meeting by a person authorized with signatory authority to make decisions regarding possible modifications of the Contract Documents or Construction Progress Schedule.

**5.9.2.1.** GDPM shall notify the Contractor and other persons involved in the Project of the time and place of the Progress Meeting that shall thereafter be the same day and hour of the week for the duration of the Project, unless GDPM notifies the Contractor and other Persons involved in the Project of a different day and hour at least 2 days in advance.

**5.9.2.2.** The Contractor shall have any of its subcontractors attend the Progress Meeting as determined advisable by the Contractor, or as requested by GDPM.

**5.9.2.3.** Unless otherwise indicated in writing, A/E shall prepare a written report of each Progress Meeting and distribute the report to the GDPM and the Contractor.

**5.9.2.4.** If any person in attendance objects to anything in a report of a Progress Meeting, the person shall notify GDPM and any other affected person in writing explaining the objections within seven calendar days.

**5.9.2.5.** The report of each Progress Meeting shall reflect any objection made to the report of the previous Progress Meeting and any response.

## **5.10. Project Coordination**

**5.10.1.** If determined needed by GDPM, the Contractor or Subcontractor(s), The Contractor shall prepare Coordination Drawings for any Coordination Area.

**5.10.1.1.** The Contractor shall prepare the Coordination Drawings with Computer-Aided Design ("CAD") or Building Information Modeling ("BIM") software acceptable to GDPM.

**5.10.1.2.** The Coordination Drawings shall show all affected work, including without limitation, plan and elevation dimensions.

**5.10.2.** After the Contractor completes the Coordination Drawing, the Contractor shall forward a copy of the Coordination Drawings to GDPM.

**5.10.2.1.** The A/E shall report any concerns in writing to the Coordination Participants within 14 days after receiving the drawings.

## **5.11. Additional Tests and Inspections**

- 5.11.1.** If the A/E or GDPM determines that any portion of the Work requires special inspection, testing, or approval not otherwise required under the Contract Documents, the A/E and/or GDPM shall order such inspection, testing, or approval.
- 5.11.2.** If the special inspection, testing, or approval reveals Defective Work, the Contractor shall pay all associated costs and will not be entitled to any related adjustment of the Contract Times. Those costs may include without limitation:
- The cost of special inspection, testing, or approval;
  - The cost of additional special inspections, testing, or approvals, to evaluate Remedial Work;
  - The cost of correcting Defective Work; and
  - All related GDPM-incurred fees and charges of contractors, engineers, architects, attorneys, and other professionals.
- 5.11.3.** GDPM may deduct the costs described under the Contract Documents from payments then or thereafter due the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover those amounts, the Contractor or its surety shall immediately pay the amount of the insufficiency to GDPM.
- 5.11.4.** If the special inspection, testing, or approval reveals that the Work complies with the Contract Documents, and the Contractor believes that it is entitled to an adjustment of the Contract Sum or Contract Time, or both, on account of the special inspection, testing, or approval, the Contractor may file a Claim by requesting a Change Order by giving written notice within 7 days after the special inspection, testing, or approval.
- 5.11.5.** If the Contractor is aware of the need of an inspection, testing, or approval, or of a need to have any inspection, testing, or approval completed by a particular time to avoid delay, then the Contractor shall timely communicate such information to GDPM.
- 5.11.6.** Except as described in Additional Tests and Inspections, GDPM shall pay for any inspection, testing, or approval that did not become a requirement until after award of Contract.
- 5.11.7.** The Contractor shall coordinate with and give GDPM reasonable notice of the anticipated dates of all inspections, testing, or approvals.

## **5.12. Review of Contract Documents**

- 5.12.1.** Before starting each portion of the Work, the Contractor shall carefully study and compare the various Contract Documents relative to that portion of the Work, 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.
- 5.12.2.** If the Contractor finds any perceived ambiguity, conflict, error, omission, or discrepancy on or between any of the Contract Documents, or between any of the Contract Documents and any Applicable Law, the Contractor, before proceeding with the Work, shall promptly submit of Requests for Information ("RFI") to GDPM for an interpretation or clarification.
- 5.12.2.1.** Before submitting any RFI, the Contractor shall carefully review the Contract Documents to ensure that the Contract Documents do not answer the RFI.

**5.12.2.2.** If Contractor indicates that the information requested in the RFI affects the critical path of the Project's Construction Progress Schedule and attaches the portion of the Project's Construction Progress Schedule that verifies that the information requested in the RFI affects the critical path, GDPM shall make all reasonable efforts to respond to the RFI within 7 business days of receiving the RFI.

**5.12.3.** If the Contractor believes that it is entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of clarifications or instructions issued in response to a RFI, the Contractor may submit a Claim by requesting a Change Order by giving notice within 3 business days of receiving the RFI response.

**5.12.4.** If Contractor does not notify GDPM in accordance with this Article Five or any other section of the Contract Documents that addresses adjustments to the Contract Sum and Contract Time, the Contractor will have accepted the RFI response without an adjustment to the Contract Sum or Contract Time and irrevocably waives his right to submit or request an adjustment to the Contract Sum and/or Contract Time.

**5.12.5.** Frivolous RFI

**5.12.5.1.** If the Contractor submits a frivolous RFI, as determined by GDPM, Contractor shall be liable to GDPM for the costs related to the review and response of the RFI.

**5.12.5.1.1.** GDPM may deduct the costs described herein from payments then or thereafter due to the Contractor.

**5.12.5.1.2.** If payments then or thereafter due to the Contractor are not sufficient to cover GDPM's costs, the Contractor or its surety shall immediately pay the amount of the insufficiency to GDPM.

**5.12.5.2.** Frivolous RFIs may be returned unanswered.

**5.12.5.3.** Delays caused by improper or frivolous RFI's are the sole responsibility of the Contractor who shall waive the Contractor's right to seek adjustments to the Contract Sum and Contract Time.

**5.13.** Site Investigation and Conditions Affecting the Work

**5.13.1.** The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including, but not limited to:

- Conditions bearing upon transportation, disposal, handling, and storage of materials;
- The availability of labor, water, electric power and roads;
- Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- The conformation and conditions of the ground; and
- The character of equipment and facilities needed preliminary to and during work performance.

**5.13.2.** The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by GDPM, as well as from the drawings and specifications made part of this contract.



**5.13.2.1.** Any failure of the Contractor Site Investigation and Conditions Affecting the Work will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceedings to successfully perform the Work without additional expense to GDPM.

**5.13.3.** GDPM assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by GDPM. Nor does GDPM assume responsibility for any understanding reached or representations made concerning conditions which can affect the Work by any of its officers or agents before execution of this Contract, unless that understanding or representation is expressly stated in this Contract.

#### **5.14. Protection of the Project**

**5.14.1.** The Contractor shall protect the Project from weather and maintain the Work and all materials, apparatus, and fixtures free from injury or damage until Substantial Completion of the Work.

**5.14.1.1.** The Contractor shall at all times cover or protect the Work and materials.

**5.14.1.2.** The Contractor, at its own expense, shall remove, and replace with new, any Work damaged as a result of the Contractor's failure to provide coverage or protection.

**5.14.1.3.** After the date of Substantial Completion of the Work, GDPM is responsible for protecting and maintaining all materials, apparatus, and fixtures for the occupied portion of the Project from injury or damage.

**5.14.2.** The Contractor shall protect the Project and existing or adjacent property from damage at all times and shall erect and maintain necessary barriers, lateral support, furnish and keep lighted necessary danger signals at night, and take reasonable precautions to prevent injury or damage to individuals or property.

#### **5.14.3. Temporary Heating**

**5.14.3.1.** The Contractor shall provide and pay for temporary heating, covering, and enclosures necessary to protect all Work and materials against damage by dampness and cold, to dry out the Work, and to facilitate the completion of Work.

**5.14.3.2.** Any permanent heating equipment used shall be turned over to GDPM in the condition and at the time required by the specifications.

**5.14.4.** The Contractor shall not load, or permit any part of the Project to be loaded, in any manner that endangers the Project, or any portion thereof.

**5.14.4.1.** The Contractor shall not subject any part of the Project or existing or adjacent property to stress or pressure that endangers the Project or property.

#### **5.14.5. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements**

**5.14.5.1.** The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work sites, which are not to be removed under this Contract, and which do not unreasonably interfere with the Work required under this Contract.

**5.14.5.2.** The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place.



- 5.14.5.2.1.** If any limbs or branches of trees are broken during performance of this Contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as specifically directed by GDPM.
- 5.14.5.3.** The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor.
- 5.14.5.3.1.** Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.
- 5.14.5.4.** The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the Project.
- 5.14.5.5.** Any equipment temporarily removed as a result of work under this Contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this Contract.
- 5.14.5.6.** New work which connects to existing Work shall correspond in all respects with that to which it connects and/or be similar to existing Work unless otherwise required by the specifications.
- 5.14.5.7.** No structural members shall be altered or in any way weakened without the written authorization of GDPM, unless such work is clearly specified in the Plans or specifications.
- 5.14.5.8.** If the removal of the existing Work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious.
- This, however, shall not be construed to require the refinishing or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different plans or on different levels when brought together by the removal of intervening work, unless such refinishing or reconstruction is specified in the plans or specifications.
- 5.14.5.9.** The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before commencement of any Work.
- 5.14.5.10.** The Contractor shall indemnify and save harmless GDPM from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which GDPM may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.
- 5.14.5.11.** The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract or failure to exercise reasonable care in performing the work.
- If the Contractor fails or refuses to repair the damage promptly, GDPM may have the necessary Work performed and charge the cost to the Contractor.

#### **5.14.6. Vibration, Noise, and Dust Control**

**5.14.6.1.** The Contractor shall provide controls/barriers for vibrations, noise, and dust control in occupied buildings as required by the construction operations.

**5.14.6.2.** The Contractor will not be permitted to exhaust or release unfiltered air, dust, construction debris, or other undesirable products into the exterior atmosphere or into occupied areas of the building.

**5.14.6.2.1.** GDPM may limit or stop the Work if the Contractor does not maintain proper air-quality standards.

**5.14.6.2.2.** Such stoppage may result in a charge to the Contractor.

**5.14.6.3.** In certain occupied buildings, tasks might be of such a nature that noise and vibration cannot be tolerated.

- In such spaces and as approved by GDPM, Work may be scheduled for other than normal working hours.
- The Contractor is cautioned that weekend or overtime work, if required, shall be performed at no additional cost.
- Permission to work other than standard hours shall be received from GDPM prior to the occurrence.
- Weekend or overtime Work shall be reflected in the Construction Progress Schedule.

**5.14.6.4.** The Contractor is responsible for vibration control and control of transmission of noise arising from the Work.

**5.14.6.5.** Principal considerations that shall be given to noise and vibrations control are:

- Noise control in compliance with Occupational Safety and Health Administration (OSHA) shall be for all areas of the facility, including equipment rooms, boiler rooms, and fan rooms.
- Vibration control to limit sound produced by construction equipment, and for protection of the equipment existing in the building and the building structure.
- Vibration control to provide for the maximum usefulness of the facility by keeping levels of vibration within ranges conducive to peaceful enjoyment of residential living or work or other uses for which the facility was designed

#### **5.15. General Warranty - Materials, Equipment and Workmanship**

**5.15.1.** The Contractor warrants to GDPM and A/E that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise.

**5.15.1.1.** 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.

**5.15.1.2.** Work, materials, or equipment not conforming to these requirements may be considered defective.

**5.15.1.3.** If required by the A/E, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**5.15.2.** If the Contractor breaches any of its obligations, the Contractor will pay the Owner for its damages and expenses, including but not limited to attorneys' and consultants' fees and expenses, arising out of or related to such breach.

**5.15.2.1.** The Contractor's obligation shall be joint and several.

**5.15.3. Additional Warranties**

**5.15.3.1.** The Contractor gives the Owner the following additional warranties:

**5.15.3.1.1.** If the Contractor's Work includes all or part of the exterior roofing system, provided that the Architect has designed the roofing system to be weather tight, the Contractor warrants that the roofing system will be weather tight; and

**5.15.3.1.2.** If the Contractor's Work includes all or part of the exterior wall system, provided that the Architect has designed the wall system to be weather tight, the Contractor warrants that the wall system will be weather tight. Weather tight shall mean the roofing and/or wall system does not permit any infiltration of water in any form that would have any adverse effect on GDPM's operations or the Project.

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

**5.15.5.** Upon notice of the breach of any of the warranties or guarantees identified herein, or any other warranties or guarantees under the Contract Documents, the Contractor, in addition to any other requirements in the Contract Documents, shall commence to correct such breach and all damage resulting therefrom within two (2) business days from written notice thereof, thereafter use its best efforts to correct such breach and damage to the satisfaction of GDPM and A/E, and, except when an extension of time is granted in writing by GDPM, correct such breach and damage to the satisfaction of GDPM within thirty (30) calendar days of such notice, or such other time as provided in the notice; provided, however, that if such notice is given after final payment the 2-day period shall be extended to seven (7) calendar days.

**5.15.5.1.** If the Contractor fails to commence to correct such breach and damage, or to correct such breach or damage as provided above, GDPM, without prejudice to any of its other rights or remedies at law or under the Contract Documents, may correct the breach without further notice to Contractor.

**5.15.5.2.** The Contractor shall pay GDPM's reasonable costs and expenses incurred in connection with the or related to such correction and/or breach, including without limitation GDPM's administrative, legal, and consulting expenses and additional service fees of the A/E.

**5.15.5.3.** The foregoing warranties and obligations of the Contractor shall survive final payment and/or termination of the Contract and shall not be limited by any other terms contained in the Contract Documents.

- 5.15.5.4.** If the Contractor fails to pay the GDPM any amounts due hereunder, the Contactor shall pay the GDPM, in addition to the amounts due, a late payment fee of one and one-half percent (1.5%) per month for each month or part thereof that the payments are not paid when due.
- 5.15.6.** Contractor shall bring to or store at the Site only the materials and equipment required for the Work. If possible, materials and equipment should be installed in their final positions when brought to the Site.
- 5.15.7.** All equipment, material, and articles furnished under this Contract shall be of the most suitable grade for the purpose intended, unless otherwise specifically provided in this Contract.
- 5.15.7.1.** References in the Contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition.
- 5.15.7.2.** The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by GDPM in writing, is equal to that named in the specifications, unless otherwise specifically provided in this Contract so long as Contractor has submitted a substitution request to GDPM.
- 5.15.7.3.** If the substituted material has not been approved by GDPM in writing, the substituted material may be considered Defective Work by GDPM or A/E.

**5.15.8. Approval of Equipment and materials**

- 5.15.8.1.** The Contractor shall obtain GDPM's approval of the machinery and mechanical and other equipment to be incorporated into the work.
- I. When requesting approval, the Contractor shall furnish to GDPM the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment.
  - II. When required by this contract or by GDPM, the Contractor shall also obtain GDPM's approval of the material or articles which the Contractor contemplates incorporating into the work.
  - III. When requesting approval, the Contractor shall provide full information concerning the material or articles.
  - IV. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
- 5.15.8.2.** When required by the specifications or GDPM, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor's expense, with all shipping charges prepaid.
- The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor's name, and the identification of the construction project for which the material or product is intended to be used.
- 5.15.8.3.** Certificates shall be submitted electronically describing each sample submitted for approval and certifying that the material, equipment or accessory complies with contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the location where produced.

**5.15.8.4.** Approval of a sample shall not constitute a waiver of GDPM's right to demand full compliance with contract requirements.

- Materials, equipment and accessories may be rejected for cause even though samples have been approved.

**5.15.8.5.** Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall not govern the number of tests required to be made nor modify other Contract requirements.

- GDPM may require laboratory test reports on items submitted for approval or may approve materials on the basis of data submitted in certificates with samples.
- Check tests will be made on materials delivered for use only as frequently as GDPM determines necessary to insure compliance of materials with the specifications.
- The Contractor will assume all costs of retesting materials which fail to meet contract requirements and/or testing materials offered in substitution for those found deficient.

**5.15.8.6.** After approval, samples will be kept in the Project office until completion of work. They may be built into the work after a substantial quantity of the materials they represent has been built in and accepted.

**5.15.9. BUILD AMERICA BUY AMERICIA BABA REQUIREMENTS:** Pursuant to the Build America, Buy America Act (BABA), enacted as part of the Infrastructure Investment and Jobs Act (IIJA). Pub. L. 117-58, 41 U.S.C. § 8301 note, the Federal Financial Assistance used to fund this infrastructure project is required to apply a domestic content procurement preference (the “Buy America Preference” or “BAP”) for all construction, alteration, maintenance, or repair of infrastructure, including buildings and real property, unless application of the BAP has been waived by HUD. Additional details on fulfilling the BABA requirements can be found at:

[https://www.hud.gov/program\\_offices/general\\_counsel/build\\_america\\_buy\\_america](https://www.hud.gov/program_offices/general_counsel/build_america_buy_america).

BABA is the Build America, Buy America Act. BABA requires any “infrastructure project” funded by any “Federal Financial Assistance” (FFA) apply a domestic content procurement preference, meaning that all iron, steel, manufactured products, and construction materials used in the infrastructure project have been produced in the United States, unless the awarding agency has issued a waiver of this requirement. This is called the “Buy American Preference” (BAP).

In order to ensure compliance with BABA requirements, Contractor will required to:

- Request waiver will be required if the contractor cannot fulfill BABA requirements.
- Provide sufficient product purchase info to enable GDPM to comply with the documentation requirements. Sufficient documentation may include:
  - A certificate from the manufacturer or reseller that the product complies with BABA;
  - For products that cost less than \$100 per product, a copy of a label that indicates the product was made in the United States; or
  - For small purchases of product that are less than the simplified acquisition threshold either a copy of a product specification that provides sufficient detail to conclude that the product complies with BABA or a communication other than a certification from a manufacturer or reseller of a product that confirms

that the product is BABA compliant.

**5.15.10. Requirements concerning lead-based paint:** The Contractor shall comply with the requirements concerning lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act.

**5.15.11. Substitutions**

**5.15.11.1.** If the Contractor provides approved Substitutions that require changes to the Contract Documents, the Contractor shall be solely responsible for the additional costs incurred as a result, including without limitation changes to the design by the A/E.

**5.15.11.2.** GDPM shall consider Requests for Substitutions after the bid opening only when the Contractor can conclusively demonstrate to GDPM the following conditions:

- I. The specified Basis of Design Components, Acceptable Components, or previously approved Substitutions through no fault of the Contractor are not available; or
- II. The specified Basis of Design Components, Acceptable Components, or previously approved Substitutions will not perform as designed or intended.

**5.15.11.3.** The Contractor's incorporation of unapproved Substitutions in the Work shall constitute Defective Work.

**5.15.11.4.** If the Contractor provides an unacceptable Component, the Contractor shall be solely responsible for the costs of coordination and modification required.

**5.16. Specifications and Drawings for Construction**

**5.16.1.** The Contractor shall keep on the work site a stamped, permit set of the drawings and specifications and shall at all times give GDPM access thereto.

- 5.16.1.1.** Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both.
- 5.16.1.2.** In case of difference between drawings and specifications, the specifications shall govern.
- 5.16.1.3.** In case of a discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to GDPM, who shall promptly make a determination in writing.
- 5.16.1.4.** Any adjustment by the Contractor without such determination shall be at its own risk and expenses.
- 5.16.1.5.** GDPM shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- 5.16.2.** Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of GDPM is intended.
- 5.16.3.** Where "shown," indicated", "detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this Contract unless otherwise stated, the word "provided" as used herein shall be understood to mean "provide complete in one place" that is "furnished and installed".
- 5.16.4.** "Shop Drawings" means drawings, submitted to GDPM by the Contractor, subcontractor or any lower tier subcontractor, showing in detail, 1) the proposed fabrication and assembly of structural elements and 2) the installations (i.e., form, fit, and attachment details) of materials of equipment.
  - 5.16.4.1.** It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the Contract.
  - 5.16.4.2.** GDPM may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.
- 5.16.5.** If this Contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other Contract requirements and shall indicate its approval thereon as evidence of such coordination and review.
  - 5.16.5.1.** Shop Drawings submitted to the A/E without evidence of the Contractor's approval may be returned for resubmission.
  - 5.16.5.2.** GDPM will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate GDPM's reasons therefore.
  - 5.16.5.3.** Any Work done before such approval shall be at the Contractor's risk.
  - 5.16.5.4.** Approval by the A/E shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this Contract, except with respect to approved variations.
- 5.16.6.** If shop drawings show variations from the Contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission.

**5.16.6.1.** If the A/E approves any such variation and GDPM concurs, GDPM shall issue an appropriate modification to the Contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

**5.16.7.** It shall be the responsibility of the Contractor to make timely requests to GDPM for such large scale and full size drawings, color schemes, and other additional information, not already in possession, which shall be required in the planning and production of the work.

**5.16.7.1.** Such requests may be submitted as the need arises, but each such request shall be filed with ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.

**5.16.8.** The Contractor shall electronically submit to GDPM for approval (unless otherwise indicated) all shop drawings as called for under the various headings of the specifications.

**5.16.8.1.** As required by GDPM, the Contractor, upon completing the work under this Contract, shall furnish a complete set of drawings as finally approved.

**5.16.8.2.** These drawings show all changes and revisions made up to the time the work is completed and accepted.

**5.16.9.** Specifications and Drawings for Construction shall be included in all subcontracts at any tier.

**5.16.9.1.** It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to GDPM.

**5.17. As Built Drawings**

**5.17.1.** "As-built drawings," means drawings submitted by the Contractor or subcontractor at any tier to show the construction of a particular structure or Work as actually completed under the Contract.

**5.17.1.1.** "As-built drawings" shall be synonymous with "Record Drawings".

**5.17.2.** As required by GDPM, the Contractor shall provide GDPM accurate information to be used in the preparation of permanent as-built drawings.

**5.17.2.1.** For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.

**5.17.3.** As Built Drawings shall be included in all subcontracts at any tier.

**5.17.4.** It shall be the responsibility of the Contractor to ensure that all As-Built Drawings prepared by subcontractors are submitted to GDPM.

**5.18. Project Document Maintenance and Submittal**

**5.18.1. During Construction**

**5.18.1.1.** The Contractor shall maintain in good order at a secure location on the Site:

- I. A complete copy of all Contract Documents; Shop Drawings, Product Data, samples and similar required submittals; manufacturer operating and maintenance instructions; certificates; warranties; RFIs and responses thereto; and other Project- related documents, all marked currently and accurately to record field changes and selections made during construction and to show



Actual installation where installation varies from Work as originally shown, including the exact location and depth of underground utility lines; and

II. A set of Drawings as approved by any applicable jurisdiction and Specifications.

**5.18.1.2.** Before submitting each Contract Payment Request, the Contractor shall record all changes on the Contract Documents, neatly in a contrasting color, noting new information not shown on the original Contract Documents.

- Failure to record all changes may cause payment to be withheld or delayed by GDPM.

**5.18.1.3.** The Contractor shall keep a record of changes made to the Specifications, noting particularly any approved variation from manufacturer's installation instructions and recommendations.

**5.18.1.4.** If the Contractor uses Shop Drawings to indicate as-built conditions, the Contractor shall cross-reference the Shop Drawing sheet numbers to the corresponding sheet numbers on the Contract Documents.

- The Contractor shall note related numbers where applicable.

**5.18.2. Before Contract Completion**

**5.18.2.1.** The Contractor, as a condition precedent to execution of the Certificate of Contract Completion and final payment, shall organize the As-Built Documents into manageable sets, bind the sets with durable paper cover sheets, and deliver the As-Built Documents to GDPM.

**5.18.2.2.** When applicable, The Contractor's As-Built Documents submission shall include, but is not limited to:

- I. Certificate of Occupancy;
- II. Inspection certificates for pressure piping, elevator, boiler, electrical, plumbing or piping purification, etc.
- III. Letter of Approval from the local fire authority or State Fire Marshal for the fire suppression system;
- IV. Operation and Maintenance Manuals, organized into suitable sets of manageable size;
- V. Indexed data bound in individual binders, with pocket folders for folded sheet information and appropriate identification marked on the front and the spine of each binder;
- VI. Neatly and accurately marked sets of As-Built Documents, and other Contract Documents reflecting the actual construction of the Project;
- VII. Detailed Drawings reflecting the exact location of any concealed utilities, mechanical or electrical systems, and components;
- VIII. Assignment to GDPM of all warranties and guarantees, including the most-recent address and telephone number of any Subcontractors or manufacturers;
- IX. An affidavit to certify that all Subcontractors have been paid in full for all Work performed or materials furnished for the Project;
- X. Final certified payroll reports; and

- XI. An affidavit to certify that the Contractor and each of its Subcontractors, regardless of tier, have complied with all requirements of HUD and the Ohio Revised Code.

5.18.2.3. By submitting the As-Built Documents to GDPM, the Contractor certifies that its As-Built Documents are complete, correct, and accurate.

**5.19. Temporary Buildings and Transportation of Materials**

5.19.1. Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of GDPM and shall be built with labor and materials furnished by the Contractor without expense to GDPM.

5.19.1.1. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work.

5.19.1.2. With the written consent of GDPM, the buildings and utilities may be abandoned and need not be removed.

5.19.2. The Contractor shall, as directed by GDPM, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by GDPM.

5.19.2.1. When materials are transported in prosecuting the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation.

5.19.2.2. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage.

5.19.2.3. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

**5.20. Facilities**

5.20.1. The Contractor shall provide and maintain in a clean condition:

5.20.1.1. Suitable facilities, including temporary facilities, equipment, services, and enclosed storage for its use at the Site;

5.20.1.2. Adequate space, equipment, and furnishings to conduct progress meetings, and store approved documents and permits;

5.20.1.3. Adequate sanitary facilities for use by all Persons at the Site.

**5.21. Progress Cleaning**

5.21.1. The Contractor shall remove all waste materials, rubbish, and mud attributable to the Work in accordance with the Specifications, if applicable, and to an appropriate disposal location.

5.21.2. The Contractor shall perform weekly broom cleaning of hard flooring surfaces in the area of the Work.

5.21.3. The Contractor shall remove, at the end of each working day or more frequently, as appropriate, for the Project, all waste materials and rubbish from the disposal location.

5.21.4. The Contractor shall remove, as appropriate for the Project or as the A/E or GDPM directs, any waste materials or rubbish from areas adjacent to the Project.

5.21.5. The Contractor shall dispose of waste materials, rubbish, and construction debris in a lawful manner in approved recycling facilities or landfills and record of such disposal shall be available upon written request of GDPM.

5.21.6. If the Contractor fails to clean up during the progress of the Work, GDPM may clean up on behalf of the Contractor and at the Contractor's expense.

5.21.6.1. If the Contractor fails to maintain the areas adjacent to the Project clean and free of waste materials and rubbish, GDPM may also direct the local jurisdiction responsible for the area to have the area cleaned to its satisfaction at the Contractor's expense.

5.21.6.2. GDPM may deduct the cleaning costs from payments then or thereafter due the Contractor.

- If payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to GDPM.

5.21.7. The Contractor shall remove excavated material and spoil to a suitable off-site location approved by GDPM.

5.21.7.1. If GDPM designates a location on its property for disposal or storage of clean topsoil and/or subsoil in the Contract Documents, the Contractor shall remove such materials to the designated location.

## 5.22. Use of Premises

5.22.1. The Contractor shall use corridors, stairs, and elevators as designated by GDPM and only during those times that are designated by GDPM.

5.22.2. The Contractor shall exercise extreme care to not exceed the carrying capacity of elevators or damage the cab interior, including but not limited to damaging the cab padding, in any way.

5.22.3. Loitering or wandering through interior of buildings or exterior grounds outside the limits of the Work will not be permitted.

5.22.4. The Contractor shall confine its apparatus, materials, and the operations of its workers to the limits indicated by law, ordinances, permits and the directions of GDPM.

5.22.5. Unless expressly required or approved by GDPM, no signs or advertising of any kind will be permitted on or about the Site, except those appearing on trucks and trailers.

5.22.6. GDPM may deduct the costs associated with remedying Contractor's misuse of the premises from payments then or thereafter due the Contractor.

- If payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to GDPM.

## 5.23. GDPM Use of Premises / Possession Prior to Completion

5.23.1. GDPM shall have the right to take possession of or use any completed or partially completed part of the Work.

- I. Before taking possession of or using any Work, GDPM shall furnish the Contractor a list of items of Work remaining to be performed or corrected on those portions of the Work that GDPM intends to take possession of or use.

- II. However, failure of GDPM to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the Contract.
- III. GDPM's possession or use shall not be deemed acceptance of Work under the Contract.

5.23.2. While GDPM has such possession or use, the Contractor shall be relieved of the responsibility for:

- I. The loss of or damage to the Work resulting from GDPM's possession or use, notwithstanding the terms herein;
- II. All maintenance costs on the areas occupied; and
- III. Furnishing heat, light, power, and water used in the areas occupied without proper remuneration therefore.

5.23.3. If timely requested by the Contractor and if prior possession or use by GDPM delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the Contract shall be modified in writing accordingly.

#### 5.24. **Smoking and Tobacco Products**

5.24.1. Smoking is not permitted at any property under construction, unless GDPM has a specifically designated area for smoking, and is not permitted within 50 feet of any entrance of a GDPM owned building.

5.24.2. This prohibition applies to new construction and rehabilitation.

5.24.3. The Contractor shall enforce these restrictions on any individual employed by the Contractor, or a Subcontractor.

5.24.4. A violation of GDPM's Non-Smoking Policy may result in a fee for damages to be made payable by Contractor to GDPM in the amount of \$250 per incident per day. Parties acknowledge and agree that this fee for damages is a reasonable amount to provide for the violation of the Non-Smoking Policy and is not necessarily putative in nature, but covers the actual reasonable cost to remedy such breach.

5.24.5. GDPM may deduct the costs associated with Contractor's breach of GDPM's Non-Smoking Policy from payments then or thereafter due the Contractor.

- If payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to GDPM.

#### 5.25. **Correction of the Work**

##### 5.25.1. ***Before Substantial Completion***

5.25.1.1. If the Contractor provides Defective Work or fails or neglects to perform the Work in accordance with the Construction Progress Schedule, GDPM or the A/E may issue a written notice to the Contractor and Contractor's Surety directing the Contractor to correct the Defective Work or recover schedule deficiencies.

- Unless otherwise specified in that written notice, the Contractor shall begin to correct the Defective Work and recover the schedule deficiencies within no more than three days after GDPM issues the written notice.

**5.25.1.2.** If the Contractor fails to commence and diligently pursue correction of Defective Work or recovery of schedule deficiencies within three (3) business days of Contractor's receipt of written notice from GDPM or the A/E, GDPM may correct the Defective Work or take action to recover schedule deficiencies without giving further notice to the Contractor or Contractor's Surety.

**5.25.2. *During the Correction Period***

**5.25.2.1.** If GDPM issues a notice during the Correction Period, GDPM may correct the Defective Work itself without giving further notice to the Contractor or Contractor's Surety if the Contractor fails to:

- a. Notify GDPM in writing of the Contractor's intent to correct the Defective Work within 3 days after GDPM issues the notice; and
- b. Thereafter promptly commence and diligently pursue correction of Defective Work.

**5.25.2.2.** The Correction Period:

- a. Commences on the date of issuance of the written notice of Defective Work to Contractor and/or Contractor's surety and expires upon the date indicated in said written notice;
- b. Relates only to the Contractor's specific obligation and opportunity to correct the Work during the Correction Period;
- c. Does not establish a period of limitation with respect to any of the Contractor's other obligations under the Contract Documents;
- d. Has no relationship to the time within which GDPM may seek to enforce the Contract; and
- e. Does not establish a period of limitation with respect to the commencement of litigation to establish the Contractor's liability under the Contract or otherwise.

**5.25.3. *After the Correction Period:***

**5.25.3.1.** GDPM may correct, at the Contractor's expense, the Defective Work without giving further notice to the Contractor or Contractor's Surety if the Contractor or Contractor's surety fails to

- a. Notify GDPM in writing of the intent to correct the Defective Work; and
- b. Promptly commence and diligently pursue correction of Defective Work.

**5.25.4. *After Substantial Completion***

**5.25.4.1.** In addition to the Contractor's other obligations under the Contract Documents, if any of the Work is found to be Defective Work after Substantial Completion, the Contractor shall correct it promptly after receipt of written notice from GDPM to do so, unless GDPM has previously acknowledged and accepted the Defective Work in writing.

**5.25.4.2.** GDPM may send a copy of the written notice to the Contractor's Surety, but is not obligated to do so.

**5.25.5. Emergency Correction of Defective Work**

**5.25.5.1.** Notwithstanding any other provision of the Contract, if in GDPM's opinion the Defective Work presents a threat of imminent harm or danger to people, property, or the environment, GDPM may order the Contractor to immediately correct Defective Work or GDPM may correct the Defective Work, at Contractor's expense, itself without any prior notice to the Contractor or Contractor's Surety.

**5.25.6. Responsibility for Costs of Correction**

**5.25.6.1.** The Contractor shall pay all of the costs and damages associated with the correction of Defective Work and the recovery of schedule deficiencies.

**5.25.6.2.** Those costs and damages may include, but are not limited to:

- The related fees and charges of contractors, engineers, architects, attorneys, and other professionals; and
- The cost of correcting or replacing adjacent work.

**5.25.6.3.** GDPM may deduct those costs and damages from payments then or thereafter due the Contractor.

5.25.6.3.1. If payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to GDPM.

**6. ARTICLE VI: SUBCONTRACTORS**

**6.1. Definitions:** As used in this Contract:

**6.1.1. "Subcontract"** means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contract or a subcontract.

**6.1.2. "Subcontractor"** means any supplier, vendor, or firm that furnished supplies, materials, equipment, or services to or for the Contractor or another subcontractor.

**6.2. Evaluation and Approval**

**6.2.1.** When submitting its Bid, the Contractor shall submit a Subcontractor and Material Supplier Declaration Form through which the Contractor identifies its Subcontractor and provide a list of subcontractors and material suppliers and equipment with bid.

**6.2.2.** Within 10 days after the Notice to Proceed, the Contractor shall submit to GDPM, an updated Subcontractor and Material Supplier Declaration form.

**6.2.3.** In its discretion, GDPM will evaluate the use of proposed subcontractors. If GDPM rejects any proposed Subcontractor, the Contractor shall propose a replacement Subcontractor with no adjustment of the Contract Sum. The proposed replacement will also be evaluated.

**6.2.4.** If requested by GDPM, Contractor must supply additional information on use of proposed subcontractor within five business days of such request. The Contractor's failure to timely submit the information regarding a proposed Subcontractor may result in withholding payment to Contractor.

### **6.3. Suspension/Debarment**

6.3.1. The Contractor shall not enter into any subcontract with any subcontractor who has been denied participation by GDPM or has been temporarily or permanently denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or the State of Ohio.

### **6.4. Contractor's Responsibility**

6.4.1. The Contractor shall be as fully responsible for the acts or omissions of its Subcontractors and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.

6.4.2. Contractor is responsible for scheduling and coordinating the Work of the Subcontractors.

6.4.3. The Contractor is fully responsible for any delay, interference, disruption, or hindrance attributable to the Contractor's Subcontractors.

6.4.4. The Contractors shall require that each of its Subcontractors have a competent supervisor at the Site whenever the Subcontractor is performing Work.

6.4.5. The Contractor shall use GDPM's form of Subcontract for each of its subcontractors And material suppliers. Contractor shall not agree to any provision, which seeks to bind GDPM, or with terms inconsistent with or at variance from these Contract Documents.

6.4.6. The Contractor will not be relieved of its full responsibility for Subcontractors and their performance of the Work by:

6.4.6.1. The participation of GDPM, HUD, or the A/E in the processes described under this ARTICLE VI SUBCONTRACTORS or other related provisions of the Contract Documents;  
or

6.4.6.2. GDPM's rejection of a Subcontractor or failure to reject a Subcontractor.

### **6.5. Mandatory Contract Provisions/Forms**

6.5.1. The Contractor shall insert appropriate clauses in all subcontracts to bind Subcontractors to the terms and conditions of this Contract insofar as they are applicable in the work of Subcontractors.

6.5.2. GDPM reserves the right to reassign accepted agreements

6.5.3. Nothing contained in the Contract Documents shall create any contractual relationship between any subcontractor and GDPM or between the Subcontractor and HUD.

6.5.4. The Contractor must include in the contract with its Subcontractors the applicable labor provisions and prevailing wages as was provided to the Contractor by GDPM.

6.5.5. No less than 10 days before the Work is to be performed by a Subcontractor, or within a shorter period as mutually agreed by the Contractor and GDPM, the Contractor shall submit to GDPM a complete copy of the executed Subcontract between the Contractor and Subcontractor.

### **6.6. Replacement of Subcontractors**

6.6.1. The Contractor shall not replace any Subcontractor after execution of the Subcontract without prior written approval of GDPM.

6.6.2. The Contractor shall not add any subcontractors after the Contract Execution without

updating the Material Supplier and Subcontractor Form or prior to written approval of GDPM.

## **6.7. Contingent Assignment of Subcontract**

**6.7.1.** The Contractor hereby assigns its Agreement with each Subcontractor to GDPM provided that the assignment is effective only after termination of the Contract by GDPM and only for those agreements that GDPM accepts by notifying Contractor and applicable Subcontractor in writing.

## **6.8. Prompt Payment of Subcontracts**

**6.8.1.** The Contractor shall make payments to the Subcontractor in accordance with Applicable Law, including the Ohio Revised Code that include, without limitation, the requirements under this Section, 6.8 - Prompt Payment of Subcontracts.

**6.8.2.** If a Subcontractor requests payment in time to allow the Contractor to include the request in its Contractor Payment Application Request the Contractor, within ten calendar days after receipt of payment from GDPM, shall pay to the:

**6.8.2.1.** Subcontractor, an amount equal to the percentage of completion of the subcontractors contract allowed by GDPM for the amount of labor or work performed;

**6.8.2.2.** Material Supplier, an amount that is equal to all or a portion of the invoice for materials which represents the materials furnished by the material supplier

**6.8.3.** The Contractor may reduce the amount paid by any retainage provision contained in the Contract, invoice, or purchase order between the Contractor and Subcontractor and may withhold amounts that may be necessary to:

**6.8.3.1.** Resolve disputed liens or claims involving the Work or labor performed by the Subcontractor; or

**6.8.3.2.** Account for failure of the Subcontractor to perform its obligations under its agreement with the Contractor as required under the Ohio Revised Code.

**6.8.4. Labor Payments:** Within ten days of receipt of payment from GDPM, the Contractor shall pay Subcontractor in the following manner:

**6.8.4.1.** Partial payments to the Subcontractor for labor performed under either a Unit Price or lump sum Subcontract shall be made at the rate of 92 percent of the amount invoiced through the Subcontractor's request for payment that shows the Work of the Subcontractor is up to 50% complete.

**6.8.4.2.** After the Work of the Subcontractor is 50 percent complete, as evidenced by payments of at least 50 percent of the total amount due under the Subcontract, no additional funds shall be retained from payments for labor.

## **6.8.5. Material Payment**

**6.8.5.1.** Required by ORC for payment to Contractor by GDPM:

- The Contractor shall pay the Subcontractor at the rate of 95% of the invoice cost, not to exceed the scheduled value in a unit price or lump sum Subcontract, for materials delivered to the Site, or other offsite storage location approved by GDPM, provided the Subcontractor provides the information required with its request for payment.
  
- The Contractor shall pay the Subcontractor at the rate of 100% of the scheduled



value for materials incorporated into the Project.

**6.8.6.** If Contractor fails to comply with the payment provisions set forth, the Contractor shall pay to the applicable Subcontractor, in addition to any payment due, interest in the amount of 18 percent per annum of the payment due, beginning the eleventh day following the receipt of payment from GDPM and ending on the date of full payment of the payment due plus interest.

**6.8.7.** If GDPM receives a Claim Affidavit from a Subcontractor, Subcontractor shall proceed in accordance with Applicable Law, including the Ohio Revised Code.

**6.8.8.** Laborers, Subcontractors, and Material Suppliers may secure payment rights in accordance with Applicable Law, including the Ohio Revised Code.

## **6.9. Subcontracting To Meet Diversity & Contracting Goals**

**6.9.1.** The Contractor shall take the following steps to ensure that, whenever possible, Subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms:

**6.9.1.1.** Place qualified small and minority businesses and women's business enterprises on solicitations lists;

**6.9.1.2.** Ensure that small and minority businesses and women's business enterprises are solicited whenever they are potential resources

**6.9.1.3.** Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;

**6.9.1.4.** Establish a delivery schedule, where the requirements of the Contract permit, which encourages participation by small and minority businesses and women's business enterprises; and

**6.9.1.5.** Use the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

## **7 ARTICLE VII: SUBCONTRACTORS**

### **7.1. GDPM Obligation**

**7.1.1.** GDPM shall pay the Contractor the price as provided in the Contract.

### **7.2. Forms**

**7.2.1.** Unless expressly authorized to the contrary, Contractor must use appropriate GDPM forms.

### **7.3. Step One-Pencil Application**

**7.3.1.** The purpose of a pencil application (HUD Form) is assisting the Contractor in identifying any potential error or omission in the pay application.

**7.3.2.** If submitted timely (as set forth below) GDPM will review and help identify any potential issues. However, the GDPM Construction Administrator's approval or suggestion does not guarantee approval of the payment application by GDPM.

**7.3.3.** The Contractor shall initially submit a pencil application by no later than the 15th of each month.

**7.3.4.** Generally, the GDPM Construction Administrator will review the pencil application, and make any suggested corrections and return to the Contractor within a reasonable amount of time.

**7.3.5.** The Contractor shall then submit the final payment application to the GDPM Construction Administrator or project manager by the 23rd of each month.

**7.3.6.** Failure to submit a pencil application may result in a significant delay in payment.

#### **7.4. Progress Payments**

**7.4.1.1.** GDPM shall make progress payments approximately every 30 days as the work proceeds on estimates of Work accomplished which meets the standards of quality established under the Contract, as approved by GDPM.

**7.4.1.2.** Subject to GDPM's written determination and approval more frequent payments may be made to contractors which are qualified as small businesses.

**7.4.2.** Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by GDPM, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments.

- The breakdown shall be approved by GDPM and must be acceptable to HUD.
- If the contract covers more than one Project, the Contractor shall furnish a separate breakdown for each.
- The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price.
- The Contractor shall prorate its overhead and profit over the construction period of the contract.

**7.4.3.** The Contractor shall submit, on forms provided by GDPM, periodic estimates showing the value of the work performed during each period based upon the approved breakdown of the contract price.

- Such estimates shall be submitted not later than ---- days in advance of the date set for payment and are subject to correction and revision as required.
- The estimates must be approved by GDPM prior to payment.
- If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.

**7.4.4.** Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made:

**7.4.4.1.** I hereby certify, to the best of my knowledge and belief, that:

- The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the Contract;
- Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and
- This request for progress payments does not include any amounts which the prime Contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

## **7.5. Allowances**

**7.5.1.** The Contract Sum includes the Allowances (if any) identified in the Contract.

**7.5.2.** All allowances include the costs to the Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes.

## **7.6. Unit Prices**

**7.6.1.** Where the Contract provides that all or a part of the Work is to be Unit Price Work, initially that Contract Sum will include for all Unit Price Work:

**7.6.1.1.** An amount equal to the sum of the established Unit Prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract

**7.6.1.2.** The Contractor's fee on that Unit Price Work

**7.6.2.** The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Sum.

**7.6.2.1.** GDPM will determine the actual quantities and classifications of Unit Price Work performed by the Contractor.

**7.6.2.2.** Before final payment, an appropriate Change Order will be issued to reconcile the Contract Sum so that it reflects actual amount due to the Contractor on account of Unit Price Work actually performed.

## **7.7. Schedule of Values**

**7.7.1.** Within seven days after issuance of Letter of Intent or other period as mutually agreed by the Contractor and GDPM, the Contractor shall submit to GDPM a Schedule of Values on a form provided for by GDPM, with separate amounts shown for labor and materials for each branch of Work.

**7.7.1.1.** The Contractor shall clearly indicate on the Schedule of Values, but is not necessarily limited to, the cost of payment and performance bond(s), permit costs, the amount(s) allocated, including separate items for the Contractor's Fee (Overhead and Profit), and the amount(s) of labor and materials, as appropriate.

**7.7.2.** The grand total shown on the Schedule of Values shall equal the total Contract Sum.

**7.7.3.** GDPM may use the approved Schedule of Values to determine cost or credit to GDPM resulting from any change in the Work.

**7.7.3.1.** The first items shall be a breakdown of the General Conditions Cost

**7.7.3.2.** The amounts for labor and materials shall accurately reflect the cost for each item.

**7.7.3.2.1.** The Contractor shall clearly indicate on the Schedule of Values, the amount(s) allocated, including separate items for Contractor's Fee (overhead and profit), for each Section 3 certified Business used in the performance of the Work.

**7.7.3.2.2.** Contractor's Fee shall be included in the totals for labor and materials.

**7.7.3.3.** If the material allocation exceeds 55 percent of the Contract Sum, the Contractor shall provide, upon request, sufficient information to support the higher percentage.

**7.7.3.4.** Subcontract Work shall show amounts for labor and materials.

**7.7.3.2.3.** Fringe benefits shall be shown as a part of labor costs.

**7.7.3.5.** When more than one major structure is included in the Work, the Contractor shall subdivide the Schedule of Values accordingly, with cost details for each structure shown separately.

**7.7.3.6.** The line items shall be coordinated with line items in the Project Schedule, which may require division of items of Work by area of the Project by floor, phase, or other appropriate area.

**7.7.3.7.** Mechanical and electrical Work shall be included in separate line items for all major pieces of equipment, and group smaller equipment items by type.

**7.7.3.8.** Line items shall be included for each Allowance, Punch List Work, and Project Record Document Submittals, delivery of attic stock, and specified demonstrations and training.

**7.7.4.** GDPM may return the Schedule of Values to the Contractor for re-submittal if it does not meet the requirements or contains insufficient items or details of the Work, or approve the Schedule of Values if GDPM determines that it conforms to section 7.7

**7.7.5.** No payment shall be made until the GDPM has approved the Contractor's Schedule of Values.

## **7.8. Labor Payments/Retainage**

**7.8.1.** The unit or lump sum price stated in the contract shall be used in determining the amount to be paid and shall constitute full and final compensation for all the work.

**7.8.2.** Partial payment to the contractor for work performed under the lump sum price shall be based on a schedule prepared by the contractor and approved by GDPM and/or A/E who shall apportion the lump sum price to the major components entering into or forming a part of the work under the lump sum price.

**7.8.3.** GDPM shall make partial payments to the contractor for labor performed under either a unit or lump sum price contract at the rate of ninety per cent of the estimates prepared by Contractor and approved by the A/E.

**7.8.4.** All labor performed after the job is fifty percent completed shall be paid for at the rate of one hundred per cent of the estimates submitted by the contractor and approved by GDPM and/or the A/E.

## **7.9. Material Payments/Retainage**

**7.9.1.** Provided such materials have been inspected and found to meet the specifications, GDPM shall pay the Contractor at the rate of ninety percent of the invoice cost, not to exceed the scheduled value in a Unit Price or lump sum contract, for materials delivered to the Site, or other off-Site storage location approved by GDPM, provided the Contractor provides the following information with the Contractor Payment Request:

- A list of the fabricated materials consigned to the Project, giving the place of storage, together with copies of invoices, in order to verify quantity and cost; and
- A certification of materials stored off-site, prepared by the Contractor and signed-off on by GDPM and/or the A/E, to evidence that the materials are in conformity with the Specifications and have been tagged with the Project name and number for delivery to the Project.

**7.9.2.** The Contractor shall directly reimburse GDPM and/or the A/E for all costs incurred to visit a storage site, other than the areas adjacent to the Site.

**7.9.3.** Provided such materials have been inspected and found to meet the specifications, GDPM shall pay the balance of the scheduled value when the materials are incorporated into and becomes a part of the Work.

**7.9.4.** When payment is allowed for materials delivered to the Site or other off-site storage location, approved by GDPM, but not yet incorporated into the Project, such material shall become the property of the GDPM, but if such material is stolen, destroyed, or damaged by casualty before being used, the contractor shall be required to replace it at the contractor's own expense.

**7.9.5.** GDPM may, at its sole discretion, retain any material not ultimately incorporated into the Project or return it to the Contractor for credit of an amount proportionate to the value of the extra materials.

**7.9.6.** Payment on approved estimates filed with GDPM or its representative shall be made within (30) thirty days.

**7.9.7. Release of Retainage**

**7.9.7.1.** When the Contractor has achieved Substantial Completion of all Work, and there is no other reason to retain funds; upon request of the Contractor, the funds retained in connection with the Work shall be released and paid to the Contractor, withholding only that amount necessary to assure faithful completion in the sole discretion of GDPM.

**7.10. Payments Withheld**

**7.10.1.** GDPM may withhold funds from or may assess Liquidated Damages against a Contractor Payment Request.

**7.10.2.** GDPM may decline to approve any Contractor Payment Request or part thereof, or nullify any previous Contractor Payment Request, in whole or in part, to the extent necessary in GDPM's sole opinion to protect GDPM from loss because of:

- Defective Work not remedied;
- Overpayment of any schedule of values line item without prior approval of related change order by Contracting Officer
- Overpayment due to calculation error;
- Damage caused by the Contractor;
- Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- Reasonable evidence that the Work will not be completed within the Contract Times, and that the unpaid balance would not be adequate to cover damages under the Contract Documents for the anticipated delay;
- Failure to comply with Applicable Law including, but not limited to, the requirements of the Ohio Revised Code.

## 7.11. Payment Request

- 7.11.1. The Contractor and each of its subcontractors, regardless of tier, shall execute a Payment Release Affidavit to certify that the Contractor and each of its subcontractors, regardless of tier, have complied with all applicable requirements of the ORC, and to certify that all of its subcontractors have been paid in full for all Work performed or materials furnished under the Contract.
- 7.11.2. GDPM shall pay Contractor in approximately 30 days from the date of acceptance of the Payment Request.
- 7.11.3. The Contractor, as a condition precedent to final payment, shall complete all requirements of the Contract Documents.
- 7.11.4. Acceptance of final payment by the Contractor or a Subcontractor constitutes the payee's waiver of all claims against GDPM except those previously made in writing and identified by that payee as unsettled at the time of the final Contractor Payment Request.

## 8 Article VIII: Contract Modifications

### 8.1. Changes in Work

- 8.1.1. GDPM may order changes in the Work without invalidating the Contract, subject to the limitations set forth in this Article and elsewhere within the Contract Documents, a change in the Work may be accomplished by a Change Order, Change Directive, or order for a minor change in the Work.
- 8.1.2. Except as provided, no order, statement or conduct of GDPM shall be treated as a change or entitle the Contractor to an equitable adjustment.
- 8.1.3. Only GDPM's Contracting Officer has authority to modify any term or condition of this Contract. Any Contract modification shall be authorized in writing.
- 8.1.4. The Contracting Officer may modify the contract unilaterally:
- Pursuant to a specific authorization stated in a Contract clause; or
  - For administrative matters which do not change the rights or responsibilities of the parties.
- 8.1.5. All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and GDPM.
- 8.1.6. Except as expressly stated herein, the Contractor's failure to obtain prior written authorization from GDPM for a change in the Work constitutes a waiver by the Contractor of an adjustment to the Contract Sum or Contract Time or both.
- 8.1.7. The Contractor shall perform all changes in the Work under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly with the change unless otherwise provided in the Change Order, Change Directive or order for a minor change in the Work.
- 8.1.8. **HUD Approval:** When a proposed modification requires the approval of HUD prior to its issuance; such modification shall not be effective until the required approval is received by GDPM.

### 8.2. Change Order

- 8.2.1. GDPM may, at any time, without notice to the sureties, by written order designated or

indicated to be a change order, make changes in the Work within the general scope of the

Contract including changes:

- In the specifications (including drawings and designs);
- In the method or manner of performance of the Work;
- GDPM-furnished facilities, equipment, materials, services, or site; or
- Directing the acceleration of the Work.

### **8.3. Increase or decrease of cost**

**8.3.1.** If any change causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the Work under this contract, whether or not changed by any such order, GDPM shall make an equitable adjustment as set forth in Section 8.8 *Change Order Cost or Credit Determination* below and modify the Contract in writing.

**8.3.2.** The Contractor shall proportionally increase the amount of the Bond whenever the Contract Sum is increased.

**8.3.3.** If any notice of any change affecting the Contract is required by the provision of the Bond, notice is the Contractor's responsibility.

**8.3.4.** Except for an adjustment based on defective specifications, no proposal for any change shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as required.

**8.3.4.1.** In the case of defective specifications for which GDPM is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specification.

**8.3.5.** The Contractor must assert its right to an adjustment within 30 days after:

**8.3.5.1.** Receipt of a written change order, or

**8.3.5.2.** The furnishing of a written notice by submitting a written statement describing the general nature and the amount of the proposal.

**8.3.6.** If the facts justify it, GDPM may extend the period for submission.

### **8.4. Change Directive**

**8.4.1.** Notwithstanding Form HUD-5370 Article 29(b), Parties agree that Change Order Directives may be utilized during the course of the Work.

**8.4.2.** A Change Directive is a written order prepared by GDPM directing a change in the Work and May, if necessary, state a proposed basis for adjustment, if any, of Contract Sum or Contract Time, or both.

**8.4.3.** A Change Directive shall be used to direct a change in the Work in the absence of a total agreement on the terms of a Change Order and shall only be used in the absence of total agreement on the terms of a Change Order concerning the associated change of the Work.

**8.4.4.** Upon receipt of a Change Directive, the Contractor shall promptly proceed with the change in the Work involved.

**8.4.5.** Within 14 days after receiving the Change Directive, the Contractor shall respond with a



Change Order Proposal for adjustment of the Contract Sum or Contract Time or both.

**8.4.6.** If the Contractor does not respond to the Change Directive as required above, GDPM shall determine the adjustments, if any, of the Contract Sum and Contract Times.

- If the Contractor does not agree with GDPM's determination, the Contractor shall initiate a claim within 10 days of the date on which GDPM issues the determination, and the Contractor's failure to do so shall constitute an irrevocable waiver the Claim.

**8.4.7.** If GDPM and the Contractor agree on the adjustment of the Contract Sum and Contract Time associated with the Change Order Directive, GDPM shall prepare an appropriate Change Order.

## **8.5. Change Order Procedure**

**8.5.1.** Any Change Order Request must be in writing and submitted by the Contractor to GDPM in accordance with the Notice Provision.

**8.5.2.** The Contractor's cost of preparing and providing Proposals is included in the Contract Sum.

**8.5.3.** If GDPM Agrees with Change Order Proposal:

- GDPM shall prepare each Change Order, attach the supporting documentation, and issue the Change Order to the Contractor for signature.
- Within 3 days after issuance of Change Order to Contractor, Contractor must sign the Change Order and resubmit to GDPM.
- Change Order is not approved until GDPM's Contracting Officer signs the Change Order.

**8.5.4.** If GDPM disagrees with Change Order Proposal or Contracting Officer doesn't approve Change Order:

- GDPM will notify Contractor in writing with reasons; and
- Contractor has 14 days to modify the Change Order Request or invoke Article Dispute Resolution/Claim Procedure.
- Failure to reach an agreement on any proposal shall be a dispute under Article Dispute Resolution/Claim Procedure.

**8.5.5.** Nothing in the change order procedure, however, shall excuse the Contractor from proceeding with the contract change pursuant to an issued Change Directive.

## **8.6. Change Order Proposal**

**8.6.1.** The Contractor's written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract with at least the following details:

### **8.6.1.1.** Direct Costs:

- Materials (list individual items, the quantity and unit cost of each, and the aggregate cost)
- Transportation and delivery costs associated with materials
- Labor breakdowns by hours or unit costs (identified with specific Work to be performed)
- Construction equipment exclusively necessary for the change
- Costs of preparation and/ or revision to shop drawings resulting from the change
- Worker's Compensation and Public Liability Insurance

- Employment taxes under FICA and FUTA
- Bond Costs

**8.6.1.2.** Indirect Costs: Indirect costs may include overhead, general and administrative expenses, and fringe benefits not normally treated as direct costs.

**8.6.1.3.** Profit:

**8.6.1.3.1.** The amount of profit shall be negotiated and paid in accordance with Section 8.9 *Change Order Cost or Credit Determination* below and may vary according to the nature, extent, and complexity of the work required by the change.

- The allow-ability of the direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR 1-31), in effect on the date of this Contract.
- The Contractor shall not be allowed a profit on the profit received by any subcontractor.
- Equitable adjustments for deleted work shall include a credit for profit and may include a credit for indirect costs.
- On proposals covering both increases and decreases in the amount of the contract, the application of indirect costs and profit shall be on the net-change in direct costs for the Contractor or subcontractor performing the Work.

**8.6.2.** The Contractor shall include in the proposal its request for time extension (if any), and shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the Contract in its entirety.

**8.6.3.** GDPM shall act on proposals within 30 days after their receipt, or notify the Contractor of the date such action will be taken. Equitable adjustments shall be made in accordance with Section

*8.9 Change Order Cost or Credit Determination* below

**8.6.4.** Failure to reach an agreement on any change order proposal shall be a dispute under the Disputes Article herein. Nothing in this Section, however, shall excuse the Contractor from proceeding with the contract as changed.

**8.6.5.** By signing a Change Order, the Contractor irrevocably certifies that the elements of a Change Order described herein are completely satisfied, and waives all rights, if any, to seek further adjustment of the Contract Sum or Contract Times, or both, at a later date with respect to the associated change in the Work, including without limitation on account of the "cumulative impact" of the associated change in the Work in combination with one or more of the other changes in the Work.

**8.6.6.** No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.

**8.6.7.** Except in an emergency endangering life or property, as determined by GDPM, no change shall be made by the Contractor without a prior written authorization from GDPM's Contracting Officer. When the Change Order is signed by the Contractor and GDPM's Contracting Officer, the fully executed Change Order modifies the Contract Documents and authorizes and directs the Contractor to proceed, and the Contractor shall promptly proceed

with the associated change in the Work.

## **8.7. Differing Site Conditions**

**8.7.1.** The Contractor shall promptly, and before the conditions are disturbed, give a written notice to GDPM of:

- Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or
- Unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract. Written notice of the condition shall be given immediately to GDPM.
- The Contractor's failure to give notice of the Differing Site Condition as required shall constitute an irrevocable waiver of any associated claim.

**8.7.2.** GDPM shall investigate the site conditions promptly after receiving the notice.

- Work shall not proceed at the affected site, except at the Contractor's risk, until GDPM has provided written instructions to the Contractor.
- If the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to GDPM within ten days after receipt of such instructions and, in any event, before proceeding with the Work.
- An equitable adjustment in the Contract price, the delivery schedule, or both shall be made under this Section and in accordance with Section 8.9 *Change Order Cost or Credit Determination* below, and the Contract modified in writing accordingly.

**8.7.3.** No request by Contractor for an equitable adjustment to the Contract under this Section shall be allowed, unless the Contractor has given the written notice required; provided that the time prescribed for giving such written notice may be extended by GDPM.

**8.7.4.** No request by Contractor for an equitable adjustment to the Contract under this Section shall be allowed if made after final payment under this contract.

**8.7.5.** If GDPM determines that the Contractor has not encountered a Differing Site Condition and the Contractor does not agree with that determination, the Contractor must initiate a Claim within 10 days of the date that GDPM issues its determination.

## **8.8. Minor Changes in the Work**

**8.8.1.** Notwithstanding Form HUD-5370 Article 29(b), GDPM may order minor changes in the Work not involving adjustment of the Contract Sum or extension of the Contract Times and not inconsistent with the intent of the Contract Documents.

- Such changes shall be effected by written order ("no cost change order") issued to the Contractor.

**8.8.2.** The Contractor shall promptly carry out each order for a minor change in the Work if the Contractor agrees that the order does not involve adjustment of the Contract Sum and Contract Times.

**8.8.3.** If the Contractor reasonably believes that it would be entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of an order for a minor change in the Work, the Contractor, within 3 business days after receiving the order, shall give GDPM written notice of the Contractor's position, and not proceed with the subject Work without

First receiving a Change Order related to it.

**8.8.4.** The Contractor waives its right to an adjustment of the Contract Sum or Contract Times on account of an order for a minor change in the Work by:

- a. Starting the Work that is the subject of the order for a minor change in the Work; or
- b. Failing to give the notice described herein within 3 business days after receiving the order for a minor change in the Work.

#### **8.9. Change Order Cost or Credit Determination**

**8.9.1.** Notwithstanding any provisions set forth in this Section 8.8 *Change Order Cost of Credit Determinations*, the allowability of any direct and indirect costs shall be determined in accordance with the Contract Cost Principles and Procedures for Commercial Firms in Part 31 of the Federal Acquisition Regulation (48 CFR1-31), as implemented by HUD Handbook 2210.18, in effect on the date of this Contract.

**8.9.2.** The maximum cost or credit resulting from a change in the Work shall be determined as described below.

- a. Proposals shall include the information required.
- b. A Unit Price Proposal shall only be valid when incorporated into the Contract by Change Order.
- c. The maximum cost or credit includes all compensation for impact costs. However, additional costs for impacts shall not be allowed.

**8.9.3.** The Contractor shall not assign any portion of the Work to another Person whereby the Contractor would benefit directly or indirectly from the double application of charges for overhead or profit.

**8.9.4.** GDPM may require notarized invoices for material costs and may audit the records of the Contractor and Subcontractors.

**8.9.5.** For each change in the Work, the Contractor shall furnish a detailed Proposal itemized on the Proposal Worksheet Summary Form published by GDPM through which the Contractor shall document the related changes in the Contract Sum.

- a. Any Subcontractor pricing shall also be itemized on the Proposal Worksheet Summary Form.

#### **8.9.6. Pricing Criteria**

**8.9.6.1.** This Section *Pricing Criteria* establishes the exclusive and maximum amount that GDPM shall pay for any Change Order, including, but not limited to, all amounts for interference with, delay, hindrance, disruption, or impact of the Work

- a. These Pricing Criteria also govern the value of deduct Change Orders and the Contractor's entitlement to additional compensation or damages through the claims and dispute resolution processes on account of changes in the Work.

**8.9.6.2.** In order to expedite the review and approval process, Proposals shall be prepared in the categories and order as listed below.

#### **8.9.6.3. Contractor Personnel Costs**

- a. The Contractor's on-Site management (including supervision and administrative personnel) are not subject to State or Federal Prevailing Wage Rates.
- b. These costs will be calculated on an hourly basis according to the rates acceptable to GDPM.
- c. In no event will the Contractor be entitled to an increase in the Contract Sum on

account of Contractor Personnel Costs unless the Contractor actually incurs

Additional Contractor Personnel Costs solely on account of the associated change in the Work.

**8.9.6.4. Labor**

- a. Field labor directly involved in the Work shall be based upon the actual rate of pay to the worker.
- b. If the Project is subject to payment of prevailing wage rates, field labor shall be paid according to the relevant classification of labor as established in the applicable prevailing wage determination.
- c. In no event will the Contractor be entitled to an increase in the Contract Sum on account of labor costs unless the Contractor actually incurs additional labor costs solely on account of the associated change in the Work.
- d. Under no conditions will the increase exceed those additional labor costs the Contractor actually incurs.
- e. The cost for supervision above the level of working forepersons (such as general forepersons, superintendent, project manager, etc.) Is included in the adjustment to Contractor Personnel Costs.

**8.9.6.5. Fringes**

- a. Fringe benefit credit for labor is only allowable for prevailing wage fringe benefits including, but not limited to, Health and Welfare, vacation, apprenticeship training, and certain types of pension plans.
- b. Each fringe benefit for which credit is requested shall be calculated on an hourly basis and listed as a separate line item.
- c. The Contractor shall submit documentation supporting the calculation of the amounts for each fringe benefit for each worker classification, including labor provided by Subcontractors.

**8.9.6.6. Allowable Payroll Expenses:** Allowable payroll expenses for labor including payroll taxes as well as other benefits that are required by Applicable Law, shall each be a separate line item.

**8.9.6.7. Equipment Rentals**

- a. All charges for certain non-owned heavy or specialized equipment at up to 100 percent of the documented rental cost
- b. No rental charges shall be allowed for hand tools, minor equipment, simple scaffolds, etc.
- c. Downtime due to repairs, maintenance and weather delays shall not be allowed.
- d. Contractor shall submit copies of actual paid invoices to substantiate rental costs.

**8.9.6.8. Owned Equipment**

- a. All charges for certain heavy or specialized equipment owned by the Contractor or Subcontractor performing the Work shall be paid at up to 100 percent of the cost listed by the current edition of the Associated Equipment Distributors' *AED Green Book* heavy equipment rental rates.
- b. No recovery shall be allowed for hand tools, minor equipment, simple scaffolds, etc.
- c. The longest period of time that the equipment is to be required for the Work shall be the basis for the pricing.
- d. Downtime due to repairs, maintenance, and weather delays shall not be allowed.

**8.9.6.9. Trucking**

- a. A reasonable delivery charge or per-mile trucking charge for delivery of required

Materials or equipment.

- b. Charges for use of a pick-up truck shall not be allowed.

**8.9.6.10. Materials**

- a. The actual cost (including all discounts, rebates or related credits) of all materials incorporated into the changed Work.
- b. Documentation shall show costs, quantities, or Unit Prices of all items, as appropriate.
- c. The cost or credit for reusable materials shall be limited to 33 percent of the material cost for each use.

**8.9.6.11. Contractor's General Conditions Costs**

- a. The Contractor's General Conditions Costs to the extent attributable to an associated change in the Contract Time for achievement of Final Acceptance resulting from the change in Work.
- b. In no event shall the Contract Sum adjustment per day of Contract Time adjustment exceed an amount equal to (1) the sum of the General Conditions Costs line items in the Contractor's Schedule of Values approved by GDPM, (2) divided by the total number of days of the original Contract Time for achievement of Final Acceptance.
- c. The Contractor shall:
  - o Exclude the bond premium from the Schedule of Values for the purposes of the calculation; and
  - o Include the actual adjustment of the Bond Premium attributable to an associated change in the Contract Sum.
- d. If the Contractor purchases Builder's Risk insurance for the Project, the Contract shall:
  - o Exclude the Builder's Risk insurance premium from the Schedule of Values for the purposes of the calculation; and
  - o Include the actual adjustment of the Builder's Risk insurance premium attributable to an associated change in the Contract Sum.

**8.9.6.12. Subcontractor Overhead and Profit**

- a. Adjustment of the Contract Sum on account of a change in Subcontractor-performed Work shall include the Subcontractor's aggregate overhead and profit allowance equal to 15 percent of the sum of the Subcontractor's costs that are associated with that changed Work.
- b. The allowance applies to each Subcontractor tier.
- c. The allowance covers:
  - 1. The costs required to schedule and coordinate the Work
  - 2. Telephone
  - 3. Telephone charges
  - 4. Facsimile
  - 5. Telegrams
  - 6. Postage
  - 7. Photos
  - 8. Photocopying
  - 9. Hand tools
  - 10. Simple scaffolds (one level high)
  - 11. Tool breakage

12. Tool repairs
13. Tool replacement
14. Tool blades
15. Tool bits
16. Home office estimating and expediting
17. Home office clerical and accounting support
18. Home office labor (management, supervision, engineering)
19. All other home office expense, legal services, travel, and parking expenses

- d. An exception is allowed for shop or engineering labor, which shall not be subject to Prevailing Wage rates for steel fabricators, sheet metal fabricators, and sprinkler system fabricators performing work off-site.
  - o Recovery for these matters shall be allowed on an hourly basis.
- e. An exception is allowed for field supervision labor, for those portions of the Change Order Work that will be performed, or was performed, at times when the superintendent is not required to be on site, including but not limited to overtime hours due to acceleration and/or extensions of the Contract Times.
  - o Recovery for this matter will be allowed on an hourly basis.

**8.9.6.13. Contractor's Fee:** Adjustment of the Contract Sum on account of a change in the Work shall include an allowance for the Contractor's Fee equal to 10 percent of the sum of the costs that are associated with that changed Work.

**8.9.6.14. Miscellaneous**

- a. Adjustment of the Contract Sum on account of a change in Work may include the following costs with no allowance for Contractor's Fee or Subcontractor overhead and profit.
  - The premium portion only for approved overtime (labor and fringes).
  - The straight time portion is included.

**8.9.6.15. Costs that shall not be reimbursed for Change Order Work include the following**

- b. Voluntary employee deductions including, but not limited to, deductions for charitable donations or U.S. savings bonds
- c. Employee profit sharing

**8.10. Time Extension**

**8.10.1.** Contractor's **Change** Order Proposal shall include sufficient information and dates to demonstrate whether and to what extent the change will delay the completion of the Contract in its entirety. Every adjustment of the Contract Times associated with any Change Order Proposal shall be determined as provided herein, which establishes the Contractor's maximum entitlement for any change in the Work, including without limitation all adjustments for interference, delay, hindrance, or disruption of the Work.

**8.10.2.** This **also** governs time adjustments for deduct Change orders and Contractor's entitlement to additional time through the claims and dispute resolution process on account of changes in the Work.

**8.10.3.** The Contractor shall substantiate all changes in the Contract Times with:

- a. A written description of the nature of the interference, disruption, hindrance or



Delay ("disruption or delay");

- b. Identification of Persons and events responsible for the disruption or delay;
- c. Date, or anticipated date, of commencement of the disruption or delay;
- d. Identification of activities by schedule activity number and name on the Construction Progress Schedule, which may be affected by the disruption or delay, or new activities created by the disruption or delay and the relationship with existing activities;
- e. Anticipated duration of the disruption or delay and of any remobilization period;
- f. Specific number of days of extension requested and specific number of days for remobilization requested;
- g. Recommended action to avoid or minimize any future disruption or delay; and
- h. A detailed written proposal for an increase in the Contract Sum which would fully compensate the Contractor for all costs of acceleration of the Work needed to completely overcome the associated delay, if any.

**8.10.4.** A Change Order may authorize extension of the Contract Time for specific elements, while maintaining milestone dates for unaffected elements. Such a Change Order may also authorize an appropriate adjustment to Liquidated Damages.

**8.11. Critical Path**

**8.11.1.** Time extensions shall depend upon the extent to which the Work on the critical path of the Construction Progress Schedule is affected.

**8.12. Granting Time Extension**

**8.12.1.** A Change Order granting a time extension may provide that the Contract Times shall be extended for only elements so interfered with, disrupted, hindered, or delayed and related remobilization and that shall not be altered and may further provide for adjustment of Liquidated Damages.

**9 ARTICLE IX: DISPUTE RESOLUTION & CLAIM PROCEDURE**

**9.1. General**

**9.1.1.** "Claim," as used in this Article, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract.

**9.1.2.** A claim arising under the Contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

**9.1.3.** A voucher, invoice, application for payment, or other routine request for payment that is not in dispute when submitted is not a Claim. However, the submission may be converted to a Claim by complying with the requirements of this Article, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

**9.1.4.** Except for disputes arising under the article entitled Labor Standards - Davis Bacon and Related Acts, herein, all disputes arising under or relating to this Contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this Article.

**9.1.5.** All Claims by the Contractor shall be made in writing and submitted to GDPM for a written decision.

9.1.6.A claim by GDPM against the Contractor shall be subject to a written decision by the Contracting Officer.

## **9.2. Initiation of a Claim by Contractor**

9.2.1. Every Claim shall accrue upon the date of occurrence of the event giving rise to the Claim.

9.2.2. Except as provided, the Contractor shall initiate every Claim by giving written notice of the Claim to GDPM within fourteen (14) days after occurrence of the event giving rise to the Claim, with the following exceptions:

9.2.2.1. The 14-day time limit on initiating a Claim arising from the response of an RFI by GDPM begins to run on the date of the response.

9.2.2.2. The 14-day time limit on initiating a Claim arising from GDPM's determination concerning a Differing Site Condition begins to run on the date of the determination.

9.2.2.3. Contractor's written notice of claim must be delivered to the Contracting Officer prior to GDPM's issuance of final contract payment.

9.2.3. The Contractor's written notice of a Claim shall provide the following information:

9.2.3.1. Nature and anticipated amount of the impact, including all costs for any interference, disruption, hindrance, or delay, which shall be calculated and be a fair and reasonably accurate assessment of the damages suffered or anticipated by the Contractor;

9.2.3.2. Identification of the circumstances responsible for causing the impact, including, but not limited to, the date or anticipated date, of the commencement of any interference, disruption, hindrance, or delay;

9.2.3.3. Identification of activities on the Construction Progress Schedule that will be effected by the impact or new activities that may be created and the relationship with existing activities;

9.2.3.4. Anticipated impacts and anticipated duration of any interference, disruption, hindrance, delay, or impact, and any remobilization period; and

9.2.3.5. Recommended action to avoid or minimize any interference, disruption, hindrance, delay, or impact.

9.2.4. The Contractor's failure to initiate a Claim as and when required shall constitute the Contractor's irrevocable waiver of the Claim.

## **9.3. Substantiation of Claims General**

9.3.1. Within 30 days after the initiation of a Claim, the Contractor shall submit to the project manager or other GDPM designee, an electronic copy of all information and statements required to substantiate a Claim and all other information that the Contractor believes substantiates the Claim.

9.3.2. The Contractor shall file the one electronic copy with GDPM.

9.3.3. The Contractor shall substantiate all of its Claims by providing the following minimum information:

- A narrative of the circumstances, which gave rise to the Claim, including without limitation the start date of the event or events and the actual or anticipated finish date;
- Detailed identification of the Work affected by the event giving rise to the Claim;

- Copies of the Contractor's daily log for each day of impact;
- Copies of relevant correspondence and other information regarding or supporting Contractor's entitlement;
- Copies of any and all information related to the Contractor's costs, including all job cost reports, bid take offs, and other financial information related to the Contractor's Claim;
- A notarized certification

#### **9.4. Substantiation of Claims for increase of the Contract Sum**

**9.4.1.**In addition to the minimum information required by Contractor, the Contractor shall substantiate each Claim for an increase of the Contract Sum with:

- Written documentation of the actual additional direct and indirect costs to the Contractor due to the event giving rise to the Claim;
- A written statement from the Contractor that the increase requested is the entire increase in the Contract Sum associated with the Claim; and
- The general substantiation documentation.

#### **9.5. Substantiation of Claims for Extension of the Contract Time**

**9.5.1.**In addition to the minimum information required by Contractor, the Contractor shall substantiate each Claim for an extension of the Contract Times with:

- Written documentation of the actual delay to the critical path of the Construction Progress Schedule due to the event giving rise to the Claim;
  - A detailed written Proposal for an increase in the Contract Sum that would fully compensate the Contractor for all costs of acceleration of the Work needed to completely overcome the associated delay, A written statement from the Contractor that the extension requested is the entire extension of the Contract Times associated with the Claim; and
- The general substantiating documentation.
- In addition, if adverse weather conditions are the basis for a Claim for additional time, the Contractor shall document the Claim with data substantiating that weather conditions were abnormal for the period, could not have been reasonably anticipated, and had an adverse effect on a critical element of the scheduled construction.

#### **9.6. Certification of a Claim**

**9.6.1.**The Contractor shall certify each Claim within 30 days after initiating the Claim or before Contract Completion, whichever is earlier, by providing the notarized certification specified below, signed and dated by the Contractor:

"The undersigned Contractor certifies that the Claim is made in good faith; that the supporting data is accurate and complete to the best of the Contractor's knowledge and belief; that the amount requested is a fair, reasonable, and necessary adjustment for which the Contractor believes that GDPM is liable; and that the undersigned is duly authorized to certify the Claim on behalf of the Contractor."

## 9.7. Delay and Delay Damage Limitations

9.7.1. Subject to other provisions of the Contract, the Contractor will be entitled to an extension of the Contract Times if Contractor demonstrates that delay is "excusable". To be excusable, the delay must be a delay in the commencement or progress of Work on the critical path of the Construction Progress Schedule and shall be caused by acts of unforeseeable nature or the public enemy, acts of the government not arising from the Contractor's failure to comply with Applicable Law, fires, floods, epidemics, weather, and labor disputes beyond the Contractor's control. The delay shall be beyond the control of the Contractor and without fault or negligence of Contractor and shall be unforeseeable prior to submitting a response to the initial solicitation for construction Work.

9.7.2. Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum, or an extension of the Contract Times, or both:

- On account of the impact of any normal adverse weather on any of the Work or on account of the impact of any abnormal adverse weather on Work not on the critical path;
- Unless contractor demonstrates that the event giving rise to the claim caused a delay to the overall completion of the Contract;
- To the extent that a delay occurs concurrently with a delay attributable to the Contractor; or
- On account of the delay of any Work not on the critical path.

9.7.3. When the Contractor is prevented from completing any part of the Work on the critical path within the Contract Time due to weather conditions, provided the Contractor properly initiates a Claim, the Contract Time will be extended by one (1) day for each work day lost due to weather that delays Work on the critical path in excess of those in the following table:

Month(s)	Number of Workdays Lost Due To Weather
January & February	8
March	7
April	6
May	5
June - August	4
September	5
October - December	6

9.7.4. Contractor shall not be entitled to an increase in Contract Time and/or Contract Sum for non- delays. Non-excusable delays include, but are not limited to, delays which are foreseeable or preventable by the Contractor (e.g. financial difficulties, supplier delays where supplies are obtainable from other source, defective specifications where defect is apparent prior to start of the Contract Work.).

9.7.5. Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum or any type of damages on account of a delay in the commencement or progress of Work on the critical path. Such claims may be compensable in limited circumstances and in accordance with the following:

9.7.5.1. GDPM Ordered Suspension of Work. Increased sum may be permitted for increased costs of performance, excluding profit, for "unreasonable delays", ordered by GDPM.

**9.7.5.2.** Constructive Suspension of Work: work is prevented by GDPM without express order of Contracting Officer (e.g. delay in issuance of notice to proceed, delay in availability of site, delay due to interference with Contractor's Work, delay of approvals, delay in inspections).

**9.7.5.3.** If GDPM does not order a Suspension of Work, the delay will generally not be compensable unless Contractor demonstrates that GDPM is solely at fault for the delay (E.g. GDPM implied duty to cooperate).

**9.7.5.4.** For such delay claims, Contractor must notify GDPM in writing within 14 days of event giving rise to the claim.

**9.7.5.5.** For such delay claims, potential recovery is limited to:

9.7.5.5.1. Indirect cost increase that occurred during the extended performance period;

9.7.5.5.2. Unabsorbed office overhead that occurred during the extended performance; period

9.7.5.5.3. Material cost increases that occur during the delay;

9.7.5.5.4. Lost productivity caused by the delay;

9.7.5.5.5. Damages directly related to or attributable to the delay.

**9.7.6.** Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum or any type of damages arising from a delay in the commencement or progress of Work caused by the occurrence or non-occurrence of an event beyond GDPM's control such as acts of Nature or the public enemy, acts of the government, fires, floods, epidemics, labor disputes, unusual delivery delays, weather, or damages caused by the Contractor.

## **9.8. Derivative Claims**

**9.8.1.** Notwithstanding any other provision of the Contract Documents to the contrary, if GDPM prosecutes a claim, suit, or appeal against a Separate Consultant or Separate Contractor to recover damages the Contractor suffers on account of the acts or negligent acts of a Separate Consultant or Separate Contractor or person or entity for whom either is legally responsible, GDPM's liability to the Contractor shall not exceed the amount GDPM actually recovers from the Separate Consultant or Separate Contractor on account of those damages less the costs GDPM incurs recovering them. GDPM is not obligated to prosecute any such claim, suit, or appeal.

## **9.9. Claim Decision**

**9.9.1.** GDPM shall, within 60 (unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.

**9.9.2.** The Contracting Officer's decision shall be final unless the Contractor:

- Appeals in writing to a higher level at GDPM in accordance with GDPM's policy and procedures;
- Refers the appeal to an independent mediator or arbitrator; or
- Files suit in a court of competent jurisdiction. Such appeal(s) must be made within 15 days after receipt of GDPM's decision.

**9.9.3.** The Contractor shall proceed diligently with performance of the contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of GDPM.

**9.10. Audit of a Claim**

**9.10.1.** All Claims shall be subject to audit at any time following filing of the Claim, whether or not the Claim is part of a lawsuit.

**9.10.2.** The audit may be performed by GDPM staff or by a consultant engaged by GDPM.

**9.10.3.** The audit may begin upon 10-days' notice to the affected Contractor or affected Subcontractor.

**9.10.4.** The Contractor shall cooperate with the request.

**9.10.5.** Failure of the Contractor or Subcontractor to produce sufficient records to allow GDPM to audit and verify a Claim shall constitute an irrevocable waiver of the Claim or portion of the Claim that could not be completely audited.

**9.10.6.** The Contractor shall make available to GDPM all Contractor and Subcontractor documents related to the Claim including, without limitation, the following documents:

1. Daily time sheets and superintendent's daily reports;
2. Union agreements, if any, and employer agreements;
3. Insurance, welfare, fringes, and benefits records;
4. Payroll tax returns;
5. Material invoices, purchase orders, Subcontracts, and all material and supply acquisition contracts;
6. Material cost distribution worksheets;
7. Equipment records (list of Contractor equipment, rates, etc.);
8. Vendor rental agreements and Subcontractor invoices;
9. Subcontractor payment certificates;
10. Canceled checks (payroll and vendors);
11. Job cost report;
12. Job payroll ledger;
13. General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals;
14. Cash disbursements journal;
15. Financial statements for all years reflecting operations on the Project;
16. Income tax returns for all years reflecting operations on the Project;
17. Depreciation records on all equipment utilized whether the records are maintained by the Contractor, its accountant, or others;
18. If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all other source documents;

19. All documents that reflect the Contractor's actual profit and overhead during the years the Project was being performed;
20. All documents related to the preparation of the Contractor's Bid, including the final calculations on which the Bid was based, unless the documents are placed in escrow under provisions of the Instructions to Bidders;
21. All documents that relate to the Claim together with all documents that support the amount of damages as to the Claim;
22. Worksheets used to prepare the Claim establishing the cost components for items of the Claim including, but not limited to, labor, fringes, benefits and insurance, materials, equipment, Subcontractors, and all documents that establish the periods of time, individuals involved, the hours and rate of pay for the individuals; and
23. All other documents requested by GDPM to review the Claim.

**9.11. False Certification of a Claim**

**9.11.1.** If the Contractor falsely certifies all or any part of a Claim, the portion of the Claim falsely certified shall be denied, and may be sufficient cause for GDPM to exclude Contractor from future contracting opportunities.

**9.11.2.** The Contractor shall not knowingly present or cause to be presented to GDPM a false or fraudulent Claim. "*Knowingly*" shall have the same meaning as in the Federal False Claims Act.

**9.12.** If the Contractor knowingly presents or causes to be presented a false or fraudulent Claim, then the Contractor shall be liable to the GDPM for the same civil penalty and damages as the United States Government would be entitled to recover and shall also indemnify and hold GDPM harmless from all costs and expenses, including GDPM's attorneys' and consultants' fees and expenses incurred in investigating and defending against such Claim and in pursuing the collection of such penalty, damages and fees and expenses.

**9.13. Claims based upon Defective Specifications:** Contractor may be entitled to compensation for increased costs of performance when increased cost is due to Contractor following GDPM-provided defective design specifications.

**9.14. Claims based on GDPM ordered Change:** If the Contracting Officer makes a direct change Within the scope of the contract, Contractor may be entitled to an increase in Contract Sum or Time if the change increases or decreases the cost or time of performance. Recovery under this provision is limited to changes by the Contracting Officer or a formally designated representative. Contractor shall not be entitled to compensation for any change ordered by un-designated person even if such person is a GDPM agent or employee. Claims for changes must be asserted within 14 calendar days after written change order.

**9.15. Claims based upon Differing Site Conditions:** To be compensable, Claims based upon Differing Site Conditions is limited to the following:

**9.15.1.** Differing Site Condition must be an actual physical condition of the job site.

**9.15.2.** Differing Site Condition must have existed at the time of contract commencement

**9.15.3.** Differing Site Condition must not have been discoverable during site inspection.

**9.15.4.** Differing Site Condition must be of a nature that materially differs from conditions indicated in the information provided by GDPM in the solicitation documents.



**9.15.5.** Differing Site Condition must be an unknown and unusual condition that differs materially from what is ordinarily encountered on the particular type of Work in the particular locality (it must be unusual for that particular area).

**9.16.Subcontractor Claims:** A subcontractor shall not submit a claim directly to GDPM. Any claim related to a Subcontractor must be brought directly by and certified by the Contractor as if the Claim were brought by the Contractor itself. The Contractor may "sponsor" the Subcontractor Claim only by affirmatively and clearly agreeing to do so in writing and must be expressly permitted in the initial agreement between Contractor and Subcontractor. Any claim falsely certified will subject the Contractor to debarment from future GDPM contracting opportunities.

**9.17. Initiation of Claim by GDPM:** All GDPM initiated Claims must be presented within eight (8) Years of notice of event giving rise to the Claim unless such claim is based upon breach of warranty in which case the term of the warranty shall apply.

## **10. ARTICLE X: SUSPENSION AND TERMINATION**

### **10.1. Suspension of the Work**

**10.1.1.** The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of GDPM.

**10.1.2.** If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of GDPM in the administration of this Contract, or by GDPM's failure to act within the time specified (or within a reasonable time if not specified) in this Contract, an adjustment shall be made for any increase in the cost of performance of the Contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the Contract modified in writing accordingly.

**10.1.3.** However, no adjustment shall be made for any suspension, delay, or interruption 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 for which any equitable adjustment is provided for or excluded under any other provision of this Contract.

**10.1.4.** A claim shall not be allowed:

- For any costs incurred more than 14 calendar days before the Contractor shall have notified GDPM in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and
- Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, for interruption, but no later than the date of final payment under the Contract.

**10.1.5.** If GDPM suspends the Work under this Article and the Contractor submits a proper Payment Request, subject to all other provisions of the Contract Documents, the Contractor shall be entitled to payment of compensation due under the Contract Documents for the Work performed before the suspension based upon the Schedule of Values.

**10.1.6.** GDPM, without prejudice to any other right or remedy it may have, may order the Contractor in writing to suspend, delay, or interrupt the performance of the Work in whole or in part for such period as GDPM may determine for any of the following reasons:

- Defective Work;



- The Contractor is causing undue risk of damage to any part of the Project or adjacent area;
- The Contractor fails to furnish or perform the Work in such a way that the complete Work will conform to the requirements of the Contract Documents; or
- Any other cause GDPM reasonably believes justifies suspension.

**10.1.7.** GDPM's exercise of its right to suspend the Work shall not entitle Contractor to any adjustment of the Contract Sum, Contract Time or both.

**10.1.8.** Upon receipt of the notice of suspension, the Contractor shall cease Work on the suspended activities and take all necessary or appropriate steps to limit disbursements and minimize respective costs.

**10.1.9.** The Contractor shall furnish a report to GDPM within 5 days of receiving the notice of suspension, describing the status of the Work, including, but not limited to, results accomplished, resulting conclusions, and other information as GDPM may require.

**10.1.10.** GDPM's right to stop the Work shall not give rise to any duty to exercise the right for the benefit of the Contractor or any other party, and GDPM's exercise or failure to exercise the right shall not prejudice any of GDPM's other rights including the right to suspend the Work in the future under the same or similar circumstances.

## **10.2. Termination for Convenience**

**10.2.1.** GDPM, through the Contracting Officer, may terminate this contract in whole, or in part, whenever the Contracting Officer determines that such termination is in the best interest of GDPM.

**10.2.2.** Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which termination becomes effective.

**10.2.3.** Upon delivery of the Notice of Termination, the Contractor shall immediately proceed with performance of the following duties in accordance with instructions from GDPM:

1. Cease operations as specified in the Notice;
2. Place no further orders and enter into no further subcontracts for materials, labor, services, or facilities, except as necessary to complete continued portions of the Project;
3. Terminate all subcontracts and orders to the extent they are related to the Work terminated;
4. Proceed with Work not terminated; and
5. Take actions that may be necessary, or that GDPM may direct, for the protection and preservation of the terminated Work.

Failure to do any actions set forth in this Provision (**10.2.3**), may lead to Contractor's liability for actual damages as a result of Contractor's failure to protect the Work.

**10.2.4.** If the performance of the work is terminated, either in whole or in part, GDPM shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by GDPM of a properly presented claim setting out in detail:

1. The total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor;
2. The cost of settling and paying claims under subcontracts and material orders for

Work performed and materials and supplies delivered to the site, payment for which has not been made by GDPM to the Contractor or by the Contractor to the subcontractor or supplier;

3. The cost of preserving and protecting the work already performed until GDPM or assignee takes possession thereof or assumes responsibility therefore; and
4. An amount constituting a reasonable profit on the value of the work performed by the Contractor.

**10.2.5.** Unless GDPM deems in writing that additional time is needed for review, GDPM will act on the Contractor's claim within 60 days of receipt of the Contractor's claim.

**10.2.6.** Any disputes are expressly made subject to the Article titled ***Dispute Resolution and Claim Procedure*** of this Contract.

**10.2.7.** If GDPM terminates the Work the termination shall not affect the rights or remedies of GDPM against the Contractor then existing or which may thereafter accrue.

**10.2.8.** Notwithstanding this Provision **10.2 Termination for Convenience**, if GDPM terminates the Work but there exists an event of Contractor's default, the Contractor shall be entitled to receive only such amounts as it would be entitled to receive following the occurrence of an event of default as provided for below.

### **10.3. Termination for Cause/Default**

**10.3.1.** If the Contractor materially breaches this Contract, including without limitation, the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this Contract, or any extension thereof, or fails to complete said work within this time, GDPM may, by written notice to the Contractor, terminate the right to proceed with the work (or separable part of the work) that has been delayed. Other examples of material breaches of the Contract include but are not limited to:

- Refusal to remedy defective work;
- Failure to supply enough properly skilled workers or proper materials;
- Failure to provide revised Construction Progress Schedule or Recovery Plan;
- Failure to properly make payment to Subcontractors or Consultants; or
- Disregarding laws, ordinances, or rules, regulations, or orders of a public authority with jurisdiction over the Project.

**10.3.2.** In the event of a Termination under this Provision, GDPM may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work.

**10.3.3.** The Contractor and its sureties shall be liable for any damage to GDPM resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by GDPM in completing the Work.

**10.3.4.** In accordance with the Ohio Revised Code, if GDPM intends to exercise its termination right, GDPM shall issue not less than 5 days written notice ("5-Day Notice") to the Contractor and the Contractor's Surety. However, notwithstanding any provision of the Contract to the contrary, the issuance of the 5-Day Notice is not a condition precedent to GDPM's exercise of its rights and GDPM's decision to not issue a 5-Day Notice will not

Prejudice GDPM's rights under this Contract.

- 10.3.5.** If the Contractor fails to satisfy the requirements set forth in the 5-Day Notice within 15 days of receipt of the 5-Day Notice or as otherwise specified in the Notice, GDPM may declare the Contractor in default, terminate the Contract, and employ upon the Work the additional force or supply materials or either as appropriate, and remove Defective Work.
- 10.3.6.** If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the Parties will be the same as if the termination had been for convenience of GDPM.
- 10.3.7.** If the Contract is terminated, the Contractor's Surety may perform the Contract. Contractor and its Surety are subject to the following provisions and Contractor shall ensure the following provisions are contained within the Agreement between the Surety and Contractor regarding the Work that is the subject of this Contract.
- 10.3.7.1.** If the Contractor's Surety does not commence performance of the Contract within 10 days of the date of Contract termination, GDPM may complete the Work by means that GDPM deems appropriate.
- 10.3.7.2.** GDPM may take possession of and use all materials, facilities, and equipment at the Site or stored off-site, for which GDPM has paid.
- 10.3.7.3.** If GDPM notifies the Contractor's Surety that the Contractor is in default or terminates the Contract, the Surety shall promptly and in not more than 21 days complete an investigation of the claimed material default or termination.
- 10.3.7.4.** As part of such investigation, the Surety shall visit the offices of the Contractor, A/E and GDPM to review the available project records.
- 10.3.7.5.** If the Surety proposes to take over the Work, the Surety shall do so no later than the expiration of such 21 day period or 10 days after the date GDPM terminates the Contract, whichever is later.
- 10.3.7.6.** If GDPM terminates the Work, and the Surety proposes to provide a replacement contractor, the replacement contractor shall be fully capable of performing the Work in accordance with the Contract Documents, including meeting all the requirements of the Contract Documents. If the Contractor is terminated, the replacement contractor shall not be the Contractor.
- 10.3.7.7.** The surety shall provide GDPM with the results of its investigation, including any written report or documents.
- 10.3.7.8.** Termination for Cause/Default is in addition to GDPM's other rights under the Contract Documents and is not intended to create any rights of the Surety, including but not limited to the right to take over the Contractor's obligations.
- 10.3.7.9.** If the Contract is terminated for cause, the Contractor shall not be entitled to further payment. If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including without limitation the fees and charges of engineers, architects, attorneys, and other professionals and court costs, and other damages incurred by GDPM and not expressly waived, the Contractor or Surety shall immediately pay the amount of insufficiency to GDPM.
- 10.3.7.9.1.** This obligation for payment shall survive termination of the Contract.
- 10.3.7.10.** If the Contractor's Surety performs the Work, the provisions of the Contract Documents govern the Surety's performance, with the Surety in place of Contractor

In all provisions including, but not limited to, provisions for payment for the Work, and provisions of the right of GDPM to complete the Work.

**10.4.** If GDPM terminates the Contract, the termination shall not affect any rights or remedies of GDPM against the Contractor then existing or which may thereafter accrue.

**10.5.** GDPM's retention or payment of funds due to the Contractor shall not release the Contractor or the Contractor's Surety from liability for performance of the Work in accordance with the Contract Documents.

**10.6. Contractor Insolvency**

**10.6.1. *Bankruptcy of Contractor:*** If the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, the Contractor, the Contractor as the debtor-in- possession, or the trustee of the Contractor's bankruptcy estate shall notify GDPM in writing within 5 days of such filing and file a motion to assume or reject the Contract within 20 days after the filing of the petition and shall diligently prosecute that motion to conclusion so as to obtain an order granting or denying that motion within 45 days after the filing of the petition.

- The failure to file and prosecute that motion Contractor shall constitute a material breach of the Contract as time is of the essence with respect to Contractor's performance of all terms of this Contract.
- The Contractor agrees to the granting of relief from the automatic stay of the Bankruptcy Code, to permit GDPM to terminate the Contract for cause in such instance and issue and serve all notices necessary to terminate the Contract or arising out of termination of the Contract and to take any other action necessary to terminate the Contract.

**10.6.2. *Receivership or Assignment for the Benefit of Creditors:*** If the Contractor makes a general assignment for the benefit of creditors or if a receiver is appointed for all or a substantial part of Contractor's business or property, GDPM shall serve written notice to the Contractor and Contractor's Surety stating that any failure of the Contractor to provide adequate assurance of continued performance shall be considered a rejection of the Contract, which shall result in termination of the Contract for cause.

- Such termination of the Contract need not be evidenced by an order of any court

**10.7.** A Contractor's right to Proceed shall not be terminated for Cause or the Contractor charged with damages under this the Provisions for Termination for Cause/ Default as set forth above if:

**10.7.1.** The delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include

1. Acts of God, or of the public enemy;
2. Acts of GDPM or other governmental entity in either its sovereign or contractual capacity,
3. Acts of another contractor in the performance of contract with GDPM;
4. Fire;
5. Floods;
6. Epidemics;
7. Quarantine restrictions;

8. Strikes;
9. Freight embargos;
10. Unusually severe weather; or
11. As determined by GDPM, delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or Subcontractors and suppliers.

**10.7.2.** The Contractor, within 10 days from the beginning of such delay as set forth in this Provision, unless otherwise extended by GDPM, shall notify GDPM in writing of the causes of delay.

**10.7.3.** GDPM's Contracting Officer shall ascertain the facts and extent of the delay.

**10.7.4.** If in the judgment of GDPM's Contracting Officer, the findings of fact warrant such action, time for completing the Work shall be extended by written modification to the Contract. The findings of fact of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the Article titled Dispute Resolution and Claim Procedure.

## **11 ARTICLE XI: CONSTRUCTION CLOSEOUT**

### **11.1. Final Cleaning**

**11.1.1.** Before requesting the Substantial Completion inspection of the Work, the Contractor shall clean the Site, remove waste materials and rubbish attributable to the Project, and restore the property to an acceptable condition so that upon Substantial Completion, the site is ready for occupancy by GDPM.

**11.1.2.** If the Contractor performs any Work after final cleaning, the Contractor shall clean the affected area as provided above so that upon Substantial Completion, the site is ready for occupancy by GDPM.

**11.1.3.** Final cleaning shall be done to the reasonable satisfaction of GDPM.

### **11.1. Inspection and Construction of the Work**

**11.1.1.** The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work performed under the Contract conforms to all Contract requirements.

**11.1.2.** All Work is subject to GDPM inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.

**11.1.3.** GDPM inspections and tests are for the sole benefit of GDPM and shall not:

- Relieve the Contractor of responsibility for providing adequate quality control measures;
- Relieve the Contractor of responsibility for loss or damage of the material before acceptance;
- Constitute or imply acceptance; or
- Affect the continuing rights of GDPM after acceptance of the completed work.

**11.1.4.** The presence or absence of the GDPM inspector does not relieve the Contractor from any Contract requirement. And, the inspector is not authorized to change any term or condition of the specifications without the Contracting Officer's written authorization.

**11.1.5.** All instructions and approvals with respect to the work shall be given to the Contractor by

GDPM and shall be in writing.

11.1.6. The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by GDPM.

11.1.7. GDPM may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary.

11.1.8. GDPM shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size and performance tests shall be performed as described in the Contract Documents.

## 11.2. Routine Inspections

11.2.1. At its discretion, GDPM may conduct routine inspections of the construction Site on a daily basis.

11.2.2. The Contractor shall, without charge, replace or correct Work found by GDPM not to conform to contract requirements, unless GDPM decides that it is in its interest to accept the Work with an appropriate adjustment in Contract Sum.

11.2.3. The Contractor shall promptly segregate and remove rejected material from the premises.

11.2.4. If the Contractor does not promptly replace or correct rejected Work, GDPM may:

11.3.4.1. By Contract or otherwise, replace or correct the Work and charge the cost to the Contractor; or

11.3.4.2. Terminate for default the Contractor's right to proceed.

11.2.5. If any work requiring inspection is covered up without approval of GDPM, it must, if requested by GDPM, be uncovered at the expense of the Contractor.

11.2.6. If at any time before final acceptance of the all Work, GDPM considers it necessary or advisable, to examine Work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all necessary facilities, labor, and material.

- If such Work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction.
- If, however, such Work is found to meet the requirements of the Contract, GDPM shall make an equitable adjustment to cover the cost of the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of time.

## 11.3. Substantial Completion

### 11.3.1. Contractor's Punch List

1. When the Contractor considers the Work, or a designated portion thereof, Substantially Complete, the Contractor shall inspect the Work and prepare a list of Defective Work and incomplete or unacceptable Work ("Contractor's Punch List").
2. The Contractor shall list all items of Work not in compliance with the Contract Documents, including items the Contractor is requesting to be deferred.
3. The Contractor shall proceed to correct all items listed on the Contractor's Punch List and

certify that the incomplete items listed on the Contractor's Punch List are to its knowledge an accurate and complete list by signing the Contractor's Punch List.

4. The Contractor's failure to include an item on the Contractor's Punch List shall not alter the Contractor's responsibility to complete the Work in accordance with the Contract Documents.
5. The Contractor shall submit the signed Contractor's Punch List to GDPM together with a request for a Substantial Completion inspection of the Work.

**11.3.2. Substantial Completion Inspection**

1. The Contractor shall notify GDPM, in writing, as to the date when, in its opinion, all or a designated portion of the Work will be substantially completed and ready for inspection.
2. If GDPM and/or the A/E determine that the state of preparedness is as represented, GDPM will promptly arrange for the inspection.
3. Unless otherwise specified in the Contract, GDPM shall accept, as soon as practicable after completion and inspection, all work required by the Contract or that portion of the Work that GDPM determines and designates can be accepted separately.
4. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or GDPM's right under any warranty or guarantee.
5. Within 3 business days after receipt of the request for the Substantial Completion inspection of the Work, GDPM shall notify the Contractor of acceptance or rejection of the request, stating reasons for any rejection.
6. Within 7 days after its acceptance of the Contractor's request, GDPM and/or the A/E shall conduct the Substantial Completion inspection to determine whether the Work, or designated portion, is in conformity with the Contract Documents and Substantially Complete.
7. If GDPM and/or the A/E determines that the Work is Substantially Complete, within 3 business days after the Substantial Completion inspection, GDPM and/or the A/E shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion and include a list of Defective, incomplete, or unacceptable Work ("GDPM's Punch List").
8. GDPM's Punch List shall include:
  - The items on the Contractor's Punch List that are not yet completed or corrected as of the date of the Substantial Completion inspection; and
  - Comments from GDPM.

**11.3.3.** GDPM shall submit the Certificate of Substantial Completion to the Contractor for their written acceptance.

**11.3.4.** Upon their acceptance and consent of the Contractor's Surety, and subject to GDPM's right to withhold payment, GDPM shall release retainage.

**11.3.5.** GDPM and/or the A/E's failure to include an item on GDPM's Punch List shall not alter the Contractor's responsibility to complete the Work in accordance with the Contract Documents.

- If GDPM subsequently determines that the Work is not



substantially Complete, GDPM may request compensation for related expenses.

- GDPM may deduct the additional expenses from payments then or thereafter due the Contractor.
- If payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to GDPM.

**11.3.6. Completion of Punch List Items**

1. The Contractor shall complete all items on GDPM's Punch List prior to date of Final Contract Completion.
2. After completing all items on GDPM's Punch List, the Contractor shall provide a written request for Final Inspection of the Work.
3. If Work on the Punch List cannot be timely completed, the Contractor shall submit a change order in accordance with the provisions of this Contract.
4. Within 3 business days after receipt of the request for the Final Inspection of the Work, GDPM and/or the A/E shall complete a Final Inspection of the Work for compliance with the Contract Documents.
5. If multiple inspections of items on GDPM's Punch List are required due to the Contractor's failure to properly and timely complete them, the Contractor shall pay any additional costs incurred by the A/E and GDPM resulting from any attendant delay.
6. GDPM may deduct those additional costs from payments then or thereafter due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover those amounts, the Contractor shall immediately pay the amount of the insufficiency to GDPM.

**11.4. Demonstration and Training, Operating Appurtenances**

**11.4.1.** The Contractor, as a condition precedent to execution of the Certificate of Contract Completion and final payment, shall perform demonstration and training of GDPM's maintenance staff and other staff as requested by GDPM.

**11.4.2.** The Contractor, as a condition precedent to execution of the Certificate of Contract Completion and final payment, shall organize and submit operating appurtenances and loose items related to operation and maintenance of the completed Project to GDPM, including, but not limited to:

- Keys to door and window hardware, panels, and other devices not directly provided to GDPM from the manufacturer;
- Operating handles, levers, cranks, specialized wrenches or drivers, remote controls, and similar items; and
- Extra materials (e.g., attic stock).

**11.5. Acceptance of Defective Work**

**11.5.1.** Defective Work may only be knowingly accepted by GDPM in writing instead of GDPM requiring its removal or correction, in which case the Contract Sum must be equitably reduced to account for the reduction in benefit of the Work received by GDPM on account of the Defective Work.



**11.5.2.** GDPM may only accept Defective Work through a deduct Change Order that makes explicit reference to Acceptance of Defective Work

**11.5.3.** None of the following will constitute acceptance of Defective Work, a release of the Contractor's obligation to perform the Work in accordance with the Contract, or a waiver of any rights set forth in the Contract or otherwise provided by Applicable Law:

1. Observations or inspections by GDPM or the A/E;
2. The making of any payment;
3. Substantial Completion or the issuance of a Certificate of Substantial Completion;
4. Partial Occupancy and GDPM's use or occupancy of the Work or any part of it;
5. Contract Completion or the issuance of a partial or final Certificate of Contract Completion;
6. Any review or approval of a submittal;
7. Any inspection, test, or approval by other Persons; or
8. Any correction of Defective Work by GDPM.

**11.6. Building Commissioning**

**11.6.1.** If the Project scope includes building commissioning, the Contractor shall participate in the Commissioning Process, as prescribed in the Contract Documents.

**11.6.2.** The Contractor shall permit the A/E, GDPM, or a third-party Commissioning Agent ("CxA") if applicable, access to commission performance based equipment, fixtures, and/or systems (e.g., HVAC, fire protection, smoke evacuation, fume hoods, emergency power, etc.), prior to Substantial Completion.

**11.6.3.** The A/E, GDPM, or CxA, if applicable, shall promptly notify, in writing, the Contractor of any deficiency identified during the Commissioning Process.

**11.6.4.** To facilitate the Commissioning Process, the Contractor shall submit 4 sets of Operation and Maintenance manuals for dynamic and engineered systems to GDPM and CxA, if applicable, for approval. This submission shall occur within 30 days of obtaining approval of all related Contractor submittals required by the Contract Documents.

**11.7. Partial Contract Completion**

**11.7.1.** When items of Work cannot be completed until a subsequent date, GDPM shall prepare a partial Certificate of Contract Completion that shall include a detailed list of the deferred Work and the date(s) by which the Contractor will complete that Work.

**11.7.2.** GDPM shall submit the partial Certificate of Contract Completion to Contractor for their written acceptance. Upon their acceptance of the partial Certificate of Contract Completion and consent of the Contractor's Surety, GDPM may release payment to the Contractor, as determined in the sole discretion of GDPM.

**11.8. Final Contract Completion**

**11.8.1.** When all items on GDPM's Punch List have been completed to the satisfaction of GDPM, all requirements of the Contract Documents have been completed, and the provisions have been fulfilled, GDPM shall prepare and recommend execution of final Contract payment.

**11.8.2.** The date that GDPM executes the final Contract payment is the date of Contract Completion.

**11.8.3.** Nothing in Contract Completion shall constitute a waiver of GDPM's ability to pursue damages as the result of any breach of the Contract by the Contractor or Liquidated Damages.

**11.9. Partial Occupancy:** if the building authority with jurisdiction over the project issues a partial certificate of occupancy, GDPM may occupy or use a portion of the Project prior to Contract Completion. The Contractor shall be relieved of the obligation to maintain the area accepted for partial Occupancy, but shall remain obligated to complete and correct the Work and to carry insurance as required by the Contract Documents during performance of any such Work.

## **12. Article XII: Warranty**

**12.1. Warranty of Title:** Contractor warrants good title to all materials, supplies, and equipment incorporated in the Work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any other person, firm or corporation shall have any right to a lien upon the premises or anything appurtenant thereto.

### **12.2. Warranty of Construction**

**12.2.1.** Contractor warrants to GDPM that all materials and equipment furnished under this Contract shall be new and of good quality unless otherwise required or permitted by the Contract Documents. In addition, Contractor warrants that work performed under this Contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by Contractor or any subcontractor or supplier at any tier.

- a. This warranty shall continue for a period of one-year from the date of final acceptance of the Work.
- b. If GDPM takes possession of any part of the Work prior to final acceptance, this warranty shall continue for a period of one year from the date GDPM takes possession.
- c. Work not conforming to the requirements, including Substitutions not properly approved and authorized, may be considered Defective Work.
- d. If Contractor or a Subcontractor recommends a particular product, material, system, or item of equipment for incorporation into the Project and GDPM accepts that recommendation, the above warranty includes a warranty from Contractor to GDPM that the recommended product, material, system, or item of equipment is fit and appropriate for the associated purpose.
- e. If required by GDPM, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**12.2.2.** Contactor shall remedy, at Contractor's expense, any failure to conform, or any defect. Further, Contractor shall remedy, at Contractor's expense, any damage to GDPM-owned or controlled real or personal property when the damage is the result of: (1) Contractor's failure to conform to contract requirements; or (2) any defects of equipment, material, workmanship or design furnished by Contractor.

**12.2.3.** Contractor shall restore any work damaged in fulfilling the terms and conditions of Warranty of Construction. Contractor's warranty with respect to work repaired or replaced will run for not less than one year of repair or replacement.

**12.2.4.** GDPM shall notify Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage. If Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, GDPM shall have the right to replace,

repair or otherwise remedy the failure, defect, or damage at Contractor's expense.

**12.2.5.** With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, Contractor shall:

- a. Obtain all warranties that would be given in normal commercial practice;
- b. Require all warranties to be executed in writing, for the benefit of GDPM; and
- c. Enforce all warranties for the benefit of GDPM.

**12.2.6.** In the event Contractor's warranty under this provision has expired, GDPM may bring suit to enforce a subcontractor's or manufacturer's or supplier's warranty.

**12.2.7.** Unless a defect is caused by the negligence of the Contractor or its subcontractor or supplier at any tier, Contractor shall not be liable for the repair or defect of material or design furnished by GDPM or for the repair of any damage that results from any defect in GDPM furnished material or design.

**12.2.8.** Notwithstanding any provisions herein to the contrary, the establishment of time periods in this Article relate only to the specific obligation of the Contractor to correct the work and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, or to the time within which proceedings may be commenced to establish Contractor's liability with respect to its obligations other than specifically to correct the work.

**12.2.9.** This Warranty shall not limit GDPM's rights under the Inspection and Acceptance of Construction related provisions within this Contract with respect to latent defects, gross negligence or fraud.

**12.3. Warranty Walk-through Contractor:** At GDPM's request, Contractor shall perform a walkthrough of the property no earlier than three months prior to the expiration of any Warranty. If Contractor is unavailable for the warranty walk-thru, the warranty shall be extended until the time Contractor is available.

**12.4.** All warranties, including but not limited to, material, equipment and special warranties and warranties otherwise required by the Contract Documents shall be issued in the name of GDPM, or shall be transferrable to GDPM and shall commence, unless otherwise indicated in the Contract Documents, upon issuance of certification of substantial completion.

## **13 Article XII: Bonds and Insurance**

### **13.1. Bid Bond/Guaranty**

**13.1.1.** The Contractor shall provide to GDPM a bid guaranty in the form of either: (1) a bond for 10% of the bid; or (2) a certified check, cashier's check or letter of credit revocable only at the option of GDPM and shall be in the amount of 10% of the bid.

**13.1.2.** The bid guaranty shall be conditioned to provide that Contractor will, after award, enter into a contract with GDPM in accordance with the bid, plans, details, and specifications.

**13.1.3.** If the bidder fails to enter into the Contract and GDPM awards Contract to next lowest bidder, the bidder and the surety on the bidder's bid are liable to GDPM for the lesser of either:

- The difference between the bid and that of the next lowest bidder; or
- For a penal sum in the amount of 10% of the bid.

**13.1.4.** If GDPM does not award the Contract to the next lowest bidder but resubmits the Project for bidding, the bidder failing to enter into the Contract and the surety on the bidder's bond are liable to GDPM for a penal sum not to exceed 10% of the amount of the bid.

**13.1.5.** Where GDPM accepts a bid but the bidder fails or refuses to enter into a proper contract in accordance with the bid, plans, details, and specifications within ten days after Notice of Intent, the bidder and surety on any bond are liable for the amount of the difference between the bidder's bid and the next lowest bidder.

**13.1.6.** All bid guaranties shall be payable to GDPM, be for the benefit of GDPM and be deposited with GDPM.

## **13.2. Payment and Performance Bond**

**13.2.1.** Contract Commencement does not occur until GDPM receives a Payment and Performance Bond

**13.2.2.** Contractor must, within 10 days of GDPM's delivery of signed Contract to Contractor, unless otherwise specified by GDPM in writing, deliver to GDPM a payment and performance bond with a penal sum in the amount of 100% of the Contract Sum (which includes all acceptable alternates).

**13.2.3.** The payment and performance bond must contain a condition that indemnifies GDPM against all damages suffered by Contractor's failure to perform the Contract according to the provisions and in accordance with the plans, details, and specifications and to pay all lawful claims of subcontractors, material suppliers, and laborers for labor performed or material furnished in carrying forward, performing or completing the Contract.

**13.2.4.** The bond shall be obtained from companies holding certificates of authority as acceptable sureties and shall be listed on the U.S. Treasury Circular 570 (T-List).

**13.2.4.1.** Each company shall be licensed to do business in Ohio and satisfactory to GDPM.

**13.2.5.** The Contractor shall submit with the executed Bond:

**13.2.5.1.** A certified copy of the authority to act (power of attorney) of the agent signing the Bond on behalf of the Surety, and

**13.2.5.2.** A current signed Certificate of Compliance issued by the Ohio Department of Insurance demonstrating that Surety is licensed to do business in Ohio.

**13.2.6.** If the Contract Sum increases at any time such that it exceeds the sum of the Bond, the Contractor shall cause the penal sum of the Bond to be increased such that the sum equals one-hundred percent (100%) of the increased Contract Sum.

**13.2.7.** Any time Contractor increases the sum of the Bond, the Contractor shall deliver to GDPM written consent of the affected Surety confirming the increased sum. GDPM's receipt of that written consent is a condition precedent to GDPM's obligation to pay the Contractor for any portion of the Work associated with the increase.

**13.2.8.** If notice of any change affecting the Contract is required by any Surety or by the provision of any Bond, the Contractor shall provide that notice.

**13.3. Form of Bond:** All bonds and guarantees must be provided for on a form deemed acceptable by GDPM and must be drafted and executed in accordance with all HUD and State of Ohio requirements. Unless otherwise so indicated, Contractor shall use GDPM's Bond Forms.

**13.4. General Insurance Requirements**

**13.4.1.** Prior to commencing Work, Contractor and each subcontractor shall furnish GDPM with certificates of insurance demonstrating coverage that meets the Minimum Contractor Coverage Requirements as outlined below is in full force and will insure all operations under the Contract.

**13.4.2.** Throughout the performance of the Work or longer as may be described below, Contractor and each Subcontractor shall obtain, pay for and keep in force, the minimum insurance coverage.

**13.4.3.** On a case-by-case basis, GDPM and Contractor may agree to adjust the below requirements for any particular subcontractor.

**13.4.4.** All insurance shall be carried with companies which are financially responsible and admitted to do business in the State of Ohio.

**13.4.5.** If any such insurance is due to expire during the construction period, Contractor (including subcontractors, as applicable) shall not permit the coverage to lapse and shall furnish evidence of coverage to GDPM.

**13.4.6.** All certificates of insurance, as evidence of coverage, shall provide that no coverage may be canceled or non-renewed by the insurance company until at least 30 days prior written notice has been given to GDPM.

**13.5. Minimum Contractor Coverage Requirements**

**13.5.1. Workers' Compensation:** The amount of Workers' Compensation coverage shall be in accordance with the State of Ohio Workers' Compensation laws.

**13.5.2. Commercial General Liability:** With a combined single limit for bodily injury and property damage of not less than \$1,000,000 per occurrence unless otherwise specified by GDPM in writing, to protect Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others. This shall cover the use of all equipment, hoists, and vehicles on the site(s) not covered by Automobile Liability.

**13.5.2.1.** If Contractor has a "claims made" policy, then the following additional requirements apply: (1) the policy must provide a "retroactive date" which must be on or before the execution date of the Contract; and (2) the extended reporting period may not be less than five years following the completion date of the Contract.

**13.5.3. Employers Liability Coverage:** Unless otherwise specified by GDPM in writing, Contractor shall maintain employer's liability coverage with:

**13.5.3.1.** An each accident limit of not less than \$1,000,000;

**13.5.3.2.** A disease each-employee limit of not less than \$1,000,000; and

**13.5.3.3.** A disease policy limit of not less than \$1,000,000.

**13.5.4. Automobile Liability:** On owned and non-owned motor vehicles used on the site(s) or in connection therewith for a combined single limit for bodily injury and property damage of not less than \$ 1,000,000 per occurrence.

- 13.5.5. Builder's Risk Insurance:** Before commencing Work, Contractor shall furnish GDPM with a certificate of insurance evidencing that Builder's Risk (fire and extended coverage) Insurance on all work in place and/or materials stored at the building site(s), including foundations and building equipment, is in force.
- 13.5.5.1.** The Builder's Risk Insurance shall be for the benefit of the Contractor and GDPM as their interests may appear and each shall be named in the policy or policies as an insured.
- 13.5.5.2.** If installing equipment supplied by GDPM, Contractor shall carry insurance on such equipment from the time Contractor takes possession thereof until the Contract work is accepted by GDPM.
- 13.5.5.3.** The Builder's Risk Insurance need not be carried on excavations, piers, footings, or foundations until such time as work on the superstructure is started. Builder's Risk coverage need not be carried on landscape work.
- 13.5.5.4.** Policies shall furnish coverage at all times for the full cash value of all completed construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by GDPM.
- 13.5.5.5.** Contractor may terminate this insurance on buildings as of the date taken over for occupancy by GDPM.
- 13.5.5.6.** The amount of Builder's Risk coverage shall not be less than the total completed value of the Project, including the value of permanent fixtures and decorations, with a deductible of not more than \$25,000 per occurrence. Any deductible over the amount specified in this provision shall be authorized in writing by GDPM.
- 13.5.5.7.** Coverage shall include a provision to pay the reasonable extra costs of acceleration and expediting temporary and permanent repairs to, or permanent replacement of, damaged property.
- 13.5.5.8.** This shall include overtime wages and the extra costs of "express" or other means of expedited transportation and/or delivery of supplies necessary to the repair or replacement.
- 13.5.5.9.** Coverage shall include "soft costs endorsement" including, but not limited to, the reasonable extra costs of the A/E and reasonable Contractor extension or acceleration costs.
- 13.5.5.10.** Coverage shall include material in transit or stored in off-site and identified for the Project.
- 13.5.5.11.** Coverage shall waive all rights between GDPM, Contractor, and Subcontractors at any tier, for damages caused by fire or any other perils to the extent of actual recovery of any insurance proceeds under the policy.
- 13.5.5.12.** Coverage shall include appropriate sub-limits for installation coverage.
- 13.5.5.13.** Coverage shall include provisions for mechanical or electrical breakdown, or boiler system testing.
- 13.5.5.14.** Coverage shall include temporary structures and scaffolding, along with collapse coverage.
- 13.5.5.15.** Coverage shall be primary to all other applicable insurance.

**13.5.5.16.** The builder's risk policy shall specifically permit partial occupancy by GDPM prior to Contract Completion and coverage shall remain in effect until all punch items are completed.

**13.5.5.17.** The Contractor's tools and equipment shall not be covered under the builder's risk policy. It is the Contractor's sole responsibility to maintain such coverage, which shall be included in its Overhead (a component of Contractor's Fee) and not included as a separate item in Contractor's Schedule of Values.

**13.5.5.18.** If Contractor is involved solely in the installation of material and equipment and not in new building construction, Contractor shall purchase and maintain a builder's risk, builder's risk-renovations, or installation floater insurance policy that complies with this Provision.

**13.5.6. *Umbrella/Excess Liability:*** Contractor may employ an umbrella/excess liability policy to achieve the above required minimum coverage. Unless otherwise specified by GDPM in writing, for Construction Contracts in excess \$1,000,000, the Contractor shall maintain umbrella/excess liability coverage with a limit of not less than \$2,000,000 (in addition to the above-required limits) if the Work (or Work to be performed by the Subcontractor) includes any of the following:

- a. Brick/block masonry;
- b. Exterior caulking/sealant;
- c. Cast-in-place or precast concrete;
- d. Damp proofing/waterproofing;
- e. Electrical;
- f. Elevator;
- g. Exterior glass and/or glazing;
- h. Exterior marble, granite, and/or other stonework;
- i. Miscellaneous metals;
- j. Plaster/stucco;
- k. Plumbing;
- l. HVAC;
- m. Roofing and/or sheet metal;
- n. Scaffolding;
- o. Spray-on fireproofing;
- p. Sprinkler and/or fire protection; or
- q. Structural steel and/or metal deck.

**13.5.7.** Unless otherwise specified by GDPM in writing, Contractor shall maintain umbrella/excess liability coverage with a limit of not less than \$5,000,000 (in addition to the above-required limits) if the Work (or the Work to be performed by the Subcontractor) includes any of the following:

- a. Caissons and/or piles;
- b. Major Demolition;



- c. Excavation and/or utility work;
- d. Sheeting, shoring, and/or underpinning;
- e. Window washing equipment; or
- f. Wrecking.

**13.5.8. Professional Liability:** Unless otherwise specified by GDPM in writing, Contractor shall maintain professional liability insurance (including without limitation for sprinkler and/or fire protection and other design-build work included in the Work) without design-build exclusions with a limit not-less than \$1,000,000 each claim and an annual-aggregate limit of not less than \$2,000,000.

**13.5.8.1.** The professional liability policy shall have an effective date on or before the date that Contractor first started to provide any Project-related services.

**13.5.8.2.** Upon submission of the associated certificate of insurance and at each policy renewal, the Contractor shall advise GDPM in writing of any actual or alleged claims that may erode the professional liability limits.

**13.5.8.3.** Contractor shall maintain the professional liability insurance in effect for no less than 5 years after the earlier of the termination of the Contract or Substantial Completion of all Work.

**13.5.9. Additional Property Insurance:** For any demolition, blasting, excavating, tunneling, shoring, or similar operations, the Contractor shall provide and maintain Property Damage Liability insurance with a limit of liability equal to the limit as specified in the applicable provisions of this Article.

**13.5.10. Equipment Coverage:**

**13.5.10.1.** GDPM will not insure or be liable for damage to any Contractor or Subcontractor owned, leased, rented, or borrowed tools, equipment, or vehicles.

**13.5.10.2.** Contractor and Subcontractors are solely responsible for maintaining all insurance necessary to cover their tools, equipment, and vehicles.

**13.5.11. Pollution Coverage:** Contractor shall maintain Pollution Liability Insurance, including Asbestos Liability Insurance, covering liability for bodily injury, property damage, and environmental damage resulting from "sudden accidental" or "gradual" pollution and related cleanup costs incurred by the Contractor, all arising out of the Work to be performed under this contract. Combined single limit per occurrence shall not be less than \$500,000, or the equivalent. Annual aggregate limit shall not be less than \$1,000,000.

**13.6. Waivers of Subrogation**

**13.6.1.** To the fullest extent permitted by Applicable Law, Contractor waives all rights against GDPM and its agents and employees for damages to the extent covered by any insurance, except rights to the proceeds of that insurance.

**13.6.2.** All policies shall accomplish the waiver of subrogation by endorsement or otherwise.

**13.6.3.** GDPM and Contractor waive all rights against each other for damages caused by fire or other perils to the extent actual recovery of any insurance proceeds under any property insurance or builder's risk insurance applicable to the Work.



## 14. Article XIV: Indemnification

- 14.1.** To the fullest extent permitted by federal and State Law, Contractor shall indemnify, defend, and hold harmless the Indemnified Parties from and against all claims, costs, damages, losses, fines, penalties, and expenses (including but not limited to all fees and charges of attorneys and other professionals, and all court, arbitration, or other dispute-resolution costs) arising out of or in connection with the Project.
- 14.2.** The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Contractor shall hold and save GDPM, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.
- 14.3.** Contractor's indemnification obligations under this Article exists regardless of whether or not and the extent to which the claim, damage, loss, fine, penalty, or expense is caused by a party indemnified pursuant to this Article.
- 14.4.** Nothing in this Article obligates Contractor to indemnify any individual or entity from and against the consequences of that individual or entity's own negligence.
- 14.5.** Contractor's obligations under this Article shall not extend to the liability of the A/E, A/E's consultants, agents, representatives, or employees for negligent preparation or approval of Drawings, Specifications, Change Orders, opinions, and other responsibility of the A/E, except to the extent covered by Contractor's insurance.
- 14.6.** In claims against an Indemnified Party by any direct or indirect employee (or the survivor or personal representative of that employee) of the Contractor or a person or entity for whom the Contractor may be liable, the indemnification obligations under this Article will not be limited by a limitation on the amount or type of damages, compensation, or benefits payable under workers' compensation acts, disability benefit acts, or other employee benefits acts.
- 14.7.** Contractor's indemnification obligation under this Article will survive termination of the Contract and Contract Completion.
- 14.8.** GDPM may deduct, from the Contract Sum, the claims, losses, fines, penalties, and expenses for which Contractor is liable under this Article.
- 14.9.** If those claims, damages, losses, fines, penalties and expenses exceed the unpaid balance of the Contract Sum, Contractor shall immediately pay the difference to GDPM.

## 15. Article XV: Damages

### 15.1. Liquidated Damages

- 15.1.1.** If Contractor fails to complete the work within the time specified in the contract, or any extension, the Contractor shall pay to GDPM as liquidated damages in accordance with the table below.
- 15.1.1.1.** If different completion dates are specified in the contract for separate parts or stages of the work, the amount of liquidated damages shall be assessed on those parts or stages which are delayed.
- 15.1.1.2.** To the extent that Contractor's delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due GDPM.
- 15.1.1.3.** Contractor remains liable for damages caused other than by delay.

- 15.1.2. If GDPM terminates Contractor's right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned GDPM in completing the work.
- 15.1.3. If GDPM does not terminate Contractor's right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.
- 15.1.4. If Contractor fails to achieve a Milestone within the associated Contract Time, it would be difficult, if not impossible, to determine GDPM's resulting damages.
- 15.1.5. Therefore, if the Contractor fails to achieve a Milestone within the associated Contract Time, the Contractor shall (at GDPM's option) pay to or credit GDPM the Liquidated Damages per day sum determined according to the following schedule for each day that the Contractor fails to achieve a Milestone within the associated Contract Time.

<b>Total Contract Sum</b>	<b>Daily Liquidated Damages</b>
Less than \$150,000	\$200
\$150,000-\$500,000	\$400
\$500,000.01 - \$1,000,000	\$500
\$1,000,000.01 - \$2,000,000	\$1,000
More than \$2,000,000	\$2,000

- 15.1.6. If Contractor simultaneously fails to achieve two or more Milestones, GDPM shall be entitled to recover the sum of the associated Liquidated Damages per day rates.
- 15.1.7. The Liquidated Damages described are only intended to compensate GDPM for the direct damages it incurs as a result of Contractor's failure to achieve the Milestones within their associated Contract Times.
- 15.1.8. The Liquidated Damages described are not intended to compensate GDPM for any damages GDPM incurs on account of:
  - 15.1.8.1. Any claims attributable to Contractor that are brought by others including Separate Consultants and Separate Contractors; or
  - 15.1.8.2. Any failure of Contractor to timely, properly, and completely perform the Contract other than the failure to achieve the Milestones within their associated Contract Times.
- 15.1.9. The parties acknowledge that the above-listed Liquidated Damages per day sums are not penalties, and they each irrevocably waive the right (if any) to challenge the validity and enforceability of those Liquidated Damages per day sums.
  - 15.1.9.1. Notwithstanding any other provision of the Contract Documents to the contrary, if a court determines that the Liquidated Damages per day sums or their application are void and unenforceable, GDPM shall be entitled to recover the actual damages that it incurs on account of the Contractor's failure to achieve one or more of the Milestones within the Contract Times.
- 15.1.10. In addition to other rights that GDPM may have relative to the Liquidated Damages, GDPM may deduct the Liquidated Damages from the Contract Sum as the damages accrue. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, Contractor shall immediately pay the amount of the insufficiency to

GDPM.

**15.2. Mutual Waiver of Consequential Damages**

**15.2.1.** Except for the Liquidated Damages provided for above, GDPM and Contractor each waive against the other all Claims for consequential damages that may arise out of or relate to this Contract.

**15.2.1.1.** GDPM's waiver includes Claims for loss of use, income, profit, revenue, financing, cost of capital, business and reputation, management and employee productivity, and consequential damages arising from termination of the Contract or related to insolvency.

**15.2.1.2.** The Contractor's waiver includes:

**15.2.1.2.1.** Claims for unabsorbed home-office overhead;

**15.2.1.2.2.** Any other form of overhead in excess of that specifically

provided for; **15.2.1.2.3.** Delay damages except as otherwise specifically

provided for; **15.2.1.2.4.** Increased cost of funds for the Project;

**15.2.1.2.5.** Lost opportunity to work on other projects;

**15.2.1.2.6.** Losses of financing, business, and reputation;

**15.2.1.2.7.** Loss of profit except anticipated profit, arising directly from properly performed Work;

**15.2.1.2.8.** Loss of bonding capacity; and

**15.2.1.2.9.** Consequential damages arising from termination of the Contract or related to insolvency.

**15.2.2.** Notwithstanding Section 15.2.1, this Section 15.2:

**15.2.2.1.** Does not apply to any damages that would be covered by insurance provided in connection with the Project if the Contract did not include Section 15.2.1;

**15.2.2.2.** Does not apply to Contractor's indemnity obligations for third-party claims against the Indemnified Parties even if those claims are for damages that Section 15.2.1 would otherwise preclude;

**15.2.2.3.** Does not preclude GDPM's recovery of Liquidated Damages; and

**15.2.2.4.** Does not apply to Claims for damages arising from GDPM's or Contractor's gross negligence or willful misconduct.

**15.3.** This Article 15 shall survive termination of the Contract.

**16 Article XVI: Labor Standards Davis-Bacon and Related Acts**

**16.1.1.** All rulings and interpretations of the Davis Bacon and Related Acts contained in 29 CFR Part 3 are herein incorporated by reference in this Contract.

**16.2. Minimum Wages**

**16.2.1.** All laborers and mechanics employed under this Contract in the development or construction of the project(s) involved will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the

Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which shall be attached to the Contract Documents and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

- 16.2.2.** Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the regular weekly period, are deemed to be constructively made or incurred during such weekly period.
- 16.2.3.** Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4).
- 16.2.4.** Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
- 16.2.5.** The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5 and the Davis-Bacon poster (WH-1321)) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- 16.2.6.** Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination.
- 16.2.7.** HUD shall approve any additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:
  - 16.2.7.1.** The work to be performed by the classification requested is not performed by a classification in the wage determination;
  - 16.2.7.2.** The classification is utilized in the area by the construction industry; and
  - 16.2.7.3.** The proposed wage rate, including bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- 16.2.8.** If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210.
- 16.2.9.** The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.
- 16.2.10.** In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where

appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination.

**16.2.11.** The Administrator or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30 day period that additional time was necessary.

**16.2.12.** The wage rate (including fringe benefits where appropriate) shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in classification.

**16.2.13.** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

**16.2.14.** If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met.

**16.2.15.** The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

**16.3.** Withholding of Funds

**16.3.1.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract.

**16.3.2.** In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the Project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**16.3.3.** HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

**16.4.** Payrolls and Basic Records

**16.4.1.** Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the Project. Such records shall contain:

**16.4.1.1.** The name, address, and social security number of each such worker;

**16.4.1.2.** His or her correct classification

- 16.4.1.3.** Hourly rates of wages paid, including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in the Davis-Bacon Act;
  - 16.4.1.4.** Daily and weekly number of hours worked;
  - 16.4.1.5.** Deductions made; and
  - 16.4.1.6.** Actual wages paid.
- 16.4.2.** Whenever the Secretary of Labor has found, under 29 CFR 5.5, that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.
- 16.4.3.** Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- 16.4.4.** The Contractor shall submit for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee.
- 16.4.5.** The payrolls submitted shall set out accurately and completely all of the information required to be maintained.
- 16.4.6.** This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.
- 16.4.7.** The Contractor is responsible for the submission of copies of payrolls by all subcontractors (Approved by the Office of Management and Budget under OMB Control Number 1214-0149).
- 16.4.8.** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- 16.4.8.1.** That the payroll for the payroll period contains the information required to be maintained and that such information is correct and complete;
  - 16.4.8.2.** That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
  - 16.4.8.3.** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
- 16.4.9.** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the "Statement of Compliance".
- 16.4.10.** The falsification of any of the above certifications may subject the Contractor or

subcontractor to civil or criminal prosecution under Title 18 and Title 31 of the United States Code.

**16.5. Records**

**16.5.1.** The Contractor or subcontractor shall make the records available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job.

**16.5.2.** If the Contractor or Subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds.

**16.5.3.** Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**16.6. Apprentices & Trainees**

**16.6.1.** Apprentices will be permitted to work at less than predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

**16.6.2.** The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

**16.6.3.** Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

**16.6.4.** In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

**16.6.5.** Where a Contractor is performing construction on a project in a locality other than that in which registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed.

**16.6.6.** Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

**16.6.7.** Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program.

**16.6.8.** If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.



16.6.9. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

16.6.10. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable pre-determined rate for the work performed until an acceptable program is approved.

16.7. Trainees

16.7.1. Except as provided for in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

16.7.2. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

16.7.3. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

16.7.4. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program.

16.7.5. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices.

16.7.6. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed.

16.7.7. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

16.7.8. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work until an acceptable program is approved.

16.8. **Equal Employment Opportunity:** The utilization of apprentices, trainees, and journeymen shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR Part 30.

16.9. **Compliance with Copeland Act requirements:** Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this Contract

16.10. **Contract Termination; Debarment:** A breach of this Article may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor.

16.11. **Disputes Concerning Labor Standards:** Disputes arising out of the labor standards provisions of Disputes Concerning Labor Standards shall not be subject to ARTICLE 9 DISPUTE RESOLUTION/CLAIM PROCEDURE of this contract. Such disputes shall be resolved in accordance



with the procedures of the Department of Labor. Disputes within the meaning of Disputes Concerning Labor Standards include disputes between the Contractor (or any of its subcontractors) and GDPM, HUD, the U.S. Department of Labor, or the employees or their representatives.

**16.12. Certification of Eligibility:** By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded contracts by virtue of the Davis-Bacon Act or 29 CFR 5.12.

**16.12.1.** No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government contract by virtue of the Davis-Bacon Act or 29 CFR 5.12.

**16.12.2.** The penalty for making false statements is prescribed in the U. S. Criminal Code 18 U.S.C. 1001.

**16.13. Contract Work Hours and Safety Standards Act:** As used in this provision - Contract Work Hours and Safety Standards Act, the terms "laborers" and "mechanics" include watchmen and guards.

**16.13.1. Overtime Requirements**

**16.14.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one half pay for all hours worked in excess of 40 hours in such workweek.

**16.15. Violation; liability for unpaid wages; Liquidated Damages**

**16.15.1.** In the event of any violation, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages.

**16.15.2.** In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages.

**16.15.3.** Such liquidated damages shall be computed with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages.

**16.16. Withholding for unpaid wages and liquidated damages**

**16.16.1.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages.

**16.17. Subcontracts**

**16.17.1.** The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in subcontracts, and such other clauses as HUD or its designee may by

appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts.

**16.17.2.** The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.

**16.18. Non-Federal Prevailing Wage Rates**

**16.18.1.** Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-federal prevailing wage rate exceeds:

**16.18.1.1.** The applicable wage rate determined by the Secretary of Labor pursuant to the Davis- Bacon Act (40 U.S.C. 276(a)) to be prevailing in the locality with respect to such trade;

**16.18.1.2.** An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL- recognized State Apprenticeship Agency; or

**16.19.** An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.

**17 ARTICLE XVIII: SECTION 3**

**17.1.** In order to promote Employment, Training, and Contracting Opportunities for Low-Income Persons, the Contractor shall participate in GDPM's Section 3 Program.

**17.1.** The work to be performed under this Contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended.

**17.2.** The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

**17.3.** The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3.

**17.4.** As evidence by the execution of the Contract, the parties to this Contract certify that they are under no contractual or other impediments that would prevent them from complying with the Part 135 regulations.

**17.5.** The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a narrative advising the labor organization or workers' representative of the Contractor's commitments, and will post copies of this notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice.

**17.6.** The notice shall describe the preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work will begin.

**17.7.** The Contractor agrees to include this Article - SECTION 3 in every subcontract subject to

compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Article upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135

**17.8.** The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

**17.9.** The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.

**17.10.** Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

**17.11.** Section 3 Reporting Requirements:

- Contractor must acknowledge and abide by any request for Section 3 documentation made by GDPM. In addition, contractor must follow any specific Section 3 reporting requirements required by GDPMs procurement department.

## **18 ARTICLE XVIII: Equal Opportunity Prohibition against Discrimination**

**18.1.** During the performance of this contract, the Contractor agrees as follows:

**18.1.1.** Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, sexual orientation, or handicap.

**18.1.2.** The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or handicap. Such action shall include, but not be limited to:

**18.1.2.1.** Employment;

**18.1.2.2.** Upgrading;

**18.1.2.3.** Demotion;

**18.1.2.4.** Transfer;

**18.1.2.5.** Recruitment or recruitment advertising;

**18.1.2.6.** Layoff or termination;

**18.1.2.7.** Rates of pay or other forms of compensation; and

**18.1.2.8.** Selection for training, including apprenticeship.

**18.1.3.** The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by GDPM that explain this Article.

**18.1.4.** The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or handicap.

**18.1.5.** The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be

provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this Article, and post copies of the notice in conspicuous places available to employees and applicants for employment.

**18.1.6.** The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

**18.1.7.** The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, pursuant thereto.

**18.1.8.** The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

**18.1.9.** In the event of a determination that the Contractor is not in compliance with this Article or any rules, regulations, or order of the Secretary of Labor, this contract may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further Government Contracts, or Federally assisted construction contracts under the procedures authorized, in Executive Order 11246, as amended.

**18.1.10.** In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law, including the following as provided by ORC:

**18.1.10.1.** In the event Contractor fails to comply with these nondiscrimination provisions, GDPM shall deduct from the amount payable to the Contractor a forfeiture of the statutory penalty pursuant to ORC for each person who is discriminated against or intimidated.

**18.1.10.2.** The Contract may be terminated or suspended in whole or in part by GDPM and all money due hereunder may be forfeited in the event of a subsequent violation of the foregoing nondiscrimination provisions.

**18.1.11.** The Contractor shall include the terms and conditions of this Article in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

**18.1.12.** The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigations to protect the interests of the United States.

**18.1.13.** Compliance with the requirements of this Article shall be to the maximum extent consistent with, but not in derogation of compliance with the Indian Self-Determination and Education Assistance Act and the Indians Preference Clause of this Contract.

**18.2.** The Contractor shall cooperate fully with the States Equal Opportunity Coordinator (EOC), with any other official or agency of the state of federal government that seeks to eliminate unlawful employment discrimination, and with all other state and federal efforts to assure equal employment practices under the Contract.

**19                    ARTICLE XIX: HEALTH, SAFETY, AND ACCIDENT PREVENTION**

**19.1.            Contractor Obligations.** In performing this contract, the Contractor shall:

- 19.1.1. Take reasonable precautions to ensure safety of individuals on the Project;
- 19.1.2. Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;
- 19.1.3. Protect the lives, health, and safety of other persons;
- 19.1.4. Prevent damage to property, materials, supplies, and equipment;
- 19.1.5. Avoid work interruptions;

**19.2.** For these purposes, the Contractor shall:

- 19.2.1. Comply with regulations and standards issued by the Secretary of Labor (failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act);
- 19.2.2. Include the terms of this Article in every subcontract that such terms will be binding on each subcontractor. The Contractor shall be responsible for its subcontractors' compliance with the provisions of this Article;
  - 19.2.2.1. The Contractor shall take such action with respect to any subcontract as GDPM, the Secretary of Housing or Secretary of Labor shall direct as a means of enforcing such provisions.
- 19.2.3. Maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational diseases or damages to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by applicable law;
- 19.2.4. Pay any fine or cost incurred because of Contractor's violation, or alleged violation, of any Applicable Law.

**19.3.            Notification of Non-Compliance Procedure**

- 19.3.1. GDPM shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required.
- 19.3.2. After receiving the notice, the Contractor shall immediately take corrective action.
- 19.3.3. If the Contractor fails or refuses to take corrective action promptly, GDPM may issue an order stopping all or part of the work until satisfactory corrective action has been taken.
- 19.3.4. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

**19.4.            Safety Plan**

- 19.4.1. The Contractor is responsible for designing and implementing its own site-specific safety

plan, including compliance with OSHA regulations and such plan shall meet or exceed GDPM's site-specific safety plan (if any).

**19.4.2.** Before starting any Work, the Contractor shall submit to GDPM a copy of the Contractor's site-specific safety plan and safety manuals.

**19.5. Safety Data Sheets**

**19.5.1.** The Contractor shall identify any material it uses at the Site with a Safety Data Sheet ("SDS") meeting the requirements of OSHA's Hazardous Communication Standard.

**19.5.2.** The Contractor shall maintain a notebook containing all of its applicable SDSs.

**19.5.3.** This notebook shall be kept at the Site for the duration of the Project.

**19.6. Hazardous Materials**

**19.6.1.** Prohibition against Hazardous Materials: The Contractor shall not introduce Hazardous Materials to the Project.

**19.6.2.** Work Stoppage Due to Hazardous Materials:

- a. If the Contractor encounters material the Contractor reasonably believes to be, or contain, a Hazardous Material that has not been rendered harmless, the Contractor shall immediately stop Work in the affected area and verbally report the condition to GDPM, and within 1 business day deliver written notice of the condition to GDPM.
- b. GDPM will promptly determine the necessity of GDPM retaining a qualified environmental consultant to evaluate the suspected Hazardous Material and to issue a related written report.
- c. Where appropriate, GDPM will engage a licensed abatement contractor to remove the material or render it harmless as directed.
- d. The Contractor shall resume Work in the affected area upon written notice from GDPM that: (1) The suspect material was evaluated and found not to be or contain a Hazardous Material; or (2) The suspect material has been removed or rendered harmless.
- e. If the Contractor knowingly or negligently proceeds with the Work in an area where a Hazardous Material exists and has not been rendered harmless, the Contractor shall be solely responsible for all related claims, damages, losses, and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from performing the Work in the affected area.
- f. The term "rendered harmless" means that the level of exposure is less than any applicable exposure standards set forth in Applicable Law.

**19.7. Fires or Hot-Work**

**19.7.1.** Contractor shall not burn any fires on the Site(s).

**19.7.1.1.** The Contractor shall notify the Project Manager 24 hours before the start of non-routine or non-recurring hot-work.

- a. Use of sources of fire, flame or sparks and flammable materials shall be kept to an absolute minimum.
- b. At the beginning of the Project, the Contractor shall inform the Project Manager of its intent to use blowtorches, welding apparatus or similar exposed flame

and sparking devices.

- c. Similar notice shall be given in regard to the use of flammable liquids, adhesives, and cleaners.

**19.7.2.** The Contractor shall furnish an appropriate number of fire extinguishers (minimum of 1), which shall be within the immediate areas where work is being done at all times. The extinguisher shall be adequate and suitable for the class of fire likely to be caused by the Contractor's operations.

**19.8. Explosives and Blasting**

**19.8.1.** The Contractor shall not conduct blasting on, or bring explosives to the Work Site without written approval of GDPM and other authorities with jurisdiction.

**19.8.2.** The Contractor shall perform all blasting, storing, and handling of explosives as required under Applicable Law.

**19.8.3.** The Contractor shall carry appropriate liability insurance coverage, as required by the Contract Documents, for its blasting and explosives storage and handling operations.

**19.8.3.1.** Immediately upon request, the Contractor shall deliver evidence of that insurance to GDPM.

**20 ARTICLE XX: CONTRACT DOCUMENTS AND CONTRACT RECORDS**

**20.1. Examination and Retention of Contractor's Records**

**20.1.1.** GDPM, HUD, or the Comptroller of the United States, or any of their duly authorized representatives shall, until 6 years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this Contract for the purpose of making audit, examination, excerpts, and transcriptions.

**20.1.2.** The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as 20.1.1. "Subcontract," as used in Examination and Retention of Contractor's Records, excludes purchase orders not exceeding \$10,000.

**20.1.3.** The periods of access and examination for records relating to (1) appeals under the DISPUTE RESOLUTION/CLAIM PROCEDURE Article of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which GDPM, HUD, or Comptroller General or any of their duly authorized representatives has taken exception, shall continue until disposition of such appeals, litigation, claims, or exceptions.

**20.1.4.** If a dispute arises with any other Person about whether that Person should be given access to the documents, the Contractor or Subcontractor as applicable, shall indemnify GDPM against all costs, expenses, and damages, including but not limited to attorneys' fees, incurred or paid by reason of that dispute.

**20.1.5.** The right of inspection, audit, and reproduction extends to all documents necessary to permit adequate evaluation of the cost of pricing data submitted along with the computations and projections used therein.

**20.1.6.** If the Contract has been terminated, in whole or in part, the records relating to the Work terminated shall be made available to GDPM for a period of 6 years from the date of any applicable final settlement or payment, as applicable.



## **20.2. Examination and Audit o/ Contractor's Records**

- 20.1.7.** GDPM may examine all books, records, documents and other data of the Contractor and its Subcontractors related to the bidding, pricing, or performance of the Work for the purpose of evaluating any Contractor Payment Request, Proposal, Modification, or Claim.
- 20.1.8.** The above referenced materials shall be made available at the office of the Contractor or Subcontractor, as applicable, at all reasonable times for inspection, audit, and reproduction until the expiration of 6 years after the date of Substantial Completion of all Work.
- 20.1.8.1.** The Contractor shall maintain, and require its Subcontractors to maintain complete and accurate business records at its principal place of business.
- 20.1.8.1.1.** If the principal place of business is greater than 50 miles from the Site, the Contractor shall timely make records available, and shall require its Subcontractors to timely make records available, at the office of GDPM upon request for the records.
- 20.1.8.2.** To the extent that the Contractor or Subcontractor, as applicable, informs GDPM in writing that any documents provided to GDPM are trade secrets, GDPM shall treat these documents, to the extent permitted by law, as trade secrets of the Contractor or Subcontractor, as applicable.
- 20.1.8.2.1.** If a dispute arises with any other Person about whether that Person should be given access to the documents, the Contractor or Subcontractor as applicable, shall indemnify GDPM against all costs, expenses, and damages, including but not limited to attorneys' fees, incurred or paid by reason of that dispute.
- 20.1.9.** The right of inspection, audit, and reproduction extends to all documents necessary to permit adequate evaluation of the cost of pricing data submitted along with the computations and projections used therein.
- 20.1.10.** If the Contract has been terminated, in whole or in part, the records relating to the Work terminated shall be made available to GDPM for a period of 6 years from the date of any applicable final settlement or payment, as applicable.
- 20.1.11.** Records that relate to disputes, litigation, or settlement of Claims arising out of the performance of the Work shall be made available until the dispute, litigation or Claims have been finally decided or settled.

## **20.3. Ownership of Contract Documents**

- 20.1.12.** GDPM shall have exclusive ownership of, all proprietary interest in, and the right to full and exclusive possession of all information, materials and documents discovered or produced by Contractor pursuant to the terms of this Contract, including but not limited to reports, memoranda, drawings or letters concerning the research and reporting tasks of this Contract.
- 20.1.13.** For data other than computer software, the Contractor grants to GDPM and others acting on its behalf, a paid-up, nonexclusive, irrevocable, world-wide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of GDPM.
- 20.1.14.** GDPM alone owns the Contractor's Documents and the Contract Documents and



every right, title, and interest therein.

**20.1.15.** The Contractor must execute and deliver and cause its agents and subcontractors to execute and deliver, to GDPM any transfers, assignments, documents or other instruments necessary to vest in GDPM the complete right, title, interest in and ownership of the Contractor's Documents.

**20.1.16.** The Contractor may retain copies of the Contractor's Documents and the Contract Documents for information, reference, and performance of the Work.

**20.1.17.** The submission or distribution of the Contractor's Documents or the Contract Documents to meet official regulatory requirements or for similar purposes in connection with the Project is not a waiver of GDPM's reserved rights in the Contractor's Documents.

**20.1.18.** Any unauthorized use of the Contractor's Documents or the Contract Documents shall be at the sole risk of the entity making the unauthorized use.

#### **20.4. Intent of Contract Documents**

**20.1.19.** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of Work by the Contractor.

**20.1.20.** The Contract Documents are complementary, and what is required by one is binding as if required by all.

**20.1.21.** The Contractor shall provide all labor materials necessary for the entire completion of the Work described in the Contract Documents and reasonably inferable to produce the intended results.

**20.1.22.** The Drawings govern dimensions, details, and location of the Work.

**20.1.23.** The Specifications govern the quality of materials and workmanship.

**20.1.24.** The organization of the Specifications in divisions, sections, and articles, and the arrangement of Drawings shall not restrict the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**20.1.25.** Unless otherwise defined in the Contract Documents, words that have well known technical or construction industry meanings are used within those recognized meanings.

#### **20.5. Use of Electronic Files**

**20.1.26.** GDPM and Contractor reasonably expect that they will provide electronic files to each other to facilitate the design and construction of the Project consistent with current practices and customs in the construction industry.

**20.1.27.** GDPM and Contractor acknowledge that the use of electronic files involves risks not generally associated with the use of paper documents. Those risks may include, but not be limited to, alteration (inadvertent or intentional) and deterioration, both of which may not be apparent through casual observation.

**20.1.28.** In the event of a discrepancy between information contained in a paper version of a document and the electronic file of that document, the paper will govern.

**20.1.29.** Use of electronic files does not relieve the Contractor of its responsibility for the preparation, completeness, or accuracy of the Contractor's Documents.

## 20.6. Order of Precedence

20.1.30. In the event of any inconsistency or conflict within any of the Contract Documents, the Contractor shall provide the better quality of Work and comply with the stricter requirement.

20.1.31. In the event of a conflict between the contract and any applicable state or local law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or regulation applies to GDPM and does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order.

20.1.31.1. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.

## 21 ARTICLE XXI: MISCELLANEOUS

21.1. **Assignment:** The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from GDPM under the contract may be assigned to a bank, trust company, or other financial institution.

21.1.1. Such assignments of claims shall only be made with the written concurrence of GDPM.

21.1.2. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by GDPM.

21.1.3. *Assignment of Anti-trust Claims:* By signing the Agreement, the Contractor assigns, conveys and transfers to GDPM any right, title, and interest to any claims or causes of action it may have or acquire under state or federal antitrust laws relating to any goods, products, or services purchased, procured, or rendered to GDPM pursuant to the Contract.

21.1.4. GDPM and Contractor each bind themselves, their successors, assigns and legal representatives, to the other party to this Contract and to the successors, assigns, and legal representatives of the other party with respect to the Contract.

21.2. **Contractor Performance Evaluation:** GDPM may evaluate the Contractor's Performance at any time including without limitation during the progress of the Work, at the completion of a phase of the Project, and/or completion of the Project.

21.2.1. GDPM shall retain the evaluation.

21.2.2. The Contractor may request a copy of the completed evaluation(s).

21.2.3. If the Contractor wishes to comment or take exception to any rating or remark, the Contractor must send a response in writing to GDPM within 30 days of Contract Completion and/or Termination.

21.2.4. GDPM may use the evaluation(s) in determining the responsibility of the Contractor for award of future contracts.

21.2.5. Poor evaluations may lead to a determination that Contractor is not responsible and therefore ineligible for award of future contracts for a period of not less than one year.

21.2.6. GDPM may request information from the Contractor for use in evaluating the A/E's performance. If information is requested, the Contractor shall comply in a timely and responsive manner.

21.2.7. If a breach of the Contract is committed by the Contractor or is attributable to a Subcontractor, that breach will be used in the responsibility analysis of the Contractor and Subcontractor (where applicable) for future contracts or subcontracts for a period of 5 years

after the date of the breach unless said breach results in Contractor being placed on debarment list, then for the period provided therein.

**21.3. *Prohibition against Liens:*** The Contractor is prohibited from placing a lien on GDPM's property. This prohibition shall apply to all subcontractors at any tier and all material suppliers.

**21.4. *Conflict of Interest***

**21.4.1. Interest of Members of Congress:** No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

**21.4.2. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees:** No member, officer, or employee of GDPM, no member of the governing body of the locality in which the Project is situated, no member of the governing body of the locality in which GDPM was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this Contract or the proceeds thereof.

**21.5. *Limitation on Payments Made to Influence Certain Federal Financial Transactions***

**21.5.1.** The Contractor agrees to comply with Title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions:

**21.5.1.1.** The awarding of any Federal contract;

**21.5.1.2.** The making of any Federal grant;

**21.5.1.3.** The making of any Federal loan;

**21.5.1.4.** The entering into of any cooperative agreement; or

**21.5.1.5.** The modification of any Federal Contract, grant, loan, or cooperative agreement.

**21.5.2.** The Contractor further agrees to comply with the requirement of the Act to furnish a disclosure (OMB Standard Form LLL, Disclosure of Lobbying Activities) if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

**21.6. *Procurement of Recovered Materials:*** In accordance with the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) 40 CFR that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

**21.6.1.** The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of

Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

**21.6.2.** This provision *Procurement of Recovered Materials* shall apply to items purchased under this contract where:

**21.6.2.1.** The Contractor purchases in excess of \$10,000 of the item under this contract; or

**21.6.2.2.** During the preceding: (1) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (2) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

**21.7. *Royalties and Patents:*** The Contractor shall pay all royalties and license fees and assume all costs incident to the use, in the performance of the Work or the incorporation in the Work, of any design, inventions, process, product, or device that is the subject of patent rights or copyrights held by others.

**21.7.1.** Contractor shall defend all suits or claims for infringement of any patent rights or copyrights and shall save GDPM harmless from loss on account thereof; except that GDPM shall be responsible for any such loss when a particular design, process, or the product of a particular manufacturer or manufacturers is specified and the Contractor has no reason to believe that the specified design, process, or product is an infringement.

**21.7.2.** If, however, the Contractor has reason to believe that any design, process or product specified is an infringement of a patent or copyright, the Contractor shall promptly notify the Contracting Officer.

**21.7.2.1.** Failure to give such notice shall make the Contractor responsible for resultant loss.

**21.8. *Contract Period:*** The Contractor shall complete all Work required within the required number of days of the effective date of the contract as set forth in the solicitation, supplemental terms, or within the time schedule established in the notice to proceed issued by GDPM.

**21.9. *Other Contracts:*** GDPM may undertake or award other contracts for additional work at or near the site of the work under this contract.

**21.9.1.** The Contractor shall fully cooperate with the other contractors and with GDPM employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by GDPM.

**21.9.2.** The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by GDPM employees.

**21.10. *Drug-Free Workplace:*** Each contractor shall be enrolled in and in good standing and shall require all subcontractors with whom the Contractor is in contract for the public improvement to be enrolled in and be in good standing in the Bureau of Workers' Compensation's Drug-Free Workplace Program or a comparable program approved by the Bureau that meets the requirements specified in the Revised Code prior to a subcontractor providing labor at the project site of the public improvement.

**21.11. *Energy Efficiency and Sustainability Requirements:*** The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act for the State in which the work under the contract is performed.

**21.11.1.** If the Project is designed and constructed under the Leadership in Energy and Environmental Design ("LEED" Rating System developed by the U.S. Green Building

Council or another rigorous rating system used to facilitate achievement of sustainability goals for the Project, the Contractor shall provide submittals certifying achievement of sustainable designed rating system criteria for verification by the Green Building Certification Institute or other third party in accordance with the Contract Documents.

**21.12. Clean Air and Water:** The contractor shall comply with the Clean Air Act, as amended 42 USC, the Federal Water Pollution Control Water Act, as amended 33 U.S.C., and standards issued pursuant thereto in the facilities in which this contract is to be performed.

**21.13. Public Relations:** Public relations or publicity about the Project shall be solely within the control of and consent of GDPM.

**21.13.1.** Contractor shall submit to GDPM all advertising and publicity related material relating to this Contract, including without limitation, information provided in social media, wherein GDPM's name is mentioned or language used from which the connection of GDPM's name may, in GDPM's judgment, be inferred or implied.

**21.13.2.** Contractor shall not publish or use such advertising and publicity matters without prior express written consent of GDPM.

**21.14. Governing Law:** This Contract shall be governed and construed exclusively by its terms and by the laws of the State of Ohio and any suit filed to enforce any term of this Contract shall be filed only in a court of competent jurisdiction in Montgomery County, Ohio. The parties to this Contract shall comply with Applicable Law.

**21.15. Written Notice:** Notice under the Contract Documents shall be validly given if delivered personally to a member of the organization for whom the notice is intended.

**21.16. Taxes:** Parties acknowledge that GDPM is a tax exempt entity and Contractor must use tax exemption status for all purchases made for the Project in which tax exemption is permitted under law.

**21.17. Computing Time:** When the Contract Documents refer to a period of time by a number of days, the period shall be computed to exclude the first and include the last day of the period. If the last day of the period falls on a Saturday or Sunday, or a legal holiday, that day shall be omitted from the computation and the period shall end on the next business day.

**21.17.1.** Except as excluded, the Contract Times and all other periods referred to in the Contract Documents includes Saturdays, Sundays, and all days defined as legal holidays below.

**21.17.2.** The standard workdays for the Work are Monday through Friday, excluding legal holidays.

**21.17.3.** The Legal Holidays are as follows:

- New Year's Day
- Martin Luther King Jr. Day
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Columbus Day
- Veterans Day
- Thanksgiving Day

- Christmas Day

- 21.18. Time is of the Essence:** All time limits set forth in the Contract Documents are of the essence.
- 21.18.1.** By signing this Contract, Contractor acknowledges that the Contract Times are reasonable, taking into consideration the usual weather and other conditions prevailing in the locality of the Project.
- 21.18.2.** By Signing the Construction Schedule, the Contractor acknowledges that the specified milestone dates are reasonable, taking into consideration the usual weather and other conditions prevailing in the locality of the Project.
- 21.18.3.** The Notice to Proceed Establishes the date for commencement of the Work.
- 21.18.4.** The Contractor acknowledges that it may be subject to interference, disruption, hindrance, or delay in the progress of the Work from any cause. The sole remedy for such interference, disruption, hindrance, or delay shall be an extension of the Contract Time, unless otherwise required by law.
- 21.19. Extent of Contract:** The Contract Documents represent the entire and integrated agreement between GDPM and the Contractor and supersede all prior negotiations, representations, or agreement, either written or oral. This Contract may be executed in any number of counterparts, each of which shall be regarded as original and all of which constitute but one and the same instrument. The captions and headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any of the provisions or sections hereof.
- 21.20. Severability:** If any provision of this Contract is determined by a court having jurisdiction to be unenforceable to any extent, the rest of the provisions of this Contract will remain enforceable to the fullest extent permitted by law.
- 21.21. Electronic Signature:** Any party hereto may deliver a copy of its counterpart signature page of any Contract Documents via email, fax, or web-based project management software. Each party shall be entitled to rely upon a scanned or facsimile signature of the other party in such a manner as if such a signature were an original.
- 21.22. No Third Party Interest:** Except as expressly provided herein, no person or entity, other than GDPM and Contractor, will have any right or interest under the Contract, and the Contract does not create a contractual relationship of any kind between any persons or entities other than GDPM and the Contractor.
- 21.23. No Waiver:** The failure of GDPM or Contractor to insist on any one or more instances upon strict performance of any one or more of the provisions of the Contract or to exercise any rights under the Contract or provided by law will not be construed as a waiver or relinquishment of that provision or of the right to subsequently demand strict performance or exercise the right and the rights will continue unchanged and remain in full force and effect.
- 21.24. Survival of Obligations:** All representations, indemnity obligations, warranties, guarantees, and other expressed continuing obligations under the Contract, will survive final payment, completion and acceptance of the Work, and termination or completion of the Contract.
- 21.25. Force Majeure:** Neither party shall be liable for failure to perform if such failure is caused by conditions beyond its control including, but not limited to, Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, and/or insurrections.
- 21.26. Privacy:** The Contractor agrees to Comply with the Privacy Act of 1974 (the Act) and the

agency rules and regulations issued under the Act and any Personal information collected, used, or acquired in connection with this Contract shall be protected against unauthorized use, disclosure, modification or loss. Contractor shall ensure that its directors, officers, employees, subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein.

**21.26.1.** Contractor agrees not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without express written consent of GDPM or otherwise required by law.

**21.26.2.** Contractor agrees to indemnify and hold harmless GDPM for any damages related to Contractor's unauthorized use of personal information.

**21.27.** ***Contractor Status:*** It is understood that the Contractor is an independent contractor and is not to be considered an employee of GDPM, or assume any right, privilege or duties of an employee.

**Exhibit B**  
**Wage Determination**



**Exhibit C**  
**Schedule of Values**

**Exhibit D**  
**Construction Schedule**

**Exhibit E**  
**Insurance & Bond Information**

**Exhibit F**  
**Drawings & Specifications**