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Hearing Date and Time: August 6, 2010 at 9:45 a.m.
Response Date and Time: July 30, 2010 at 4:00 p.m.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re)
) Chapter 11 Case No.
) 09-50026 (REG)
MOTORS LIQUIDATION COMPANY, *et al.*,)
 f/k/a General Motors Corp., *et al.*,) (Jointly Administered)
)
 Debtors.)
)
MOTORS LIQUIDATION COMPANY,)
)
 Plaintiff/Counter-Defendant,)
) Adv. Pro. No. 10-05008
v.)
)
MCM Management Corp.,)
)
 Defendant/Counter-Plaintiff.)

**MOTORS LIQUIDATION COMPANY’S PARTIAL MOTION TO DISMISS
MCM MANAGEMENT CORP.’S COUNTERCLAIM**

Plaintiff/Counter-Defendant Motors Liquidation Company (“Motors Liquidation”), by and through its undersigned attorneys, hereby files this Partial Motion to Dismiss (the “Motion”), and requests, pursuant to Federal Rule of Civil Procedure 12(b)(6) and Federal Rule of Bankruptcy Procedure 7012(b), that this Court dismiss in full Counts I, II, III, IV and VI of the Counterclaim filed by MCM Management Corp. (“MCM”), and dismiss in part

Count V of MCM's Counterclaim. In support of this motion, Motors Liquidation respectfully refers the Court to the Brief in Support filed herewith and the exhibit attached thereto.

WHEREFORE, Motors Liquidation respectfully requests that the Court grant its Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b) and Fed. R. Bankr. P. 7012(b), and grant such other and further relief as the Court deems appropriate.

Dated: June 22, 2010

Respectfully submitted,

PEPPER HAMILTON LLP

/s/ Deborah Kovsky-Apap_____

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*Ordinary Course Professionals for Motors
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EXHIBIT A



**GENERAL MOTORS CORPORATION
AND AFFILIATES
CONSTRUCTION GENERAL CONDITIONS
GM 1638 (05/05)**

Supersedes Earlier Versions

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GENERAL MOTORS CORPORATION

GM 1638 (05/05) CONSTRUCTION GENERAL CONDITIONS

ARTICLE 1: CONTRACT DOCUMENTS

1.1 DEFINITIONS

The following terms shall have the meanings indicated throughout the Contract Document, whether used in the singular or plural (some terms are defined in sections to which they apply):

Activity: As used in connection with the Schedule, the term “Activity” means a discrete portion of the Work for a Project that can be identified for planning, scheduling, monitoring and controlling the Project. “Critical Path Activities” are Activities on the Critical Path; they must start and finish on the planned early start and finish times.

Allowance: The term “Allowance” shall mean an allowance permitted to be included in the Contract Sum in accordance with Section 8.2 hereof.

Alternate Price: The term “Alternate Price” shall mean a price option that is requested by the Owner in the Bid Documents or volunteered by the Contractor in its bid proposal for the substitution of systems, materials, equipment or means for those specified in the Bid Documents for the Contractor’s base bid. The terms “Alternate Price” and “Separate Price” may be used interchangeably.

Application for Payment: The term “Application for Payment” shall mean the invoice meeting the requirements of Article 8 submitted by the Contractor for progress payments and the Retention payment. The terms “Application for Payment” and “Invoice” may be used interchangeably.

Architect/Engineer: The term “Architect/Engineer” or “Process Engineer” means the independent professional architectural/engineering firm engaged by the Owner to perform architectural/engineering services in connection with the Project. The Architect/Engineer and/or Process Engineer is identified in the Contract Documents.

Assigned Contractor: The term “Assigned Contractor” means a contractor who becomes a Subcontractor by virtue of its contract with the Owner being assigned by the Owner to another Contractor.

Baseline Schedule: The term “Baseline Schedule” shall mean the original critical path method schedule prepared by the Contractor and approved by the Owner in accordance with Section 7.1.3.

Bid Documents: The “Bid Documents” shall include Drawings, Specifications, these Construction General Conditions, Special Safety Conditions, Information to Bidders and/or Request For Proposal, Special Conditions, if any, Supplemental Conditions, if any, and Addenda issued and dated on or before the date of the Contract with the Owner’s approval.

Bulletin: A “Bulletin” is a written request by the Owner for a Quotation from the Contractor as to the cost impact of a proposed change in the Work, change in the Contract Time, or change in the Schedule. A BULLETIN DOES NOT AUTHORIZE THE CONTRACTOR TO PROCEED WITH CHANGED WORK; only a Field Order, Contract Change Order, or Purchase Order Alteration can authorize the Contractor to proceed with changed work. A Bulletin is authorized as provided in Section 13.2.

Construction General and Regional Requirements: The Construction General and Regional Requirements are attached hereto as Appendix A.

Construction Manager: The term “Construction Manager” shall mean a construction manager engaged by the Owner to provide certain overall project management and administration services on behalf of the Owner. If the Owner engages a Construction Manager, the identity of the Construction Manager and the role of the Construction Manager will be stated in the Contract Documents.

Contract Change Order: A “Contract Change Order” is a document issued by the Owner, on a form furnished by the Owner, and signed by the Owner’s Purchasing Department and the Contractor, modifying the scope of the Work under the Contract, the Contract Sum, the Contract Time, and/or the Schedule. The terms Contract Change Order and Purchase Order Alteration are sometimes used interchangeably; although the forms differ, their effect in amending the Contract is the same once properly executed.

Contract Documents: The “Contract Documents” and the “Agreement” and the “Contract” have the same meaning and consist of (i) the Owner-Contractor Agreement, if any, issued by the Owner and/or the Purchase Order issued by the Owner for the Project if an Owner-Contractor Agreement is not issued; (ii) Special Conditions, if any; (iii) Special Safety Conditions; (iv) Supplemental Conditions, if any; (v) this document entitled “Construction General Conditions” including the appendices to this document; (vi) the Drawings and the Specifications enumerated in the Contract; (vii) other documents incorporated in the Contract by reference; and (viii) all Addenda issued

prior to, and all written amendments executed by both parties and Purchase Order Alterations issued after, award of the Owner-Contractor Agreement. If the Owner issues an Owner-Contractor Agreement for the Project, the Contract Documents will be listed in the Owner-Contractor Agreement. If the Owner does not issue an Owner-Contractor Agreement for the Project, the Contract Documents will be listed in the Purchase Order issued by the Owner for the Project.

Contract Sum: The “Contract Sum” is the full consideration of the full and complete performance of the work and all other obligations of the Contractor under the Contract Documents.

Contract Time: The term “Contract Time” shall mean the period of time allotted in the Contract Documents for Final Completion of the Work by the Contractor, including authorized adjustments of the original Contract Time.

Contractor: The Contractor is the person or entity engaged by the Owner to provide construction services for the Project and is identified as the “Contractor” in the Contract Documents.

Critical Path: The term “Critical Path” means the longest continuous chain of activities through the network schedule as determined by network calculations, that establishes the minimum time to achieve Final Completion of the Work.

Date of Commencement of the Work: The term “Date of Commencement of the Work” shall mean the day of the Owner Contractor Agreement, if any, or Purchase Order or such other date as may be established in the Owner-Contractor Agreement.

Date of Final Acceptance of the Work: The term “Date of Final Acceptance of the Work” shall mean the Day on which the Owner agrees that Final Completion of the Work has been achieved and the Owner issues written acceptance of the Work in the form of Appendix J attached hereto, as more particularly defined in Section 7.8.

Date of Final Completion of the Work: The term “Date of Final Completion of the Work” shall mean the Day on which the Work shall be fully, completely and finally completed in accordance with the Contract Documents and the Contractor has satisfied all of the conditions to Final Completion set forth in the Contract Documents, including those set forth in the Construction General and Regional Requirements attached as Appendix A.

Date of Substantial Completion of the Work: The term “Date of Substantial Completion of the Work” or designated portion thereof is the Day upon which both of the following conditions have been satisfied: (i) the Owner shall have agreed that construction is sufficiently complete, in accordance with the Contract Documents, so that the Owner can occupy or utilize the Work or designated portion thereof for the use for which it is intended; and (ii) a temporary certificate of occupancy or other governmental authorization to use the Project shall have been issued, subject only to such conditions as may be reasonably acceptable to the Owner unless the same cannot be obtained because of work and/or conditions beyond the scope of this Contract.

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

Design/Build Subcontractors: The term “Design/Build Subcontractors” shall mean Subcontractors of the Contractor designated by the Contractor in the Owner-Contractor Agreement or the Purchase Order to perform those portions of the Work that will be completed on a design/build basis.

Document Clarification Request: A “Document Clarification Request” or “DCR” shall mean a request submitted by the Contractor to the Owner, using the form attached hereto as Appendix B to: (i) obtain a clarification of the design intent and/or the scope of Work for a work item included in the Drawings and Specifications; or (ii) obtain a clarification of the scope of work included in a Field Order or Bulletin; or (iii) seek authorization in accordance with the Contract Documents for a change in the Work, the Contract Time and/or the Schedule. The terms “Document Clarification Request” and “Request For Information” and “RFI” may be used interchangeably.

Drawings: The term “Drawings” shall mean and refer to the portion of the Drawings and Specifications that give a graphic representation of the scope, location and arrangement of construction, materials and equipment.

Environmental Law: The term “Environmental Law” means all applicable federal, state, and local laws, ordinances, regulations, final orders and final judgments, which have been duly enacted or promulgated and which are legally enforceable concerning the subject of the introduction, emission, discharge or release of any Hazardous Material into the air, soil or surface or ground water; the transportation, storage, treatment or disposal of any Hazardous Material; or the remediation or investigation of contamination of air, soil or surface or ground water by any Hazardous Material.

Field Order: A “Field Order” is a written authorization from the Owner to the Contractor, executed by the Owner’s Purchasing Department, using a Field Order form furnished by the Owner, directing the Contractor to proceed immediately to perform the Changed Work described in the Field Order, with the adjustment to the Contract Sum to be determined in accordance with Section 13.3. Only the Owner can issue a Field Order.

Final Acceptance: The term “Final Acceptance” shall mean final acceptance of the Project by the Owner in accordance with Section 7.8 hereof.

Float: The term “Float” means the amount of time an Activity can be delayed without adversely affecting the early start of the following Activity.

Force Majeure Delays: The term “Force Majeure Delays” shall have the meaning set forth in Section 7.5.

Handling Fee: The term “Handling Fee” shall have the meaning set forth in the Construction General and Regional Requirements, Appendix A.

Hazardous Materials: As used herein, the term “Hazardous Materials” means any hazardous, toxic, flammable, or explosive substance, material, or waste which is or becomes regulated by any governmental authority with jurisdiction. By way of example and not limitation, in the United States the term “Hazardous Material” includes, any material or substance which is (i) designated as a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317); (ii) defined as a “hazardous waste” pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, (42 U.S.C. §§ 6901 et seq.); (iii) defined as a “hazardous substance” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, (42 U.S.C. §§ 9601 et seq.); or (iv) defined as a “hazardous” or “toxic” substance in any law similar to or in any amendment of any of the foregoing laws.

Including or Include: The term “Including” or “Includes” shall be read as though the words “without limitation” follow in each instance unless otherwise expressly stated.

Invoice Date: As used herein with respect to payment by the Owner of an approved Application for Payment, and subject to the terms of Article 8, the term “Invoice Date” shall mean the date of the Project walk-through to determine the percentage of completion of Work and confirm the “pencil copy” of the Contractor’s Application for Payment in accordance with Sections 8.2.3 and 8.2.4 of Appendix A.

Materialman: The term “Materialman” or “Supplier” shall mean a party furnishing materials or equipment to the Contractor under this Contract. If the Materialman incorporates the materials or equipment into the construction itself, the Materialman shall be designated under this Contract as a “Subcontractor.”

Milestone Date: The Term “Milestone Date” shall mean the day set forth in the Contract Documents and the Schedule for commencement or completion of a major component of the Work.

Owner: Unless provided otherwise in the Supplemental Conditions, if any, the term “Owner” shall mean and refer to General Motors Corporation as represented by the operating business unit or the plant indicated in the Contract Documents.

Owner-Contractor Agreement: The Owner-Contractor Agreement is the written agreement executed by the Owner and Contractor for the performance of the Work for the Project and which incorporates by reference the other Contract Documents. For some Projects, a Purchase Order may serve this purpose.

Owner’s Consultants: The term “Owner’s Consultants” shall mean the consultants engaged by the Owner to provide design, engineering and other consulting services to the Owner with respect to the Project.

Owner’s Representative: The term “Owner’s Representative” shall mean the person or entity identified by the Owner in writing to manage and oversee the Project on behalf of the Owner. The Owner’s Representative shall have authority to act on the Owner’s behalf with respect to the Project. If, and to the extent, indicated in the Contract Documents, the Owner’s project administration activities may be performed by the Architect/Engineer, Process Engineer, Construction Manager or other representative of the Owner.

Payment Date: As used herein with respect to payment by the Owner of an approved Application for Payment and subject to the terms of Article 8, the term “Payment Date” shall be the date established by the Owner’s Multilateral Netting System (MNS-2), which provides, on average, that payment shall be made on the second day of the second month following the date percentage complete for the work is determined (the walk through date or invoice date as applicable).

Product Data: The term “Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate a material, product or system for some portion of the Work.

Project: The term “Project” shall mean the completion of the Work required by the Contract Documents in accordance with, and reasonably inferable from, the Drawings and Specifications, and all Work, whether on or off the Site, necessary to carry it forward.

Project Site: The term “Project Site” means “Site.”

Purchase Order: The term “Purchase Order” shall mean the GM purchase order issued to the Contractor with respect to the Work, as more particularly described in Section 1.3.4 hereof.

Purchase Order Alteration: A “Purchase Order Alteration” is a document issued by the Owner, on a form furnished by the Owner, and signed by the Owner’s Purchasing Department, modifying the scope of the Work under the Contract, the Contract Sum, the Contract Time and/or the Schedule. The terms Purchase Order Alteration and Contract Change Order are sometimes used interchangeably; although the forms differ their affect in amending the Contract is the same once properly executed.

Quotation: A “Quotation” is the Contractor’s proposal for the adjustment to the Contract Sum, Contract Time and/or Schedule for the change to the Work described in either the Bulletin or Field Order and containing a Form GM1784, Form GM 1784A and/or related Owner forms properly completed by the Contractor, addressed and delivered to the Owner’s Purchasing Department. A Quotation is not a Contract Document unless expressly identified as such in writing signed by both parties.

Safety Book: The term “Safety Book” means the safety records and documents required to be maintained by the Contractor at the Project Site, including records and documents required by Article 9 and the Special Safety Conditions and otherwise required under applicable laws and regulations.

Samples: The term “Samples” means physical examples furnished by the Contractor or any Subcontractor, manufacturer, Supplier or distributor which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

Schedule: The term “ Schedule” shall mean and refer to the logic-based progress schedule for the Project using critical path methodology prepared by the Contractor and approved by the Owner in accordance with Section 7.1.3, as subsequently adjusted in accordance with the terms of these Construction General Conditions.

Schedule of Values: The term “Schedule of Values” means the line item breakdown of the Contract Sum prepared by the Contractor and approved by the Owner in accordance with Section 8.1 of Appendix A for purposes of the Contractor’s Applications for Payment.

Separate Price: The term “Separate Price” shall mean a price option that is requested by the Owner in the Bid Documents for additional or deleted work beyond the scope of work required to be included in the Contractor’s base bid. The terms “Alternate Price” and “Separate Price” may be used interchangeably.

Shop Drawings: The term “Shop Drawings” means drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared for the Work by the Contractor or any Subcontractor, manufacturer, Supplier or distributor to illustrate some portion of the Work.

Site: The term “Site” means the location where the Project will be completed.

Special Conditions: The Special Conditions, if any, will be issued by the Owner with the Bid Documents, will be included in the Contract Documents and will modify the conflicting terms of GM 1638 and the conflicting terms of the Supplemental Conditions, if any, for the particular Project.

Special Safety Conditions: The Special Safety Conditions shall be issued and updated by the Owner from time to time and shall include safety requirements applicable to the Contractor and its Subcontractors. The Special Safety Conditions are in addition to safety requirements imposed upon the Contractor under applicable laws and governmental regulations and otherwise imposed under the Contract Documents. The Special Safety Conditions are incorporated in the Contract Documents.

Specifications: The term “Specifications” shall mean and refer to the written description of the requirements for the performance of the Work, which may be on the Drawings or in a separate document.

Subcontractor: A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any portion of the Work at the Site. Unless indicated otherwise in the Contract Documents, the term “Subcontractor” includes suppliers (“Suppliers” and/or “Materialmen”) furnishing material or equipment to the Contractor for the Project under Purchase Orders issued by the Contractor. Unless indicated otherwise in these Construction General Conditions, the term “Subcontractor” includes Sub-Subcontractors of any tier. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or its authorized representative.

Submittals: The term “Submittals” means Shop Drawings, Product Data, Samples and other submittals required to be furnished by the Contractor under the Contract Documents.

Submittal Schedule: The term “Submittal Schedule” means the schedule prepared by the Contractor and finalized and confirmed in accordance with Appendix A Section 3.8.

Sub-Subcontractor: A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any portion of the Work. 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 thereof.

Superintendent: The term “Superintendent” shall mean a representative who must have authority to act for the Contractor or Subcontractor respectively. The Contractor’s Superintendent shall represent the Contractor on the site of the Work and all directions given to this person shall be as binding as if given to the Contractor.

Supplemental Conditions: The Supplemental Conditions, if any, will be issued by the Owner with the Bid Documents, will be included in the Contract Documents and will modify the conflicting terms of GM 1638 for the particular Project.

Supplier: The term “Supplier” or “Materialman” shall mean a party furnishing materials or equipment to the Contractor under this Contract. If the Supplier incorporates the materials or equipment into the construction itself, the Supplier shall be designated under this Contract as a “Subcontractor”.

Total Float Time: The term “Total Float Time” shall mean the amount of time that the completion of an Activity can be delayed without delaying the required contract completion dates in the Schedule.

Work: The term “Work” shall mean and refer to all labor and supervision necessary to produce the construction required by the Contract Documents and all materials, tools, equipment, temporary facilities, and services incorporated or to be incorporated in the Work, whether on or off the Site furnished in connection with the Work.

1.2 CONTRACTOR’S REPRESENTATIONS

1.2.1 By executing the Owner-Contractor Agreement or the Purchase Order and/or by performing any Work under the Purchase Order, the Contractor represents to the Owner that:

- (i) the Contractor is financially solvent;
- (ii) the Contractor is qualified to do business in the State where the Project is located,
- (iii) the Contractor has all required licenses and permits necessary in connection with performance of the Contract by Contractor (all such licenses and permits shall be at the Contractor’s sole cost and expense);
- (iv) the Contractor has the expertise and authority to perform its obligations under this Contract;
- (v) prior to bidding the construction work, the Contractor has inspected the Site and familiarized itself with all local conditions under which the Work is to be performed (including general working conditions, labor requirements, accessibility, condition of the premises, obstructions, drainage conditions, actual levels, excavation and fill conditions, character of existing structures at or adjacent to the Site, the character and extent of the Owner’s and other contractors’ operations in the area);
- (vi) the Contractor is familiar with all applicable laws, codes, ordinances and regulations which may, in any way, affect the Work or those employed therein, including, those particularly applicable to the Project;
- (vii) the Contractor has reviewed and accepted all of the terms and conditions of the Contract Documents; and
- (viii) the Contract Sum is the agreed amount for all the Work, including all reasonably foreseeable risks, hazards, and difficulties in connection therewith assumed by the Contractor under the Contract. The Contractor shall require each Subcontractor to review the foregoing representations to the extent that they bear on the Subcontractor’s Work and shall be deemed to have made the same representations to the Owner in performing any Work on the Project.

1.3 CONTRACT EXECUTION AND INTENT

1.3.1 The Contract Documents form the Contract for construction. The Contract represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations, proposals, agreements and discussions, either written or oral, between the parties with respect to the Project. The Contract may be amended or modified only by a

written amendment to the Contract signed by both parties or a Purchase Order Alteration. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Architect/Engineer or the Construction Manager and the Contractor.

1.3.2 The intention of the Contract is that all labor, materials, equipment, insurance, taxes and other items necessary for the proper execution and completion of the Work are included in the scope of the Work, except for any items expressly identified as "excluded" or "NIC" or "Not In Contract" in the Contract Documents. It is intended that all Work and services required for the construction and administration of the Project shall be supplied including all such work that is in the Contract Documents or is reasonably inferable from the Drawings and Specifications and the Contract Documents as being necessary to produce the intended results. Lists of "Work Included," "Scope" or "Description of Work" are not intended to enumerate each and every item of Work or appurtenances required. Words which have well-known technical or trade meanings are used in the Contract in accordance with such recognized meanings.

1.3.3 The Contract Documents are intended to build on one another and constitute a single agreement, and every effort shall be made to construe such documents as being consistent and not contradictory. In the case of any conflict, the documents shall have the following order of precedence:

1. Owner-Contractor Agreement,
2. Special Conditions,
3. Supplemental Conditions,
4. GM 1638 (05/05) Construction General Conditions including appendices.

5 In the event of any conflict between the Special Safety Conditions and the provisions of Article 9 of these Construction General Conditions, the provisions of the Special Safety Conditions shall control and govern.

1.3.4 The Contractor acknowledges that the Owner will issue a Purchase Order to the Contractor in connection with the Project. These Construction General Conditions shall govern and supersede any preprinted terms and conditions appearing on the face or reverse side of any Purchase Order issued by the Owner in connection with this Work.

1.3.5 The date of the Contract shall be the date of the Owner-Contractor Agreement, or, if an Owner-Contractor Agreement is not issued for the Project, the Order Date on the face of the Purchase Order issued by the Owner for the Project.

1.3.6 The Owner-Contractor Agreement, or, if an Owner-Contractor Agreement is not issued for the Project, the Purchase Order issued by the Owner for the Project, shall be executed by the Owner and the Contractor.

1.4 OWNERSHIP AND USE OF DRAWINGS AND SPECIFICATIONS

1.4.1 Drawings and Specifications for the Project are the sole property of the Owner, whether the Project for which they are made is executed or not. Drawings and Specifications furnished to the Contractor shall only be used on Work under this Contract.

1.4.2 After award of the Contract, the Owner shall provide Drawings and Specifications to the Contractor. The quantity to be provided shall be set forth in the Special Conditions or other Contract Documents but in no case shall the quantity exceed ten (10) sets. Alternatively, the Owner, in the Owner's discretion, may provide a reproducible set of Drawings and Specifications. Additional sets of Specifications and Drawings may be obtained at the cost of reproduction. No transparencies will be provided.

1.4.3 The organization of the Specifications into divisions, sections and articles, and the 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.

1.4.4 The Drawings show the general arrangement, design and extent of the Work and are partially diagrammatic. The Drawings shall not be scaled for rough-in measurements, nor serve as Shop Drawings. Details, sections and work shown on the Drawings in part only shall continue throughout unless distinctly marked otherwise.

1.4.5 Drawings and Specifications are complementary and what is called for by one shall be as binding as if called for by both. Should the Drawings, Specifications and/or other instructions be contradictory in any particular or should there be any doubt as to the meaning of either, the Contractor shall refer the matter to the Owner's Representative by submitting a Document Clarification Request.

1.4.6 The Drawings and Specifications shall have equal authority and priority. In the event of any conflict between the Drawings and Specifications, the stricter requirements shall govern and the appropriate Work shall be determined by the Owner's Representative. Unless the other Contract Documents provide otherwise, with respect to the Drawings and Specifications:

- 1.4.6.1 Dimensions take precedence over scale measurements. Scaling drawings are at the Contractor's risk.
- 1.4.6.2 Large scale details take precedence over smaller scale details.
- 1.4.6.3 Architectural or Civil Drawings take precedence in regard to dimensions when in conflict with other Drawings, except for the size of structural members.
- 1.4.6.4 Specifically titled Drawings and sections of the Specifications take precedence over indication of the item in a collateral way.
- 1.4.6.5 Existing conditions take precedence over Drawings and Specifications for dimensions.
- 1.4.6.6 When multiple requirements are given for any item, all requirements shall be met.
- 1.4.6.7 Terms such as "as shown," "as indicated" and "as noted" mean there are additional requirements given elsewhere in the Contract Documents.

1.5 ATTACHMENTS

The following documents are attached to these Construction General Conditions and incorporated herein by reference:

- APPENDIX A: Construction Regional Requirements
- APPENDIX B: Form - Document Clarification Request
- APPENDIX C: Forms of Changes
 - Field Order
 - Bulletin
 - GM1781 Overhead and Profit/Handling Fees
 - GM1782 Other Rates and Fees
 - GM1783 Hourly Field Labor Rate
 - GM1784 Field Order/Bulletin Quote Summary
 - GM1784A Field Order/Bulletin Quote Breakdown
- APPENDIX D: Sales and Use Tax Exemption Certificate/Direct Pay Certificate
- APPENDIX E: Forms of Notarized Sworn Statement
 - Contractor's Notarized Sworn Statement (2 Pages)
 - Subcontractor's Notarized Sworn Statement (2 Pages)
 - Contractor's Notarized Final Sworn Statement Retention (2 Pages)
- APPENDIX F: Forms of Waiver of Lien
 - Partial Unconditional Waiver of Lien
 - Full, Final Conditional Waiver and Release of Lien
 - Full, Final and Unconditional Waiver and Release of Lien
- APPENDIX G: Form - Intellectual Property Rights Agreement
- APPENDIX H: Forms of Guarantee
 - Contractor Guarantee
 - Subcontractor Guarantee
- APPENDIX I: Non-Discrimination Clauses
- APPENDIX J: Form – Acceptance Procedures
 - Final Acceptance of Contract Requirements
- APPENDIX K: Form - Receipt for Salvaged Material or Equipment
- APPENDIX L: Form - Receiving Report for Materials and Equipment Furnished by the Owner
- APPENDIX M: Hazardous Materials Requirements
- APPENDIX N: Contractor Insurance Requirements

ARTICLE 2: OWNER

2.1 OWNER'S ACCESS, INSPECTIONS, AND APPROVALS

2.1.1 The Owner shall at all times have access to the Work whenever it is in preparation or progress. The Contractor shall provide proper facilities for access by the Owner.

2.1.2 The Owner reserves the right to inspect any of the Work being fabricated or performed away from the Project Site. To ensure this right, the Contractor shall give the Owner timely notice of where and when such Work is being performed.

2.1.3 The Owner shall be entitled to photograph Work in progress for purposes of the Owner's Project records.

2.1.4 The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Architect/Engineer or the Construction Manager, if any, or the Owner in their administration of the Contract, or by inspections, tests or approvals required or performed by persons other than the Contractor. Any inspection performed or failed to be performed by the Owner or the Construction Manager or the Architect/Engineer shall not constitute a waiver of any of the Contractor's obligations under the Contract Documents or be construed as an approval or acceptance of the Work or any part of the Work.

2.2 REMOVAL OF MATERIALS

Materials delivered to the Project Site shall not be removed from the Project Site without the written consent of the Owner. Owner will not unreasonably withhold its consent.

2.3 INSTALLATION OF OWNER'S EQUIPMENT

The Contractor agrees to allow the Owner to receive, place and install machinery and equipment during the progress of the Work and to make use of any portion or portions of the Project building or facility which can be mutually agreed upon as being available for the Owner's operations. The Contractor further agrees that such placement of machinery and equipment or use of any portion of the building or facility does not evidence completion of the Work nor signify the Owner's acceptance of all or any part of the Work.

2.4 OWNER'S RIGHT TO STOP THE WORK

If the Owner reasonably believes that the Work is being performed in a manner that presents an imminent danger of death or serious injury, or if Contractor fails to comply with the safety requirements under the Contract Documents, fails to correct defective Work or fails to carry out the Work or to supply labor, materials and equipment in accordance with the Contract Documents, the Owner may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. Should the Owner elect to order the Contractor to stop the Work, the Contractor shall be responsible for whatever measures are necessary to make up for any delays and to maintain the Schedule once the cause for such order has been eliminated and for all costs and expenses associated with such measures.

2.5 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor:

2.5.1 Fails to properly respond to notices issued by the Owner or Owner's Representative pursuant to the Contract Documents; or

2.5.2 Fails to pay Subcontractors, laborers, vendors, Materialmen and equipment lessors promptly for work performed or labor and material furnished in connection with the Project; or

2.5.3 Fails to supply the quantity of properly skilled workmen necessary to complete the Work in accordance with the critical path activities as set forth in the Schedule; or

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

2.5.5 Fails to properly coordinate the work of any of its Subcontractors, vendors, Materialmen and equipment lessors; or

2.5.6 Fails to properly coordinate the Work with work activities of the Owner's separate contractors; or

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

- 2.5.8 Fails to pay workers' compensation or other employee benefits; or
- 2.5.9 Fails to pay withholding or other taxes; or
- 2.5.10 Fails to perform any other obligation under this Contract;

then the Owner shall have the right, but not the obligation, to take corrective action in accordance with the following: The Owner will give the Contractor at least forty-eight (48) hours written notice of the deficiency in the Contractor's performance. If the Contractor does not correct the deficiency within the time period specified in the notice to the Owner's satisfaction the Owner shall have the right to make good such deficiencies or otherwise rectify such situations to the satisfaction of the Owner. In such case, the Contractor shall be responsible to pay the cost of correcting such deficiencies or otherwise rectifying such situations to the satisfaction of the Owner, including compensation for additional services of the Architect/Engineer, Construction Manager, Owner's separate contractors or Owner's Consultants made necessary by such default, neglect or failure. The Owner shall have the right to deduct the amount of such costs from any amounts otherwise due to the Contractor. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner. The Owner's right to take corrective actions under this Section 2.5 is in addition to, and without prejudice to, any other remedy the Owner may have.

2.6 OWNER'S RIGHT TO ASSIGN THIS CONTRACT

The Owner shall have the right to assign this Contract to a separate contractor, in which event, the Contractor, as a Subcontractor to such separate contractor, shall perform its obligations under this Contract for the benefit of the separate contractor. The Contract Sum and Contract Time shall not be subject to adjustment on account of such assignment. However, in such case, unless expressly waived following advice of such an assignment, Contractor shall be entitled to terminate the Contract by giving one month written notice.

2.7 OWNER'S RIGHT TO ASSIGN CONTRACTS AND PURCHASE ORDERS TO CONTRACTOR

The Owner shall have the right to assign to the Contractor for performance those contracts and purchase orders previously issued by the Owner that are identified in the Special Conditions. All costs and expenses related to the assignments are included in the Contract Sum. Except as provided otherwise in the Special Conditions, the Contractor shall be responsible for the full and proper performance of such assigned contracts and purchase orders.

2.8 OWNER'S CONSULTANTS AND CONSTRUCTION MANAGER

The Owner shall have the right to engage Owner's Consultants and/or a Construction Manager to perform services in connection with the Project, including construction phase design and construction management services. The Contractor shall fully cooperate with all such Owner's Consultants and/or a Construction Manager, shall attend meetings with such Owner's Consultants and/or Construction Manager as requested by the Owner, and shall provide information to such Owner's Consultants and/or a Construction Manager as required by the Owner. Neither the Owner's Consultants nor the Construction Manager shall have authority to make changes to the Work, adjust the Contract Sum, or adjust the Schedule; such changes and adjustments may only be made via Field Order, Purchase Order Alteration or Contract Change Order issued by the Owner.

2.9 OWNER'S COMPLIANCE WITH LAWS

Contractor shall not interfere with or make more difficult or expensive Owner's compliance with any applicable law, code, ordinance or regulation. If the Contractor interferes with or makes more difficult or expensive Owner's compliance with any law, code, ordinance or regulation, and if Owner notifies Contractor, orally or in writing, then Contractor shall within forty-eight (48) hours of receiving Owner's notification make whatever changes are necessary to remedy the situation, including, changes in the Schedule and installation of safety devices. Owner's exercise of its rights under this provision shall not be grounds for an increase in the Contract Sum or extension of the Contract Time or Schedule.

2.10 SUPERVISION OF WORK

Neither the Owner nor the Architect/Engineer nor the Construction Manager, if any, nor any other Owner's Consultants shall be responsible to supervise or direct the Work or the activities of Contractor's employees.

2.11 OWNER'S PREMISES

2.11.1 The Contractor and all Subcontractors and their employees shall be subject to, and shall conform to, the Owner's rules and regulations governing conduct of persons while on the Owner's premises.

2.11.2 The Owner shall have the right to place on the Project Site such signs as the Owner may elect.

2.12 RIGHT TO AUDIT

2.12.1 The Owner shall have the right to audit all Contractor's books and records which directly or indirectly relate to the Project in order to verify the correctness of any amounts charged to the Owner as well as compliance with Owner's Corporate Policy including gifts and Gratuities. The Owner may also audit Contractor's compliance with any and all legal or contractual requirements.

2.12.2 Based on the findings of the audit the Owner has the right to adjust any incorrect amounts paid to Contractor.

2.12.3 Contractor undertakes to ensure that also its subcontractor will grant the Owner the right to audit Project documents to the extent as set forth in this Section 2.12.

2.12.4 Contractor further agrees, for the purpose of the Owner's right to audit under Section 2.12.1, to preserve all such documents for a period of three (3) years after final payment or Final Acceptance, or longer period if required by law, including documents of the Subcontractor(s) and Suppliers.

ARTICLE 3: CONTRACTOR

3.1 REVIEW OF CONTRACT DOCUMENTS

3.1.1 The Contractor acknowledges that prior to submitting its bid for the Work, it thoroughly reviewed the Drawings and Specifications, Bid Documents and other Contract Documents for the Project and that it is sufficiently familiar with the Drawings and Specifications, Bid Documents and other Contract Documents. The Contractor further acknowledges that the Owner, in entering into this Contract, is relying on the Contractor's review of the Drawings and Specifications to substantiate that they are sufficiently complete, coordinated, constructible and otherwise adequate to take into account all work, labor and material required for the completion of the Project. Accordingly, the Owner makes no representation, expressed or implied, that the Drawings and Specifications are complete, coordinated, constructible or adequate. Except with respect to any defects in the Drawings and Specifications not reasonably apparent prior to submittal of the Contractor's bid, the Contractor expressly waives any right to assert claims based on the completeness, coordination, constructibility or adequacy of the Drawings and Specifications, and no such claim shall be valid. The foregoing shall not imply any requirement that the Contractor assume responsibility for design, for checking the Architect/Engineer's calculations, for determining performance criteria and standards, or for determining that all of the Owner's requirements have been included in the Drawings and Specifications; however, Owner encourages Contractor to apply its judgment and experience in its review of these documents and to provide any recommended improvements as part of the process of developing this Contract.. Except for the foregoing Contractor waiver of claims in this Section 3.1.1, the Contractor is not responsible for the Architect/Engineer's or the Owner's other Owner Consultant's errors and omissions.

3.1.2 Each Subcontractor shall review the portion of the Drawings and Specifications bearing on such Subcontractor's work and shall be deemed to have made the same waiver set forth in Section 3.1.1 above in performing any work on the Project.

3.1.3 The Contractor shall review all questions from Subcontractors for interpretation of the meaning and intent of the Drawings and Specifications. It shall direct the Subcontractors to the appropriate portions of the Drawings and Specifications. Only after confirming that the necessary information is not in the Drawings and Specifications, or that ambiguities, discrepancies or other errors exist, the Contractor shall submit a Document Clarification Request to refer such questions to the Owner. At the Owner's discretion, any additional cost to the Owner in connection with reviewing and answering requests for information submitted by the Contractor or any Subcontractor will be charged to the Contractor. Such additional cost may be offset against amounts otherwise due to the Contractor in any case where the information requested is reasonably available from a careful review of the Contract Documents. The Contractor shall comply, and cause all Subcontractors to comply, with all interpretations provided by the Owner.

3.1.4 Should any error or inconsistency appear in the Drawings or Specifications, the Contractor shall not proceed with the affected Work in uncertainty but shall promptly consult with the Owner regarding any necessary revisions to the Drawings and Specifications. If determined to be required, Bulletins will be issued by the Owner to address such revisions.

3.2 CONSTRUCTION OF PROJECT

3.2.1 The Contractor shall construct the Project in accordance with the Drawings and Specifications. It shall provide all items required by the Drawings and Specifications, including all things indicated by or reasonably implied therefrom so as to bring the Project to completion on time, and within the Contract Sum. The Contractor shall provide competent supervision, coordination, management and related services as required for such construction and as otherwise required by the Contract Documents. The Contractor shall be solely responsible to the Owner for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

3.2.2 Unless otherwise specifically excluded in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, insurance, taxes, water, heat, utilities, transportation, temporary Project-Site facilities, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent.

3.2.3 The Contractor shall implement a management control system for use in monitoring and meeting the objectives of the Project in a timely, economical and acceptable manner. To do so, it shall use both manual and automated procedures to support such functions as the Owner may require. The data provided shall be timely and must be fully capable of providing a sound basis for management decisions.

3.2.4 Unless the Contract Documents indicate that the Owner has engaged a Construction Manager for the Project, the Owner shall establish procedures for coordination among the Owner, the Architect/Engineer, the Contractor, the Subcontractors, the Owner's separate contractors, the Owner's Consultants, and others designated by the Owner.

3.2.5 The Contractor agrees that anything necessary on the part of its trade to eliminate interferences and to make possible the work of other trades is to be done as part of the Contract, including eliminating interference with the use of the Owner's facilities and utilities, and shall be done in such a manner and at such times as to avoid interference with the Owner's operations.

3.3 PERSONNEL

3.3.1 The Contractor shall maintain a competent and qualified supervisory staff at the Site for the supervision, coordination, scheduling and administration of the Work.

3.3.2 Attached to the Owner-Contractor Agreement is a personnel chart identifying the Contractor's Superintendent and other Supervisory Project-Site Staff, the title or job classification of each. (If the Owner agrees to award the Contract before the personnel chart is attached, the Contractor shall submit a personnel chart to the Owner for review and approval prior to commencement of the Work.) The Contractor's Superintendent shall have authority to act on behalf of the Contractor. No appointment, substitution or reassignment of the Superintendent or any of the other Supervisory Project-Site Staff shall be made by the Contractor without the prior written consent of the Owner unless such personnel leave the employ of the Contractor or any affiliated entity. In connection with any proposed appointment, substitution or reassignment, the Contractor shall submit to the Owner a detailed justification supported by the qualifications of any proposed individual.

3.3.3 Failure of a Contractor's or Subcontractors' Superintendent to attend meetings or execute instructions of the Owner shall constitute a basis for dismissal of such Superintendent from the Project. Upon request of the Owner, dismissal will take effect within 12 (twelve) hours and a new Superintendent will be substituted by the Contractor or Subcontractor.

3.4 INSPECTIONS

3.4.1 The Contractor shall participate with the Owner and, if the Owner elects, the Architect/Engineer or Construction Manager or any of the Owner's Consultants, in performing full Project walk-throughs whenever required by the Owner in the Owner's discretion. The purpose of such walk-throughs is to check that the materials provided and Work performed are in accordance with the Drawings and Specifications and other Contract Documents and that the Work on the Project is progressing in accordance with the Schedule.

3.4.2 The Contractor shall assist Owner's personnel and the Architect/Engineer and Construction Manager, if any, when they perform inspections. The Contractor shall furnish a detailed report to the Owner of observed discrepancies, deficiencies and omissions in the Work performed by any Subcontractor and the actions being taken to correct them. Unless the Owner directs the Contractor to correct such discrepancies, deficiencies or omissions within 48 hours in accordance with Section 2.5 hereof, the Contractor shall correct non-conforming or defective work within seven (7) days of any report issued (including reports issued by the Owner or the Architect/Engineer or Construction Manager) unless such non-conforming or defective work cannot be corrected within such time, in which case Contractor shall commence corrective action and furnish Owner its written plan for correcting such non-conforming or defective work within such seven (7) day period and shall report its progress with respect thereto whenever requested by the Owner (or the Architect/Engineer or Construction Manager). Nothing set forth in this Section 3.4.2 shall limit the Owner's rights under Section 2.5.

3.5 LABOR

3.5.1 The Contractor and its Subcontractors shall have a pre-job conference to indicate craft work assignments. Owner may attend such pre-job conference at its discretion.

3.5.2 The Contractor shall develop and administer an effective labor relations program for the Project and shall employ, and require its Subcontractors to employ, only compatible labor to the end that the Work may proceed without interference by labor disputes.

3.5.3 The Owner may, in writing, require the Contractor to remove from the Project any employee or Subcontractor the Owner deems incompetent, careless or uncooperative and may require the Contractor to replace any such employee or Subcontractor with suitable personnel. Superintendents shall be replaced within twelve (12) hours after removal. The Contractor shall at all times enforce strict discipline and good order among its employees and Subcontractors and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him or her. All services under this Contract shall be performed in a competent and professional manner.

3.5.4 If in the U.S. the Contract Documents provide that the Project is being constructed under the National Maintenance Agreement, the Contractor and its Subcontractors shall become signatory to the individual International Union whose member they employ. Outside of the U.S. the Contractor and its Subcontractors shall abide by any similar requirements as agreed with the Owner. Once a company is signatory, the agreements are used to secure an extension for this particular Project. The Contractor shall be responsible to secure all Subcontractor signatures on a timely basis so that the commencement and performance of the Work is not delayed.

National Maintenance Agreement Policy Committee, Inc. (NMAPC)
1501 Lee Highway
Suite 202
Arlington, VA 22209
(703) 524-3364 (fax)

3.6 MATERIALS AND EQUIPMENT

3.6.1 The Contractor covenants that all Work shall be done in a good and workmanlike manner and that all materials furnished and used in connection therewith shall be new and approved by the Architect/Engineer, except as otherwise expressly provided for in the Drawings and Specifications. If required by the Drawings and Specifications or otherwise by the Owner, the Contractor shall furnish satisfactory evidence as to the kind, quality, performance and values of materials and equipment

3.6.2 The quality or fitness of materials and workmanship shall comply with the best industry standards. Conformance of materials and workmanship with the requirements of the Drawings and Specifications shall be determined by the Owner in its sole discretion. Customary standards on other projects shall not apply to determine whether materials and workmanship are acceptable under the Contract Documents for this Project.

3.6.3 Materials and Suppliers proposed by the Contractor for use in connection with the Work shall be subject to the Owner's approval. The Contractor shall submit written requests for such approval in accordance with the requirements of the Contract Documents. Requests for approval shall indicate the involved trade section of the Specifications and shall include all technical data and brochures required by the Owner.

3.7 SUBSTITUTIONS

Deviations from the Drawings and Specifications shall not be permitted except for substitutions approved by the Owner in accordance with the Construction General Requirements.

3.8 WARRANTY

3.8.1 See Construction Regional Requirements – Appendix A, R3.

3.9 TAXES

3.9.1 All taxes of every kind imposed, levied, or assessed by any governmental authority with respect to the Work, including taxes for labor, materials, and equipment utilized in connection therewith and all sales, use, personal property, excise and payable taxes, are included in the Contract Sum except as expressly provided in the Contract Documents.

3.9.2 Where permissible by law the Owner may elect to exercise certain tax exemptions, in which event, such exemptions will be designated in the Contract Documents. The Contractor shall comply with all procedures required to enable the Owner to qualify for such tax exemption. In the event the applicable governmental agency rules that any of the exempted items do not qualify as tax exempt, then the Owner will make whatever tax adjustment is necessary with the Contractor for proper payment of the tax. The Owner reserves the right to reclassify, for tax purposes, materials and equipment. The Contractor agrees to furnish data necessary for the proper payment or exemption of the tax.

3.9.3 See Construction Regional Requirements – Appendix, R3.

3.10 COMPLIANCE WITH LAWS; PERMITS, FEES AND NOTICES

3.10.1 Unless the Contract Documents provide otherwise, the Owner will apply and pay for a general building permit; the Contractor will assist and provide documentation as required. The Contractor shall secure certificates of inspection and occupancy, all other permits, licenses and similar authorizations from governmental authorities required in order for the Contractor to perform its obligations under the Contract and inspections, and shall post all bonds, secure and pay for all permits, and pay all fees for the proper execution and completion of the Work which are legally required as of the date the Contract is executed. If any of the Work is required to be inspected or approved by any public authority, the Contractor shall cause such inspection or approval to be sought and obtained.

3.10.2 The Contractor shall give all notices and comply with all laws, ordinances, codes, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. If Contractor believes it is incapable of complying with a law, code, ordinance or regulation due to circumstances it believes are exclusively under the control of Owner, Contractor shall advise Owner of the situation in a writing that includes citation to the law, code, ordinance or regulation and a detailed explanation of the factors Contractor believes are exclusively under Owner's control and that Contractor believes prevent compliance.

3.10.3 The Contractor shall comply with all applicable laws, ordinances, codes, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. The Contractor shall erect and maintain, as required by existing conditions and the progress of the Work, all safeguards required for safety and protection, including barriers and the posting of danger signs and other warnings against hazards, promulgate safety regulations and notify owners and users of adjacent utilities. The requirements under this Section 3.10.3 are in addition to those set forth in Article 9.

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

3.10.5 Environmental permits for air and water will be obtained by the Owner. The Contractor shall not proceed with any Work until the applicable permits have been obtained. The Contractor shall comply with all environmental permit requirements applicable to the Work and shall perform the Work so as not to interfere or encumber Owner's compliance with other environmental permits.

3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

The Contractor shall establish and implement procedures to be followed for expediting the processing and reviewing of Shop Drawings and other Submittals, on an orderly basis as required by the approved Submittal Schedule all in accordance with the requirements of the Construction Regional Requirements, R3, Specifications and other Contract Documents.

3.12 USE OF SITE

3.12.1 All Work activities at the Project Site shall be performed in accordance with the Site logistics plan prepared by the Contractor and reviewed by the Owner, unless such plan has been provided by the Construction Manager or the Owner.

3.12.2 The Contractor shall comply with, and cause all Subcontractors to comply with, all restrictions on the use of the Site imposed by the Contract Documents. The Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits, the Contract Documents and directions of the Owner and shall not unreasonably encumber the Site with any materials or equipment. The Contractor may utilize only such access routes as may be designated by the Owner from time to time.

3.12.3 In the event of an emergency or for the Owner to conduct its operations, the Contractor and its Subcontractors when requested by the Owner shall cease Work at any particular location and transfer their laborers to other locations, and execute such portions of Work as required to enable others to carry on their work without delay.

3.12.4 If it becomes necessary at any time during construction to move materials which are to enter into the construction, or equipment and barricades which have been temporarily placed, the Contractor furnishing these materials, equipment or barricades shall, when directed by the Owner, move them or cause them to be moved without additional charge to the Owner.

3.13 COMMUNICATIONS

3.13.1 All recommendations and communications by the Contractor to the Owner and the Architect/Engineer and the Construction Manager, if any, that will affect the terms and conditions of this Contract or the Project as to costs, time, quality or Project scope, shall be made or confirmed in writing.

3.13.2 The Contractor shall be responsible for ensuring that all communications with the Subcontractors and Suppliers are through the Contractor. Where, for purposes of clarity, direct communication between the Owner and Subcontractors or Suppliers are necessary, the Contractor shall have a Superintendent present.

3.13.3 All communications between the Contractor and the Architect/Engineer, Owner's Consultants or the Owner's separate contractors shall be through the Owner. The Contractor shall copy the Owner on all written communications from the Contractor to the Construction Manager, if any, and/or the Architect/Engineer.

3.14 ROYALTIES AND PATENTS; TECHNICAL INFORMATION

3.14.1 The Contractor shall pay all royalties and license fees in connection with items furnished by the Contractor in connection with the Project.

3.14.2 Contractor agrees and grants to Owner a non-exclusive, royalty-free license under any patents, domestic as well as foreign, which it may now own, control or hereafter acquire to make, have made, use and sell, including product, process equipment or facilities designed and/or developed under this Contract together with the corresponding right and license to use and have used processes and to make, have made and use equipment for the manufacture of such product or part thereof or the operation of such facilities.

3.14.3 Contractor agrees to grant to Owner a worldwide, nonexclusive, royalty-free, irrevocable license to repair and have repaired, to reconstruct and have reconstructed the goods ordered under the Contract. Contractor assigns to Owner all right, title and interest in and to all trademarks and copyrights in any material created for Owner under this Contract.

3.14.4 Contractor shall furnish Owner technical information, including drawings, specification, and manuals together with the right to use such information without restrictions of any kind in conjunction with the maintenance and repair of the goods covered by this Contract.

3.14.5 The Contractor agrees not to assert any claim with respect to any technical information which the Contractor shall have disclosed or may hereafter disclose to the Owner in connection with the Contractor's Work.

3.14.6 See Construction Regional Requirements – Appendix A, R3.

3.15 AS-BUILT DRAWINGS

The Contractor shall keep a current set of Drawings continuously marked-up and documented to reflect "as-built" conditions. The Contractor shall require each Subcontractor to comply with the foregoing requirement. He shall check each Subcontractor's marked up set of Drawings on a monthly basis as a condition of progress payments by the Contractor to the Subcontractor. The Contractor, itself, shall be held to the same requirements as its subcontractors to provide evidence to the Owner of continuous mark up efforts as a condition of receiving progress payments. Additionally, the Contractor shall transfer all changes in the location of all Work including utilities, mechanical or electrical systems and components onto a set of reproducible drawings and any electronic set of Drawings supplied by the Architect/Engineer, if required by the Construction Special Conditions. The Contractor shall be responsible for extra costs in connection with all work performed by the Owner or others in reliance on the as-built drawings where such as-built drawings do not accurately reflect as-built conditions. Upon completion of the Work, and prior to final payment by the Owner, the Contractor shall furnish to the Owner marked up Drawings showing locations and elevations of all work and recording any variations from working drawings, engineering drawings or Shop Drawings.

3.16 INDEMNIFICATION

3.16.1 The Contractor is liable for any damages caused by its negligent or otherwise wrongful conduct, and shall indemnify the Owner against all third party claims that may be raised against the Owner in connection with any negligent, or otherwise wrongful conduct by the Contractor or its employees or any other person used by the Contractor in the performance of its obligations under the Contract. See Appendix A for Project or regional specific terms.

3.16.2 See Construction Regional Requirements - Appendix A, R3.

3.17 DESIGN-BUILD WORK

3.17.1 If the Specifications or other Contract Documents require a portion of the Work to be performed on a design/build basis, or if any changed Work is required to be performed on a design/build basis, the provisions in this Section 3.17 shall apply. The Contractor shall be responsible for the engineering, design, furnishing and installation of any such design-build Work for the Project. The design-build Work shall be performed in accordance with the requirements of the Contract Documents by the Design-Build Subcontractors identified in the Owner-Contractor Agreement.

3.17.2 The Contractor shall prepare (or cause its Design/Build Subcontractor(s) to prepare) and submit to the Architect/Engineer and, for any design-build fire protection Work, to Owner's insurance underwriter for review and approval (with a copy to the Owner), complete working drawings for the installation of the design-build Work. The Contractor shall revise the working drawings for the design-build Work as may be required by the Architect/Engineer or by the Owner's insurance underwriter.

3.17.3 The design of the design-build Work, the working drawings submitted by the Contractor with respect to the design-build Work, and the installation of the design-build Work shall comply with

- (i) the requirements of the Contract Documents, including, all performance criteria and design requirements in the Specifications;
- (ii) all legal and contractual requirements and conditions of any approvals, certifications or permit required for the Project in existence as of the date of issuance of the building permit for the Project; and
- (iii) the requirements of the Owner's insurance underwriter or Factory Mutual standards, whichever are more stringent, all without necessity of variance unless specifically consented to or requested by the Owner. The Contractor shall obtain all required approvals prior to the commencement of installation of the design-build Work.

3.17.4 The design of the design-build Work shall meet the standards of professional skill and care practiced by nationally-recognized architects and engineers practicing on projects of comparable size and complexity. The design of the design-build Work and the drawings submitted by the Contractor with respect to the design-build Work shall be free from errors and omissions and fully adequate to take into account all construction work, labor and materials necessary to bring about completion of the design-build Work, and shall meet the Owner's requirements for the Project as indicated in the Contract Documents.

3.17.5 Drawings and specifications prepared by the Contractor (or its Design/Build Subcontractor(s)) as the work product under this Contract shall become the property of the Owner free of any retention rights of the Contractor or its Design/Build Subcontractor(s).

3.17.6 The design and installation of the design-build Work shall properly interface with the design and construction of the entire Project and the Drawings and Specifications prepared by the Architect/Engineer and the Owner's separate design and engineering Owner's Consultants. The Contractor shall be responsible for the coordination of the design-build Work with the design work of the Architect/Engineer and the Owner's Consultants.

3.17.7 In no event shall the Architect/Engineer or the Owner be deemed to have approved the design or engineering of the design/build Work or any working drawings or other documents prepared by the Contractor (or the Design/Build Subcontractors) with respect to the design/build Work. Neither the review nor other action by the Architect/Engineer, the Owner's Consultants, the Owner, the Construction Manager, or the Owner's insurance underwriter with respect to the working drawings or other documents prepared by the Contractor (or any Design/Build Subcontractor(s)) hereunder shall relieve the Contractor of its responsibility for the proper design, furnishing and installation of the design-build Work under this Contract.

3.17.8 The design services required for any design-build Work shall be performed by a person or entity lawfully licensed to practice architecture or professional engineering in the state in which the Project is located and all design documents shall be properly sealed as required by law or otherwise required by the Contract Documents.

3.18 EMERGENCIES

3.18.1 In any emergency affecting the safety of persons or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work, not occasioned in whole or in part by Contractor's acts or omissions or by other causes which are Contractor's responsibility or indemnity obligation hereunder, shall be determined as provided in Article 13 and Article 7 hereof.

3.18.2 The Contractor shall strictly comply with all reporting requirements under Article 9 regarding accidents and other occurrences. In addition, in the event of any accident or occurrence resulting in damages to any property, the Contractor shall immediately notify the Owner of the accident or occurrence and shall submit a written report regarding the property damage within forty-eight (48) hours. The Contractor shall submit follow-up reports as requested by the Owner.

3.19 WORK AT OWNER'S EXISTING FACILITIES

3.19.1 If the Work will be performed at or adjacent to existing facilities of the Owner, the Contractor shall be required to take special precautions to avoid disruption of the Owner's ongoing business operations at such facilities. Contractor acknowledges that the Owner, employees, guests and invitees will continue to occupy the existing facilities at or adjacent to the Project Site. The Contractor shall

- (i) not interrupt or interfere with access to such facilities and the Owner's normal business at such facilities ;

- (ii) limit construction operations to methods and procedures which will not adversely and unduly affect the normal business operations at the Owner's facilities;
- (iii) take all appropriate steps to minimize noise, drafts, odors, air pollution, ambient discomfort, poor lighting, hazards and other undesirable effects and conditions; and
- (iv) at all times comply with the requirements of applicable laws and governmental regulations and the Contract Documents regarding work at the Owner's premises. None of the foregoing shall justify any extension of the Contract Time or increase in the Contract Sum.

3.19.2 If indicated in the Special Conditions, the Owner will commence or continue to perform business operations at the Owner's premises during the performance of the Work. The Contractor shall take all steps necessary to avoid interference with the Owner's operations, shall perform all Work activities at hours and in such manner and at such times as to suit the Owner's convenience. All costs to the Contractor to comply with such requirements are included in the Contract Sum, and no adjustment shall be made to the Contract Sum or Contract Time on account of such requirements.

3.20 SEE CONSTRUCTION REGIONAL REQUIREMENTS – APPENDIX A, R3

ARTICLE 4: SUBCONTRACTORS

4.1 GENERAL

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

4.1.2 The Contractor shall be responsible for the adequacy of the Subcontractors' supervision, personnel and equipment, the availability of necessary materials and supplies and all other action necessary to maintain the Schedule.

4.1.3 Nothing contained in this Contract shall create any contractual relation between the Owner or the Architect/Engineer or the Construction Manager, if any, and any Subcontractor or Sub-Subcontractor but the Owner shall be entitled to the performance of the obligations of Subcontractors and Sub-Subcontractors intended for its benefit, and to the enforcement thereof, as a third party beneficiary.

4.1.4 The Owner will not reimburse the Contractor for the cost of bonds which the Contractor may require Subcontractors to post.

4.1.5 All Subcontracts and purchase orders issued by the Contractor for the Project shall set forth the Project identification number set forth in the Bidding Documents for the Project and the GM Purchase Order Number set forth on the purchase order issued by the Owner to the Contractor for the Project. All Subcontracts and purchase orders issued by the Contractor shall apply to this Project only and shall not include work or material or equipment being furnished to the Contractor for any other project. The Contractor shall require in contracts it issues for this Project that each Subcontractor enforce the requirements of this Section 4.1.5 with respect to each Sub-Subcontract and Subcontractor purchase order for the Project.

4.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

4.2.1 All Subcontractors and Suppliers engaged by the Contractor shall be subject to the approval of the Owner.

4.2.1.1 Promptly after award of the Contract, the Contractor shall submit to the Owner written requests for approval of all Subcontractors, Suppliers and materials proposed for use in connection with the Project. Approval requests shall indicate the involved trade section of the Specifications and include all technical data and brochures required by the Owner.

4.2.1.2 The Owner will reply to the Contractor in writing stating whether or not the Owner has an objection to any such proposed person or entity. Failure of the Owner to reply within the time designated in the Contract Documents, or within a reasonable time if no time period is designated, shall constitute notice to the Contractor that the Owner has no objection to the proposed person or entity.

4.2.1.3 If the Owner objects to a person or entity proposed by the Contractor, the Contractor shall submit a substitute to whom the Owner has no objection.

4.2.1.4 Owner's refusal to approve a Subcontractor shall not be grounds for an increase in the Contract Sum.

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

4.2.2 Upon award of a Subcontract, the Contractor shall require that the Subcontractor identifies its Superintendent and other key job-site staff and agree that such Superintendent and key job-site staff may not be changed or reassigned (except where an individual leaves the employ of the Subcontractor or any affiliate) without the prior written consent of the Contractor. The Contractor shall consult with the Owner prior to giving consent to any proposed substitution.

4.2.3 The Contractor shall give the Owner at least forty-eight (48) hours prior written notice of any termination by the Contractor of a Subcontract or purchase order that has been issued by the Contractor for the Project.

4.3 SUBCONTRACTUAL RELATIONS

4.3.1 Contractor must ensure that the agreement between the Contractor and any Subcontractor contains no provisions which would result in the Contractor or its Subcontractor violating this Contract. See Appendix A for additional Project and regional specific terms.

4.3.2 The Contractor shall cause all Subcontractors, laborers and vendors to agree to indemnify the Owner and other Indemnitees and hold them harmless from all claims that may arise from Subcontractor's operations to the same extent as the Contractor has indemnified the Owner and other Indemnitees pursuant to Section 3.16.

4.3.3 The Contractor hereby assigns to the Owner, as security for the Contractor's performance hereunder, all Subcontracts, purchase orders and all other contracts and agreements entered into in connection with the Project, and appoints the Owner its attorney to enforce said contracts according to their terms. Such assignment shall be operative only upon notice by Owner in the event of default by, or termination of, the Contractor under this Contract. All Subcontracts shall provide that the Subcontractor consents to the assignment of the Subcontract to the Owner pursuant to this Subparagraph 4.3.4 and agrees, in the event such assignment becomes effective, to recognize the Owner as the successor to the Contractor and to complete the Work under the Subcontract.

4.3.4 Notwithstanding the Owner's review and approval of the Contractor's form of Subcontract and/or purchase order, the Contractor shall bear the risk of any inconsistencies between the terms and conditions of the Contract Documents and the terms and conditions of its Subcontracts, purchase orders and similar documentation.

4.3.5 See Construction Regional Requirements – Appendix A, R4.

4.4 COMMUNICATIONS WITH SUBCONTRACTORS

4.4.1 The Contractor shall be responsible for the communication of information between the Subcontractors or Suppliers and the Owner and shall ensure that all communications from the Subcontractors and Suppliers are properly routed through the Contractor to the Owner, whenever warranted.

4.4.2 Subcontractors who approach the Owner directly do so at their own peril. No communication between any Subcontractor or Supplier and the Owner or Owner's Representative shall be binding on the Owner unless acknowledged in writing by the Owner and Contractor but shall be binding on the Subcontractor should the Owner elect to enforce same.

ARTICLE 5: WORK BY OWNER OR BY SEPARATE CONTRACTORS

5.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

5.1.1 The Owner reserves the right to (i) perform work related to the Project with its own forces; and (ii) to award separate contracts in connection with other portions of the Project or other work on the Site under these or similar Construction General Conditions. The Owner reserves the right to award other contracts for other work on the premises, even if of similar nature, character or trade.

5.1.2 The Contractor will provide for the coordination of the work of the Owner's forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith as provided in Section 5.2 hereof.

5.2 MUTUAL RESPONSIBILITY

5.2.1 The Contractor shall afford the Owner and the Owner's separate contractors, reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work related to the Project, and shall properly connect and coordinate its Work with theirs as required by the Contract Documents.

5.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with such Work, inspect and promptly report to the Construction Manager, if

any, and Architect/Engineer and the Owner any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor so to inspect and report shall constitute an acceptance of the Owner's or the separate contractors' work as fit and proper to receive its Work, except as to defects which may develop or become apparent in the Owner's or separate contractor's work after the execution of the Contractor's Work.

5.2.3 Should the Contractor cause damage to the work or property of the Owner, or to other work on the Site, the Contractor shall promptly remedy such damage as provided in Section 10.4 hereof.

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

ARTICLE 6: MISCELLANEOUS PROVISIONS

6.1 GOVERNING LAW

6.1.1 Any disputes between the parties to this Contract shall be governed by the law of the jurisdiction where the Owner has its principal place of business.

6.1.2 Owner and Contractor agree that any resort to litigation in connection with the Contract will only be to courts of applicable jurisdiction where the Owner has its principal place of business.

6.2 SUCCESSORS AND ASSIGNS

The Owner has relied upon the creditworthiness, experience, reputation and professional ability of the Contractor; accordingly, the Contractor shall not assign, subcontract or transfer any interest in this Contract without the prior written consent of the Owner. The Owner reserves the right to assign both the benefits and/or obligations of the Owner under this Contract, in whole or in part, absolutely or as security, at any time. Upon such assignment (except in the case of an assignment as security), Owner shall have no further responsibility for the obligations so assigned hereunder, provided such party assumes such obligations. However, in case of such assignment, the Contractor shall be entitled to terminate as provided in Section 2.6.

6.3 WRITTEN NOTICE

6.3.1 Written notice shall be deemed to have been duly served if delivered in person or sent by regular mail or facsimile transmission to the Owner or Contractor at the addresses indicated respectively in the Owner-Contractor Agreement, if any, or the Purchase Order. Notices shall also be deemed to have been duly served if delivered personally in writing to the Contractor's Superintendent or other on-site representative. Either party may change its address or designee for purposes of this Section by a written notice complying with the provisions of this Section.

6.3.2 The Special Conditions shall identify additional representatives of the Owner to whom Notices of Furnishing, Notices of Lien and other similar documents must be sent by Contractor, in addition to the Owner's Representative.

6.3.3 Written notices served to the Owner by the Contractor under this Contract must include the following information: Owner's Purchase Order Number, Project name and location, Owner's Representative and name of Contractor.

6.4 RIGHTS AND REMEDIES

6.4.1 Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, claim shall be made in writing to such other party within such time as may be provided in this Contract, or if no time is so specified, within a reasonable time after the first observance of such injury or damage.

6.4.2 The Owner and Contractor acknowledge and agree that this Contract has been awarded by the Owner, and the Contract Sum has been determined by the Contractor, based on the specific allocation of Project risks and responsibilities expressly set forth in the Contract Documents. Accordingly, any claim of either party shall be based on the provisions of the Contract Documents, and not on any allocation of risks or entitlement to claims that may apply on other projects or in the construction industry generally. The parties agree that the allocation of Project risks set forth in the Contract Documents is of the essence of this Contract and shall be strictly enforced.

6.4.3 The Contractor acknowledges that, in light of the nature and complexity of the Project, changes are likely to the scope of Work, the planned character, duration and sequence of the Work, the planned methodology for performance of the Work, the availability of Work, and other job conditions. In addition, the Contractor acknowledges that the Owner makes no representation or warranty, express or implied, that the Drawings and Specifications are complete, coordinated, constructible or accurate. See Construction Regional Requirements Appendix A, R6 for specific terms on Contractor's remedies for inaccuracies or omissions.

6.4.4 The Contractor acknowledges that the Contract requires the Contractor to develop and implement a comprehensive project management system to enable the Contractor to provide effective administration and management of the Contractor's Work. This includes cost management procedures and reporting systems. The Contractor further acknowledges and agrees that it is an obligation of the Contractor under the Contract Documents to comply with the best construction industry accounting practices so that the Contractor is able to identify and monitor its Project costs. Accordingly, if the Contractor contends that it is entitled to an adjustment to the Contract Sum in accordance with the Contract Documents, the Contractor shall be obligated to substantiate any such claim with complete detailed and accurate cost records as required by the Owner meeting the requirements of the Contract Documents, including Article 13 of these Construction General Conditions. The Owner shall be entitled to determine amounts, if any, due to the Contractor for claims made by the Contractor if the Contractor fails to submit complete, detailed and accurate cost records substantiating the amount claimed by the Contractor.

6.4.5 Unless otherwise agreed in writing and subject to Section 8.7 of Appendix A, the Contractor shall carry on the Work and maintain its progress during any good faith dispute. The Owner shall continue to make payments to the Contractor over which there is no dispute in accordance with the Contract Documents. In no case may the Owner withhold payment relating to claims which the Owner has accepted in writing or which have been awarded to the Contractor by an unappealable court order.

6.4.6 Should the Contractor perform any Work or should it proceed in any manner which it may subsequently allege has caused it increased cost, damage or loss, purporting in each case to have acted upon verbal instruction or with tacit consent or acceptance or approval other than written authorization from the Owner's Purchasing Department; the Contractor shall be held to have done so at its own peril and the Contractor shall have no claim against the Owner on account of the alleged increased cost, damage or loss unless it can prove that an authorization by the Owner had been given. In all instances where the Contractor observes a change in the Work under the Contract Documents to be necessary, the provision of Article 13 shall apply. Subject to the foregoing, if the Contractor believes that the Contractor is entitled to assert a claim against the Owner under this Contract, the Contractor shall give prompt notice of such claim in accordance with the requirements of this Contract, and such notice shall both give details of the claim and identify the Section(s) of these Construction General Conditions which the Contractor contends permits such claim. No claim (other than claims for bodily harm, death or based on gross negligence) shall be permitted unless expressly allowed under these Construction General Conditions, and the Owner shall have no obligation to review any claim of the Contractor if the Section of these Construction General Conditions permitting such claim is not identified as required.

6.4.7 Anything to the contrary stated in or implied by the Contract Documents or otherwise permitted under law notwithstanding, the Owner shall not be liable for and shall not be required to make payments to Contractor, directly or on account of claims by Contractor's Subcontractors and/or Suppliers, for loss of anticipated profit; lost business opportunities; unabsorbed overhead; interest on late payments or claims; costs to prepare bids; loss of use of equipment, manpower, or facilities; unamortized depreciation of costs, and general and administrative burden charges. The limitation on damages set forth in this Section 6.4.7 shall not limit or preclude claims for damages expressly allowed under these Construction General Conditions, including the percentage fees permitted under Article 13.

6.4.8 Anything to the contrary stated in or implied by the Contract Documents or otherwise permitted under law notwithstanding, the Contractor shall not be liable for and shall not be required to make payments to Owner for loss of anticipated profits; unabsorbed overhead resulting from loss of use of production facilities; interest on claims; lost business opportunities; and unamortized depreciation costs resulting from loss of use of production facilities. The Owner shall be entitled to costs recoverable under the Contract Documents and other damages resulting from breach of this Contract by Contractor, including additional costs for contract administration and management; fees and expenses paid to design professionals and consultants; expense for scrap vehicles; labor, administrative and management costs to make up lost production; downtime expenses; increased expenses of operation; and other costs resulting from any such breach.

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

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

6.4.11 See Construction Regional Requirements – Appendix A, R6.

6.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BONDS

6.5.1 The Owner may in the Contract Documents or in the course of the Project when reasonable assurance is, in Owner's judgment, needed, require assurance in the form of a bond or otherwise. See Appendix A for Project and regional specific terms.

6.5.2 See Construction Regional Requirements - Appendix A, R6.

6.6 NON-DISCRIMINATION CLAUSES

6.6.1 It is the policy of the Owner to extend employment opportunities to qualified applicants and employees on an equal basis regardless of an individual's age, race, color, sex, religion or national origin. Owner requests that its subcontractors, vendors and suppliers take appropriate action with respect to implementation of their own equal employment opportunity policies.

6.6.2 The Contractor shall comply and contractually require all Subcontractors to comply with the provisions and requirements set forth in the Non-Discrimination Clauses attached hereto as Appendix I and incorporated herein by reference.

6.7 INDEPENDENT CONTRACTOR

The Contractor is an independent contractor and nothing set forth in the Contract Documents shall be construed to mean the Contractor is an employee or agent of the Owner.

6.8 SEVERABILITY

If any provision of this Contract or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the Contract, or the application of such provisions to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.

6.9 NO JOINT VENTURE

The Project is not, and shall not by virtue of this Contract be deemed to be, a joint venture of the Owner and the Contractor, and the Contractor shall not have any rights by virtue of this Contract in the Project or in the income or profits derived therefrom, except as expressly set forth in this Contract. This Contract shall inure solely to the benefit of the parties hereto and their successors and permitted assigns as above provided, and is not intended to and shall not create rights of any nature in favor of any third parties.

6.10 REMEDIES IN THE EVENT OF BANKRUPTCY

6.10.1 The Owner and the Contractor acknowledge and agree that successful construction within the time and financial parameters anticipated by this Contract will require prompt continued administration and performance by the Contractor and its Subcontractors and that any delay therein for any reason including a bankruptcy proceeding respecting the Contractor or any Subcontractor would create immediate and irreparable harm to the Owner, the Contractor and all Subcontractors. To that end, this Contract contains, and all Subcontracts shall contain, a right insofar as permitted by applicable law to terminate in the event of bankruptcy of a contracting party, it being recognized that such action will be necessary to avoid and minimize such delay and consequent damage to all concerned.

6.10.2 See Construction Regional Requirements - Appendix A, R6.

6.11 RIGHTS OF TITLE; INTELLECTUAL PROPERTY

6.11.1 Contractor agrees that all work products of Contractor's employees, Suppliers and Subcontractors, including drawings, designs, reports, manuals, programs, tapes and any other material prepared by Contractor's employees under this Contract shall belong exclusively to the Owner.

6.11.2 Contractor agrees that all writing, discoveries, designs, mask works, inventions and improvements whether copyrightable, patentable or not which are written, conceived, discovered or made by the Contractor's employees or Subcontractors in the course of the Work shall be promptly disclosed to Owner and shall become Owner's sole property.

6.11.3 Contractor agrees to sign and execute all assignments and other papers necessary to vest the entire right, title and interest in such writings, designs, drawings, mask works, inventions, processes, compositions of material, specifications, improvements or discoveries to Owner and do all lawful acts and sign all assignments and other papers Owner may reasonably request relating to applications for patents, mask works registrations, trademarks, and copyrights, both United States and foreign, or relating to the conduct of any interference, litigation or other controversy in connection therewith, provided that all expenses incident to the filing of such applications, the prosecution thereof and the conduct of any interference, litigation or other controversy shall be borne by the Owner.

6.11.4 Prior to the start of the Work, Contractor agrees to require Contractor's employees, Suppliers and Subcontractors, and the employees of subcontractors performing Work under the Contract to sign an Intellectual Property Rights Agreement in the form attached hereto as Appendix G. Contractor agrees to witness the signing of such agreements for Owner and to preserve the executed Intellectual Property Right Agreement form for a period of five (5) years. At the request of the Owner, the Contractor shall promptly deliver all such Intellectual Property Rights Agreements to the Owner.

6.12 CROSS-DEFAULT

Any default of Contractor under this Contract that would entitle the Owner to terminate the Contract under Section 15.2.1 hereof shall constitute a default by Contractor under any other contract between Owner and Contractor; and Owner shall be entitled to enforce, with respect to such default under this Contract, all rights and remedies afforded to Owner under such other contract with respect to a default under such other contract. Any material default by Contractor under any other contract between Owner and Contractor shall constitute a default by Contractor under this Contract; and the Owner shall be entitled to enforce, with respect to such material default under such other contract, all rights and remedies afforded to the Owner under the Contract Documents with respect to a default under this Contract.

6.13 SET-OFF

In addition to any right of setoff or recoupment provided by law, all amounts due Contractor shall be considered net of indebtedness of Contractor and its affiliates and subsidiaries to Owner and Owner's affiliates and subsidiaries, and Owner shall have the right to set off against or to recoup from any amounts due to Contractor (and Contractor's affiliates and subsidiaries) from Owner (or its affiliates or subsidiaries).

6.14 COVENANT AGAINST CONTINGENT FEES

6.14.1 The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of its warranty the Owner shall have the right to annul this Contract or recover the full amount of such commission, percentage, brokerage or contingent fee.

6.14.2 The provisions of this Section 6.14 shall survive the termination or expiration of this Contract.

6.15 CONFLICT OF INTEREST

6.15.1 The Contractor hereby represents and warrants that it does not now and will not during its performance of the Work have any direct or indirect proprietary, or other interest in any patent, system, method, plan or design of construction or in any building procedures, which if used, would involve the payment of royalties, fees, or commissions that will be recommended by Contractor or specified by Contractor in the Drawings and Specifications or other documents for the Project, nor in any manufacture or fabrication of any materials to be recommended or specified for use in the Project.

6.15.2 The provisions of this Section 6.15 shall survive the termination or expiration of this Contract.

6.16 CONFIDENTIAL INFORMATION

6.16.1 In order that the Contractor may effectively fulfill its covenants and obligations under the Contract, it may be necessary or desirable for the Owner to disclose or cause disclosure of confidential and proprietary information to the Contractor. Since it is difficult to separate confidential and proprietary information from that which is not, the Contractor shall instruct its employees, Subcontractors, Suppliers, and consultants to regard all information gained by each such person, as a result of work performed or services rendered hereunder, as information which is confidential and proprietary to the Owner. Such information must not be disclosed to third parties without the prior consent of the Owner, except communications reasonably required for the performance of the Work under the Contract Documents. The Contractor shall not disclose any information relating to the Project or the Owner's or its affiliate's intentions with respect thereto to any person or entity, including, any governmental agency or any news media, except as may be required pursuant to applicable laws and regulations. The Contractor shall notify the Owner of any such request for information received by the Contractor.

6.16.2 Except project photographs, if any, required by the Contract Documents, no photographs, Project-related advertisements or other publicity regarding the Project, the Project Site, or the Owner's premises or facilities shall be permitted without the prior express written consent of the Owner.

6.16.3 Contractor shall not, without first obtaining the written consent of the Owner, in any manner advertise or publish the fact that Contractor has contracted to construct the Project, or use any trademarks or trade names of Owner in Contractor's advertising or promotional materials.

6.16.4 The provisions of this Section 6.16 shall survive the termination or expiration of this Contract.

ARTICLE 7: TIME

7.1 SCHEDULE

7.1.1 The Contractor shall prepare, for approval of the Owner, a logic-based Schedule meeting the requirements of the Construction General and Regional Requirements (Appendix A) and the other Contract Documents. Unless the Owner directs otherwise in writing, the Schedule shall be a computerized critical path method schedule using a scheduling program acceptable to the Owner. The Schedule shall be used to plan, organize, direct, manage, control and administer the Work and to provide a basis for determining job progress. The completion date and other Milestone Dates set forth in the Owner-Contractor Agreement (or other Contract Documents if an Owner-Contract Agreement has not been issued) shall govern and the Schedule shall be prepared so as to meet these dates. The Contractor shall submit to the Owner a Schedule, satisfying the requirements of the Contract Documents and consistent with the overall schedule developed by the Owner for the Project, within fourteen (14) days after the date of the Contract unless provided otherwise in the Contract Documents.

7.1.2 The planning, scheduling, management and execution of the Work is the sole responsibility of the Contractor. The progress schedule requirements in the Contract Documents are established to allow the Owner to review the Contractor's planning, scheduling, management and execution of the Work; to assist the Owner in evaluating Work progress and make payments; to allow other contractors to coordinate their activities with those of the Contractor; and to provide the Owner with information about the construction schedule.

7.1.3 Upon submission of the Schedule by the Contractor, the Contractor shall schedule a meeting with the Owner (and the Construction Manager, if any, Architect/Engineer, the Owner's Consultants and any separate contractors, if designated by the Owner) to discuss the Schedule and resolve any conflicts with respect thereto. The Schedule, when approved by the Owner, shall be binding on the Contractor. The Owner's review and/or approval of the Schedule shall not relieve the Contractor from responsibility for deviations from the Contract Documents unless the Contractor has, in writing, called the Owner's attention to such deviations at the time of submission of the Schedule and the Owner has given written concurrence to the specific deviations, nor shall any review and/or approval of the Schedule by the Owner relieve the Contractor from responsibility for errors and omissions in the Contractor's schedule submittals.

7.1.4 The Contractor shall designate an authorized representative of the Contractor who shall be responsible for the development and maintenance of the Schedule and other related schedule submittals. The Contractor's scheduling representative shall have the capability to perform the schedule submittal requirements under the Contract Documents and shall have the necessary experience in similar type projects and critical path scheduling to perform such tasks.

7.1.5 In the event the Contractor fails to prepare and submit to the Owner for review, the Schedule within the time period stipulated, the Owner, after notice and reasonable opportunity for the Contractor to cure such failure, may establish and prepare the Schedule at the expense of the Contractor. Such Schedule, when forwarded to the Contractor, shall be binding upon the Contractor.

7.1.6 All Work shall be done in accordance with the Schedule approved by the Owner in accordance with Section 7.1.3, and the Contractor and its Subcontractors shall fully cooperate with the Owner in effectively utilizing the Schedule.

7.1.7 The Owner's review of the schedule submittals shall be only for conformance with the information given in the Contract Documents and shall not extend to the means, materials, sequences and techniques or procedures of construction or to safety precautions or programs.

7.2 PROGRESS AND COMPLETION

7.2.1 The Contractor shall begin the Work on the date of commencement as defined in Section 7.1.2 hereof. The Contractor shall carry the Work forward expeditiously with adequate forces, and shall at all times substantially adhere to the agreed Schedule to achieve the Milestone Dates, Substantial Completion and shall achieve Final Completion within the Contract Time.

7.2.2 The Contractor shall be responsible to maintain daily records to document progress and enable the Contractor to update the Schedule accurately as required in Section 7.3.4.

7.2.3 The Contractor shall continuously maintain an updated Schedule showing the actual status of the Project. The updated Schedule shall be related to the Baseline Schedule to identify variances (activity descriptions shall not be redefined on such

updated Schedule). The Contractor shall furnish the current Schedule data file as may be requested by the Owner for the Owner's review.

7.2.4 If the Schedule shall, at any time, indicate a Schedule Completion Date earlier than the Contract completion date the Scheduled Completion Date shall be presumed to be the Contractor's most realistic completion date at that time but shall not alter the Contract Completion Date. Delays if any caused by the Owner which do not affect the Contract Completion Date shall not be compensable and shall not extend the Contract Completion Date. Delays not caused by the Contractor which affect the Contract Completion Date are governed by Sections 7.5 and 7.6 hereof. Delays caused by the Contractor which affect the Contract Completion Date are governed by Section 7.4.7 hereof.

7.2.5 Time extension shall not be granted except as expressly provided for in this Article 7 and as substantiated by the Schedule and then only when the Total Float Time is reduced to zero.

7.2.6 In the event the Contractor becomes aware of any conditions which are likely to cause or are actually causing delays, the Contractor shall notify the Owner in writing of the effect, if any, of such conditions within any specific time limits set forth in this Contract (and if no specific time limits are set forth, within seven (7) days) and shall state in what respects, if any, the Schedule should be revised with the reasons therefore.

7.2.7 If the Contractor shall fail to adhere to the Schedule, as revised pursuant to this Contract, it must promptly work additional time over regular hours, work additional shifts, including Saturdays, Sundays and holidays; supply additional workmen; revise its construction procedures; or take such other steps as may be required to bring Work on schedule, without additional cost or expense to the Owner. Claims for inefficiency due to the use of overtime or other measures and recourses will not be accepted by the owner. All such overtime and weekend work shall be scheduled with the Owner in advance and shall be subject to the Owner's regular schedule for availability of work areas and hours at the Owner's premises.

7.2.8 The Contractor will be responsible for the handling of jurisdictional disputes or work stoppages (excluding Owner skilled trade disputes) which may arise during performance of the Work. The Contractor shall promptly utilize available remedies to effect resumption of the Work.

7.3 DELAYS BY OWNER

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

7.3.1.1 Upon receipt of written notice from the Owner to suspend, delay or interrupt the Work, and within the time stated in such notice, the Contractor shall suspend shipment and delivery of material and stop any part or all of the Work and operations hereunder for the periods of time designated by the Owner in the notice. The Contractor shall immediately confer with the Owner relative to:

- (i) Probable duration of the suspension or stoppage.
- (ii) Delays and extensions of time resulting therefrom.
- (iii) The reduction or elimination of the Contractor's costs.
- (iv) Prospective costs and expenses which may result directly from the suspension or stoppage; including the costs to the Contractor of complying with the Owner's directions relative to the preservation of the Work in progress and the protection of existing facilities of materials and equipment on or in transit to the Site.

7.3.1.2 The Owner may require the Contractor to promptly resume all or any part of the Work and operations by further written notice.

7.3.1.3 Claims of the Contractor for costs and damages resulting from the Owner's suspension, delay or interruption of the Work shall be determined in accordance with Section 7.4.2.

7.3.2 If the performance of all or any part of the Work on the Project is suspended by the Owner or otherwise is delayed or interrupted by an act of the Owner or an agent of the Owner in the administration of the Project:

7.3.2.1 If such act causes delays in the critical path activity, then the Schedule shall be adjusted, subject to Sections 7.3.4 and 7.3.5 hereof, as necessary to compensate for such delay; and

7.3.2.2 The Owner shall issue a Field Order or Purchase Order Alteration to adjust the Contract Sum to cover any increase in the cost of performance of this Contract to the Contractor caused by such suspension, delay or interruption, not to exceed the direct, unavoidable net expenses (without mark-up for overhead or profit) incurred by the Contractor which shall, in all cases, exclude lost profits and consequential damages. These costs shall be subject to audit by the Owner.

7.3.3 Within four (4) days after the occurrence of a delay caused by the Owner, the Contractor shall notify the Owner in writing, using a DCR form, setting forth in detail the claimed delay, a description of the portions of the Work affected, and additional relevant details. Failure to submit the notice of delay required herein shall be presumed to be a waiver of claim by the Contractor. In the case of a continuing cause of delay, only one notice is necessary.

7.3.4 Any claims for extension of time pursuant to Section 7.4.2.1 hereof shall be made in writing to the Owner, using a DCR form, no more than seven (7) days after the conclusion of the delay. If the Contractor believes the Contractor is entitled to an adjustment to the Contract Sum under Section 7.4.2.2, the Contractor shall submit a detailed description of its claim, including substantiation of all amounts claimed, within fourteen (14) days after conclusion of the delay. The Contractor shall furnish such documentation as may be requested by the Owner, including cost records and Schedule analysis, to substantiate its claim. Failure to submit a claim for extension of the Contract Time and/or adjustments to the Contract Sum within the time limits set forth in this Section 7.4.4 shall be presumed to be a waiver of such claim by the Contractor.

7.3.5 No adjustments shall be made under this Section 7.4 for any suspension, delay or interruption (i) to the extent that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor or (ii) for which an equitable adjustment is provided or excluded under any other provision of this Contract. The Owner's exercise of any of its rights under this Contract or Owner's requirement of correction or re-execution of any defective Work shall not, under any circumstances, be construed as interference with the Contractor's performance of the Work.

7.4 FORCE MAJEURE DELAYS

7.4.1 If the Contractor shall be delayed by (i) the combined action of workmen (either those employed on the Work or in any industry essential to the conduct of the Work) in no way caused by or resulting from default or collusion on the part of the Contractor (ii) strikes, lockouts, embargoes, fire, unavoidable casualties, national emergency, unusually severe and adverse weather conditions not reasonably anticipatable, or (iii) any other causes which the Contractor could not reasonably control or circumvent, and if such delay affects the critical path activity, then the Schedule shall be adjusted, subject to Sections 7.4.4 and 7.4.5 hereof, as necessary to compensate for such delay (but the total extension of all critical path activities may not exceed the length of the delay).

7.4.2 Extension of time shall be the Contractor's sole remedy for any delay unless the same shall have been caused by the Owner (including the Owner's agents) as provided by Section 7.4 hereof.

7.4.3 Within seven (7) days after the occurrence of a force majeure related delay, the Contractor shall notify the Owner in writing, using a DCR form, setting forth the cause of the delay, a description of the portions of the Work affected, and additional relevant details. Failure to submit the notice of delay required herein shall be presumed to be a waiver of claim by the Contractor. In the case of a continuing cause of delay only one notice is necessary.

7.4.4 All claims for extension of time pursuant to Section 7.5.1 hereof shall be made in writing to the Owner, using a DCR form, no more than fourteen (14) days after the conclusion of the delay. The Contractor shall furnish such documentation to substantiate its claim as may be requested by the Owner, including Schedule analysis. Failure to submit a claim for extension of the Contract Time within the time limit set forth in this Section 7.5.4 shall be presumed to be a waiver of such claim by the Contractor.

7.4.5 No adjustments shall be made under this Section 7.5 for any suspension, delay or interruption (i) to the extent that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor or (ii) for which an equitable adjustment is provided or excluded under any other provision of this Contract. The Owner's exercise of any of its rights under this Contract or the Owner's requirement of correction or re-execution of any defective Work shall not, under any circumstances, be construed as interference with the Contractor's performance of the Work.

7.5 ACCELERATION OF PERFORMANCE

7.5.1 If the Owner shall desire the Work of the Contractor hereunder to be performed with greater speed than is herein contracted for, the Owner shall issue a Field Order, Purchase Order Alteration or Contract Change Order to the Contractor in accordance with Article 13 directing the Contractor to accelerate the Work. The adjustment to the Contract Sum for such acceleration shall be determined in accordance with Section 13.4. This provision shall not apply to acceleration of performance caused by the Contractor's default, the cost of which shall be borne solely by the Contractor.

7.6 SUBSTANTIAL COMPLETION

7.6.1 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Owner, is Substantially Complete as defined in Section 1.1, the Contractor shall prepare for submission to the Owner a list of items (the "Punchlist") to be completed or corrected. At the election of the Owner, the Owner shall prepare the Punchlist for the Project. The Punchlist shall be submitted to the Owner for review and approval, and the Contractor shall revise the Punchlist as directed by the Owner. The failure to include any items on the Punchlist does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

7.6.2 The Contractor shall complete all Punchlist work within thirty (30) days after the Owner's approval of the Punchlist, unless the Owner agrees in writing to a different time for completion when the Punchlist is approved by the Owner. In the event that any Punchlist work is not complete within such time, the Owner, after notice to the Contractor and a reasonable opportunity for the Contractor to complete such work, shall have the absolute right to complete the same by whatever means it deems most efficient and to off-set the costs thereof against the amount otherwise due to the Contractor.

7.7 FINAL COMPLETION, FINAL ACCEPTANCE

7.7.1 When the Contractor considers that Final Completion of the Work has been achieved in accordance with Appendix A Sections 3 and 7, the Contractor shall notify the Owner in writing. Upon receipt of written notice from the Contractor that the Work is ready for final inspection and Final Acceptance, the Owner will make such inspection in the presence of the Contractor at a date mutually agreed upon.

7.7.2 If the Owner finds the Work to be in accordance with the Contract Documents, all items on the Punchlist completed to the Owner's satisfaction and the Work under the Contract fully performed (including the submission of all required documentation), the Owner will notify the Contractor that the Work is acceptable by the Owner in the form attached hereto as Appendix J. Defects that do not impair operations or use and that are otherwise only non-material, shall not prevent acceptance unless the Owner had already requested the repair or removal of such defect upon an earlier inspection conducted in preparation for acceptance. Safety defects are always deemed a sufficient reason for the Owner to refuse acceptance of the Work. The Contractor is liable for any additional costs associated with repeated inspections that are not the fault of the Owner.

7.8 SEE CONSTRUCTION REGIONAL REQUIREMENTS – APPENDIX A, R7

ARTICLE 8: CONTRACT SUM AND PAYMENTS

8.1 CONTRACT SUM

The Contract Sum is stated in the Owner-Contractor Agreement (or the Purchase Order if an Owner-Contractor Agreement is not issued) and, including authorized adjustments thereto in accordance with the terms of the Contract Documents, is the total amount payable by the Owner to the Contractor for the performance of the Work, including all risks, hazards and difficulties therewith assumed by the Contractor under the Contract.

8.2 ALLOWANCES

Unless provided otherwise in the Bid Documents, no Allowances shall be included in the Contract Sum. If Allowances are permitted under the Bid Documents, the terms of the Special Conditions shall govern adjustments to the Contract Sum due to Allowance overruns and underruns. All unused Allowance amounts shall belong to the Owner. The Owner reserves the right to audit the Contractor's books and records with respect to any permitted Allowances.

8.3 ADJUSTMENTS TO CONTRACT SUM

The Contract Sum can only be changed by a Contract Change Order or Purchase Order Alteration. The sole and exclusive reasons for which the Contract Sum may be adjusted are as follows:

8.3.1 The Contract Sum may be adjusted in accordance with the provisions of Article 13 of these Construction General Conditions for changes in the Scope of Work which, under the provisions of Article 13, may result in an increase or decrease in the Contract Sum.

8.3.2 The Contract Sum may be adjusted in accordance with Section 7.4 because of suspension of the Work or delays to the Work caused by the Owner.

8.3.3 The Contract Sum may be adjusted in accordance with Section 7.6 and Section 13.4 if the Owner issues a Field Order or Purchase Order Alteration or Contract Change Order directing the Contractor to accelerate the performance of the Work.

8.3.4 The Contract Sum may be adjusted in accordance with Section 13.6 in the event the Contractor encounters unforeseeable concealed conditions at the Site.

8.3.5 The Contract Sum may be adjusted in accordance with the Alternate Prices and Separate Prices and Allowances set forth in the Owner-Contractor Agreement (or Purchase Order if an Owner-Contractor Agreement is not issued).

There are no other circumstances under which the Contract Sum may be adjusted. By way of example, and not limitation, the Contract Sum shall not be adjusted for any increases or decreases in material prices, wage rates, freight rates or other changes in cost items affecting the cost to the Contractor to perform this Contract.

8.4 PAYMENTS

8.4.1 Payment terms shall be Owner's standard MNS-2 terms (second day of second month following invoices, or next business day). No payment shall be made for changed Work until adjustment for the Contract Sum for such Changed Work is determined in accordance with Article 13 and authorized by Purchase Order Alteration or Contract Change Order.

8.4.2 The acceptance of payment by Contractor shall constitute a waiver of all claims against the Owner arising out of or in connection with Work covered by such payment, except those claims which were previously reserved by the Contractor in writing.

8.4.3 See Construction Regional Requirements - Appendix A, R8.

8.5 SEE CONSTRUCTION REGIONAL REQUIREMENTS – APPENDIX A, R8

ARTICLE 9: SAFETY PRECAUTIONS AND PROGRAMS

9.1 LEGAL COMPLIANCE

Contractor must comply with applicable laws, codes, ordinances and regulations. Additionally, Contractor must not interfere with or make more difficult or expensive Owner's compliance with any law, code, ordinance or regulation. If Contractor's Work interferes with or makes more difficult or expensive Owner's compliance with any law, code, ordinance or regulation, Owner will notify Contractor, orally or in writing, and Contractor must within forty-eight (48) hours of receiving Owner's notification make whatever changes are necessary to remedy the situation, including changes in the work schedule, installation of safety devices, etc. Owner's exercise of its rights under this provision will not be grounds for an increase in the Contract Sum under the Contract.

9.2 SPECIAL SAFETY CONDITIONS

Contractor must comply with all Special Safety Conditions. A copy of Special Safety Conditions is incorporated into the Contract Documents as if fully restated.

9.3 CONTRACTOR COMMITMENT TO SAFE WORK PRACTICES

Contractor affirmatively represents to Owner that Contractor regards the health and safety of those exposed to Contractor's Work or Work related activities as an overriding priority and acknowledges that Owner has relied upon Contractor's expressed commitment to safe work practices in selecting Contractor for this Work. Contractor acknowledges that its commitment to safety and its compliance with the spirit and intent of these Health & Safety provisions are material and substantial bases upon which Owner has entered the Contract and that a breach by Contractor of any of the Health & Safety provisions is a material and substantial breach of the Contract.

9.4 PROTECTION OF PERSONS

Contractor must perform all Work in a manner calculated to ensure protection of the health and safety of all persons that are exposed to Contractor's Work product or Work related activities, including Contractor's employees, Subcontractors, Suppliers, vendors, visitors, other contractors, or others.

9.5 JOB-SITE SAFETY ORGANIZATION—DESIGNATED REPRESENTATIVE

Contractor must designate in writing individual(s) trained and knowledgeable in Health & Safety appropriate to the nature of the Work being performed. The designated representative(s) must be present at the job-site whenever work is being performed and must have authority to promptly act on Contractor's behalf to address health and safety issues and control or eliminate hazards. Contractor also will designate in writing individuals(s) who will occupy and assume responsibility associated with the safety positions described on or required by the Job-Site Safety Organization template attached to the Special Safety Conditions.

9.6 JOB-SITE SAFETY PLAN

Contractor must prepare and implement a detailed written Job-Site Safety Plan encompassing all aspects of the Work, including those performed by subcontractors at any tier that will do work at the job-site. The Job-Site Safety Plan must include a detailed review of all aspects of the Project, identification of all tasks that may present a health or safety hazard and contain a strategy for unified coordinated implementation with Subcontractors. Regarding each task for which a hazard is identified, the plan must include an individual Pre-Task Plan.

9.6.1 Pre-Task Planning: Contractor must prepare and include in the Job-Site Safety Plan a detailed written Pre-Task Plan describing each major task, the hazards associated with performance of each such task, the measures Contractor will use to control the hazards and a contingency plan. The Contractor must submit its Pre-Task Plan on the form attached to the Special Safety Conditions. Owner has the right to determine in its sole discretion whether the measures Contractor will use to control the hazard(s) satisfies Contractor's obligation under the Contract Documents.

9.6.2 Supplementation or Revision: Contractor must update, supplement or revise its Job-Site Safety Plan and Pre-Task Plans whenever changes in the nature or scope of the Work or in job-site conditions alter, affect or impact the manner in which Work related activities may safely be performed, including additions to the Work, changes in the method used to perform the Work, or changes to the job-site.

9.6.3 Oversight: Contractor will develop and implement procedures to monitor the adequacy and effectiveness of the Job-Site Safety Plan on an on-going basis throughout performance of the Work and to correct any defects or inadequacies in the plan or any of its components. Contractor will monitor each task for which a hazard is identified in the Job-Site Safety Plan on a daily basis and conduct a general health and safety inspection of the job-site each week. Contractor will make a written record of the daily monitoring and weekly inspections noting any discrepancies and corrective measures taken. Contractor also will update, supplement or revise its Job-Site Safety Plan and applicable Pre-Task Plans to the extent necessary to account for any identified discrepancies.

9.6.4 Submission: Contractor will submit a copy of its Job-Site Safety Plan, including Pre-Task Plans, to Owner or Owner's Representative before any Work begins and with sufficient time to allow for Owner's or Owner's Representative's review. Contractor also will submit to Owner or Owner's Representative for review all updates, supplements or revisions to Contractor's Job-Site Safety Plan and Pre-Task Plans immediately upon being developed. Owner or Owner's Representative has the right to determine in its sole discretion whether the measures Contractor will use to control the hazard(s) satisfies Contractor's obligation under the Contract Documents.

9.6.5 Implementation: Contractor will supervise, maintain, monitor and enforce its Job-Site Safety Plan, including each Pre-Task Plan and all other safety precautions, programs or requirements regarding the Work. Contractor also will review and coordinate all safety activities of Subcontractors to ensure a unified coordinated implementation. Contractor will also coordinate its safety activities with Owner and with other contractors at the job-site. Contractor is responsible to provide all health and safety training to its employees as required for the performance of the Work, and the Contractor will require all Subcontractors to provide required training for their respective employees.

9.6.6 Owner's Acceptance: Owner's or Owner's Representative's review and acceptance of Contractor's Job-Site Safety Plan, the Contractor's Pre-Task Plans or any safety measure proposed or implemented by Contractor, is intended for the sole and exclusive benefit of Owner. Contractor may not rely upon Owner's review or acceptance as constituting validation of the means, methods, techniques, procedures or equipment.

9.7 SAFETY ORIENTATION

Contractor will prepare a detailed written safety orientation for Contractor employees that must be presented to Contractor employees before they are permitted to perform any of the Work. This safety orientation also must be presented to any Contractor employee who has been absent from the job site for thirty (30) or more calendar days. At a minimum, the safety orientation must include the following:

- (i) The Special Safety Conditions;

- (ii) A detailed description of all known or reasonably anticipated hazards regarding the job-site or Work related activities and the measures Contractor will use to control the hazards;
- (iii) Contractor's Job-Site Safety Organization;
- (iv) A review of Contractor's Job-Site Safety Plan; and
- (v) Any other information that Owner designates to be included.

9.8 SAFETY MEETINGS

Contractor will conduct a safety meeting with each of its employees, collectively or individually, at least once each seven (7) calendar days. Contractor must use these meetings to keep employees informed of changes that may alter, affect or impact the manner in which Work related activities may safely be performed; to relate information regarding safe work practices; to solicit employee concerns regarding safety; and to relate any other safety-related information Owner designates, either verbally or in writing, to be included. Contractor will keep a written record of employee attendance; of the information provided and of employee safety concerns received. Regarding employee safety concerns, Contractor must within twenty-four (24) hours investigate the situation and make needed corrections. Contractor also must prepare and maintain a detailed written report containing a description of the safety concern, the findings of Contractor's investigation and describing any corrective action taken by Contractor.

9.9 CONTRACTOR EMPLOYEE DISCIPLINE

Contractor will develop and implement a system for assessing appropriate discipline applicable to its employees and its Subcontractor employees, including dismissal, for violation of safety laws, codes, ordinances and regulations; safety requirements specified by the Job-Site Safety Plan; safety requirements specified by this the Contract, including Special Safety Conditions, and for any other conduct that presents a safety hazard to the employee or others. Contractor will prepare and maintain a detailed written report of each instance where it has assessed discipline for a safety related infraction, including identification of the employee, the nature of the infraction and the discipline assessed.

9.10 PROJECT MEETINGS

Contractor will conduct a Project Meeting, to be attended by Subcontractors, at least once each seven (7) calendar days to review safety issues. In addition, the Contractor shall attend weekly Project Meetings with the Owner's Representative, during which Project Meetings safety issues must be reviewed. Within twenty-four (24) hours after a Project Meeting, Contractor will prepare detailed written statement of the safety issues discussed at the meeting. Each Project Meeting must, at a minimum, include the following:

- (i) Review of all injuries or incidents or near-miss injuries or incidents;
- (ii) Review of Contractor's progress toward implementation of the safety control measures identified in Contractor's Pre-Task Plan, including any problems or difficulties experienced by Contractor;
- (iii) Review of any inspection by local, state or federal authorities on Owner's property, including information indicating that Contractor may receive a citation;
- (iv) Any other safety concerns.

9.11 SUPERVISION

Contractor is solely responsible for supervising and directing the activities of its employees and Subcontractors so that they perform their work and otherwise conduct themselves in a manner consistent with requirements of the Contract Documents. However, Owner has the right to stop Contractor activities that Owner reasonably believes are being performed in a manner that presents an imminent danger of death or serious injury. Owner's exercise of its rights under this provision, even if mistaken, will not be grounds for an increase in the Contract Sum under the Contract. Owner's review or acceptance of Contractor's Job-Site Safety Plan, Pre-Task Plan or any safety measures proposed or implemented by Contractor, will not impose upon Owner any responsibility for Contractor's safety management methods or programs and does not relieve Contractor from its obligations under the Contract Documents or which may otherwise be imposed by law.

9.12 SERIOUS INJURY OR NEAR-MISS NOTIFICATION

Contractor immediately must notify Owner upon the occasion of a serious injury or the near miss of a serious injury. A serious injury is one that results in death or physical injury requiring medical care beyond one-time, minor, on-site first-aid treatment. A near miss of a serious injury occurs where but for contemporaneous unplanned or unanticipated intervention there was a substantial probability that a

serious injury or death would have occurred. In the case of a fatality, Contractor must within eight (8) hours submit to Owner a preliminary report detailing all facts known to Contractor regarding the circumstances of the fatality. For all injuries, including a fatality, Contractor must within twenty-four (24) hours (or longer period if Owner consents) investigate the direct cause and contributing factors of the injury, make needed corrections and submit to Owner a detailed written report containing a description of the direct cause and contributing factors of the injury, the findings of Contractor's investigation and describing any corrective action taken by Contractor. Owner has the right to determine in its sole discretion whether the corrective action taken by Contractor satisfies Contractor's obligation under the Contract Documents to eliminate unsafe conditions that may have caused or contributed to the injury or near-miss injury.

9.13 SERIOUS INCIDENT OR NEAR-MISS NOTIFICATION

Contractor immediately must notify Owner upon the occasion of a serious incident or near miss of a serious incident. A serious incident is an event having widespread or indiscriminate adverse consequences, including fire, release of toxic or hazardous substances, and unintended structural collapse. A near miss of a serious incident occurs where but for contemporaneous unplanned or unanticipated intervention there was a substantial probability that a serious incident would have occurred. Contractor must within 24 hours (or longer period if Owner consents) investigate the incident or near-miss incident, make needed corrections and submit to Owner a detailed written report containing a description of the incident or near-miss incident, the findings of Contractor's investigation and describing any corrective action taken by Contractor. Owner has the right to determine in its sole discretion whether the corrective action taken by Contractor satisfies Contractor's obligation under the Contract Documents to eliminate unsafe conditions that may have caused or contributed to the incident or near-miss incident.

9.14 SUMMARY LISTING OF WORK RELATED INJURIES AND ILLNESSES

Contractor will compile a summary listing of all work-related injuries and illnesses experienced by Contractor's employees and any Subcontractor's employees on the Contractor Safety Performance form attached to the Special Safety Conditions in accordance with instructions contained on the form. Contractor must submit a copy of a completed form to Owner for the immediately preceding calendar month to the person designated and in accordance with instructions contained on the form.

9.15 EXPLOSIVES

Ordinarily, Contractor must not bring onto Owner's premises any explosive material or items intended to be used to fabricate an explosive, except when it is necessary to perform the Work and the Owner has given prior written approval. This includes all materials that can be detonated by means of a blasting cap when unconfined or that are designed to function by an extremely rapid release of heat and gas, or by chemical reaction in a similar manner, including dynamite, blasting powder, gun-powder (or its equivalent), detonation devices, and plastic explosives. If Contractor believes the Project requires the use of explosives or if explosives are the normal and customary method of performing a particular task, then Contractor must provide Owner written notification contemporaneous with Contractor's bid, advising that Contractor anticipates using explosives and including a detailed description of the task and identification of the explosives Contractor anticipates using. Contractor may not use explosives, other than powder-actuated hand-tools, unless Owner specifically consents to their use in writing. Owner reserves sole discretion to determine whether Contractor may use explosives and, if so, the Special Safety Conditions under which they may be used.

9.16 WEAPONS

Contractor must not bring onto Owner's premises, including Owner's parking lots, any weapons, including guns, knives, clubs, and other dangerous devices.

9.17 ALCOHOL AND DRUGS

Contractor must not bring onto Owner's premises, including Owner's parking lots, any alcoholic beverages or any controlled substance the possession of which is unlawful or which is lawful to possess but if ingested would impair the employee's ability to function in a safe and alert manner.

9.18 SAFETY BOOK

Contractor will create, maintain at the jobsite and make available for Owner's inspection and copying on demand a comprehensive, organized safety book containing at least the following:

- (i) All health and safety records regarding the Work that Contractor is required to create, keep or maintain pursuant to any law, statute, code, ordinance or regulation unless such disclosure is prohibited by law;
- (ii) Special Safety Conditions provided by Owner;
- (iii) Contractor's Job-Site Safety Organization chart;

- (iv) Contractor's Safety Orientation;
- (v) All information disseminated at Safety Meetings;
- (vi) Project Meeting Minutes pertaining to safety issues;
- (vii) All records that Contractor is required to create, keep or maintain pursuant to Health & Safety provisions of this Agreement, including Job-Site Safety Plan, Project Meeting Minutes, reports generated pursuant to safety complaints, concerns, injuries, incidents, or near miss injuries or incidents, and reports of discipline.
- (viii) A copy of all certificates of insurance required by these Construction General Conditions.

9.19 GOVERNMENTAL INSPECTION NOTIFICATION

Upon being notified that Contractor is subject to an inspection by local, state or federal authorities on Owner's property Contractor immediately must seek from that authority permission to advise Owner's Representative of the inspection and if granted immediately so advise Owner's Representative. Owner may elect to accompany Contractor and the inspecting authority on the inspection.

9.20 MEDICAL TREATMENT

Contractor's employees are not eligible for medical treatment by Owner's medical departments or personnel. Contractor must make independent arrangements for medical treatment.

9.21 USE OF OWNER'S EQUIPMENT

It is expected that Contractor will use its own tools and equipment to perform Contractor's obligations under the Contract. If Owner consents to Contractor's use of Owner's tools and equipment, it is Contractor's sole and exclusive responsibility to determine whether the equipment is adequate to safely perform the contemplated tasks and to carefully inspect the tools or equipment and correct any damage, defects or other deficiencies that may present a safety hazard prior to use. Contractor acknowledges that Owner is not a sophisticated user of tools and equipment in construction applications. Contractor must make an independent assessment as to whether the tools and equipment are appropriate for the contemplated application and is solely and exclusively responsible for proper application and use of Owner's tools and equipment. **OWNER MAKES NO REPRESENTATIONS WHATSOEVER REGARDING ITS TOOLS AND EQUIPMENT AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.**

9.22 OWNER'S RIGHT TO DENY ENTRY

Owner has the right to deny entry to its premises any Contractor, or any individual Contractor employee, whose conduct Owner believes in its sole discretion presents a risk of death or serious injury to themselves or to others. Owner's exercise of this right will not be grounds for any increase in the Contract Sum or justification for any delay in completion of Contractor's obligations.

9.23 OWNER'S RIGHT TO COVER

Owner has the right to purchase, construct or install safety devices that Owner believes in its reasonable discretion are necessary to eliminate a safety hazard within the scope of the Contractor's obligations under this Contract if after being requested to do so Contractor has refused or otherwise failed to purchase, construct or install the safety devices within a reasonable time. All expenses borne by Owner as a result of its purchase, construction or installation of safety devices under this provision, including administrative, labor and materials will be offset against amounts owed to Contractor for this or any other project. Owner's labor expense where Owner has used its own employees will be determined according to the blended hourly rate paid, inclusive of benefits. The Owner's rights under this Section 9.23 are in addition to other remedies available to the Owner under the Contract Documents or at law.

9.24 SUBCONTRACTORS

Before retaining a Subcontractor, the Contractor must evaluate and satisfy itself as to (i) the Subcontractor's commitment to safe work practices, and (ii) the Subcontractor's ability to comply with the Health and Safety requirements of the Contract Documents and the Contractor's Job-Site Safety Plan. If Owner approves the Subcontractor, Contractor must obtain from the Subcontractor an express written commitment to abide by terms of the Health & Safety provisions of the Contract Documents, including, all provisions incorporated herein by reference. Contractor must obtain from the Subcontractor and retain in Contractor's Safety Book a copy of all health and safety records that the Subcontractor is required to keep under its obligation to comply with provisions of the Contract Documents or pursuant to any law, code, ordinance or regulation.

9.25 SEE CONSTRUCTION REGIONAL REQUIREMENTS – APPENDIX A, R9

ARTICLE 10: PROTECTION OF PROPERTY

10.1 CONTRACTOR RESPONSIBILITY

Except for property damage covered by the property insurance provided by the Owner under Section 12.2.1 hereof, the Contractor assumes all risks of damage or injury to any property used on or in connection with the Work and all risks of damage to any property wherever located, resulting from any action, omission or operation under this Contract or in connection with the Work. The Contractor shall take all necessary precautions and shall provide all necessary protection to prevent damage, injury or loss to:

10.1.1 All the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody or control of the Contractor or any of its Subcontractors or Sub-Subcontractors or others;

10.1.2 Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and

10.1.3 Equipment and materials of the Owner and employees, agents and separate contractors.

10.2 COMPLIANCE WITH LAWS

The Contractor shall give all notices and comply with all applicable laws, ordinances, codes and rules, regulations, including lawful orders of any public authority, bearing on the protection of property from damage, injury or loss.

10.3 PROTECTION OF PROPERTY

The Contractor shall comply with the Construction General and Regional Requirements attached hereto as Appendix A and all other requirements of the Contract Documents regarding protection of the Project and property of the Owner and others. The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all required safeguards for protection, including barriers and the posting of danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

10.4 STORM WATER

The Contractor shall implement controls and preventative measures to prevent storm water runoff at the Project Site from being contaminated during the Work. Unless the Special Conditions provide otherwise, the Contractor shall be responsible to prepare and implement all required storm water plans and obtain all required storm water permits and approvals required for the Project. Contractor must notify Owner's environmental representative if soil disruption will be greater than one (1) acre, or when conditions may cause sediment to reach surface water or a storm sewer.

10.5 DAMAGE

All damage or loss to any property referred to in Section 10.1.1, 10.1.2 and 10.1.3 hereof caused in whole or in part by Contractor, any Subcontractor, any Sub-Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by Contractor, except damage or loss attributable solely to the acts or omissions of the Owner or anyone employed by the Owner or for whose acts the Owner may be liable and not attributable, at least in part, to the fault or negligence of Contractor.

10.6 SEE CONSTRUCTION REGIONAL REQUIREMENTS – APPENDIX A, R10

ARTICLE 11: HAZARDOUS MATERIALS

11.1 GENERAL

11.1.1 The Contractor shall strictly comply with the Hazardous Materials Requirements attached hereto as Appendix M and incorporated herein by reference.

11.1.2 Contractor shall not, at any time, cause or permit any Hazardous Materials to be brought upon, stored, manufactured, blended, handled, or used in, on, or about the Work or the Site for any purpose, except any Hazardous Materials as may be specifically called for in the Drawings and Specifications and except as specifically identified by the Contractor and approved in writing in advance by Owner, as more particularly described in the Hazardous Materials Requirements attached as Appendix M.

11.1.3 Contractor shall at all times be in material compliance with all applicable laws, ordinances, codes and regulations pertaining to Hazardous Materials and the environment; shall obtain and maintain all permits, licenses, and authorizations; required for Contractor's business, equipment, and operations on and in connection with the Work; shall comply with all material terms and conditions of such permits, licenses, and authorizations, and shall comply with all material and applicable requirements, orders, and directives of governmental agencies. Contractor shall be given a reasonable period of time within which to come into compliance with any applicable laws ordinances, codes, or regulations enacted after award of the Contract.

11.1.4 Contractor shall promptly notify Owner in writing of any reportable release of Hazardous Materials on the Work or the Site, specifying the nature and quantity of the release, the location of the release, and the measures taken to contain and clean up the release and ensure that future releases do not occur.

11.1.5 The Contractor shall promptly notify the Owner in writing if the Contractor encounters Hazardous Materials at the Site. In the event of a release of Hazardous Materials or if the Contractor encounters Hazardous Materials at the Site, the Contractor shall immediately stop all Work in affected areas until the Owner directs the Contractor in writing to proceed with such Work.

11.1.6 The Contractor shall strictly comply with the applicable requirements of Chart A, Contractor Insurance Requirements attached hereto as Appendix L and incorporated herein by reference.

11.2 INDEMNIFICATION

11.2.1 General indemnification provision as set forth in the Contract Documents apply.

11.2.2 See Construction Regional Requirements – Appendix A, R11.

11.3 TESTING

Owner may conduct any testing, sampling, borings, and analyses of Hazardous Materials or suspected Hazardous Materials it deems necessary. Such testing shall be at Contractor's expense if Contractor, its agents, employees, subcontractors or their agents and employees have caused Hazardous Materials to be on the Work or the Site. This applies also if Owner has a reasonable basis for suspecting the presence of Hazardous Materials which has been caused by or resulted from the activities of Contractor, its agents, employees, Subcontractors, or their agents or employees. In addition to any other right granted by law or the Contract, if Contractor is in material noncompliance with any Environmental Law Owner may, at its option, take whatever action it deems necessary and appropriate at Contractor's sole expense, which sums shall be immediately due and payable to Owner. Upon termination of the Contract, or abandonment of the Work by Contractor for any reason, Contractor shall remove all of its equipment, materials, and other items which may cause, contribute to, or result in contamination. At all times during the construction of the Work, Contractor shall, if required by Owner or any governmental agency, promptly take whatever steps are necessary to stop any and all equipment, materials, and other items which may cause, contribute to, or result in contamination from causing, contributing to, or resulting in such contamination. Nothing set forth herein shall limit or modify the Contractor's obligation under the Construction General Requirements and other Contract Documents to perform quality control and other construction testing in connection with the Work.

ARTICLE 12: INSURANCE

12.1 CONTRACTOR'S INSURANCE REQUIREMENTS

12.1.1 Contractor shall as a minimum maintain insurance coverage referenced in the Chart attached hereto as Appendix N, as may be applicable to Contractor's activities, including all conditions specified on Page 2 of such Chart.

12.1.2 In addition, Contractor agrees to require that all of its Subcontractors as a minimum maintain insurance coverage referenced in the Chart attached as Appendix N, and to secure and maintain in its records all certificates of insurance from all Subcontractors.

12.1.3 If requested by the Owner, within three (3) days after such request, the Contractor shall submit to the Owner's Representative certificates of insurance evidencing coverage required to be provided by the Contractor under by the Contract Documents. The Contractor shall require each Subcontractor to submit to the Contractor the Subcontractor's certificate of insurance, evidencing insurance of the Subcontractor meeting the requirements of the Contract Documents, prior to commencement of the Subcontractor's work for the Project. The Contractor shall maintain such certificates in the Project documents. Contractor further agrees that if requested by Owner, all Subcontractor certificates of insurance required for this Contract will be furnished to Owner within three (3) days of request.

12.2 PROPERTY AND CASUALTY INSURANCE (BUILDER'S RISK)

12.2.1 The Owner will procure and maintain Builder's Risk property insurance to cover the completed construction for the Project, the material and other property delivered to the Project Site which are to become a part of the permanent construction for the Project or are to be consumed on the Owner's premises in the process of constructing the Project.

12.2.2 The property insurance policy of the Owner required to be provided under Section 12.2.1 hereof shall include as loss payees the Contractor, Subcontractors at any tiers, Materialmen, Architects and Engineers in an amount equal to the actual cash value for all risks of direct physical loss. Flood and earthquake losses are limited to \$125.0 Million each occurrence.

12.2.3 The coverage provided by the Owner under Section 12.2.1 does not insure against loss caused by:

- (i) Wear and tear, deterioration, rust or corrosion, mold, wet or dry rot.
- (ii) Smog, smoke, vapor, liquid or dust discharged from agricultural or industrial operation.
- (iii) Mechanical breakdown, including rupture or bursting caused by centrifugal force.
- (iv) Settling, cracking, shrinkage, bulging or expansion of pavements, foundations, walls, floors, roofs or ceilings unless loss by a peril not excluded.
- (v) Dampness or dryness of atmosphere, resulting from extremes or changes of temperature.
- (vi) Interference by employees or others with customary operations.
- (vii) Theft or attempted theft of any property which at the time of loss is in the open outside of buildings located on the Owner's premises or, when designated by the Owner before a loss occurs, the Contractor's security service is not constantly in attendance.
- (viii) Unexplained or mysterious disappearance of any property or shortage disclosed on taking inventory; or caused by any willful or dishonest act or omission of the insured or any associate, employee or agent of any insured.
- (ix) Errors in design, poor workmanship or use of faulty materials.
- (x) The cost of or resulting from the cost of making good any faulty workmanship, material, construction or design to buildings or structures, but this exclusion shall not apply to loss caused by an insured peril arising as a consequence of faulty workmanship, material, construction or design.
- (xi) Electrical or magnetic injury, disturbance or erasure of electronic recordings.
- (xii) Nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled, or be in whole or in part caused by, contributed to, or aggravated by any of the perils insured against.
- (xiii) Pollution accident of any sort.

12.2.4 The policy provided by the Owner under Section 12.2.1 does not insure against loss to:

- (i) Steam boilers (including equipment attached to and forming a part thereof), steam turbines, steam engines, steam pipes interconnecting any of the foregoing or gas turbines caused by any condition or occurrence within such pressure vessels, loss caused by or resulting from explosion, rupture, bursting, cracking, burning or bulging of boilers, pressure vessels, or piping or apparatus attached thereto.
- (ii) Electrical appliances, devices, fixtures, wiring, or other electrical equipment caused by electrical currents.
- (iii) Lawns, plants, shrubs, trees, standing timber.
- (iv) Personal property in the open caused by exposure to elements of the weather.
- (v) Contractors' and Subcontractors' machinery, tools and equipment used in the erection of property covered unless the total capital value of such property is directly and specifically charged to the job.

(vi) Personal property undergoing alterations, repairs, testing, installation or servicing, including materials and supplies, therefore, if directly attributable to the operations or work being performed thereon, unless loss is caused by an insured peril.

12.2.5 Unless the Special Conditions provide otherwise, the Contractor shall be responsible to pay Five Thousand (\$5,000) Dollars of the deductible portion of any loss due to the Contractor's negligence or due to theft of the Contractor's materials. Unless the Special Conditions provide otherwise, the Owner shall assume responsibility for payment of other deductible amounts for an insured loss under the property insurance required to be provided by the Owner under Section 12.2.1.

12.2.6 Unless the Special Conditions provide otherwise, the Contractor shall be responsible to provide property insurance for materials and equipment provided by the Contractor for the Project in transit, stored in a location other than the Project Site, or not otherwise covered by the property insurance required to be provided by the Owner under Section 12.2.1.

12.2.7 Unless the Special Conditions provide otherwise, the Contractor shall purchase and maintain boiler and machinery insurance covering steam boilers (including equipment attached to and forming a part thereof), steam turbines, steam engines, steam pipes interconnecting any of the foregoing or gas turbines provided by the Contractor as part of the Work for the Project, which insurance shall specifically cover such insured objects during installation, testing and start-up and until Final Acceptance by the Owner. This insurance shall include the interests of the Owner, Contractor and Subcontractors of any tier in the Work, and Owner and Contractor shall be named as insureds.

12.2.8 Notwithstanding anything to the contrary set forth in these Construction General Conditions, the Contractor shall be responsible for all direct property losses (up to Five Thousand (\$5,000) Dollars, or other amount set forth in the Special Conditions) under the insurance provided by the Owner under Section 12.2.1, due to the Contractor's negligence or due to theft, however caused, and such losses shall not be the responsibility of the Owner or the Owner's insurance.

12.2.9 The Owner and Contractor each waive all rights of subrogation against each other with respect to losses caused by fire or other perils to the extent covered by the property insurance required to be provided by the Owner and the Contractor, respectively, under this Section 12.2. The Owner shall provide a similar waiver from Owner in favor of the Subcontractors at any tier, Architects and Engineers or Materialmen. The Contractor shall provide a similar waiver, in favor of the Owner and Owner's agents and separate contractors, from the Contractor's Subcontractors at every tier, Architects, Engineers and Materialmen. All insurance policies required hereunder shall permit and recognize such waivers of subrogation.

12.2.10 The foregoing provisions shall not relieve the Contractor, Subcontractors at any tiers, Architects or Engineers or Materialmen from their respective liability and responsibility for loss or damage to real or personal property of the Owner or others, which loss or damage is not specifically stated to be included in the insurance coverage to be provided by the Owner for this Project as set forth and limited in this Section 12.2, which loss or damage is caused by the acts, omissions or operations of the Contractor, Subcontractors, Architects, Engineers, or Materialmen, their employees, agents, servants or representatives.

12.2.11 In addition to other required insurance, the Contractor, Subcontractors at any tiers, Materialmen, Architects and Engineers shall maintain Contractor's Equipment Floater insurance for their respective tools, equipment, tarpaulins, field offices or construction buildings, employees' tools and clothing, materials and other property which will not become a part of the permanent construction or be consumed on the Owner's premises in the process of completing the Project.

12.2.12 In the event of loss covered by the Owner's property insurance required to be provided under Section 12.2.1, the Contractor shall submit a complete written damage report to the Owner. Reports shall be submitted within seventy-two (72) hours after a loss occurs and shall include an estimate of repair or replacement cost. Except in an emergency endangering life or property, the Contractor shall proceed with repairs or replacement only in pursuance of a Field Order from the Owner under Article 13 of these Construction General Conditions.

12.3 MISCELLANEOUS INSURANCE PROVISIONS

12.3.1 The Owner may elect at any time during the term of this Contract to require the Contractor to procure and maintain other or additional insurance not specified in Section 12.1 hereof. Notice of such election shall be given to the Contractor at least sixty (60) days prior to the effective date of the requirement. Any additional costs incurred by Contractor in securing such additional insurance shall be reimbursed by the Owner and an appropriate Change Order covering such reimbursement shall be issued.

12.3.2 In order to facilitate Owner's purchase and maintenance of the insurance called for under Section 12.2 above, the Contractor shall supply the Owner with such information relative to the Contractor, the Subcontractors, the Sub-Subcontractors and their performance of the Work as the Owner may request. Such information may include, by way of example and not limitation, information concerning payroll "job loading" by separate trades.

12.3.3 The Contractor agrees (i) to maintain, and to cause all Subcontractors and Sub-Subcontractors to maintain, separate payroll records for the Work performed under this Contract, and (ii) to make such records available to Owner upon its request.

12.4 OWNER - CONTROLLED INSURANCE PROGRAM

12.4.1 Owner shall have the option to provide an Owner-Controlled Insurance Program (“OCIP”) for the Project

12.4.2 The Contractor shall cooperate with the Owner as necessary in connection with the application for OCIP coverage and shall promptly provide all information requested by the Owner regarding the Contractor’s insurance claims history, accident and safety record and similar matters.

ARTICLE 13: CHANGES IN THE WORK

13.1 OWNER’S RIGHT TO CHANGE THE WORK

13.1.1 The Owner shall have the right at any time to require alterations in, additions to and deductions from the Work without rendering void the Contract. Unless the Owner agrees otherwise in writing, all changes in the Work shall be completed within the Contract Time set forth in the Contract.

13.1.2 The Owner shall have the right, in the Owner’s reasonable discretion, to have changed Work performed by another contractor.

13.1.3 The Contractor shall not proceed with the changed Work until the changed Work is authorized in writing by the Owner’s Purchasing Department or Designate by:

- (i) A Field Order, as defined in Section 1.1 hereof; or
- (ii) A Purchase Order Alteration, as defined in Section 1.1 hereof; or
- (iii) A Contract Change Order, as defined in Section 1.1 hereof.

13.1.4 RECEIPT OF DRAWINGS, BULLETINS, OR ORAL ORDERS FROM THE OWNER’S REPRESENTATIVE OR OTHERS SHALL NOT CONSTITUTE AUTHORIZATION TO PROCEED WITH A CHANGE IN THE WORK.

13.2 PROCEDURE

13.2.1 If the Owner issues a Field Order or a Bulletin describing a change to the Work, the Contractor shall submit a written Quotation, as defined in Section 1.1 hereof, for such change within the time required by the Field Order or Bulletin (or within fourteen (14) days after the date of the Field Order or Bulletin if no other time is stated in the Field Order or Bulletin.). The Quotation shall comply with all requirements of this Article 13.

13.2.2 The Quotation shall be itemized in detail to facilitate checking by the Owner. Forms GM 1784, GM 1784A (Appendix C), and/or related Owner forms, properly completed, shall be submitted with the Quotation. As applicable (as described in this Article 13), Forms GM 1781, GM 1782 and GM 1783 (Appendix C) setting forth pre-established rates will be used to prepare the Quotation.

13.2.3 Each Bulletin or Field Order item number must be priced separately.

13.2.4 The Quotation shall be priced in accordance with Section 13.3, the applicable requirements of the Construction Requirements in Appendix A, R13 and the following:

13.2.4.1 The Quotation for a Bulletin shall be based on Method 1 (Unit Prices), Method 2 (Estimated Cost Plus Percentage Fees), or a combination of the two, as indicated in the Bulletin. If unit prices are stated in the Contract, and if the Bulletin indicates that Method No. 1 will be used, such unit prices shall be used to calculate the Quotation (See Section 13.3).

13.2.4.2 The Quotation for a Field Order shall be based on Method 1 (Unit Prices), Method 2 (Estimated Cost Plus Percentage Fees), Method 3 (Cost Plus Percentage Fees), or a combination of the three, as indicated in the Field Order. If unit prices are stated in the Contract, and if the Field Order indicates that Method No. 1 will be used, such unit prices shall be used to calculate the Quotation (See Section 13.3).

13.2.4.3 If the Bulletin or Field Order directs the Quotation to be determined under Method No. 2 (Estimated Cost Plus Percentage Fees), or Method 3 (Cost Plus Percentage Fees), the estimated cost shall be determined in accordance with Section 13.3.2, or

13.3.3, and the Percentage Fees shall be determined in accordance with Forms GM 1781, GM 1782, , GM 1783, GM 1784, GM 1784A and/or related Owner forms, included in the Contract Documents.

13.2.5 Unless the Bulletin or Field Order indicates otherwise, the changed Work described in the Bulletin or Field Order must be completed within the original Contract Time, and the Quotation must indicate separately any acceleration costs necessarily resulting from the change, calculated in accordance with Section 13.4 hereof. In any case where the Contractor claims that a change will affect the Contract Time, the Contractor shall submit a detailed Schedule analysis supporting such claim.

13.2.6 If the Contractor's Quotation includes changed Work performed by a Subcontractor of any tier, unless Subcontractor(s) Quotations are not required by the Owner, Subcontractor(s) Quotations shall be prepared in accordance with the requirements of this Article 13 applicable to the preparation of Quotations. Such Quotations shall be supported by itemized details and GM Forms 1781, 1782, 1783, 1784 and 1784A in the same manner as required by Article 13 to support a Quotation prepared by the Contractor, except that only the Contractor shall be permitted to include the Handling Fee in its Quotation and Subcontractors of any tier shall not be permitted to include the Handling Fee in their respective Quotations. Prior to submittal of the Contractor's Quotation, the Contractor shall carefully check the amount claimed by the Subcontractor for such change to verify that such amount has been calculated and itemized in detail using proper forms, in accordance with the requirements of this Article 13, to facilitate checking by GM.

13.2.7 The Owner shall have the right to reject a Quotation without review or comment if such Quotation fails to comply with the requirements of this Article 13. In such event, the Contractor shall correct errors in the Quotation, supply additional back-up documentation, and re-submit the Quotation within seven (7) days. The Contractor shall be responsible for costs and delays to the Work resulting from the submittal of incomplete or inaccurate Quotations or Quotations that otherwise fail to meet the requirements of this Article 13.

13.2.8 The adjustment to the Contract Sum permitted hereunder shall cover all costs and delays to the Contractor associated with the changed Work, including all direct, unavoidable costs and delays and no further or subsequent adjustments to the Contract Sum, the Contract Time or the Schedule shall be allowed for the change. All such claimed costs shall be substantiated by back-up documentation as requested by the Owner and claimed delays shall be substantiated by a detailed Schedule analysis in accordance with the requirements of this Article 13.

13.2.9 If the changed Work includes deletions to the scope of the Work, the Contractor shall furnish complete pricing information, in accordance with this Article 13, as required to substantiate the amount included in the Contract Sum for such Work.

13.2.10 If the Contractor fails to submit a Quotation for additional Work, deleted Work or changed Work meeting the requirements of this Article 13 within the time required for submittal of such Quotation, the Owner shall have the right, after fourteen (14) days prior written notice to the Contractor and failure of the Contractor to submit the required Quotation, to determine the Contract Sum adjustment for such additional, deleted or changed Work and to adjust the Contract Sum and Purchase Order to the Contractor accordingly.

13.2.11 If the changed Work includes work or materials to be provided by Subcontractors and/or Suppliers, the Contractor shall furnish the Owner's Field Order Number to such Subcontractors and Suppliers and shall require the Subcontractors and Suppliers to include such Field Order Numbers on all Quotations and other documentation relating to the changed Work.

13.2.12 When a change in the Work is requested, the Owner will furnish to the Contractor, as applicable, Drawings describing the change. The number of copies furnished will depend on the complexity of the change, but shall in no case exceed a total of three (3) sets. The Contractor may request additional sets at the cost of reproduction or a reproducible set at the discretion of the Owner.

13.2.13 If the Contract Documents include an Alternate Price or Separate Price covering a change in the Work, Contract Time or Schedule, and if the Owner elects to accept such Alternate Price or Separate Price after award of the Contract, the Contract Sum shall be adjusted in accordance with the Alternate Price or Separate Price and terms thereof.

13.3 PRICING METHODOLOGY

Unless the change is covered by an Alternate Price or Separate Price, the method to be used to calculate the price for changed Work shall be by one or a combination of the following three methods at the discretion of the Owner, and the method to be used shall be specified by the Owner in the Bulletin and/or Field Order.

13.3.1. METHOD NO. 1 -- UNIT PRICES

13.3.1.1 Unit prices, if stated in the Contract, shall govern for changes in the Work if the Owner elects to use Method No. 1. The Owner shall have no obligation to elect to use Method No. 1, even if unit prices for the changed Work are included in the Contract. Unit prices shall include all the Contractor's charges for Work completed in place, including overhead and profit. The same

unit price shall apply for additions and deletions, and different unit prices for deleted Work will not be accepted. The Field Order and/or Purchase Order Alteration shall include a "Not to exceed" price.

13.3.1.2 The Contractor shall not be permitted to change any unit prices set forth in the Contract. If the Owner elects to use Method No. 1, the unit prices shall apply to all phases and type of Work required under the Contract that are covered by unit prices. Contractor agrees no other charges will be made unless the Owner agrees that very special circumstances warrant their consideration, in which case the Contractor will submit the price with sufficient detail and adequate supporting documentation to facilitate checking by the Owner.

13.3.1.3 If the Owner elects to use Method No. 1, unit prices govern for all additions to or deductions from the Contract. The unit prices will govern not only additions or deductions in connection with Work covered by the accompanying Drawings and Specification, but also for other Work located on the premises which is incidental to or necessary for the use of the building or buildings for which drawings and specifications may be later prepared. Discounts provided by the Contractor or any Subcontractor for bundled units in the Contract shall be maintained in any Purchase Order Amendment or Contract Change Order as applicable.

13.3.1.4 Each unit price provides for any and all charges to furnish and install the described item, except for sales and/or use tax. Sales and/or use tax shall be applied by the Contractor to all items of the changed Work except items identified as personal property, qualified pollution control facilities, or qualified energy conversion or thermal efficiency improvement facilities, pursuant to the applicable Sales and Use Tax Exemption Certificate or Direct Pay Certificate supplied by Owner which will be attached hereto as Appendix D and incorporated herein by reference.

13.3.2 METHOD NO. 2 -- ESTIMATED COST PLUS PERCENTAGE FEES

13.3.2.1 If the Owner elects to use Method No. 2, each Quotation shall be submitted utilizing the form GM Form 1783 (attached hereto as Appendix C) to support the Contractor's breakdown and Forms GM 1784 and GM 1784A (attached hereto as Appendix C) and any additional related forms supplied by the Owner, in sufficient detail together with adequate supporting information to facilitate checking by the Owner to arrive at a lump sum amount as set forth in Appendix A, Construction General Requirements. If the Owner elects Method No. 2 for purpose of calculating the Contract Sum, the following shall be included: labor class, number of labor hours by class and the cost of labor as supplied in the Form GM 1783 and cost detail and supporting documentation for material and equipment included in the Quotation. (Contractor time sheets shall not be considered valid substantiation of labor hours or costs unless the Owner expressly agrees otherwise in writing prior to performance of the changed Work.) The Contractor shall be permitted to include the following in its Quotation:

- (i) Applicable unit price work.
- (ii) Estimated labor and material costs and expenses itemized to include:
 - (a) Labor class, number of labor hours by class.
 - (b) Material costs by item, size, type and cost per unit less any trade/quantity discounts.
 - (c) Transportation
 - (d) The use of tools or equipment having an original cost basis of more than \$1,500 per unit detailed by item and cost.
- (iii) Applicable Percentage Fees set forth in Forms GM 1781, GM 1782 and GM 1783 (Appendix C) and other fees, if any, in the Contract.
- (iv) Subcontract work (including applicable Subcontract Percentage Fees).
- (v) Manufactured items of operating equipment.
- (vi) Fabricated materials worked to a specific design required by the Drawings and Specification or for which Shop Drawings are required.

13.3.2.2 Where changes involve both additions and deductions, the estimated costs of the Work added and deducted shall be balanced against each other and the Contractor's or Subcontractor's Percentage Fees shall be applied to the net result. If the net result is positive, calculate the amount using the add percentage; if the net result is negative, calculate the amount using the deduct percentage.

13.3.2.3 Items of cost shall not include the expense of making good any damage to the Work or premises or the removal and replacement of materials or Work rejected or condemned by the Owner as failing to conform with the requirements of the Drawings and Specifications.

13.3.2.4 The adjustment (credit) to the Contract Sum for deleted Work shall be determined as follows: The net cost of labor, subcontracted work, equipment and material for the changed work plus the required amount for overhead and profit (determined by multiplying the net cost for labor, subcontracted work, equipment and material by the percentage fees for deductions set forth in GM Form 1781) equals the amount of the credit to be subtracted from the Contract Sum.

13.3.3 METHOD NO. 3 - COST PLUS PERCENTAGE FEES

13.3.3.1 If the Owner elects to use Method No. 3, for purposes of calculating the adjustment to the Contract Sum, the parties will agree on elements of cost and a mark-up percentage in accord with the procedures set forth in Appendix A, R13 Construction Regional Requirements. The Field Order and/or Purchase Order Alteration shall include a "Not to exceed" price

If the Owner elects Method No. 3 for purpose of calculating the Contract Sum, the following shall be included:

(i) Applicable percentage fees set forth in Forms GM 1781, GM 1782 and GM 1783 (Appendix C) and other fees, if any, in the Contract.

(ii) Labor costs shall include construction workers directly employed by the Contractor to perform the construction of the Work at the site by labor class and number of labor hours by class. When required by trade agreement, travel time will be paid on a fixed rate basis. A list, by Field Order, of all Contractor and Sub-Contractor employees by classification who will be working on the Field Order and equipment to be used on the Field Order must be provided to the Owner or Owners representative at the start of each shift. In addition, daily time sheets will be required to be submitted to the Owner or Owners Representative for labor and equipment used by the Contractor for time periods during which extra work is performed on a Method Number 3 - Cost Plus Percentage Fees Basis at the end of each shift for each Field Order.

(iii) Material costs and expenses less all cash, trade and other discounts itemized to include:

(a) Material costs.

(b) Transportation.

(c) The use of tools or equipment having an original cost basis of more than \$1,500.00 per unit.

(iv) Subcontract work (including applicable Subcontractor Percentage Fees).

(v) Overtime work when applicable (if overtime work is involved in the change, payment therefore will be in accordance with Section 13.4 of these Construction General Conditions).

(vi) Manufactured items of operating equipment.

(vii) Fabricated materials worked to a specific design required by the Drawings and Specification or for which Shop Drawings are required.

13.3.3.2 The adjustment (credit) to the Contract Sum for deleted Work shall be determined as follows: The net cost of labor, subcontracted work, equipment and material for the changed work plus the required amount for overhead and profit (determined by multiplying the net cost for labor, subcontracted work, equipment and material by the percentage fees for deductions set forth in GM Form 1781) equals the amount of the credit to be subtracted from the Contract Sum.

13.4 PREMIUM OR OVERTIME WORK

13.4.1 The Contract Sum includes all premium time or overtime required to properly staff the job, meet its established schedules, make all necessary tie-ins or cutovers and avoid interferences with the Owner's operations. The Contractor shall not be entitled to any adjustment to the Contract Sum for premium time or overtime work required to perform the Work.

13.4.2 In the event the Owner requests the Contractor in writing to perform additional premium or overtime work to perform base Work on an accelerated basis or to complete changed Work within the original Contract Time, the Contractor shall work such

additional hours or shifts required to comply with the Owner's request. The following requirements will govern compensation for additional premium or overtime incurred under Section 13.4.2:

- (i) The Contractor will submit a statement of charges for the Owner's record covering the premium or overtime work in connection with each written authorization of the Owner. This statement shall list the working employees by name, trade classification, hourly rate and premium or overtime hours worked. The Contractor shall be responsible to maintain accurate daily time sheets of the employees performing premium or overtime work each day and the number of hours of such premium or overtime work performed by each. Such daily time sheets shall be submitted to the Owner on the day such work was performed. All such time sheets shall be subject to audit by the Owner and revision to correct inaccuracies. At the request of the Owner, the Contractor shall promptly submit to the Owner copies of such daily time sheets.
- (ii) Each statement of charges must be submitted in writing signed by the Contractor's Superintendent. The Owner will only reimburse the Contractor for the premium portion of pay, applicable fringe benefits and taxes, and Federal and State unemployment and insurance contributions. No overhead and/or profit or handling fees will be allowed.
- (iii) The installing Contractor must provide an accurate Form GM 1783, Hourly Field Labor (Appendix O), subject to review and approval of Owner, for each trade prior to having any premium or overtime authorized by the Owner. (Review and/or approval of Form GM 1783 by Owner does not preclude subsequent adjustment by Owner's agents to correct inaccuracies.)
- (iv) The Owner reserves the right to audit and adjust the Contractor's statements of charges for premium or overtime work, including Form GM 1783, and each Contractor agrees to record these statements of charges in a manner to assist the Owner's audit.

13.4.3 All hours to be worked for which premium labor rates are to be paid shall be reported to the Owner at least forty-eight (48) hours in advance of the scheduled performance of the Work. Written approval must be given by the Owner to the Contractor before such Work is to be performed. This applies to all premium or overtime work whether scheduled by the Contractor, its Subcontractors, or requested by the Owner. Casual overtime, such as may be required to complete concrete placement and finishing, is the Contractor's responsibility and may be performed without prior notification to the Owner.

13.4.4 The Contractor must require all its Subcontractors to comply with the terms and conditions set forth in this Section 13.4.

13.5 PROCEDURE FOR ALLEGED CHANGE IN COST OF WORK

13.5.1 If the Contractor shall contend that direction from the Owner (including oral instructions or tacit consent or acceptance of the Owner) will result in an increase of the cost of the Work, damage or loss; the Contractor shall, except in the situation of an emergency, notify the Owner's Purchasing Department in writing, using a DCR (Appendix B), within four (4) days of the receipt of such directions. Contractor shall not proceed with the directions or with the Work affected thereby until the Contractor has received, in writing, acknowledgment of the claim and instructions from the Owner's Purchasing Department. The Contractor shall comply with the written instructions, and unless the claim is finally disposed of by a Purchase Order Alteration. Compliance shall be without prejudice to the rights of the Contractor and Owner. In the event of an emergency, the Contractor shall proceed with the Work necessary and shall keep accurate and complete records of the costs of the Work, which records shall be presented to the Owner's Purchasing Department as soon as the emergency ceases to exist.

13.5.2 If the Contractor shall contend during the performance of the Work, that the Contractor is entitled to payment from the Owner for increase in the cost of the Work, damage or loss because of any action or omission of the Owner or others engaged by the Owner; the Contractor shall not delay its Work on account thereof and shall, within twenty-four (24) hours after the first observance of the occurrence, notify the Owner's Representative and Owner's Purchasing Department, in writing, of the fact of the claim and the circumstances giving rise to the claim. It shall further, within fourteen (14) days after completion of the affected Work, submit to the Owner's Purchasing Department a written claim stating the amount of its claim and all details in connection with its contention. Failure to submit such written notice and/or such written claim shall constitute a waiver by the Contractor of any claim for such increased cost of the Work or loss.

13.5.3 Within seven (7) days after receipt by the Owner's Purchasing Department of the Contractor's written notice of claim, the Owner's Purchasing Department shall, in writing, acknowledge receipt of the notice. At the time of this acknowledgment or within a reasonable time thereafter, the Owner's Purchasing Department, representing the Project team, shall certify or deny the validity of the Contractor's claim. The Contractor shall furnish all information requested by the Owner's Purchasing Department to assist them in making their decision.

13.5.4 It is a condition precedent to the consideration of any claim by the Contractor that the foregoing provisions of this Section 13.5 be strictly observed in each instance. Neither the provisions of this Article 13 nor the acknowledgment of the receipt of any claim by the Owner's Purchasing Department shall constitute admission on the part of the Owner that any claim is valid.

13.6 CONCEALED CONDITIONS

13.6.1 If the Contractor encounters concealed, unknown physical conditions below the surface of the ground or in an existing structure, of an unusual nature, differing materially from those indicated in the Contract and from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, the Contract Sum shall be adjusted on the basis set forth in Section 13.3.

13.6.2 If the Contractor wishes to make a claim for an increase in the Contract Sum pursuant to this Section 13.6, it shall give the Owner written notice thereof, using a DCR form (Appendix B), promptly and within two (2) days after discovery of the conditions and, in all events, prior to performing Work affected by such conditions. The Owner will authorize the Contractor to proceed with the affected Work by issuing a Field Order and/or Purchase Order Alteration. The Contractor shall not proceed with Work affected by such concealed conditions until the Contractor receives such Field Order instructing it to do so, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Section 3.18. No such claim shall be valid for any work performed prior to delivery of written notice to the Owner.

13.6.3 If, after prompt investigation of such conditions, a decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Owner will issue a Field Order and/or Purchase Order Alteration to authorize an adjustment to the Work in accordance with this Article 13.

13.7 SEE CONSTRUCTION REGIONAL REQUIREMENTS – APPENDIX A, R13

ARTICLE 14: UNCOVERING AND CORRECTION OF WORK

14.1 UNCOVERING OF WORK

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

14.1.2 If any other portion of the Work has been covered which the Architect/Engineer or the Owner has not specifically requested to observe prior to being covered, the Owner and, with the Owner's approval, the Architect/Engineer may request to inspect such Work and it shall be promptly uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs and maintain the Schedule unless it be found that this condition was caused by the Owner or a separate contractor as provided in Article 5, in which event the Owner shall be responsible for the payment of such costs.

14.2 CORRECTION OF WORK

14.2.1 The Contractor shall correct all Work rejected by the Owner or the Owner's Representative as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion or Final Completion and whether or not fabricated, installed or completed. Such correction shall be accomplished within seven (7) days after notice from the Owner or the Owner's Representative unless such work cannot be accomplished within such period, in which case the Contractor shall commence the correction and submit its written plans therefore within seven (7) days. The Contractor shall bear all costs of correcting such rejected Work and maintaining the Schedule, including compensation for the Architect/Engineer's and Construction Manager's (if any) additional services made necessary thereby. Correction shall be accomplished without affecting the Contract Time or the Schedule.

14.2.2 The Contractor shall remove from the Site all portions of the Work which are defective or non-conforming and which have not been corrected under Subparagraph 14.2.1 hereof, unless removal is waived by the Owner and the Work shall be corrected to comply with the Contract Documents without cost to the Owner.

14.2.3 If the Contractor fails to correct defective or nonconforming Work, the Owner may correct it in accordance with Section 2.5 hereof.

14.2.4 If the Contractor does not remove defective or non-conforming Work within a reasonable time fixed by written notice from the Owner, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days (10) thereafter, the Owner may sell such Work at auction or at private

sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Architect/Engineer's and Construction Manager's additional services. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

14.2.5 The Contractor shall bear the cost (including costs due to any delays to Contractor or other contractors) of making good all of its Work, the work of the Owner or separate contractors and any other facilities destroyed or damaged by such deficiencies and their removal or correction.

14.2.6 Nothing contained in this Section 14.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Section 3.8 hereof. The establishment of the time period of two (2) years after Final Acceptance by the Owner or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work.

14.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

If the Owner prefers to accept defective or nonconforming Work, it may do so instead of requiring its removal and correction, in which case a Contract Change Order will be issued to reflect a reduction in the Contract Sum, or, if the amount is determined after final payment, it shall be reimbursed to the Owner by the Contractor.

ARTICLE 15: TERMINATION OF THE CONTRACT

15.1 TERMINATION BY THE CONTRACTOR

15.1.1 If the Contractor has submitted an Application for Payment complying with the requirements of the Contract Documents and all required supporting documentation at least twenty (20) days before the Payment Date; and if the Owner has not made payment of the undisputed amount due under such Application for Payment by the Payment Date, the Contractor shall have the right to send the Owner written notice, in accordance with the notice requirements in Section 6.3, of overdue payment, specifying the amount the Contractor claims is due and the date the Contractor claims such payment was due. If the Owner fails to make payment of the undisputed amount due under such Application for Payment within sixty (60) days after receipt of such written notice, the Contractor shall have the right, after forty-eight (48) hours additional notice to Owner, to: (i) suspend performance of all or a part of the Work until payment of the undisputed amount due is made to Contractor; or (ii) terminate the Contract.

15.1.2 If the Contractor suspends the Work under Section 15.1.1, such suspension shall be considered a delay to the Work caused by the Owner, and the Contractor shall be entitled to recover damages incurred as a result of such delay in accordance with Section 7.3.

15.1.3 If the Contractor terminates the Contract under Section 15.1.1, the Contractor shall be entitled to recover from the Owner, as total compensation for all Work and services performed hereunder,

- (i) payment for all Work properly performed prior to the effective date of termination, determined on the basis of percentage of completion of Work under this Contract, using the termination date as the Invoice Date, including payment of the appropriate retainage, plus
- (ii) payment for materials and equipment for the Work delivered to the Project Site and properly stored, unless such items can be returned to the manufacturer or vendor, plus
- (iii) payment for fabrication work to the extent properly completed prior to the effective date of termination for machinery or equipment for the Work fabricated to a special design, plus
- (iv) any commercially reasonable standard restocking or material and equipment and temporary facility cancellation charges payable to suppliers and vendors (unless the Contractor shall have assigned to the Owner, at the request of the Owner, the agreements pursuant to which such material and equipment were ordered and the Owner shall have indemnified the Contractor in connection therewith), plus
- (v) any unavoidable, commercially reasonable, verifiable direct costs incurred by the Contractor as a result of such termination, which shall exclude, in all events, anticipated profit on unperformed Work and other indirect, special or consequential damages.

Payment of such Compensation is the sole and exclusive remedy of the Contractor for a termination of this Contract under this Section 15.1. Owner shall not be liable for and shall not be required to make payments to Contractor, directly or on account of claims by

Contractor's Subcontractors and Suppliers, for loss of anticipated profit, lost business opportunities, unabsorbed overhead, interest on claims, costs to prepare bids, loss of use of equipment or facilities or manpower, unamortized depreciation costs, and general and administrative burden charges resulting from termination. Within sixty (60) days after the effective date of termination, Contractor shall submit a comprehensive termination claim to the Owner, consistent with the terms of this Section 15.1.3, with sufficient supporting data to permit audit by Owner. Contractor shall submit such additional supplemental and supporting information as Owner shall request. All Work, materials, equipment, machinery and other items to the extent paid for by the Owner hereunder shall become the property of the Owner at the time such payment, and the Owner shall have the right, in the Owner's sole discretion, to direct the use and disposition of such Work, materials, equipment, machinery and other items.

15.1.4 In no event shall the Contractor be entitled to suspend the Work or terminate the Contract under Section 15.1 if the failure of the Owner to make payment is due to a dispute regarding the amount of payment due to the Contractor; failure of the Contractor to submit Notarized Sworn Statements, Waivers of Lien or other required documentation; or the Owner's exercise of its right to withhold payment under Section 8.6 of Appendix A.

15.2 TERMINATION BY THE OWNER

15.2.1 The Owner shall have the right, without prejudice to any other right or remedy it may have to terminate this Contract and take possession of the Site and of all materials, facilities, tools and appliances thereon and finish the Project by whatever method the Owner may deem expedient upon forty-eight (48) hours prior written notice to the Contractor upon the occurrence of any of the following events of default:

15.2.1.1 The failure of the Contractor to comply with the health and safety requirements of the Contract Documents, including failure to comply with the requirements of Article 9 hereof or the Special Safety Conditions;

15.2.1.2 The occurrence of any event set forth in Section 2.5 hereof and failure of the Contractor to cure such default within the time provided under Section 2.5;

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

15.2.1.4 The Contractor shall make any unauthorized changes in the personnel designated on the personnel chart approved pursuant to Section 3.3.2 hereof and fails to cure such default within forty-eight (48) hours after written notice from the Owner;

15.2.1.5 The filing of claims with the Owner by third parties alleging failure to pay any amount due (except claims reasonably disputed by the Contractor) and Contractor fails to have such claim withdrawn within seven (7) days after written notice from the Owner;

15.2.1.6 The imposition of a lien against any property of, or sum due to, the Contractor by any governmental tax collection authority and failure of the Contractor to have such lien removed within fourteen (14) days after notice from the Owner; or

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

In any such case, the Contractor shall not be entitled to receive any further payment until the Project is finished. If the unpaid balance of the Contract Sum shall exceed the expense of finishing the Project, including compensation for the Owner's additional services, such excess shall be paid to the Contractor but only to the extent of payment due under the Contract Documents for Work properly performed by the Contractor prior to the termination of the Contract (determined on the basis of the percentage of completion of Work under this Contract, using the termination date as the Invoice Date). If the expense of finishing the Project shall exceed the unpaid balance of the Contract Sum, the Contractor shall pay such excess to the Owner.

15.2.2 The Owner may also terminate the Contract for its convenience at any time upon forty-eight (48) hours written notice of termination to Contractor. In such case, the Contractor shall be entitled to receive, as total compensation for all Work and services performed hereunder:

- (i) payment for all Work properly performed prior to the effective date of termination, determined on the basis of percentage of completion of Work under Section 8.2 of Appendix A, using the termination date as the Invoice Date, including payment of the appropriate retainage, plus

- (ii) payment for materials and equipment for the Work delivered to the Project Site and properly stored, unless such items can be returned to the manufacturer or vendor, plus
- (iii) payment for fabrication work to the extent properly completed prior to the effective date of termination for machinery or equipment for the Work fabricated to a special design, plus
- (iv) any commercially reasonable standard restocking or material and equipment and temporary facility cancellation charges payable to suppliers and vendors (unless the Contractor shall have assigned to the Owner, at the request of the Owner, the agreements pursuant to which such material and equipment were ordered and the Owner shall have indemnified the Contractor in connection therewith).

Payment of such compensation is the sole and exclusive remedy of the Contractor for a termination of this Contract by Owner without cause and the Contractor shall not be entitled to, and hereby waives, claims for anticipated profits on unperformed Work and all other damages and expenses. The Owner shall not be liable for and shall not be required to make payments to Contractor, directly or on account of claims by Contractor's Subcontractors and Suppliers, for lost or anticipated profit, lost business opportunities, unabsorbed overhead, interest on claims, costs to prepare bids, loss of use of equipment, manpower or facilities, unamortized depreciation costs, and general and administrative burden charges resulting from termination. The Contractor shall execute a waiver and general release of claim as a condition of payment. At the Owner's option, the Contractor shall assign to the Owner all approved Subcontracts and purchase orders designated by the Owner and the Owner shall indemnify and defend the Contractor against all claims for payment thereunder in respect of Work performed after the date of termination. All Work, materials, equipment, machinery and other items to the extent paid for by the Owner hereunder shall become the property of the Owner at the time such payment, and the Owner shall have the right, in the Owner's sole discretion, to direct the use and disposition of such Work, materials, equipment, machinery and other items.

[End of GM 1638 (05/05)]

APPENDIX A
CONSTRUCTION REGIONAL REQUIREMENTS: UNITED STATES

The provisions of Article R1 – R15 of the Construction General Conditions and the provisions of the Construction Regional Requirements are complementary and constitute a single document.

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APPENDIX A ARTICLE R1: CONTRACT DOCUMENTS

R1.1. SURVEYS AND PROJECT LAYOUT

1.1.1 Unless the Special Conditions provide otherwise, as applicable to the Project, the Owner shall furnish all surveys describing the physical characteristics, legal limitations and utility locations for the Site.

1.1.2 Unless the Special Conditions provide otherwise, the Owner shall secure any necessary easements for permanent structures or for permanent changes in existing facilities.

1.1.3 If applicable to the scope of Work, the Contractor shall maintain records of elevations of bottoms of footings, floor levels, and approaches made as the Work progresses. The Contractor shall assist Owner and Architect/Engineer in obtaining all measurements and surveys, including building and approach lines, necessary for approval of the Project or as may be required by Owner or any regulatory authority.

1.1.4 The Owner will establish lot lines and locate the benchmark unless provided otherwise in the Special Conditions.

1.1.5 All other lines and elevations necessary for the location and construction of the specified Work shall be established and maintained by a competent surveyor who shall be employed and paid for by the Contractor.

1.1.6 The Contractor shall compare carefully all lines and elevations given on Drawings with existing lines and elevations and shall review discrepancies with the Owner as required by Section 3.1 of GM 1638.

APPENDIX A ARTICLE R2: OWNER

This Article intentionally left blank.

APPENDIX A ARTICLE R3: CONTRACTOR

R3.1 WARRANTY

3.1.1 Contractor warrants and guarantees that the Work shall be free from defects in materials and workmanship and in accordance with the Drawings and Specifications for the longer of (i) two (2) years after the date of written Final Acceptance of the Work by the Owner, or (ii) such longer period as may be provided in the Drawings and Specifications or other Contract Documents. Any warranties from manufacturers or suppliers of more than two (2) years shall be pass through warranties from the manufacturers of the equipment or materials to the Owner as to any period in excess of two (2) years. All rights acquired by the Owner through guarantees by the Contractor shall inure to the benefit of the Owner and its successors and assigns. In addition to the foregoing, any equipment warranties and warranties from Subcontractors or Suppliers, secured by the Contractor, including those in excess of two (2) years, and any additional bond or guaranty which may be required under the Drawings and Specifications, shall also inure to the benefit of the Owner and its successors and assigns and shall be enforceable directly by the Owner. The Contractor shall include in its contract with each subcontractor that the Subcontractor provide a similar warranty and guaranty for the benefit of the Contractor and the Owner. The Contractor shall render assistance and cooperate with the Owner in enforcing those warranties from Subcontractors and Suppliers which extend beyond the Contractor's warranties.

3.1.2 Unless otherwise agreed with respect to any item placed in service before Final Acceptance, if within two (2) years after the date of Final Acceptance of the Work by the Owner any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct such defects and non-conformance and make all required repairs and replacements (including repairs to other portions of the Work or facility damaged as a result of the defect or non-conformance in the Work), all at no cost or expense to the Owner. In the event the defect or non-conformance prevents the Owner from conducting normal business operations or causes an emergency situation (which, for purposes of this Section 3.1.2 shall mean a defect that poses an imminent and material risk to human health and safety or serious property damage), the Contractor shall correct such defect or non-conformance as soon as possible under the circumstances after receipt of oral or written notice from the Owner. With respect to other defects or non-conformance, the Contractor shall commence such corrective work within seven (7) days after receipt of notice from the Owner (unless the Owner indicates a different time in such notice) and shall diligently pursue the same to conclusion to the satisfaction of the Owner. This obligation shall survive termination of the Contract. If the Contractor fails to correct defective or non-conforming Work as provided herein, the Owner shall be entitled to correct it in accordance with Section 2.5 of these Construction General Conditions and the Contractor shall reimburse the Owner for all expenses incurred by the Owner as a result.

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

3.1.4 The Contractor shall obtain, collate, summarize and forward to the Owner copies of all guarantees, warranties, bonds, maintenance and operating manuals from the manufacturers of the materials and equipment used in the Project which shall be bound (in removable form), tabbed and labeled.

R3.2 TAXES

3.2.1 Unless the Contract Documents direct the Contractor to exclude sales and use taxes, the Contractor shall pay all sales, consumer, use and other similar taxes on supplies, materials, machinery, tools, utilities and other equipment and services used or incorporated in the construction of the Project which are required by law to be paid at the time the Contract is executed, whether or not yet effective. Unless the Contract Documents direct the Contractor to exclude sales and use taxes, the Contract Sum includes, and the Contractor shall make payment of, all Federal, State and Local sales, use or any other taxes now in force, or which may be enacted during the progress and completion of the Work.

3.2.2 In the event the Contract Documents indicate that the Owner will pay directly sales or use taxes on supplies, materials, machinery, tools and other equipment used or incorporated in the Project, the Contractor shall use the Sales and Use Tax Exemption Certificate or Direct Pay Certificate supplied by GM, which will be attached hereto as Appendix D and incorporated herein by reference.

3.2.3 The Contractor shall also be responsible for the payment of any payroll taxes or contributions for unemployment insurance, old age pensions or annuities which are measured by the wages, salaries or other remuneration's paid to the employees of the Contractor and its Subcontractors.

R3.3 ROYALTIES AND PATENTS; TECHNICAL INFORMATION

3.3.1 The Contractor shall defend, with counsel reasonably acceptable to the Owner, hold harmless and indemnify Owner, and its successors and customers against all claims, demands, losses, suits, damages, liability and expenses (including reasonable attorney fees) arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright or mask work right by reason of the manufacture, use or sale of the goods or services ordered, including infringement arising out of compliance with specifications furnished by Owner, or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Contractor's actions. Contractor agrees to waive any claim against Owner, under the Uniform Commercial Code or otherwise, including any hold harmless or similar claim, in any way related to a claim asserted against Contractor or Owner for patent, trademark, copyright or mask work right infringement or the like, including claims arising out of compliance with Specifications furnished by Owner.

3.3.1.1 The Owner shall give the Contractor notice of such claims and suits with reasonable promptness after receipt of any written claim or complaint and shall give the Contractor information and assistance within its control, all at the Contractor's expense, in defending such suits.

3.3.1.2 In case a suit is brought against the Contractor or any of its Subcontractors, of which the Contractor receives notice, or a written charge of infringement such as contemplated herein is received by the Contractor or any of its Subcontractors, the Contractor shall give the Owner written notice with reasonable promptness.

3.3.2 The Contractor agrees not to assert any claim with respect to any technical information which the Contractor shall have disclosed or may hereafter disclose to the Owner in connection with the Contractor's Work.

R3.4 INDEMNIFICATION

3.4.1 The Contractor shall defend, with counsel reasonably acceptable to the Owner, hold harmless and indemnify Owner, and its successors and customers against all claims, demands, losses, suits, damages, liability and expenses (including reasonable attorney fees) arising out of any suit, claim or action for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark, copyright or mask work right by reason of the manufacture, use or sale of the goods or services ordered, including infringement arising out of compliance with specifications furnished by Owner, or for actual or alleged misuse or misappropriation of a trade secret resulting directly or indirectly from Contractor's actions. Contractor agrees to waive any claim against Owner, under the Uniform Commercial Code or otherwise, including any hold harmless or similar claim, in any way related to a claim asserted against Contractor or Owner for patent, trademark, copyright or mask work right infringement or the like, including claims arising out of compliance with Specifications furnished by Owner.

3.4.2 The Owner shall give the Contractor notice of such claims and suits with reasonable promptness after receipt of any written claim or complaint and shall give the Contractor information and assistance within its control, all at the Contractor's expense, in defending such suits.

3.4.3 In case a suit is brought against the Contractor or any of its Subcontractors, of which the Contractor receives notice, or a written charge of infringement such as contemplated herein is received by the Contractor or any of its Subcontractors, the Contractor shall give the Owner written notice with reasonable promptness.

3.4.4 To the fullest extent permitted by law, the Contractor shall indemnify, defend with counsel reasonably acceptable to Owner, and hold the Owner and its officers, shareholders, agents, employees, successors and assigns, the Architect/Engineer, if any, the Construction Manager, if any, the Process Engineer, if any, and other representatives of the Owner (the "Indemnitees") harmless from all claims, loss, costs and expenses (including attorney fees) whether arising before or after completion of the Contractor's Work, caused by or resulting from the performance of the Work by the Contractor, its Subcontractors, their agents and employees, their presence on the Site or the breach of this Contract whether or not caused by the active or passive negligence or other fault of the Indemnitees, excepting only such claims, costs, expenses or liabilities caused by the sole negligence of the Indemnitees.

3.4.5 In any and all claims against the Owner or any of its officers, shareholders, agents, employees, successors or assigns by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under Section 3.4.4 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

3.4.6 The obligations of the Contractor under Section 3.4.4 shall not extend to the liability of the Architect/Engineer, its agents or employees, arising out of (i) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or

specifications, or (ii) the giving of or the failure to give directions or instructions by the Architect/Engineer, its agents or employees provided such giving or failure to give is the primary cause of the injury or damage and provided further, in the case of a failure to give, the Architect/Engineer had a duty to give such directions or instructions.

3.4.7 The Contractor shall indemnify, defend with counsel reasonably acceptable to Owner, and hold harmless the Owner from all claims for nonpayment by Subcontractors, Sub-Subcontractors, laborers, vendors, and Materialmen for labor, services or material provided in connection with the Contractor's Work, and shall indemnify, defend and hold the Owner harmless from any construction or mechanics lien, builders trust fund or similar claims filed by Subcontractors, Sub-Subcontractors, laborers, vendors and Materialmen for labor, services or material provided in connection with the Contractor's Work.

3.4.8 The obligations of the Contractor under this Section 3.4 shall survive the termination of the Contract as to all matters arising prior to the date of termination and shall be fulfilled at no cost or expense to the Owner.

3.4.9 The indemnification obligations under this Section 3.4 are in addition to the Contractor's indemnification obligations set forth in other provisions of these Construction General Conditions.

3.4.10 To the fullest extent permitted by law, and without limiting the Contractor's indemnification obligation, the Contractor shall indemnify and hold the Owner and its officers, employees, agents, successors and assigns harmless from any and all liabilities, obligations, damages, penalties, claims, injuries, costs, charges, expenses (including reasonable fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by or asserted against any of them arising from any negligent act, error or omission of the Contractor or any Design/Build Subcontractor in performing the design services required to be performed under this Contract. The indemnification obligation herein shall be in addition to the obligations of the Contractor under Section 3.4 and any requirements set forth in the Contract Documents.

R3.5 PROJECT MEETINGS

3.5.1 The Contractor shall schedule and conduct meetings to be attended by the Owner, the Architect/Engineer, the Construction Manager, if any, the Contractor, the Subcontractors, the Owner's Consultants and/or the Owner's separate contractors if the Owner so elects, to discuss such matters as procedures, progress, problems, scheduling and safety. Such meetings shall be scheduled as follows:

- A. Weekly meetings (or less frequently at the Owner's election) with the Owner's Representative and others designated by the Owner;
- B. Weekly meetings with Subcontractors' on-site Superintendents;
- C. Monthly meetings or more frequently if necessary with Subcontractors' Project Manager or equivalent;
- D. Additional periodic meetings requested by the Owner; and
- E. Additional safety meetings as required by Article 9 of GM 1638 or the Contractor's Job Site Safety Plan, or as otherwise required due to the specific job conditions.

3.5.2 The Contractor's Superintendent shall attend all required meetings, and the Subcontractors' Superintendents shall attend meetings required to be attended by the Subcontractors.

3.5.3 Unless the Owner elects to have Project meeting minutes prepared by another contractor or by the Construction Manager or by the Owner, the Contractor shall take, transcribe and distribute detailed and accurate minutes of all conferences and meetings to those in attendance as well as to the Owner. Minutes prepared by the Contractor shall be submitted to the Owner within five (5) days after the meeting. The Contractor shall correct meeting minutes based on comments from the Owner and shall re-submit corrected minutes to the Owner within five (5) days after receipt of the Owner's comments.

R3.6 PROJECT RECORDS

3.6.1 The Contractor shall keep accurate and detailed written records of the progress of the Project during all stages of construction, which shall be open for inspection by the Owner at all reasonable times. In addition to other Project documents required to be maintained by the Contractor under the Contract Documents, the Contractor shall maintain the following:

- A. Safety records and documentation required by Article 9 of GM 1638.
- B. Records of all Subcontractors, material orders, Shop Drawings, Samples, and any other related documents and revisions thereto which arise out of the Contract or the construction of the Project.
- C. A complete set of current Drawings and Specifications.
- D. A complete, current set of Drawings and Specifications marked up to show the as-built conditions of the Project.
- E. A daily construction report containing at a minimum the following items: listing of all major events, contract number, date, description of work performed, weather conditions, manpower (by trade) and equipment detailed by base contract work and changed work (by field order number) occurring on the Site or connected with progress of the Project.
- F. A separate log of accidents or safety related incidents, including photographs where appropriate.
- G. A separate log of all labor disputes.
- H. Copies of all correspondence relating to the Project.
- I. Copies of all reports and inspections relating to the Project.
- J. Copies of all claims including claims for extras and extensions of time.
- K. The Log of Shop Drawings and other Submittals required by GM 1638.
- L. The Log of Changes as required by these Construction General Requirements.
- M. To the extent required by the Contract Documents, monthly dated construction progress photographs.

To the extent requested by the Owner, copies of all of the foregoing records shall be turned over to the Owner at the completion of construction or termination of the Contract as a condition of payment to the Contractor.

3.6.2 If and to the extent required by the Special Conditions, the Contractor shall prepare and publish a field operations manual to implement the administration of the Work to be performed under the terms of the Contract. The manual shall include the following data:

- A. Directory of Personnel.
- B. Inspection Procedures.
- C. Shop Drawings Submittal Procedures.
- D. Testing Laboratory Procedures.
- E. Final Acceptance Procedures.
- F. Additional Instructions.
- G. Contractor's Project-Specific Health and Safety Program.
- H. Equal Employment Requirements
- I. General Requirements.
- J. Site Logistics Plan if required.

- K. Owner-Controlled Insurance Program, if applicable.
- L. Intellectual Property Rights Agreement.

R3.7 START-UP; OPERATING INSTRUCTIONS AND MAINTENANCE MANUALS

3.7.1 The Contractor shall perform all start-up requirements in the Contract Documents. With the Owner's maintenance personnel the Contractor shall direct the checkout of utilities, operations of systems and equipment for readiness and assist Subcontractors and equipment suppliers in their startup and testing procedures in accordance with the Specifications and manufacturers' requirements. The Contractor will assist the Owner in the start-up of the installed equipment and systems as the facilities are completed and occupancy occurs.

3.7.2 As a condition of Final Acceptance, the Contractor shall obtain and forward to the Owner all operating manuals from the manufacturers of equipment used in the Project. The Contractor shall be required to provide the Owner with three (3) complete sets of written instructions covering the proper operation and maintenance requirements of all equipment furnished under the Specifications. The Contractor shall furnish reproducible transparencies of all drawings. Operating Instructions and Maintenance Manuals shall be contained in a hard cover type, three or more ringed binder and shall contain uniform sized instruction sheets. Instructions shall essentially consist of the following sections:

- A. Description of System
- B. Installation and Operating Instructions
- C. Maintenance Requirements for All Equipment
- D. Controls and Adjustments
- E. Parts Lists
- F. System Electrical Wiring Diagrams

R3.8 APPROVALS, MATERIALS AND CONTRACTOR'S SHOP DRAWINGS

3.8.1 Within fourteen (14) days after the date of the Contract or at such earlier time as may be necessary to avoid delays in the Project, the Contractor shall prepare and submit to the Owner a proposed Submittal Schedule for Shop Drawings and other Submittals and shall allow for a minimum period of fourteen (14) days for review by the Owner. Upon receipt of the proposed Submittal Schedule, the Owner and the Contractor shall meet to review, adjust if necessary and finalize a Submittal Schedule and confirm the same in writing.

3.8.2 The Contractor shall establish and implement procedures to be followed for expediting and approval of Shop Drawings and other Submittals, on an orderly basis as required by the approval Submittal Schedule all in accordance with the requirements of the Specifications and other Contract Documents.

3.8.3 The Contractor shall review, utilizing personnel who are qualified, knowledgeable and experienced in the area of expertise required, approve and only then submit, with reasonable promptness, in orderly sequence so as to cause no delay in the Work or in the work of the Owner or any separate contractor, and in accordance with the Submittal Schedule, all Shop Drawings, Product Data and Samples required by the Contract Documents or subsequently required by the Owner. Shop Drawings, Product Data and Samples shall be properly identified as specified, or as the Owner may require. At the time of submission, the Contractor shall clearly inform the Owner in writing of any deviation in the Shop Drawings, Product Data or Samples from the requirements of the Contract Documents.

3.8.4 By approving and submitting Shop Drawings, Product Data and Samples, the Contractor thereby represents that it has (i) determined and verified all materials, field measurements, field construction criteria, catalog numbers and similar data; (ii) checked and coordinated such Shop Drawing, Product Data and Samples with the requirements of the Work and of the Contract Documents; (iii) clarified any discovered design ambiguity with the Owner in writing; and (iv) complied with all conditions of the Contract Documents to submittal of such items to the Owner.

3.8.5 The Contractor shall maintain a log of all Shop Drawings and other Submittals noting dates of initial

submission to Contractor, date of Contractor’s review and approval, date of initial submittal to Owner, date of Owner’s review, date of return to Subcontractor and the same information with respect to each resubmittal.

3.8.6 The Contractor shall report to the Owner with respect to the status of Shop Drawings whenever requested by the Owner.

3.8.7 The Contractor shall insure that Shop Drawings are prepared and reviewed by personnel with the appropriate background and experience in the relevant area of expertise.

3.8.8 The Contractor shall secure and submit to the Owner for review four samples of materials to be used in the Work as required in the trade sections of the Specifications or as required by the Owner.

A. The Contractor’s submissions of samples to the Owner for review shall be accompanied by positive identifying information, including: (1) place the material is to be used and reference to the section of the Specifications calling for this material; (2) manufacturer’s name, also trade name, catalog number, quality designation, etc. Materials delivered to the Site shall be fully equal to the approved samples.

3.8.9 All Subcontractors’ materials and samples, etc., shall be submitted to the Contractor for the Contractor’s review and coordination prior to delivery to the Owner.

3.8.10 As soon as possible after award of Contract, the Contractor shall secure from all its Subcontractors and Materialmen specify size Shop Drawings and all manufacturers’ drawings and specifications required by the various trade sections of the Specifications.

A. The Contractor and each Subcontractor and Materialman shall consecutively number its drawings throughout the duration of the Project. The Contractor shall coordinate all Shop Drawings with other trades prior to delivery to the Owner. Each drawing shall be marked to identify the Project including job number, trade section of the Specification and page number, name of checker and date of transmittal.

B. All Shop Drawings shall be submitted in ample time to prevent delays of material deliveries. Drawings shall be submitted in the order in which the materials are needed without necessarily waiting for completion of all drawings before submitting part of them for review.

3.8.11 Prior to submitting Shop Drawings, the Contractor shall thoroughly check and verify that the design and engineering of work shown on the Shop Drawings conforms to the intent of the Drawings and Specification, including measurements, sizes of members, materials, details and requirements for capacity, strength, and function. Shop Drawings found to be inaccurate or otherwise in error shall be corrected by the Contractor, Subcontractor or Materialman responsible for the work.

3.8.12 After the Contractor has checked and verified the Shop Drawings, the Contractor shall submit one transparency or, if not practical, six copies of each drawing to the Owner for review.

3.8.13 Shop Drawings and other Submittals may not be submitted with disclaimers or other exculpatory language inasmuch as it is the responsibility of the Subcontractor or Supplier originating such Submission to properly prepare the Submittal and the responsibility of the Contractor to verify that the Submittal has been properly prepared. Shop Drawings and other Submittals containing disclaimers or other exculpatory language will be returned unreviewed.

3.8.14 Shop Drawings and other Submittals which are not approved by the Contractor will be returned unreviewed.

3.8.15 After review of the Shop Drawings, the Owner shall return to the Contractor one transparency or one copy of each drawing with one of the following notations:

Reviewed: Drawings thus marked indicate final action by the Owner.	
Reviewed: Drawings thus marked indicate reviewed subject to corrections noted.	
Reviewed as Noted: Drawings thus marked must be corrected and resubmitted for record purposes.	
Resubmit: Drawings thus marked must be corrected and resubmitted.	

3.8.16 Any materials ordered or fabricated prior to receiving reviewed Shop Drawings bearing Owner’s notation,

“Reviewed” or “Reviewed as Noted”, shall be at the Contractor’s risk.

3.8.17 No changes shall be made on the reviewed Shop Drawings without the written consent of the Owner. The Owner’s review of Shop Drawings and manufacturer’s drawings and specifications is for general arrangement only unless otherwise noted, and does not relieve the Contractor from full responsibility for the proper and correct execution of its Work. Where errors and omissions are discovered later, they must be made good by the Contractor irrespective of any prior reviews by the Owner.

3.8.18 The Contractor shall submit to the Owner final Shop Drawings, as used for construction, marked as such for the Owner’s records.

3.8.19 Except as specifically authorized by the Owner in writing, no portion of the Work requiring a Shop Drawing, Product Data or Sample submission shall be commenced until the submission has been reviewed by the Architect/Engineer and the Owner and the Contractor has taken appropriate corrective action as indicated by the Architect/Engineer’s or Owner’s review comments. All such portions of the Work shall be in accordance with such reviewed and corrected Shop Drawings, Product Data and Samples.

3.8.20 In no event shall the Architect/Engineer or the Owner be deemed to have approved any Shop Drawing, Product Data or Samples or other Submittals from the Contractor. Neither the Architect/Engineer’s nor the Owner’s review of Shop Drawings, Product Data or Samples or other Submittals shall relieve the Contractor of responsibility for a deviation from the requirements of the Contract Documents unless Contractor has informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation, nor shall the Architect/Engineer’s or Owner’s review relieve the Contractor from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples.

R3.9 TEMPORARY FACILITIES AND UTILITIES

3.9.1 Unless specifically provided otherwise in the Special Conditions, the Contractor shall provide at its expense any temporary facilities and utilities required for performance of the Work. The temporary facilities and utilities shall include but are not limited to:

A. Providing temporary construction roads, ramps and approaches as soon as possible after award of the Contract and maintaining them in a serviceable and dust free condition for use by all persons performing work in connection with this construction project.

B. Providing main ladders and runways for the performance of the Work. Subcontractors shall provide additional ladders and runways as required for the performance of their own work.

C. Providing field offices and other temporary structures the Contractor may require. Subcontractors must provide their own offices, construction and storage sheds. The design and location of these temporary structures shall be as approved by the Owner. When directed by the Owner, the Contractor shall remove the temporary structures and shall be responsible for Subcontractors removing their temporary structures from the premises.

D. Providing a field office for the Architect-Engineer’s field representative which shall be a mobile office type trailer with not less than 300 square feet or other structure approved by the Owner. This office shall be provided with exterior doors with locks, suitable windows with screens, furnishings including a table approximately 4 ft. by 8 ft., drawings racks, desk, chairs, file cabinets and other necessary furnishings. The Contractor shall be responsible for maintenance of this office including cleaning and the provision of heat, light and air conditioning. The Contractor shall provide an adequate supply of bottled drinking water.

E. Providing fire protection for the field offices and other temporary structures. The Contractor shall provide and place in each field office and temporary structure not less than three fire extinguishers as follows:

(i) One (1) dry chemical type having a net chemical content of not less than fifteen (15) pounds for use on Class B fires (oil, gasoline, paint and grease) and for Class C fires (electrical).

(ii) Two (2) water pressurized (2 1/2 gallon) for Class A fires (wood, textile, paper and rubbish).

All extinguishers shall be checked once a week and maintained in first class operating condition.

F. Telephones:

(i) Provide for the exclusive use of the Architect-Engineer, a telephone in the office of the Architect-Engineer's field representative. The Contractor shall pay for the telephone service and all calls except long distance which shall be paid for by the persons making such calls. The telephone shall remain in service until the completion of the entire Work.

(ii) The Contractor shall provide all telephone service as may be required for its own and its Subcontractors' use.

G. Providing near each phone at the job site, a legibly printed sign listing emergency telephone numbers including local doctor, local public fire and police departments, Contractor's first aid stations on the job, ambulance services and the Owner's local plant protection and fire department.

H. Providing suitable toilet facilities and maintaining them in a proper disinfected condition.

I. Providing all water required in connection with the Work.

J. Providing all compressed air required in connection with the Work.

K. Providing temporary light and power as follows:

(i) Unless the Special Conditions provide otherwise, the Owner shall furnish electrical power to the Project Site at a location designated by the Owner and shall pay for all electrical power required in connection with the performance of the Work except portable generators as may be required.

The characteristics of the temporary electrical system shall be as set forth in the Contract Documents.

(ii) The Contractor shall connect to the temporary electrical system at the designated points and provide and install all required transformers, meters, disconnect switches, temporary feeders and power and lighting outlets for distribution of electrical power. All feeder lines shall be protected from damage and installed to minimize interference with work areas.

(iii) The power and lighting system provided by the Contractor shall be 120 volt consisting of not less than twin weatherproof sockets (one for a 150 watt lamp and one for 150 watt power extension or additional lamp), spaced on not more than fifty foot centers each way throughout the construction area unless otherwise specified. Larger lamps shall be used for high bays as required. Also provide additional twin sockets and lamps for other areas such as rooms, stairwells and corridors. Lamps shall be installed and maintained by the Contractor.

The system shall be installed so as not to interfere with the work of the various trades and shall provide adequate distribution of light.

(iv) All other contractors and Subcontractors requiring temporary power and lighting, in excess of or in locations other than provided in the distribution system, shall consult with the Contractor. They shall furnish, install and maintain at their own expense at locations agreed upon with the Contractor, such service feeders, transformers and other electrical installations required. All temporary installations shall be made in a manner which will not present a hazard to, or obstruct the work of, any trade.

L. Providing temporary weather protection and heat as follows:

(i) The Contractor shall be responsible for providing weather protection and temporary heat to protect all equipment and all parts of the structure from damage by inclement weather such as wind, water and freezing temperatures. This protection shall include temporary walls, partitions and protective coverings including complete enclosure of the structure or structures if necessary.

(ii) The Contractor shall be responsible for providing temporary space heat as required to protect the occupancy of existing and new structures and to permit the work of the various trades to continue. The Contractor shall provide temporary walls, partitions, roof and wall opening coverings as required to retain the heat within the work areas.

The temporary space heating requirements are as follows:

(a) Maintain ambient temperatures as required for the proper execution of the Work but not less than 10 degrees Celsius (50 deg. F.).

(b) All temporary space heaters shall be approved and listed by Underwriters Laboratories, Inc., and shall be package type with fuel supply tanks fastened to the burners complete with safety devices. No more than one (1) day's fuel supply for these heaters shall be stored in the local area of the heaters.

(c) The Contractor shall pay all costs of furnishing, installing, operating and removing temporary heating equipment including fuel and necessary attendants. Every precaution shall be taken to prevent fires and accumulation of gases within the building.

(iii) Unless the Special Conditions provide otherwise, when the building has been totally enclosed and the permanent heating system, including the filtering system, is sufficiently complete to permit its safe use in accordance with all codes, the Contractor may elect to use the permanent heating system in lieu of or in conjunction with the temporary space heating equipment. The Owner will pay for all fuel used in the operation of the permanent heating system.

In the event the Contractor elects to use the permanent heating system it shall:

(a) Provide and pay for all necessary temporary connections and removals.

(b) Provide and/or pay for all operating attendants.

(c) Provide periodic inspections, maintenance and repairs to ensure safe and proper operation of the entire system.

(d) Prior to the final acceptance of the entire system by the Owner, replace all used filters with new ones of the type or types specified. Contractor shall make and pay for all arrangements necessary for completely cleaning the entire system, including ductwork, and make all replacements and repairs as required to restore the system to a condition that will satisfy the warranty requirements of the Contract Documents.

3.9.2 The Contractor shall be responsible at Contractor's expense for the removal of any temporary facilities and utilities installed in connection with this Project by the Contractor.

R3.10 CUTTING AND PATCHING OF WORK

3.10.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly and for all cutting, fitting, or patching required in connection with work done by the Owner or the Owner's separate contractors. All cutting, fitting and patching shall be performed in strict compliance with the requirements of the Contract Documents. The Contractor shall make all necessary adjustments to its Work as required to receive or be received by the work of others. The Owner shall not be responsible for any costs arising out of cutting, fitting and patching the work of the various Subcontractors and no claims on account thereof will be considered.

3.10.2 The Contractor shall not, and shall not permit any Subcontractor to, damage or endanger any portion of the Work or the work of the Owner or any separate contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or any separate contractor its consent to cutting or otherwise altering the Work.

3.10.3 All work shown on the Drawings or specified as work to be removed or altered, or as may be necessary to remove or alter, in order to permit the proper installation of the new work, shall be done by the Contractor or Subcontractor whose trade is involved.

3.10.4 The written approval of the Owner must be obtained prior to drilling of holes in structural steel, burning into structural steel or cutting of openings of any size in walls, ceilings, roofs, floors, etc., in connection with any Work.

A. The drilling or cutting of any structural steel members such as beams and columns will not be permitted unless approved in writing by the Owner. All connections must be made with approved beam clamps, or drilled and bolted in accordance with the Owner's requirements. All bolts used in steel construction must be long enough to permit the use of one full nut and one lock washer, or one lock nut. Multiple flat washers will not be permitted. All bolt holes must be either drilled or punched. Flame cutting of bolt holes will not be permitted.

B. No connections shall be made to concrete beams, columns and piers which do not already have inserts without the written approval of the Owner.

3.10.5 All repair work shall be performed by the Contractor or Subcontractor whose trade is involved, but the cost shall be paid by the Contractor or Subcontractor responsible for causing the repair work.

R3.11 TESTS

3.11.1 Except for tests regarding Hazardous Materials under Section 11.3 of GM 1638, the Contractor shall furnish all labor, materials and equipment required to make all performance and other tests of its Work, as required by the governing codes, regulations and the Specifications. All tests shall be performed in the presence of the Owner unless attendance at the test has been waived by the Owner in writing. If the Contract Documents or laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Architect/Engineer and the Owner timely notice of its readiness and the date arranged so they may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals. All Work required to be tested which is to be buried underground or otherwise concealed shall be tested before being covered, and the test conditions shall be maintained for a sufficient length of time to permit adequate inspection. Contractor shall furnish the Owner with test results and data upon completion of the testing. Should there be a requirement by any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction for special inspections by persons other than the Architect/Engineer or agents of such public authority, the Contractor shall employ the services of a qualified special inspector who will provide selective or continuous inspection of the construction and work requiring his employment.

3.11.2 If the Architect/Engineer or the Owner determines that any Work requires special inspection, testing, or approval which Section 1 above does not include, the Owner will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Section 1. The Contractor, if so directed in writing by the Owner, must engage an approved testing laboratory to perform such tests. The Contractor shall provide all labor, material and equipment necessary to perform the tests or assist the testing laboratory. If such special inspection or testing reveals a failure of the Work to comply with (i) the requirements of the Contract Documents; or (ii) laws, ordinances, codes, regulations or orders of any public authority having jurisdiction, the Contractor shall bear all costs of such special inspection or testing, including compensation that may be required to be paid by the Owner for the Architect/Engineer's and/or Construction Manager's additional services made necessary by such failure; otherwise the Owner shall bear such costs for special testing or inspection, and an appropriate Change Order shall be issued. The Contractor shall be responsible for all testing necessary to maintain quality control.

3.11.3 Required certificates of inspection, testing or approval shall be secured by the Contractor, cataloged, indexed, bound (in removable form) and promptly delivered by it to the Architect/Engineer and the Owner.

R3.12 SALVAGE AND REMOVAL OF EXISTING WORK AND EQUIPMENT

3.12.1 Unless indicated otherwise in the Contract Documents, the Contractor shall remove existing work and equipment as may be necessary to permit the proper installation of the new Work. All cutting, repairing or patching in connection with these removals shall be performed without additional cost to the Owner.

3.12.2 Unless indicated otherwise in the Contract Documents, all equipment and materials removed from existing buildings shall remain the property of the Owner. The Contractor shall protect these materials and equipment from damage and loss until the Contractor has (i) reinstalled materials and equipment as part of the specified Work, or (ii) received an appropriate written

receipt (in the form attached to GM 1638 as Appendix K) from the Owner after delivering the materials and equipment to a storage area designated by the Owner. This receipt shall properly identify the materials, equipment and storage area.

3.12.3 When salvage material or equipment is specified in the Contract Documents to become the property of the Contractor, the Contractor shall state in its bid, as a credit or charge, the amount included for the salvaged material or equipment.

3.12.4 No material or equipment may be taken from the premises without first securing a properly executed property removal pass from the Owner. Boxes, cartons, or similar items, are subject to inspection by the Owner.

3.12.5 The risk of loss and all other incidents of ownership of materials removed by Contractor for disposal or of salvaged materials specified to become the property of Contractor, shall pass from Owner to Contractor at the time of removal by the Contractor from its fixed position.

R3.13 INSPECTION OF DELIVERIES

3.13.1 Upon delivery to the Project Site of materials, equipment and supplies for the Work (including any materials, equipment and supplies furnished by the Owner), the Contractor shall promptly inspect such materials, equipment and supplies to verify that they are free from defects, conform to approved Submittals and conform to the requirements of the Contract Documents. Items which are damaged or fail to conform to approved Submittals or fail to conform to the Contract Documents must be identified and segregated from accepted items. Defective and non-conforming items shall be repaired or corrected promptly, and items which cannot be repaired shall be removed from the Project Site promptly, with appropriate documentation of all such items sent to the Owner. Any hazardous material containers which are damaged or leaking must be reported immediately to the Owner.

APPENDIX A ARTICLE R4: SUBCONTRACTOR

R4.1 SUBCONTRACTUAL RELATIONS

4.1.1 By an appropriate written agreement (the form of which shall be subject to Owner's prior approval), 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 the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by this Contract, assumes toward 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, copies of the Contract Documents to which the Subcontractor will be bound by this Section 4.1, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Contract Documents available to Sub-Subcontractors.

4.1.2 The Contractor shall ensure that the agreement between the Contractor and each Subcontractor (and, where appropriate, between a Subcontractor and each Sub-Subcontractor) shall:

4.1.2.1 Contain the applicable provisions required by these Construction General Conditions;

4.1.2.2 Preserve and protect the right of the Owner under this Contract with respect to the Work to be performed under each Subcontract so that the subcontracting thereof will not prejudice such rights;

4.1.2.3 Require that such Work be performed in accordance with the requirements of this Contract;

4.1.2.4 Require submission to the Contractor of sworn statements and waivers of lien under each Subcontract and Sub-Subcontract, in reasonable time to enable the Contractor to check such sworn statements and waivers of lien and to comply with this Contract, all such documents to be in the forms attached to these Construction General Conditions as Appendix E and Appendix F and in compliance with all requirements of applicable construction and mechanics lien acts, builder's trust fund acts, any other requirements of law and of the Owner;

4.1.2.5 Require that all claims for additional costs or extensions of time with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-Subcontractor where appropriate) in sufficient time so that the Contractor may comply in the manner provided, if any, in this Contract for a like claim by the Contractor upon the Owner;

4.1.2.6 In accordance with Section 12.2.3 of the Construction General Conditions, waive all rights the contracting parties may have against one another and against the Owner for damages caused by fire or other perils covered by the property insurance described in Section 12.2 hereof;

4.1.2.7 Require the Subcontractor to perform all work activities at the Site in accordance with the Contractor's Site logistics plan;

4.1.2.8 Require the Subcontractor to comply with the Special Safety Conditions, Construction General and Regional Requirements (Appendix A) and other requirements of the Contract Documents;

4.1.2.9 Require, as a condition of the Subcontract, that the Subcontractor execute and deliver to the Contractor for submittal to the Owner, the Intellectual Property Rights Agreement attached hereto as Appendix G;

4.1.2.10 Require that the Subcontractor execute and deliver to the Contractor for submittal to the Owner, the Subcontractor Guarantee in the form of Appendix H attached hereto;

4.1.2.11 Require that the Subcontractor comply with the provisions and requirements of the Non-Discriminatory Clauses attached hereto as Appendix I; and

4.1.2.12 Obligate each Subcontractor specifically to consent to the provisions of this Section 4.1.

APPENDIX A ARTICLE R5: WORK BY OWNER OR BY SEPARATE CONTRACTORS

This Article intentionally left blank

APPENDIX A ARTICLE R6: MISCELLANEOUS PROVISIONS

R6.1 RIGHTS AND REMEDIES

6.1.1 The Contractor agrees that the Contractor's sole remedy for inaccuracies or omissions in the Drawings and Specifications or other changes in anticipated Project conditions are those remedies provided under the Contract Documents, which shall exclude, in all cases, claims for lost profits, claims for other consequential damages, claims based on the "cardinal change" doctrine (i.e., that changes are so great as to set aside the contract terms) whether or not denominated as such explicitly, or claims calculated on the basis of a "total cost" damage theory (i.e., the total Project cost is so different from that initially contemplated as to set aside the contract terms), whether or not denominated as such explicitly bonds; bankruptcy.

R6.2 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BONDS

6.2.1 The Owner reserves the right to require that the Contractor post Payment and Performance Bonds, in a form acceptable to the Owner, issued by a licensed commercial surety, each in the amount of up to one hundred (100%) percent of the Contract Sum.

6.2.2 All Payment and Performance Bonds issued for any Subcontractor, Sub-Subcontractor or Supplier, shall be multiple obligee bonds naming the Contractor and the Owner and their respective successors and assigns. Notwithstanding the failure to include a multiple obligee rider naming such parties as obligees, and notwithstanding the terms of any bonds, any surety issuing a Payment and/or Performance Bond for the Project shall be deemed to have issued such bond(s) for the benefit of such parties and such parties shall have a direct right of action on such bonds.

6.2.3 In the event that the Contract Sum is increased pursuant to the provisions of this Contract, the Contractor shall cause the face amount of said bonds to be increased to the amount of the increased Contract Sum prior to the Contractor's submittal of its next Application for Payment. The face amount of the Payment and Performance Bonds shall not exceed ten (10%) percent of the bonding company's capital surplus. The bonding company shall attach its latest statement of capital surplus to the bonds.

6.2.4 The Bid Documents or the Contract Documents will indicate whether the premium amount for the Contractor's Performance and Payment Bonds is included in the Contract Sum. All payments and reimbursements for bond premiums shall not exceed the lesser of (i) the amount quoted or included in the Contract/ Subcontract; and (ii) the actual invoiced premium, and appropriate documentation therefore shall be produced on request of the Owner.

6.2.5 Other instruments indemnifying the Owner will be considered only upon the written request of the Contractor, and the Owner may refuse to accept such instruments in the Owner's sole discretion. The acceptance by the Owner of any indemnity bond or similar instrument shall not relieve the Contractor from any terms and conditions of the Contract.

R6.3 REMEDIES IN THE EVENT OF BANKRUPTCY

6.3.1 If, as a matter of law, the Owner does not have the right due to a bankruptcy proceeding involving the Contractor to exercise the remedies provided for in this Contract, then if Contractor, as debtor, or its trustee, wishes to assume this Contract, in addition to curing or adequately assuring the cure of all the Contractor's defaults (adequate assurance of curing default being defined below) existing under this Contract on the date of filing of the proceedings or thereafter, the Contractor, as debtor, or the trustee, must also furnish adequate assurances of future performance (adequate assurance of future performance being defined below) under this Contract. "Adequate assurance of curing default" means the posting with Owner of a sum of cash sufficient to cure such default. "Adequate assurance of future performance" means, at a minimum:

6.3.2 Posting with the Court, to be held in a segregated account, upon the acceptance of this Contract and on the first day of each month thereafter, of a sum of cash sufficient to meet all payments expected to become due from the Contractor to Subcontractors, Sub-Subcontractors, laborers, trade unions, vendors, Suppliers and equipment lessors within sixty (60) days of the date of assumption of this Contract, less sums expected to become due from the Owner to the Contractor during such period, with respect to the initial deposit required to be made upon acceptance of this Contract, and within thirty (30) days with respect to each monthly deposit required to be made thereafter;

6.3.3 Establishing a line of credit or other financing arrangement sufficient to provide financing of all costs and expenses expected to be required for the performance of the Contractor's remaining obligations under this Contract;

6.3.4 Obtaining the written consent and acquiescence of the surety issuing the Payment and Performance Bonds, if applicable, to such assumption and the acknowledgment of such surety that such assumption will not affect, alter or diminish the surety's obligations under such bonds;

6.3.5 Obtaining an additional bond(s) securing any increased costs or expenses to the Owner as a result of such assumption, including delay claims, interference claims and construction, builder's trust and mechanics lien claims by other contractors or Subcontractors and loss of use to the Owner in the event the Work is not completed and the Project is not ready for occupancy by the Owner within the time originally scheduled therefore; and

6.3.6 Providing evidence, reasonably satisfactory to the Owner, that the Contractor, as debtor, or its trustee, has reestablished satisfactory business and credit arrangements with its vendors, Suppliers and equipment lessors and satisfactory employee and union arrangements with its work force.

6.6.7 Because of the immediate and irreparable harm to the Owner, Subcontractors and Sub-Subcontractors which will result from any delay in the prompt and continued administration and performance by Contractor, the debtor or trustee, in a reorganization under Chapter 11 of the Bankruptcy Code must assume this Contract promptly so as to avoid any work stoppage or delay in the work of the Subcontractors or Sub-Subcontractors, or he shall be deemed to have rejected this Contract.

APPENDIX A ARTICLE R7: TIME

R7.1 SCHEDULE REQUIREMENTS

7.1.1 The Schedule shall be prepared by the Contractor in accordance with the following requirements:

7.1.1.1 The Schedule shall reflect the Contract dates and include all construction Activities such as permitting, detailing, shop fabrication, mobilization, field activity durations, etc., and shall be sufficiently detailed to enable the Owner, at all times throughout the duration of the Work, to compare actual with scheduled progress.

7.1.1.2 The Schedule shall reflect working Activities in reasonable detail.

7.1.1.3 The Schedule shall portray the specific plan of operation proposed by the Contractor.

7.1.1.4 The Schedule shall include times for submittal, review and approval of Shop Drawings and Samples and other Submittals.

7.1.1.5 The Schedule shall include interrelated Activities of any phase of the Work being performed under a separate contract with the Owner or by Owner's forces.

7.1.1.6 The Schedule shall show Activities of the Owner and the Owner's separate contractors, the Architect/Engineer, the Owner's Consultants, and any other factors or conditions disclosed to the Contractor by the Owner.

7.1.2 Schedule Submittal:

7.1.2.1 Upon initial submission of the Schedule by the Contractor, the Contractor shall schedule a meeting with the Owner (and the Construction Manager, if any, Architect/Engineer, the Owner's Consultants and any separate contractors, if designated by the Owner) to discuss the Schedule and resolve any conflicts with respect thereto. Any revisions necessary resulting from this review shall be made by the Contractor and the proposed Schedule resubmitted within seven (7) calendar days after the meeting. The Schedule, when approved by the Owner, will be the Project Baseline Schedule and shall be binding on the Contractor

7.1.2.2 Schedule submittals by the Contractor constitute a representation to the Owner that the Contractor (and all Subcontractors and Suppliers) has determined or verified the data on the submittal and that the Contractor and its Subcontractors and Suppliers have reviewed and coordinated the sequences shown in the submittal with the requirements of the Work and the Contract Documents.

7.1.2.3 If the Owner returns the schedule submittal to the Contractor for revision, the Contractor shall make the necessary corrections and promptly resubmit the schedule submittal to the Owner.

7.1.2.4 Submittals shall include a graphic logic or precedence diagram showing all Contract Activities and a supporting narrative. The Contractor shall submit the same information in electronic format including the current Schedule data file compatible with the Owner's software and computer equipment in addition to the paper copies submitted.

7.1.2.5 The graphic diagram shall include all detailed activities grouped by structures or major areas of Work. The critical path activities shall be identified by clearly highlighting the path on the graphic diagram. Activity Identification, i.e., numbers, shall be unique, such that not more than one Activity may have that activity number. Description of each Activity may be brief, but shall convey the scope of Work described.

7.1.2.6 The narrative shall include sufficient data to explain the basis of the Contractor's determination of durations, describe the contract conditions and constraints plugged into the schedule and provide a "what-if" analysis pertaining to potential problems and additional data of the type required in Section 7.3.4.3; this information shall be supplied by the Contractor within ten (10) calendar days.

7.1.3 Status Reports:

7.1.3.1 Beginning with the first payment period, and monthly thereafter, the Contractor shall submit to the Owner a Monthly Status Report with data as of the last day of the pay period. The Monthly Status Report shall include an updated copy of the currently accepted Schedule, computer reports and a narrative. The Contractor will address the Owner's comments in the subsequent Monthly Status Report. The Contractor shall submit the same information in electronic format including the current Schedule data file compatible with the Owner's software and computer equipment in addition to the paper copies submitted.

7.1.3.2 The monthly schedule status shall show, for the currently accepted detailed diagram, percentages of completion for all Activities, actual start and finish dates and remaining durations, as appropriate. Activities not previously included in the Baseline Schedule may be added, the contractual dates and Milestone dates in the Schedule shall not be changed except by Change Order. Review of a revised diagram by the Owner will not be construed to constitute concurrence with the time frames, durations or sequencing for such added Activities.

7.1.3.3 The narrative shall include the information shown in the following:

- (i) Construction progress (refer to Activity number in the detailed schedule), including:
 - (a) Activities completed this reporting period;
 - (b) Activities in progress this reporting period; and
 - (c) Activities scheduled to commence next reporting period.
- (ii) Description of problem areas: provide a "what-if" analysis pertaining to potential problems.
- (iii) Current and anticipated delays:
 - (a) Cause of the delay;
 - (b) Corrective action and schedule adjustments to correct the delay;

- (c) Impact of the delay on other Activities, on Milestones and on completion dates.
- (iv) Changes in construction sequence.
- (v) Pending items and status thereof:
 - (a) Permits;
 - (b) Field Orders/Change Orders;
 - (c) Time Extensions; and
 - (d) Other. (e.g. plant skilled trades work)
- (vi) Contract completion date status:
 - (a) Ahead of schedule and number of days; or
 - (b) Behind schedule and number of days.

7.1.3.4 Three-Week Look-Ahead Schedule: In addition to the monthly progress schedule updates, the Contractor will be required to submit a Three-Week Look-Ahead Schedule on a weekly basis. That schedule will show all scheduled Activities and durations for the upcoming three (3) weeks, plus one (1) week of history of Activities worked during the previous week, which will include explanations for variances to the previous week's plan. The Four-Week Schedules will be distributed at or prior to the weekly construction coordination meetings with all contractors. The Contractor will be responsible to review these schedules and implement the required coordination, if requested by the Owner. Major equipment at the job site shall be listed and coordination/interface issues with the Owner's operations shall be identified.

7.1.4 Schedule Revisions:

7.1.4.1 Any requests for revision to the Project Baseline Schedule by the Contractor shall be submitted using a DCR, which shall be subject to approval by the Owner. The revision shall incorporate all previous changes to reflect current as-built conditions.

7.1.4.2 A revised detailed work plan submittal shall be submitted for review, when required by the Owner, for one of the following reasons:

- (i) The Owner directs a change that affects the date(s) specified in the Contract and alters the length of the Critical Path; or
- (ii) The Contractor elects to change any sequence of Activities or incurs delays so as to affect the Critical Path of the Schedule.

7.1.4.3 If the Owner requires revisions to the Schedule in order to evaluate planned progress or assess the impact of a change in the Work being considered, the Contractor shall provide an interim revised submittal for review with the change effect(s) incorporated as directed. Approved interim revisions to the documents will be incorporated during the first subsequent Monthly Status Report.

7.1.5 As-Built Schedule:

7.1.5.1 After Substantial Completion, but prior to the Final Payment, the Contractor shall submit an as-built graphic diagram. The Contractor shall submit the same information in electronic format compatible with the Owner's software and computer equipment in addition to the paper copies submitted. The documents shall reflect all as-built critical path(s). The diagram shall be prepared in accordance with the Requirements in this Section.

7.1.5.2 All Contract Activities, including all added Activities, shall be shown.

7.1.5.3 Activity duration shall be the actual number of separate workdays during which Work was performed on the Activity, not the elapsed time between actual starts and finishes.

7.1.5.4 The as-built graphics shall be plotted according to the dates the Activity actually started and finished.

7.1.5.5 Contract Milestone completions shall be plotted according to the date(s) agreed upon by the Owner for actual completion of the Work.

R7.2 CONDITIONS OF FINAL COMPLETION

In addition to the requirements set forth in GM 1638 and the other Contract Documents, the Contractor shall satisfy the following requirements as a condition of Final Completion of the Work:

7.2.1 A final, unconditional Certificate of Occupancy or other governmental authorization to use the Project has been issued (unless the same cannot be issued because of work and/or conditions beyond the scope of this Contract).

7.2.2 Contractor has completed all Punchlist Items to the satisfaction of Owner, including providing Owner with the results of any and all tests that may be required.

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

7.2.4 Contractor has delivered to Owner:

- A. All maintenance and operating manuals required under the Contract Documents and the Specifications;
- B. Marked sets of working drawings, and Drawings and Specifications reflecting “as built” conditions;
- C. Reproducible mylar or electronic drawings (to be supplied by the Architect/Engineer) upon which the Contractor shall have transferred all changes in the location of any concealed utilities, mechanical or electrical systems and components;
- D. The Contractor’s Guarantee attached to GM 1638 as Appendix H, the Subcontractors’ Guarantees attached to GM 1638 as Appendix H and any special guarantees or warranties required by the Contract Documents unless waived by the owner;
- E. An assignment and/or transfer of all guarantees and warranties from subcontractors, vendors, suppliers and manufacturers;
- F. A list of the names, addresses and phone numbers of all subcontractors and other persons providing guarantees or warranties;
- G. Final Submittals required by the Contract Documents; and
- H. Any required sales tax or other tax information.

7.2.5 The Contractor has completed all start-up, testing and check-out procedures required under GM 1638 and/or the Specifications to the satisfaction of the Owner.

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

APPENDIX A ARTICLE R8: CONTRACT SUM AND PAYMENTS

R8.1 SCHEDULE OF VALUES

8.1.1 Immediately following contract award, the Contractor shall submit to the Owner, for review and approval, a Schedule of Values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. Submission and approval of the Schedule of Value is a condition precedent to submission of the Contractor’s first application for payment. This Schedule of Values, as approved by the Owner, shall be used as the basis for the Contractor’s Applications for Payment. The Contractor agrees that the line item breakdown of the Contract Sum, Work activity descriptions and line item amounts set forth in the Purchase Order shall not be used for the line items in the Schedule of Values unless the Owner agrees. Contractor further agrees that (i) each Purchase Order line item may contain one or more “Schedule of Value” items, and (ii) for the purpose of Applications for Payment, the Schedule of Value items shall correspond to the appropriate Purchase Order item(s) as directed by the Owner and shall be detailed accordingly in the Contractor’s Application for Payment in a format acceptable to the Owner.

8.1.2 The Contractor represents that the Schedule of Values shall accurately represent its costs to perform the Work and its overhead and profit related to its Work. However, the Schedule of Values, by itself, will not determine the credit amount for deleted Work, and the Contractor shall submit to the Owner information requested by the Owner to substantiate the Contractor's cost for such Work.

8.1.3 If, at any time, the Owner determines, in its reasonable discretion, that the Schedule of Values does not approximate the actual cost then being incurred by the Contractor to perform the Work, the Contractor shall prepare, for Owner's approval, a revised Schedule of Values approximating actual costs, which then shall be used as the basis for future progress payments. Without changing the Contract Sum, the Owner reserves the right to require the Contractor (i) to increase or decrease amounts within the line items in the Schedule of Values; and (ii) to conform the price breakdown to the Owner's local accounting practice.

8.1.4 The Owner may require the Contractor to furnish additional allocation of the Contract Sum and Schedule of Values for the purpose of allocating the Contract Sum among separate buildings, structures and/or equipment installations.

R8.2 PROGRESS PAYMENTS

8.2.1 Except as provided otherwise, the Owner shall make progress payments for completed Work, subject to retention, in accordance with this Article 8. Execution by both parties of the Purchase Order or, if applicable, the Owner-Contractor Agreement, is a condition precedent to payments to the Contractor hereunder.

8.2.2 It is the Contractor's responsibility to verify with the Owner's Representative the correct address for submitting Applications For Payment. Failure to submit Applications for Payment to the correct address/location could substantially delay payment to the Contractor, and the Owner shall not be responsible for delays caused by submittal of Applications for Payment to an incorrect address.

8.2.3 Applications for Payment for progress payments shall be submitted on a cycle of no less than thirty (30) days in accordance with a schedule designated by Owner. Such schedule shall identify the day of the month on which (i) the Contractor's Applications for Payment are to be based and walk-throughs shall be conducted to establish construction progress (the "Invoice Date"); and (ii) formal Applications for Payment and Notarized Sworn Statements and Waivers of Lien are to be submitted by Contractor. Payment shall be made in accordance with the payment terms in the Contract Documents (the "Payment Date" as defined in Section 1.1 of GM 1638).

8.2.4 On the Invoice Date, the Contractor and the Owner shall conduct a walk through to determine construction progress (percentage complete) and to review and evaluate work completed for each line item in the Contractor's Schedule of Values.

8.2.5 Promptly following the walk through and agreement by the Owner on the construction progress, the Contractor shall submit all of the following to the Owner:

8.2.5.1 An original Application for Payment including Contract/Purchase Order/Schedule of Value detail in a format as approved by the Owner.

8.2.5.2 A properly completed Notarized Sworn Statement, on the form attached as Appendix D, from Contractor, listing each Subcontractor, Supplier, engineer, architect and laborer having a Subcontract with the Contractor in the current aggregate amount (including adjustments for Purchase Order Alterations and Field Orders that have been issued as of the Invoice Date) in excess of \$5,000 (or in excess of \$25,000 if the current aggregate Contract Sum is in excess of \$1,000,000). The Notarized Sworn Statements shall cover all Work, labor, engineering and other services, and materials, including equipment and fixtures of all kinds done, performed or furnished as of the Invoice Date; the value of same shall be indicated in the "Pay this Request" column adjacent to each Subcontractor, Supplier, engineer, architect and laborer listed. The Owner reserves the right to require the Contractor to add Subcontractors, Suppliers, architects, engineers and laborers to the Notarized Sworn Statement (regardless of the current aggregate Subcontract amount and regardless of the current aggregate Contract Sum) if the Notarized Sworn Statement is not accurate or complete.

8.2.5.3 Beginning with the second Application for Payment, properly completed Waivers of Lien on the form attached as Appendix J, from the Contractor and each Subcontractor, engineer, architect, laborer and Supplier who is listed on the Sworn Statement submitted with the previous Application(s), which Waivers of Lien shall cover all work, labor, engineering and other services, and materials, including equipment and fixtures of all kinds done, performed or furnished as of the immediately preceding Invoice Date; and

8.2.5.4 Such other evidence requested by Owner to satisfy the Owner that the Work for which payment is requested has been completed in conformance with the Contract and the Drawings and Specifications, and that all amounts which have previously been paid for Work performed have been properly distributed to the various Subcontractors, Sub-Subcontractors, laborers, Suppliers, architects and engineers.

8.2.6 The delineation of the foregoing items to be routinely submitted with each Application for Payment shall not limit the Owner's right to require such Notarized Sworn Statements and Waivers of Lien as may be necessary to protect the Owner from the imposition of liens on the Owner's property. At the request of the Owner, the Contractor shall furnish such additional Notarized Sworn Statements, Waivers of Lien and other documentation necessary to verify that payment has been made for all work performed and labor and material furnished for the Project. Sample copies of the required Notarized Sworn Statement and Waiver of Lien forms are attached to these Construction General Conditions as Appendix E and Appendix F. The attached forms are intended to cover only the Owner's minimum requirements under the Contract. The Contractor is responsible for supplementing these forms and supplying to the Owner any other information, forms and documents which may be required by applicable laws of the jurisdiction where the Work is being performed. All Notarized Sworn Statements and Waivers of Lien from Contractor, Subcontractors, Suppliers and other entities performing any of the Work shall include the Owner's Purchase Order number for this Contract, the Project name and location, the name of the Owner's Representative and the Contractor's name and shall cover only work performed or labor or material furnished to the Contractor under this Contract and as required by Article R4.

8.2.7 The Contractor shall be responsible to obtain and thoroughly check Subcontractor Notarized Sworn Statements and Waivers of Lien to verify that Sub-Subcontractors, suppliers and laborers have been paid and that the Subcontractors are complying with the provisions of the Contract Documents. The applicable forms attached as Appendix D and Appendix J shall be used. The Contractor shall require each Subcontractor to similarly check each Sub-Subcontractor Notarized Sworn Statements and Waivers of Lien so that the obligation to verify proper payment to lower-tier subcontractors, suppliers and laborers is imposed at every tier of subcontracting consistently and in accordance with these Construction General Conditions. The Contractor shall require that all Notarized Sworn Statements, Waivers of Lien, Notices of Furnishing, invoices, and Schedules of Values submitted by Subcontractors, Sub-subcontractors, laborers and Suppliers set forth the GM Purchase Order Number assigned to the Contract and cover only work performed or labor or material furnished to the Contractor under this Contract. The Contractor is responsible to submit to the Owner, upon request of the Owner, Notarized Sworn Statements and Waivers of Lien from Subcontractors, Sub-Subcontractors, laborers and Suppliers and/or, upon Owner's request, to make such Notarized Sworn Statements and Waivers of Lien available to Owner for audit.

8.2.8 The issuance of an Application for Payment shall constitute a representation by the Contractor to the Owner that the Work has progressed to the point indicated; that the quality of the Work is in accordance with the Contract Documents; that all as-built Drawings required by the Contract Documents are accurate and up-to-date; that the Contractor has obtained and checked Subcontractor Notarized Sworn Statements and Waivers of Lien as required by Section 8.2.7; and that Contractor is entitled to payment in the amount certified.

8.2.9 The Owner shall pay the approved Application for Payment on or before the Payment Date (as defined in Section 1.1 of GM 1638), provided that the Contractor submits to the Owner an accurate Application for Payment, Contract/Purchase Order detail, properly executed Notarized Sworn Statements, Waivers of Lien and other supporting documentation required by the Contract Documents. The Owner shall not be responsible for delays in payment caused by late submittal of the Applications for Payment, incorrect or incomplete Applications for Payment, failure to submit complete and accurate Notarized Sworn Statements and Waivers of Lien, or submission of Application for Payment to an incorrect address.

8.2.10 Payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the Site or at some other location, only with the prior written approval of the Owner. Such payment shall be conditioned upon submission by the Contractor of the following: (i) the bill of sale to Owner, notarized if required by the Owner, duly executed on behalf of the selling corporation; (ii) if stored off-Site, a certificate of insurance covering the material for fire, theft and vandalism adding the Owner as an insured party; (iii) an affidavit from an officer of the selling corporation stating that he is an officer and giving the complete address of the specific location where the material is stored; (iv) a certification authorizing inspection by the Owner or its representative at the storage location; and (v) such other evidence as the Owner may reasonably require demonstrating that Owner is the owner of such material free and clear of all rights in others. Except to the extent covered by the property insurance provided by the Owner as described in Section 12.2 of GM 1638, the Contractor shall have full responsibility for all stored materials and shall bear the risk of all loss, damage of theft thereof or thereto.

8.2.10 The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Work or not, will pass to Owner upon the receipt of payment by the Contractor, free and clear of all liens, claims, security interests, encumbrances or rights in others, hereinafter referred to in this Article 8 as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials or equipment for the Work, subject to a lien or an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

8.2.11 No progress payment, nor any approval by the Owner, nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents. Nor shall any prior estimate of completed units made by Owner in connection with a progress payment constitute a certification or acceptance of the amount of actual quantities which shall be determined by Owner in connection with the Final Progress Payment which determination shall be final and binding.

R8.3 FINAL PROGRESS PAYMENT

8.3.1 Contractor shall submit a Final Application for Progress Payment when Final Completion of the Work has been achieved and all adjustments to the Contract Sum under Article 13 for changed Work have been incorporated into the Contract. The Contractor's Final Application for Progress Payment shall not include a request for payment of the retention held by the Owner.

8.3.2 In connection with the Final Application for Progress Payment, the Contractor shall submit Notarized Sworn Statements and Waivers of Lien and comply with all other requirements of Section 8.2. The Final Progress Payment is subject to retention in accordance with Section 8.4. The Owner shall be entitled to withhold additional amounts from the Final Progress Payment as required to protect the Owner in accordance with Section 8.3 hereof.

8.3.3 The acceptance of the Final Progress Payment by the Contractor shall constitute a waiver of all claims against the Owner arising out of or in connection with the Contract except (i) the remaining retention amount held by the Owner; and (ii) claims of the Contractor made in writing and expressly reserved by the Contractor in written notice to the Owner prior to submittal of the Contractor's Final Application for Progress Payment.

R8.4 RETENTION

8.4.1 Each progress payment shall cover the amount due to Contractor for Work done through the Invoice Date; provided, however, there shall be retained from each such Application for Payment, retention at the rate of ten (10%) percent, unless a different rate is set forth in the Special Conditions.

8.4.2 The Owner's right to withhold retention in accordance with this Section 8.4 is in addition to the Owner's right to withhold payment under Section 8.3 to protect the Owner from specific identified problems and claims and other costs for which the Contractor is responsible. The Owner is not required to use retention amounts to protect the Owner from the costs and liability arising from liens, claims and other problems caused by the Contractor.

8.4.3 The Owner shall have the right, but not the obligation, to release a portion of retention related to a Subcontractor who achieves Final Completion of its subcontracted portion of the Work under the Subcontract substantially earlier than Final Completion of the entire Work, but only upon the written recommendation of the Contractor that such retention should be released. Release by the Owner of a Subcontractor's portion of the retention, based on early completion of its subcontracted portion of the Work, shall be a direct pass through from the Contractor to the Subcontractor and shall not require the Owner to release any portion of the Contractor's retention at that time. Release of said retention requires an Application for Payment "Retention Release" and cannot be combined with an Application for Payment for a Progress Payment.

8.4.4 At the time of Substantial Completion of the Work, the Contractor may make written request for a partial release of retention held by the Owner. The Owner shall have no obligation to approve such request. Should the Owner agree to such request, after considering the Contractor's performance, the performance of Subcontractors, the status of resolution of Quotations for changed Work and other factors, the amount retained to the date of the request may be reduced by the Owner to a lower lump sum amount. The Owner's agreement to such partial release of retention shall not change the percentage retained from future Applications for Payment after the date of the partial retention payment.

8.4.5 All retained amounts shall be held by the Owner and shall be released in accordance with Section 8.5 of these Construction General and Regional Requirements.

R8.5 RETENTION PAYMENT

8.5.1 Upon Final Acceptance by the Owner of the Work as described in Section 7.7 of GM 1638, the Contractor shall submit the Application for Retention Payment.

8.5.2 The Retention Payment shall not become due until the Contractor has fulfilled all requirements under the Contract including full payment to all Subcontractors, Suppliers, laborers and others providing work, labor, services or material to the Contractor for the Project and has provided the Owner with copies of duly recorded Discharges of Lien if applicable.

8.5.3 The Application for Retention Payment shall include the following:

- (i) Full, Final, Conditional Waiver of Lien from the Contractor in form attached hereto as Appendix F (conditional only as to payment of the retention amount held by the Owner);

- (ii) Notarized Final Sworn Statement from Contractor in form attached hereto as Appendix E stating that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or its property might in any way be responsible, have been paid or otherwise satisfied;
- (iii) Consent of surety, if any, to final payment and release of retention;
- (iv) Full, Final, Unconditional Waivers of Lien in form attached hereto as Appendix F from all Subcontractors, laborers, Suppliers, architects, engineers, and others providing work, labor, services or materials to the Contractor for the Project; and
- (v) If requested by Owner, Final Notarized Sworn Statement(s) in form attached hereto as Appendix E from Subcontractors and Full, Final, Unconditional Waivers of Lien from any Sub-Subcontractors, laborers and Suppliers.

8.5.4 The acceptance of the Retention Payment by the Contractor shall constitute a waiver of all claims against the Owner arising out of or in connection with the Contract, except only those claims of the Contractor that were previously reserved by the Contractor under Section 8.3.3 and are further expressly reserved by the Contractor in written notice to the Owner attached to the Contractor's Application for Retention Payment.

R8.6 OWNER'S RIGHT TO WITHHOLD PAYMENT

8.6.1 The Owner may withhold payment or, because of subsequently discovered evidence or subsequent review of the Work or the Contractor's Applications for Payment, invoice detail and/or submittals, it may nullify the whole or any part of any payment previously issued, to such extent as it may be necessary in its opinion to protect the Owner from loss or expense due to any of the following:

8.6.1.1 The Contractor fails to properly respond to notices issued by the Owner or Owner's Representative pursuant to the Contract Documents.

8.6.1.2 The Contractor is in material default of any of its obligations under these Construction General and Regional Requirements or otherwise is in material default under any of the Contract Documents.

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

8.6.1.4 The Contractor has failed to make payments promptly to Contractor's Subcontractors, Sub-Subcontractors, laborers, engineers, architects or Suppliers or for material or labor or services used in the Work.

8.6.1.5 Any part of such payment is attributable to Work with respect to which any party has filed an undischarged lien or with respect to which the Owner has been notified of a claim or dispute or has received reasonable evidence indicating the existence of such a claim or dispute.

8.6.1.6 The Contractor has failed to submit to the Owner a complete and accurate Application for Payment, including Notarized Sworn Statement and/or Waivers of Lien and/or other documentation requested by the Owner in accordance with Article 8 hereof to substantiate that the Contractor has paid for Work performed and labor, services, and material furnished to the Contractor in connection with the Project.

8.6.1.7 The Contractor has failed to discharge a lien filed against the Owner's property for work performed or labor, services or materials furnished to the Contractor in connection with the Project.

8.6.1.8 The Owner has reasonable indication that the Work will not be completed within the Milestone Dates or Contract Time or in substantial accordance with Schedule.

8.6.1.9 The Owner determines that the portion of the Contract Sum then remaining unpaid will not be sufficient to pay amounts due and to become due to Subcontractors, Suppliers, laborers, architects, and engineers performing work or providing labor, services or materials to the Contractor for the Project.

8.6.1.10 The Owner determines that the portion of the Contract Sum then remaining unpaid will not be sufficient to complete the Work in accordance with the Drawings and Specifications. (In such event, no additional payments will be due to the

Contractor unless and until the Contractor, at no cost to the Owner, performs, and pays in full for, a sufficient portion of the Work so that such portion of the Contract Sum then remaining unpaid is determined by the Owner to be sufficient to complete the Work.)

8.6.1.11 The Owner is entitled to a set-off under Section 6.13 of GM 1638.

8.6.1.12 The Contractor is in material default under any other contract between Owner and Contractor.

8.6.2 If the Owner elects to withhold a portion of a payment under Section 8.6.1, the Owner shall have the right to require the Contractor to prepare and submit to the Owner a revised Application for Payment, as directed by the Owner, to facilitate payment of the undisputed amount to the Contractor.

R8.7 FAILURE OF PAYMENT

So long as the Owner continues to make payments of undisputed amounts due to the Contractor, the Contractor shall carry on the Work and maintain its progress during the existence of any payment disputes. So long as the Contractor continues to carry on the Work and maintain its progress, the Owner shall continue to make payments to the Contractor over which there is no good faith dispute. Nothing set forth in this Section 8.7 shall limit or modify the respective rights of the parties under Article 15.

R8.8 LIENS

8.8.1 The Contractor is responsible to make timely payments to Subcontractors, laborers, Suppliers, architects and engineers to ensure that no liens will be filed against the Project Site or Owner's property, whether or not the Contractor has received payment from the Owner.

8.8.2 The Contractor shall obtain, check and process the waivers, sworn statements and other certifications required as described in Section 8.2.6 and/or any other applicable regulatory authority to ensure that no liens will be filed.

8.8.3 In the event a lien is filed for work performed or labor or material provided in connection with the Contractor's Work, the Contractor shall, within thirty (30) days, either have the lien discharged or statutorily bond the lien off the record.

8.8.3.1 It is the Contractor's responsibility to ensure the Discharge of Lien is properly filed in the jurisdiction where the Work is taking place. The Contractor shall immediately provide the Owner with a copy of such Discharge of Lien containing a clearly visible authority date and time stamp.

8.8.3.2 Until such time as the Contractor provides a properly recorder Discharge of Lien to the Owner, the amount of the lien plus fifteen percent (15%) for potential costs may be withheld from future payments to the Contractor.

8.8.3.3 If the Contractor does not discharge the lien within thirty (30) days in accordance with Section 8.8.3, the Owner at its sole discretion shall have the right to apply to such lien any amounts withheld by the Owner from payments to the Contractor.

8.8.3.4 In the event any litigation with respect to such a lien is instituted, the Contractor shall defend the interest of the Owner and its agents, with counsel reasonably acceptable to the Owner, and shall indemnify and hold harmless the Owner and its agents with respect to any liability arising thereunder but only to the extent such liability exceeds the amount otherwise due and payable to the Contractor under the Contract Documents. In the event that the Contractor fails to file an answer or to respond to any subsequent pleading on behalf of the Owner and the Owner's agents by the fifth (5th) business day prior to the deadline for filing an answer or other responsive pleading, the Owner may do so and deduct the legal fees and expenses in connection with defending such suit from any amount otherwise due and payable to the Contractor under the Contract Documents or otherwise pursue such collection.

8.8.3.5 No costs or expenses paid or incurred by the Contractor in satisfying its obligations under this Section 8.8.3 shall be reimbursable by the Owner.

8.8.4 The Contractor shall indemnify the Owner against all costs and expenses incurred by the Owner as a result of the filing of any lien against the Project Site or Owner's property relating to the Work.

R8.9 USE OF FUNDS

8.9.1 Except for the Contractor's overhead and profit, sums advanced by Owner pursuant to Article 8 shall be used solely for the purpose of performance of the Work and the construction and equipping of the Project in accordance with the Drawings and Specifications. Contractor shall promptly pay all bills for services, labor, material and equipment properly performed and furnished by others in connection with the construction and equipping of the Project and the performance of the Work. The Contractor shall make

payment to Subcontractors, Suppliers, laborers and others in strict accordance with the Contractor's statements regarding payments due as set forth in the respective Contractor's Notarized Sworn Statement submitted to the Owner. The Contractor shall be obligated to make the payments required by this Section 8.9.1 for Work properly performed whether or not such payments are then due and owing under the terms of the Subcontract or Contractor's purchase orders to Suppliers or others. Contractor shall promptly pay Subcontractors and Suppliers for labor and materials properly performed even though the Owner may withhold amounts based upon defective Work or unsatisfactory performance by other Subcontractors or Suppliers not included in the current Contractor's Application for Payment.

8.9.2 The Contractor shall process all progress payments to Subcontractors, laborers and Suppliers to assure full compliance with (i) applicable construction lien acts, builders' trust fund statutes and similar legislation, (ii) all requirements of the Contract Documents related to payments to Contractor and Subcontractors, and (iii) any reasonable special requirements of the Owner. The Contractor shall have full responsibility for, and the entire risk of, claims for non-payment by its Subcontractors, Suppliers, laborers, architects, engineers and the Sub-Subcontractors, suppliers and laborers of any tier.

8.9.3 All Contractors, Subcontractors and Suppliers doing work on the premises of the Owner, or providing materials or equipment to be used in the performance of the Contract, must agree to comply with all requirements of the Federal Wage and Hour Act regarding hours, rates, and other matters, and shall be held responsible for compliance.

8.9.4 Should the Owner be joined as a party in any action or proceeding arising out of the violation or an alleged violation of the Federal Wage and Hour Law in the performance of the Contract, the Contractor, Subcontractor or Supplier violating or alleged to have violated such law, or using or introducing goods manufactured or alleged to have been manufactured in violation of the law, shall defend (using counsel reasonably acceptable to the Owner) and hold harmless the Owner in any such action or proceeding and pay and defray any damage, expense and cost of any description by reason thereof, including reasonable attorneys fees.

8.9.5 The Owner may, on request and at its discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts certified by the Contractor on account of Work done by such Subcontractor.

8.9.6 Upon forty-eight (48) hours prior notice to the Contractor, the Owner shall have the right, but not the obligation, to issue checks payable jointly to the Contractor and a Subcontractor (or Supplier) for work performed or labor or materials furnished by such Subcontractor (or Supplier) in connection with the Work.

8.9.7 Neither the Owner nor the Owner's Representative nor any agent of the Owner shall have any obligation to pay or to see to the payment of any moneys to any Subcontractor, Suppliers or others providing work, labor, services or materials to the Contractor.

R8.10 SUBCONTRACTS

8.10.1 Contractor shall include in all contracts it issues that each Subcontractor will be bound by the foregoing provisions of this Article .

APPENDIX A ARTICLE R9: SAFETY PRECAUTIONS AND PROGRAMS

R9.1 PROTECTION OF PERSONS AND PROPERTY

9.1.1 In addition to requirements for protection of the Contractor's employees, the Contractor shall also take all precautionary measures to protect other persons from injury and to protect property, including newly installed materials and equipment, from damage in connection with the Work. The Contractor shall remove protective devices when no longer required and repair damage to new and/or existing construction. Precautionary measures shall include but not be limited to:

A. Firmly constructed barricades, fences or guards; decking, planking for excavations and openings in floors, walls, roofs, stairs, elevator shafts, etc.; and protection (including overhead) for walks, driveways and other areas subject to pedestrian and/or vehicular traffic on public, private and Owner's property; and

B. Warning devices such as guard lights; danger signs, horns, bells and flags at temporary structures, pits, trenches and other obstructions.

9.1.2 Contractor shall take all necessary precautions to protect occupancy and use of premises from dirt, dust, weather, etc., in such manner that the Owner's operations may be carried on without interference, interruption or inconvenience. Concrete and masonry shall be wetted while cutting, breaking and handling. Hard surfaced roadways used in connection with this Project shall be maintained clean and free of dirt and debris at all times.

9.1.3 The Contractor shall take all necessary precautions to protect the roofs from damage during the performance of the Work. Temporary walkways shall be installed to protect the roof from damage by pedestrian traffic and similar light loading. Protection from heavier loads must bear directly on building structural members. The Contractor will remove temporary protection when no longer required.

R9.2 FIRE PROTECTIVE MEASURES

9.2.1 The Contractor shall be responsible to take all necessary action to eliminate fire hazards and assure good housekeeping practices. The Contractor's Superintendent and the Owner jointly shall inspect the entire Project at least once each week. Such inspection by the Owner shall not relieve the Contractor of its responsibility for complying with or correcting hazardous conditions (except conditions caused by the Owner).

9.2.2 The Contractor will at least comply with the following requirements:

A. Field offices and other temporary buildings, tool cribs, trailers, etc., shall be located outside and not less than fifty (50) feet from new construction and existing structures, with space between kept open.

B. Provide access to the construction site and around the perimeter of the facility. Such access shall be maintained in a serviceable condition suitable at all times for use by heavy fire fighting equipment.

C. Trucks and motor vehicles shall not be parked within the perimeter of any building, completed or under construction, unless directly engaged in construction, in which case the vehicle operator must be in attendance. Due to exhaust emissions, gasoline, propane and/or diesel powered construction equipment without scrubbers shall not be allowed in enclosed building areas, except with the Owner's prior written consent. If it becomes necessary to use gasoline, propane or diesel powered equipment without scrubbers, the Contractor shall submit to the Owner in advance, a written plan providing for proper ventilation of building areas. However, if conditions develop during work activities which require banning the use of gasoline, propane, diesel powered vehicles or equipment or the like from enclosed structures, the Contractor shall not be entitled to an increase in the Contract Sum or adjustment to the Contract Time as a result of such ban.

D. Provide and maintain in an operating condition during the period of construction not less than two (2) fire extinguishers in good working order for each building having a total floor area of 6,000 square feet or less. One (1) additional extinguisher shall be provided for each additional 3,000 square feet of floor area. Extinguishers shall be of an approved type, not less than 2-1/2 gallons water pressurized or fifteen (15) pounds dry chemical, and shall be conveniently located throughout the building for proper protection of the hazards to be encountered. Extinguishers subject to freezing shall be protected by the addition of anti-freeze.

E. Unless the Special Conditions provide otherwise, the Contractor will not be permitted to use the Owner's fire extinguishers, even if the Work is in conjunction with the Owner's existing buildings or the Owner's fire extinguishers are available.

F. Flammable liquids shall not be stored within the perimeter of buildings completed or under construction.

G. Only temporary space heating equipment systems listed by Underwriter Laboratories, Inc., and approved by the Owner will be allowed. Location of unit will be subject to approval by the Owner. OPEN FIRES WILL NOT BE PERMITTED. It shall be the responsibility of the Contractor to maintain heaters in proper working order and to provide properly trained personnel in attendance at all times while heaters are in operation.

H. Torch-cutting and welding operations for any type of work will be performed in strict accordance with the fire and safety regulations in the Special Conditions and Special Safety Conditions which may require the Contractor to secure a permit for each shift operation.

(i) Permission must be obtained for each specific operation and for a particular time, and in no case will any permit be given which extends beyond one shift.

(ii) In all such cases involving cutting and welding, the Contractor shall provide representatives for “fire watch” who shall be present at all times during such operations and whose specific responsibility shall be the prevention and fighting of fire.

I. Tarpaulins used in connection with torch-cutting and welding operations must be fire resistant.

J. Combustible materials or equipment in combustible containers shall be stored in an orderly manner. Not more than one (1) day’s supply of combustible materials or containers may be stockpiled on one location within the building. Supplemental fire fighting equipment shall be located in the vicinity of such containers and materials.

K. Roofing materials shall not be stored within the building. Tar kettles and similar melting equipment will be located not less than twenty-five (25) feet from the building or stockpiled combustible materials. Not less than two (2) fifteen (15) pound dry chemical fire extinguishers must be provided and readily accessible at each tar kettle for protection.

L. All combustible waste materials shall be removed from all buildings at the close of every work day. All other rubbish and debris shall be removed from the premises at least once every week.

M. Permanent fire protection water supply, fire extinguishing equipment and systems required by this Specification will be installed at the earliest possible date. Installed sections of the fire protection water supply shall be made available for emergency use, even though final testing has not been accomplished. Where some portions of the fire protection system may be subject to freezing, preventive measures must be taken by the Contractor.

N. Temporary fire fighting or fire prevention equipment which becomes faulty or defective shall be replaced immediately.

O. Temporary fire fighting or fire prevention equipment shall be removed upon completion of the Project.

APPENDIX A ARTICLE R10: PROTECTION OF PROPERTY

R10.1 MATERIALS AND EQUIPMENT FURNISHED BY THE OWNER

10.1.1 All materials and equipment furnished by the Owner for installation by the Contractor shall upon delivery to the job site be unloaded, transferred, stored and fully protected by the Contractor until installed. Any demurrage or similar charge incurred due to failure of the Contractor to promptly unload the materials and equipment shall be the responsibility of the Contractor when the items are delivered in accordance with the Owner’s schedule or the Owner and Contractor have cooperated in establishing another delivery date.

10.1.2 The Contractor shall carefully examine all materials and equipment furnished by the Owner. The Contractor shall complete receiving reports (in the form attached to GM 1638 as Appendix L) describing the quantity and condition of the materials or equipment. The Contractor shall be responsible for subsequent damage or loss until installation is completed and accepted by the Owner.

10.1.3 Should the Contractor fail to report any visible signs of damage as required above, then all parties in interest may assume that the damage occurred while the materials and equipment were in the care, custody and control of the Contractor.

10.1.4 Any material furnished by the Owner at an off-site location, on other than a charge basis in connection with the Contract, shall be deemed as held by the Contractor on consignment. All such materials or equipment required under the Contract shall be returned to the Owner, as directed, at the Owner’s expense; and, if not accounted for or returned, shall be paid for by the Contractor.

R10.2 REGULATION AND USE OF OWNER’S FACILITIES

10.2.1 Unless specifically provided otherwise in the Special Conditions, the Contractor shall not be permitted to use the Owner’s facilities in connection with the Work.

10.2.2 Identification badges will be required for all Contractor's and Subcontractors' employees to limit the use of the Owner's premises. Contractor shall cooperate with the Owner in setting up this identification system and shall strictly enforce all rules established by the Owner regarding the use of such badges.

10.2.3 The Contractor shall not display advertising at the Project site without approval of the Owner.

10.2.4 Smoking will be allowed only in designated smoking areas.

10.2.5 The Owner's security fencing shall not be altered, removed or relocated without first obtaining written permission from the Owner.

10.2.6 The Contractor shall be responsible to make provisions for the proper receiving, unloading, handling and storage of its materials, equipment and supplies delivered to the Project Site. Neither the Owner nor the Construction Manager will receive, accept, unload, handle or store any shipments to the Contractor. Improper shipping documents, unverified material orders, insufficient MSDS (Material Safety Data Sheet) information, etc. shall be sufficient cause to bar entry of the material or other items to the Project Site. The Contractor shall promptly provide all MSDS information requested by the Owner.

R10.3 USE AND PROTECTION OF EXISTING UTILITIES

10.3.1 Unless specifically provided otherwise in the Special Conditions, the Contractor shall not be permitted to use existing utilities at the Project Site in connection with the Work. When the Contractor is permitted to use existing utilities, Contractor shall provide and pay for all wiring, piping, etc., required for its use and shall make all connections to Owner's service and disconnect and remove same at the Contractor's expense upon completion of the Work.

10.3.2 The Contractor shall be fully responsible for the protection from damage of all known utilities and underground lines. Any such utilities and underground lines which are not designated in the Drawings and Specifications to be removed and which may be damaged in the performance of the Work under this Contract must be properly restored, replaced and repaired by the Contractor without cost to the Owner except to the extent covered by the property insurance required to be maintained by the Owner under Section 12.2 of GM 1638.

10.3.3 Prior to starting Work, the Contractor shall consult with the Owner regarding known utilities and underground lines.

10.3.4 Should the Contractor encounter utilities and underground lines not previously identified, Contractor shall consult with the Owner before proceeding with the affected Work.

10.3.5 In case of public utilities, the Contractor shall consult with the governing authorities concerning protection and use of utilities and structures prior to the start of Work. Public utilities damaged in the performance of the Work shall be repaired, altered or replaced as directed by the governing authorities at the Contractor's sole cost and expense.

R10.4 CLEANING OF PREMISES

10.4.1 The Contractor shall be fully responsible for keeping the Project Site, buildings and adjoining premises free at all times from accumulations of all waste material, rubbish, debris, broken concrete, etc., caused by the Contractor's employees and its Subcontractors' employees and the work of each.

A. The Contractor shall take all precautions to avoid depositing earth, debris or mud on the Owner's existing roads, adjacent public roads, parking areas and etc. The Contractor shall be responsible for removal of earth, debris or mud, etc., at no additional cost to the Owner.

B. Unless provided otherwise in the Special Conditions, no facilities or equipment of the Owner may be used for trash accumulation or the hauling away from the premises without the Owner's prior written approval.

10.4.2 All combustible waste materials shall be removed from all buildings at the close of every work day. All other rubbish and debris shall be removed from the premises at least once every week.

10.4.3 When performing construction activities within an operating facility; rubbish, debris and other waste material must be placed in containers at once. All containers shall be covered for removal through any area where the Owner is conducting its operations.

10.4.4 If the Contractor does not clean the Project Site and premises as required:

A. The Owner shall advise the Contractor that in the Owner's opinion the Project Site and premises are not being maintained in the condition required.

B. Should the Contractor fail to initiate substantial progress toward clean-up of the premises within twenty-four (24) hours following receipt of written notice, the Owner may elect to provide the necessary labor, materials or equipment to fulfill the necessary requirements and deduct the cost from any monies then due or thereafter due the Contractor and its Subcontractors. If more than one Contractor's work is involved, a proportionate share of The Owner's cost will be charged to each Contractor and determined as follows:

(i) Costs attendant to the removal of all debris, rubbish, packaging, etc., which are identifiable to the activity of a specific Contractor or its Subcontractors shall be charged to that Contractor.

(ii) Costs attendant to the removal of all other debris, rubbish, etc., shall be pro-rated among all Contractors on the basis of the ratio of the work force of each (including their Subcontractors) to the total work force on the job site.

(iii) The Owner shall maintain adequate records related to the assessment of charges.

10.4.5 As work is completed in an area, the Contractor shall remove all tools, scaffolding and surplus materials and leave the area broom-clean. In addition, at the completion of the Work, it shall (i) remove all its waste materials and rubbish from and about the Project, as well as all tools, construction equipment, machinery, surplus materials and temporary installations and facilities; (ii) shall clean and protect all finished surfaces and areas in accordance with Project Specifications.

10.4.6 Immediately before turning the building over to the Owner, the Contractor shall have all installed glass washed clean.

R10.5 SIGNS

Owner shall have the right to place on the Project Site such signs as it may elect. Contractor shall not place any signs on the Project Site without Owner's written permission in advance.

APPENDIX A ARTICLE R11: HAZARDOUS MATERIALS

R11.1 INDEMNIFICATION

Contractor shall indemnify, defend with counsel reasonably acceptable to Owner, and hold Owner and its officers, agents and employees harmless from and against any and all claims, judgments, damages, penalties, fines, liabilities, losses, and costs and expenses (including reasonable attorney's fees and court costs) which arise at any time during or after the completion of the Work as a result of or in connection with (i) Contractor's breach of any prohibition or requirement set forth in Article 11 or the Hazardous Materials Requirements set forth in Appendix K; (ii) any release, spill or presence of Hazardous Materials in the environment, soil or surface or ground water in, on, under, or about the Work, the Owner's facilities, the property or other properties as a result of Contractor's, its agents', employees', Subcontractors', Sub-Subcontractors' and their agents and employees', activities on or in connection with the Work, except the presence of a Hazardous Material if such Hazardous Material was specified in the Drawings and Specifications provided by the Owner and its constituting a Hazardous Material was unknown to Contractor and could not have been discovered with the exercise of due care by Contractor. This obligation by Contractor to indemnify, defend, and hold harmless includes costs incurred in connection with any investigation of Site conditions or any cleanup, remedial, removal, or restoration work required by Owner or any governmental agency or political subdivision because of any Hazardous Materials occurring or present in the soil or surface or ground water in, on, under, or about the Work or the Site, diminution in value of the Work or the Site, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Work or the Site, and sums paid in settlement of claims, penalties, attorneys fees, court costs, consultant and laboratory fees, and expert's fees as a result of Contractor's, its agents', employees', subcontractors', and their agents and employees' activities on or in connection with the Work or the Site.

APPENDIX A ARTICLE R12: INSURANCE

This Article intentionally left blank

APPENDIX A ARTICLE R13: CHANGES IN THE WORK

R13.1 SUBSTITUTIONS/VALUE ENGINEERING RECOMMENDATIONS

13.1.1 The Contractor shall submit a Document Clarification Request (Appendix B to GM 1638) to request approval of any proposed substitution. No request for substitution shall be considered by the Owner unless the Contractor submits a properly completed Document Clarification Request. Substitutions recommended by the Contractor for the purpose of reducing Project cost to the Owner or reducing the time required for construction shall be subject to Section A. below. Substitutions recommended by the Contractor or a Subcontractor for the purpose of reducing cost to the Subcontractor or Contractor or off-setting delays for which the Contractor or Subcontractor is responsible shall be subject to Section B. below. The Owner shall reasonably determine whether the procedures of Section A. or B. shall apply to a specific request for a substitution. The Owner shall notify the Contractor of its determination whether the procedures under Section A. or B. shall apply and the Contractor shall have the opportunity to withdraw a request for substitution under Section B. by giving written notice to the Owner within seven (7) days. No other substitutions or variations from the Specifications and Drawings will be permitted, except that where "or approved equal" is used, the Contractor shall have the right, after the Contract has been executed, to request the Owner's approval of a substitute material generally considered to be equal to that named in the Specifications and/or Drawings. The Owner, however, shall have no obligation to accept any substitute.

A. On-going value engineering recommendations of the Contractor shall be reviewed in accordance with the Owner-Contractor Agreement or Special Conditions. The Owner and Contractor shall mutually determine how the costs to review and implement such recommendations will be allocated.

B. Requests from the Contractor or a Subcontractor for approval of any substitution for the benefit of the Contractor or such Subcontractor, as reasonably determined by the Owner, must be submitted in writing to the Owner, together with all necessary supporting data. Unless the Owner agrees otherwise, all such requests shall be submitted prior to the award of the Contract. Requests for approval of any substitute shall be accompanied by an analysis of any changes in the Work of other trades or Subcontractors, redesign, other changes in the Contract Documents or additional costs that will result from the proposed substitute or a statement that no such matters will result and the analysis of whether the proposed substitute is inferior, equal or superior to the product specified. The Contractor shall be responsible for payment of all costs and expenses incurred by the Owner, including fees and expenses of the Architect/Engineer, to review and evaluate a request for substitution under this Section B., and the Owner shall be entitled to withhold such amount from payment otherwise due to the Contractor under the Contract Documents.

(i) If a substitution recommended by the Contractor requires changes in the work of other trades or Subcontractors or in the work of the Owner's separate contractors, redesign, other changes in the Contract Documents or results in any additional costs whatsoever, the Contractor shall be solely responsible for such costs, except for such costs specifically accepted by the Owner in writing.

(ii) By making a recommendation for a substitution, the Contractor shall be deemed to represent and warrant that:

(a) The Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to the product specified;

(b) The Contractor will provide the same warranty for the proposed substitute product as for the specified product; and

(c) The Contractor will waive all claims for additional costs related to the proposed substitute product including any which may subsequently become apparent.

(iii) By making a recommendation for a substitution involving redesign by the Contractor or any Subcontractor, the Contractor shall also be deemed to represent and warrant that such redesign:

- (a) Will be free from errors and omissions;
- (b) Will be fit for the purpose specified and will fully satisfy and perform as represented;
- (c) Will properly interface with the design and Drawings and Specifications provided by the Architect/Engineer and other Subcontractors (if any); and
- (d) Will comply with all applicable laws, regulations, ordinances and requirements of, and conditions of any approvals, certifications or permits given by, any and all governmental authorities having jurisdiction over the design, construction, existence or use of the Project.

R13.2 PREPARATION OF QUOTATIONS FOR CHANGED WORK

13.2.1 General

A. Requirements: Quotations must comply with the requirements of Article 13 of GM 1638 and Section 13.2 and 13.3 of this Appendix A Construction General and Regional Requirements.

B. Deleted Work: The adjustment (credit) to the Contract Sum for deleted Work using the GM1784 and GM1784A forms shall be determined as follows: The net cost of labor, subcontracted work, equipment and material for the changed work plus the required amount for overhead and profit (determined by multiplying the net cost for labor, subcontracted work, equipment and material by the percentage fees for deductions set forth in GM Form 1781) equals the amount of the credit to be subtracted from the Contract Sum. For example; if GM Form 1781 indicates that the percentage mark-up for deducts is ten (10%) percent and if the net cost for labor, subcontracted work, equipment and material is Two Hundred Fifty Thousand (\$250,000.00) Dollars, then the adjustment (credit) to the Contract Sum shall be calculated as follows: $\$250,000 + (\$250,000.00 \times 0.10) = \$275,000$ credit to the Owner. At the Owner's discretion, the deleted work may be calculated by using the Schedule of Values and a negotiated amount for overhead and profit.

13.2.2 Form GM 1783: Hourly Field Labor:

A. The Contractor shall be responsible to obtain a complete and accurate Form GM 1783 (Appendix C to GM 1638), completed in accordance with the requirements of Article 13 of GM 1638, from each Subcontractor of any tier performing the changed Work. The Contractor shall maintain such forms with its Project documents and shall submit such forms to the Owner's Representative if requested by the Owner. The Contractor shall submit a Form GM 1783 (Appendix C to GM 1638) to the Owner's Representative with respect to all field labor performing the Changed Work. A Form GM 1783, Hourly Field Labor, must be prepared by the Contractor and all Subcontractors for each trade (pipefitter, millwright, operating engineer, etc.), classification (apprentice, journeyman, foreman, general foreman) and shift (first, second or third).

B. Lines A (Taxable Base Rate) through E (Total Trade Agreement Rate) of the Form GM 1783 shall be in accordance with the economic terms (base wage and fringes) as stated in the applicable local Trade Union Agreement for each classification. A copy of the applicable Trade Union Agreement or a summary of the economic terms of the Agreement on union letterhead, such as would be used by the Contractor's payroll department to compute wages and benefits, should also be submitted with the Form GM 1783.

C. With respect to Line F of Form GM 1783, the F.I.C.A., F.U.T.A. and S.U.T.A. rates (or others as applicable to the jurisdiction) should be defined as employer's net actual cost of payroll taxes. Contractors shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. Any other payroll-based taxes, such as Michigan Single Business Tax (M.S.B.T.), should be reported and specified on the line below S.U.T.A. M.S.B.T. should properly reflect the effective cost rate incurred. (Items such as small tools, auto insurance, umbrella insurance, general liability shall not be included as Special Taxes; they are covered under the Overhead and Profit Markup Percentage Fee.)

D. With respect to Line F of Form GM 1783, the Worker's Compensation rate should be specified and should reflect the actual premium rate paid for the work category taking into account all applicable experience

modification factors, premium discounts, dividends, rebates, expense constants, assign risk pool costs, net costs reductions due to policies with deductibles for self-insured losses, assigned risk rebates, surcharges, claim handling fees for self insured or large deductible contractors, assigned risk rebates, etc. A copy of the Contractor's most recent annual premium invoice (declaration sheet) from its insurance carrier should be attached to document the rate utilized.

E. Where changes in the Work involve both additions and deductions, the cost of the added Work shall be balanced against the estimated cost of the deleted Work and the Contractor's or Subcontractors' Percentage Fees shall be applied to the net result.

F. Items of cost shall not include the expense of making good any damage to the Work or premises or the removal and replacement of materials or Work rejected or condemned by the Owner as failing to conform with the requirements of the Drawings and Specifications.

13.2.3 Percentage Fees – Contractor:

If Method No. 2 (Estimated Cost Plus Percentage Fees) or Method No. 3 (Cost Plus Percentage Fees) is used to calculate the adjustment to the Contract Sum for the Change in the Work, the Percentage Fees to be applied shall be the applicable Percentage Fees set forth on Form GM 1781 (Appendix C to GM 1638) and Form GM 1782 (Appendix C to GM 1638) and Hourly Field Labor Rate calculated as indicated in Form GM 1783 (Appendix C to GM 1638), incorporated in the Contract Documents. Unless other Percentage Fees are included in the Special Conditions, no other mark-ups or fees or changes for overhead and profit handling fees, payroll benefits and taxes, field engineering, shop work or sales or use taxes shall be allowed. For purposes of Forms GM 1781 and GM 1782, the following shall apply:

A. FIELD LABOR AND MATERIAL/EQUIPMENT OVERHEAD AND PROFIT (FORM GM 1781)

The Overhead and Profit Percentage Fee shall include but not be limited to:

(i) Consumable materials, i.e. any item that is expendable (such as rags, rope, etc.) or replacement parts (such as abrasive wheels, dies, welding tips, etc.).

(ii) Tools and equipment with original cost of less than \$1,500.

(iii) Home and field office organization and expense, including but not limited to supervision and/or management not continuously employed at the site, and all taxes except sales/use or special taxes.

(iv) All components of Comprehensive General Liability Insurance including bodily injury and property damage liability.

NOTE: Builders Risk Insurance is provided by Owner. See Section 12.2 of GM 1638 "Property and Casualty Insurance (Builder's Risk)"

This Overhead and Profit Fee is paid once to the installing contractor, being either the prime Contractor (Contract direct with Owner) or a Subcontractor.

(a) Application to Field Labor Cost.

The Labor Overhead and Profit Percentage Fee set forth in Form GM 1781 is applied to the sum of the base field labor rate and taxable fringes such as vacation pay, holiday pay and union dues, calculated in accordance with Line C of Form GM 1783 incorporated in the Contract Documents. It is not applied to non-taxable fringes and the premium portion of overtime/shift time.

(b) Application to Material/Equipment Cost.

The Material Overhead and Profit Percentage Fee set forth in Form GM 1781 is applied to the net actual supplier price (including freight charges and taxes less sales/use tax) of plain/stock material and/or equipment delivered to site for field installation.

B. FIELD LABOR PAYROLL TAXES, WORKER'S COMPENSATION INSURANCE, AND FRINGE BENEFITS (FORM GM 1781)

The Percentage Fee set forth in GM Form 1781 is applicable to field labor only and shall constitute all charges, both direct and indirect, including worker's compensation insurance, payroll taxes, vacation and travel allowances and health and welfare funds. The percentage Fee is applied to the sum of the base field labor rate and taxable fringes, calculated in accordance with Line C of Form GM 1783 is applied to the sum of base field labor rate and taxable fringes such as vacation and holiday pay and union dues. This fee is not applied to non-taxable fringes. It includes the following payroll taxes and Worker's Compensation Insurance:

- (i) Social Security (F.I.C.A.),
- (ii) Federal Unemployment (F.U.T.A.),
- (iii) State Unemployment (S.U.T.A.),
- (iv) Special Tax such as Michigan Single Business Tax (MSBT), and
- (v) Worker's Compensation Insurance.

NOTE: The Contractor shall reduce their standard payroll tax percentage to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes.

C. HANDLING FEE (FORM GM 1781)

(Handling Fee for Changed Work performed by other than the Contractor's own forces). The Handling Fee is a single aggregate fee that includes the mark-up for the prime Contractor and mark-ups for all Subcontractors of any tier (except the Subcontractor who actually performs the changed work). Only the prime Contractor shall be permitted to include the Handling Fee in its Quotation. Subcontractors of any tier shall not be permitted to include the Handling Fee in their respective Quotations. From the Handling Fee paid to the Contractor, the Contractor will pay any handling fees payable to Subcontractors of all tiers in accordance with the applicable contractual arrangements between the Contractor and such Subcontractors. The Percentage Fee set forth in Form GM 1781 shall apply to:

- (i) Price approved by the Owner for changes in the Work performed by Subcontractors, excluding overtime and shift work premium,
- (ii) Cost of manufactured items of installed operating equipment and/or facilities, and
- (iii) Cost of fabricated materials worked to a specific design required by the Drawings and Specification or for which shop drawings are required and the equipment or fabricated materials have been installed by the Contractor.

This fee shall constitute all the Contractor's charges for overhead and profit, including supervision, the services of its general office organization and field office expense. The Handling Fee shall not be applied to the cost of Owner furnished materials and equipment or to work performed on a unit price basis except for the unit prices established in assigned contracts. The percentage Handling Fee payable to the prime Contractor is applied to the total price of the Subcontractor (of any tier) performing the changed Work, excluding unit priced work. The Handling Fee is a single aggregate fee. This percentage fee shall not be applied to material or equipment prices if the material or equipment is furnished by the Owner or an affiliate/subsidiary company of the prime Contractor or Subcontractor. For a Contractor to be paid this Handling Fee, the installing Subcontractor must be an approved Subcontractor as prescribed in Section 4.2 of GM 1638. The Handling Fee includes the appropriate elements of Overhead and Profit as previously defined.

The Contractor requesting the Handling Fee is required to provide an itemized quote on company letterhead of each Subcontractor or Materialman.

Items declared exempt by the Owner shall be described in the Special Conditions section of the Specification or Contract Documents (usually on or before the price is determined).

D. OTHER RATES AND FEES (FORM GM 1782)

(i) Construction Equipment Use Rate -- The rate is paid once to the installing contractor being the prime Contractor (Contract direct with Owner) or Subcontractor.

The equipment use rate is applicable to large equipment where original cost is \$1,500 or more. This equipment may be rented or owned and may be any item or assembled group of parts (e.g. scaffolding, prefabricated form panel, etc.). If base contract on-site equipment is used to perform the change, then the agreed percentage of the current edition of the "Rental Rate Blue Book" monthly equipment rental rates will be used to calculate the price.

Monthly equipment rental rates will be divided by 173 to obtain an hourly rate and increased to include the appropriate hourly operating cost where applicable (less operator). The rate includes any and all charges including sales/use tax.

(ii) Field Engineering -- The hourly rate is applied to the additional hours required to provide new or to revise contract field layouts and surveys. The rate is applicable to changes not covered by unit prices. The rate includes any and all charges and fees.

(iii) Shop Work:

(i) Drafting -- The hourly rate is applied to the additional hours required to provide new or to revise contract shop drawings. The amount for drafting included in unit prices shall be deducted from the price. The rate includes any and all charges and fees.

(ii) Shop Labor -- The hourly rate is applied to the total hours required to fabricate or assemble plain/stock material/equipment (not covered by unit prices) to the specific requirements of contract Drawings and Specifications. The rate includes any and all charges and fees.

(iv) Sales/Use Tax -- The percentage fee is applied to the price of the net amount (taxable/non-exempt) for material/equipment including fabrication. The rate is as prescribed by state and local law in the state where the material/equipment is installed at the Owner's site. The percentage fee set forth in the Contract as the Contractor's fee for Sales/Use Tax shall consist of the actual amount of tax in force and shall be applied separately to the net cost of labor and materials except when such materials and/or labor are exempt from Sales/Use Tax as provided for in the bid documents.

13.2.4 Percentage Fees – Subcontractors:

The Percentage Fees for changes in the Work to be performed by Subcontractors shall conform to the respective definitions and applications set forth in Section 2 above, except that the Subcontractor shall not include a Handling Fee for changed Work performed by its lower-tier Sub-Subcontractors. (If the Subcontractor is entitled to a handling fee for changed work performed by a lower-tier Subcontractor, such handling fee will be paid by the Contractor from the single aggregate Handling Fee included in the Contractor's Quotation for such Work.) The percentage Fees in Forms GM 1781, GM 1782, and GM 1784 and GM 1784A incorporated in the Contract Documents shall apply. Percentage Fees not included in the Contract shall be subject to prior written approval by the Owner.

R13.3 CHANGES IN THE WORK: GUIDELINES FOR ALLOWABLE COST AND COST DOCUMENTATION REQUIREMENTS FOR ALL CONTRACTORS

13.3.1 The Construction General Conditions GM 1638 require in Section 13.2.2 that quotations submitted by the Contractor for changes in the Work shall be itemized in detail to facilitate checking by the Owner. The following provisions define allowable cost and supporting documentation submittal requirements for all Field Orders including Field Orders releasing Bulletins.

The GM1784 and GM1784-A Forms, Field Order/Bulletin Quote Summary and Field Order/Bulletin Quote Breakdown are to be completed and submitted with every Field Order and Bulletin Quotation for both the prime Contractor and each individual Subcontractor, as applicable. All rates and fees applied to various elements of cost by either the Contractor or any of its Subcontractors should be as stated on the Contractor's GM1781 Form, Overhead and Profit/Handling Fees, and GM1782 Form, Other Rates and Fees, as submitted by the Contractor and approved by General Motors Corporation Worldwide Purchasing at the time of Contract award.

The cost of performing changes in the Work should be reported and documented as set forth below. The term "Contractor" refers to both the prime Contractor and its Subcontractors.

13.3.2 Field Labor:

A. GM1783 Form, Hourly Field Labor, must be submitted by the Contractor and all Subcontractors for each trade (pipefitter, millwright, operating engineer, etc.), classification (apprentice, journeyman, foreman, general foreman) and shift (first, second, or third).

B. Lines A (Taxable Base Rate) through E (Total Trade Agreement Rate) of the GM1783 must agree with the economic terms (base wage and fringes) as stated in the applicable local Trade Union Agreement for each classification. A copy of the applicable Trade Union Agreement or a summary of the economic terms of the Agreement on union letterhead, such as would be used by the Contractor's payroll department to compute wages and benefits, should also be submitted.

C. F.I.C.A. taxes represent the employer's portion only and must be reported as 7.65%, unless revised by the U.S. Government.

The F.U.T.A. (Federal Unemployment) tax cannot exceed 0.8%, unless revised by the U.S. Government.

D. The S.U.T.A. (State Unemployment) tax should be the effective rate paid as documented by copies of Contractor's quarterly filings to the state for the prior four calendar quarters; e.g., Employer's Quarterly Tax Report to the Michigan Employment Security Commission for contractors doing business in Michigan. The effective S.U.T.A. tax rate is the actual tax paid during the prior four quarters divided by the Contractor's total payroll for that same period.

E. Any other payroll-based taxes, such as the Michigan Single Business Tax, should be reported and specified on the line below S.U.T.A. Again, the rate shown should be the actual effective rate for the prior four calendar quarters or fiscal year, as documented by a copy of the Contractor's tax return or other tax submittal report showing the amount of tax paid and how it was computed.

F. Workers' Compensation Rate should reflect the actual premium paid for the work category taking into account all applicable experience modification factors and premium discounts, as documented by a copy of the Contractor's most recent annual premium invoice from its insurance carrier.

G. Overhead and Profit Rate cannot exceed the rate reported in Item 1 of the GM1781 Form. It applies only to the straight time Total Taxable Wage, Line (C) of the GM1783. The rate includes but is not limited to the kinds of expenses noted in the section of these Construction General Requirements entitled "Percentage Fees – Contractor: Overhead and Profit for Labor and Materials/Equipment."

H. If the Project is covered by the National Maintenance Agreement, the only items affecting rates are the second and third shift premiums. The second and third shift premium and hours worked are to be in accordance with the NMA policy.

I. GM1783 Form is a statement of actual cost incurred for certain labor. Accordingly, updated forms should be submitted whenever a change affecting wages or fringes, such as annual wage increases, occurs in the underlying Trade Union Agreement. Supporting documentation for the change should also be submitted (See Section 13.2.1.A. above).

J. Field Labor hours must be documented by daily time sheets signed by the Contractor and the Owner or Owner's Representative. Copies of the daily time sheets pertaining to a given Field Order must be submitted with the

GM1784 Form Quotation summary for the Field Order. Spreadsheets used to compile hour take-off's can be used to summarize the field labor hours charged to a Field Order, but are not acceptable as documentation for the hours worked.

K. Superintendent and general foremen straight time hours are not chargeable to Field Orders prior to completion of the base contract. Their time has already been paid for in the base Contract. If the base Contract is not yet completed a prorated portion of overtime and double-time hours will be allowed if worked on Field Orders. If base Contract work is also scheduled for overtime during the period of Field Order work, the reason for charging superintendent and general foremen time to Field Orders must be documented.

L. Apprentices must be noted as such on the daily time sheets and their hours charged at the appropriate hourly rate.

M. Using composite or average labor rates to cost Field Orders is not acceptable unless specifically stated or incorporated by reference in the Contract.

N. The allocation of supervision hours as a percentage of journeymen hours or as a ratio to the number of journeymen is not acceptable. Hours for foremen (and general foremen and superintendents, where chargeable), must be supported by daily time sheets showing hours charged to each Field Order.

13.3.3 Material:

A. The description and quantity of material used on the Field Order at the job Site should be recorded on the daily time sheet.

B. Average costing wages used per unit of measure for valuing generic materials (e.g. cents per pound for "standard" steel) must be documented by purchasing records or commodities price records showing how the average costing rage was calculated.

C. The cost of material taken out of the Contractor's inventory must be adequately documented. Copies of invoices or pre-established unit prices would be acceptable documentation. **Note:** If previously approved unit prices are utilized, the cost should be recorded in Column A, "Unit Price Work" of the GM1784 Form. Unit Price Work includes any and all costs to furnish and install and is not subject to the Materials Overhead and Profit fee.

D. Material purchased outside for Field Order work must be supported by a copy of the paid invoice.

E. Material cost is always considered to be FOB job site.

F. Sales tax must be subtracted from supplier invoices along with all discounts taken before the Materials Overhead and Profit Fee (GM1781 Form, Item 2) is applied. Where applicable, sales tax should be separately stated on the line provided near the bottom of the Contractor's GM1784 Form. **Note:** If a Contract is exempt from sales tax, neither Subcontractors nor outside Suppliers should be passing through sales tax related to Work on that Contract.

G. Fabricating shop material costs are to be handled and documented in the same way as other material costs. The labor portion is to be reported as shop labor (See Section 13.3.6 Shop Labor below). If the fabrication work is done by an outside shop (i.e. a separate company with no ownership ties to the Contractor), the entire cost, including labor, should be treated as material and documented with a copy of the paid invoice from the outside shop.

H. Consumable materials, such as drill bits, abrasive discs, gloves, rags, etc. are not chargeable to Field Orders. They are included in the Materials Overhead and Profit fee.

13.3.4 Construction Equipment:

A. Equipment may be charged only for the time it is actually used on the Field Order.

B. Equipment descriptions and hours used are to be recorded on the daily time sheets. If an operator is used, the hours worked must be reported as field labor and not included in the equipment hourly rate charge (See Sections 13.3.2.A. and 13.3.2.J., Field Labor above).

C. Contractor owned equipment is to be adequately described and quoted at the percentage of the Rental Rate Blue Book For Construction Equipment (Blue Book) cited in Item 1 of the Contractor's GM1782 Form. (Note: This percentage is not an adder to the Blue Book rate. It is based on the Rate Adjustment Tables, for age of the equipment, that are located at the front of each of the different equipment classification sections in the Blue Book.) Copies of the applicable pages of the Blue Book are to be submitted as backup documentation. Hourly rates are to be determined by dividing the monthly rate by 173. The correct method for calculating the equipment charge is as follows: multiply the applicable Blue Book monthly rate by the percentage from GM1782, Item 1. Divide the result by 173 to determine the hourly rate. Multiply the result by the Regional Adjustment Factor for the state where the Work is being performed, and add the estimated operating cost \$/Hr. from the applicable Blue Book rate sheet to arrive at the total hourly rate.

D. Contractor rented equipment should be quoted at an hourly rate determined by dividing the actual monthly rental rate by 173 or four week rental rate by 160 and adding the Materials Overhead and Profit Fee (GM1781 Form, Item 2). The Blue Book estimated operating cost \$/Hr. is then added, to obtain the total charge. The latter is not subject to the Overhead and Profit Fee. Charges for rented equipment must be documented by a copy of the paid rental invoice.

E. Tools and equipment with an original cost of less than \$1,500 are considered to be included in the field labor Overhead and Profit Fee provided in Item 4 of the GM1781 Form, and are not separately chargeable as construction equipment. (See the section of these Construction General Requirements entitled "Percentage Fees – Contractor: Overhead and Profit for Labor and Materials/Equipment.")

F. Items such as radios and personnel carriers (golf carts, scooters) are not chargeable to Field Orders.

13.3.5 Field Engineering:

A. The hourly rate applied to field engineering hours charged to Field Orders cannot exceed the rate specified in Item 2 of the GM1782 Form Other Rates and Fees.

B. Hours charged to Field Orders must be documented by time sheets or the Contractor's internal records for tracking actual time spent by various functions on individual jobs. No other method (allocations, ratios, etc.) for determining field engineering charges is acceptable.

13.3.6 Shop Drafting:

A. The hourly rate applied to shop drafting hours charged to Field Orders cannot exceed the rate specified in Item 3A of the GM1782 Form.

B. Hours charged to field orders must be documented by time sheets or the Contractor's internal records for tracking actual time spent by various functions on individual jobs. No other method (allocations, ratios, etc.) for determining field engineering charges is acceptable.

13.3.7 Shop Labor:

A. The hourly rate applied to shop labor hours cannot exceed the rate specified in Item 3B of the GM1782 Form.

B. Hours charged to field orders must be documented by time sheets or the Contractor's internal records for tracking actual time spent by various functions on individual jobs. No other method (allocations, ratios, etc.) for determining field engineering charges is acceptable.

13.3.8 Handling Fees:

The Handling Fee for subcontract work (GM1781 Form Item 3) only applies to the value of additional work performed by a Subcontractor. The Handling Fee applied by the prime Contractor is a single aggregate amount that includes all handling fees payable to lower-tier Subcontractors. If any portion of the changed work is subcontracted in turn by the first tier Subcontractor, only the prime Contractor will be allowed to apply the handling fee. If a Subcontractor is entitled to a handling fee for changed work performed by a lower-tier Subcontractor, such handling fee will be paid from the single aggregate Handling Fee paid to the prime Contractor. Subcontractors of all tiers will not be permitted to include a Handling Fee in their Quotations.

13.3.9 Material Overhead and Profit:

Rates used are specified on the GM1781 Form, and taken in accordance with the GM 1638, Construction General Conditions.

13.3.10 Taxes:

If the item subject to tax, the tax shall consist of the actual tax in force, unless the Contract Documents indicate that a tax exemption applies.

13.3.11 Subcontractors:

A. The Overhead and Profit/Handling Fees submitted in Items 1 through 3 on the Contractor's GM1781 Form for sub-trades are binding on all Subcontractors used in the designated sub-trade. Only GM1781 Form Item 4 percentages may differ between contractors within the same sub-trade as they are based on actual costs that may reflect differences in effective S.U.T.A. rates and workers' compensation rates from Subcontractor to Subcontractor.

B. Subcontractors must furnish the same documentation as set forth in the requirements of this Article 11a.

C. Contractors must provide copies of paid Subcontractor invoices as documentation for total charges.

R13.4 CHANGES LOG

13.4.1 The Contractor shall maintain a log of all Field Orders and Bulletins as part of the Contractor's Project records, and the Contractor shall provide such log to the Owner at the request of the Owner. The information set forth in the Contractor's log shall not be binding upon the Owner. The Contractor's change log shall contain the following information:

A. Bulletin Number and date, date of Purchase Order Alteration, start and finish date and all related cost data, including manpower, manhours, equipment, and materials.

B. Field Order Number and date, start and finish date, and all related cost data, including manpower, manhours, equipment, materials, and Purchase Order Alteration number and date.

C. Complete information regarding Subcontractor and Supplier Quotations, including date requested, date submitted, date reviewed by Contractor for compliance with requirements of Article 13 of GM 1638, and similar information.

APPENDIX A ARTICLE R14: UNCOVERING AND CORRECTIONS OF WORK

This Article intentionally left blank

APPENDIX A ARTICLE R15: TERMINATION BY THE OWNER

This Article intentionally left blank



Location:	Page:	of:	Number:
Original Purchase Order No.:			
Contractor's Name:	Project Number: See Field Order Items		
City, State, Zip:	Date:		

The Contractor is hereby authorized and directed to proceed with the work described below in accordance with the terms and conditions of the contract.

The Contractor shall promptly submit its statement of all impacts, including price and schedule impacts, for all work described below to

GM Worldwide Purchasing no later than:

Price impacts shall be submitted using Form GM 1784, accompanied by supporting breakdowns and documentation as required by the Construction General Conditions.

This Field Order authorizes part or all of the work described in Bulletin No.:

Item	Project No.	DCR No.	Pricing Method	Description
1				
2				
3				
4				
5				
6				
7				

Pricing Methods

- 1 -Unit Prices
- 2 -Estimated Cost Plus Percentage Fees
- 3 -Cost Plus Percentage Fees

Distribution

Authorization

Requested by:	Approved by:
Title:	Title:
Date:	Date:
Approved by:	Authorized by:
Title:	GM Worldwide Purchasing
Date:	Date:

Notice to Contractor: This Field Order does not authorize you to invoice for this work. Billing must be withheld until a Purchase Order Alteration is received incorporating this work in the Purchase Order.



BULLETIN
General Motors Corporation

Location: Construction / Program Manager	Page:	Of	Number:
Process / Architect – Engineer:		Project:	
		Date:	

Warning: This document is a Request for Quotation. It is NOT an authorization to proceed with any work.
The contractor is requested to submit promptly a proposal to reflect any change to the contract amount or schedule as a result of the work described herein and accompany same by supporting breakdowns and summary on Form GM 1784 as required by the Construction General Conditions. The Contractor is requested to submit its proposal to GM Worldwide Purchasing in duplicate no later than: _____

The Contractor will be held to do all work of his trade(s) required for the full completion of the work described, including all work incidental thereto, or necessary to properly complete the work even though not specifically mentioned.

The Construction General Conditions and Specifications for the original work are to govern all work herein described unless otherwise mentioned Drawing(s) _____ accompany and form part of this Bulletin.

Item:	Description:

Requested By:	Approved By:
Title:	Title:
Date:	Date:
Distribution:	



CHANGES IN THE WORK

OVERHEAD AND PROFIT/HANDLING FEES

GM1781

PERFORMING CONTRACTOR _____

DATE _____

PROJECT _____

OWNER JOB NO. _____

GM UNIT _____ SITE LOC. _____

A/E JOB NO. _____

THE FOLLOWING RATES AND FEES ARE TO INCLUDE ALL ELEMENTS OF COST AS DEFINED IN THE CONSTRUCTION GENERAL CONDITIONS, GM1638 - ARTICLE 13, AND WILL BE APPLIED TO WORK ADDED TO, OR DELETED FROM, THE BASE CONTRACT:

ITEM DESCRIPTION	PRIME CONTRACT WORK	Sub-trades: e.g. Architectural, Mechanical, Electrical, etc. **			
		SUB-TRADE 1. _____	SUB-TRADE 2. _____	SUB-TRADE 3. _____	SUB-TRADE 4. _____
1. FIELD LABOR Overhead and Profit - Applied to the sum of base field labor rate & taxable fringes (Line C on GM1783)*	<u>ADD / DEDUCT</u> 25 % 10 %	<u>ADD / DEDUCT</u> 25 % 10 %	<u>ADD / DEDUCT</u> 25 % 10 %	<u>ADD / DEDUCT</u> 25 % 10 %	<u>ADD / DEDUCT</u> 25 % 10 %
2. MATERIALS Overhead and Profit - Applied to net actual supplier price, including freight charges and taxes, less sales/use tax	<u>ADD / DEDUCT</u> 10 % 5 %	<u>ADD / DEDUCT</u> 10 % 5 %	<u>ADD / DEDUCT</u> 10 % 5 %	<u>ADD / DEDUCT</u> 10 % 5 %	<u>ADD / DEDUCT</u> 10 % 5 %
3. SUBCONTRACT WORK Handling Fee - Applied to approved subcontractors' total quoted price for Non-Unit Price Work, excluding overtime and shift work premium	<u>ADD / DEDUCT</u> 10 % 5 %				
4. FIELD LABOR Payroll Taxes & Workers' Compensation - Applied to the sum of base field labor rate and taxable fringes. (Line C on GM 1783)*	<u>ADD / DEDUCT</u> ACTUAL FROM BOX (F) ON 1783 FORM ____% ____%	<u>ADD / DEDUCT</u> ACTUAL FROM BOX (F) ON 1783 FORM ____% ____%	<u>ADD / DEDUCT</u> ACTUAL FROM BOX (F) ON 1783 FORM ____% ____%	<u>ADD / DEDUCT</u> ACTUAL FROM BOX (F) ON 1783 FORM ____% ____%	<u>ADD / DEDUCT</u> ACTUAL FROM BOX (F) ON 1783 FORM ____% ____%

* GM 1783 is a Hourly Field Labor Rate computation sheet to assist in applying the fees according to the GM terms and conditions.
 ** Handling Fee on the changes to the work is a single aggregate fee that can only be applied by the Prime Contractor. (See Section 13.2.6 of GM 1638)

Note: Item No. 1 - Field Labor and Overhead and Profit Fee will be reduced by 2% and a portion of Item No. 4 - relating to Field Labor Workers' Compensation rate will be reduced to zero if an Owner-Controlled Insurance Program ("OCIP") is in effect.



CHANGES IN THE WORK

OTHER RATES AND FEES

GM1782

PERFORMING CONTRACTOR _____ DATE _____

PROJECT _____ OWNER JOB NO. _____

GM UNIT _____ SITE LOC. _____ A/E JOB NO. _____

THE FOLLOWING RATES AND FEES ARE TO INCLUDE ALL ELEMENTS OF COST, OVERHEAD AND PROFIT AS DEFINED IN THE CONSTRUCTION GENERAL CONDITIONS, GM1638 - ARTICLE 13:

<p>1. <u>CONSTRUCTION EQUIPMENT</u></p> <p>Provide a percentage of the monthly rental rate contained in the <i>Rental Rate Blue Book</i> that will be used to calculate the charge for all owned, base contract on-site equipment. This percentage is to include all markups; see Appendix A to GM 1638.</p>	<p>_____ 85 _____ %</p>
<p>2. <u>FIELD ENGINEERING</u></p> <p>Layout/Survey Hourly Rate for Field Engineering Services not covered by Unit Price.</p>	<p>_____ 55 _____ /hr</p>
<p>3. <u>SHOP WORK</u></p> <p>A. Drafting Hourly Rate for services not covered by Unit Price.</p> <p>B. Shop Labor Hourly Rate for services not covered by Unit Price.</p>	<p>_____ 45 _____ /hr</p> <p>_____ 55 _____ /hr</p>
<p>4. <u>SALES/USE TAX</u></p> <p>State/Local Sales Tax, applied for non-exempt material.</p>	<p>_____ %</p>

NOTE: ABOVE PERCENTAGES AND RATES ARE TO INCLUDE ALL MARK-UPS. THE ABOVE RATES WILL BE APPLIED TO WORK ADDED TO OR DELETED FROM, THE BASE CONTRACT.



CHANGES IN THE WORK

HOURLY FIELD LABOR RATE

GM 1783

PERFORMING CONTRACTOR _____

DATE _____

PROJECT _____

OWNER JOB NO. _____

GM UNIT _____

SITE LOC _____

A/E JOB NO. _____

LOCAL UNION NO. _____

PHONE () _____

N.M.A.(Yes/No) _____

CRAFT / TRADE _____

CLASIFICATION _____

O.C.I.P.(Yes/No) _____

WORKERS COMP. CLASS CODE _____

DATE WAGE EXPIRES _____

NOTE: The contractor is required to complete one GM 1783 for each craft/trade/classification employed continuously at the site.

	STRAIGHT TIME	ADDER FOR 1 1/2 TIME	ADDER FOR DOUBLE TIME
(A) TAXABLE BASE RATE			
TAXABLE FRINGES			
Vacation / Holiday \$ _____ /Hr	\$ _____		
Union Dues _____ /Hr	\$ _____		
Other (specify) _____ /Hr	\$ _____		
Other (specify) _____ /Hr	\$ _____		
(B) TOTAL TAXABLE FRINGES	\$ _____	\$ _____	\$ _____
(C) TOTAL TAXABLE WAGE (A+B)	\$ _____	\$ _____	\$ _____
NON-TAXABLE FRINGES (per hour)		If permitted by Trade Agreement	If permitted by Trade Agreement
Health & Welfare		\$ _____	\$ _____
Pension: All Others		\$ _____	\$ _____
(D) TOTAL NON- TAXABLE FRINGES	\$ _____	\$ _____	\$ _____
(E) TOTAL TRADE AGREEMENT RATE (C+D)	\$ _____	\$ _____	\$ _____
(F) PAYROLL TAXES & WORKERS' COMPENSATION			
F.I.C.A.			
F.U.T.A.			
S.U.T.A.			
Special (specify) _____			
Sub Total		\$ _____	\$ _____
Workers' Compensation*			
(F) _____ x (C) Straight Time	\$ _____		
OVERHEAD AND PROFIT (same as submitted on GM 1781 includes General Liability Insurance)			
(G) _____ % x (C) Total Taxable Wage	\$ _____		
TOTAL - HOURLY FIELD LABOR RATE (E+F+G)	\$ _____	\$ _____	\$ _____

* This amount will be zero if an Owner-Controlled Insurance Program ("OCIP") is in effect (see Appendix A to GM 1638)



FIELD ORDER/BULLETIN QUOTE SUMMARY- FORM GM 1784

GENERAL MOTORS CORPORATION

Contractor: _____

CHANGES IN WORK

Estimator: _____

GM Unit: _____

P.O. Number: _____

Project: _____

Site Location: _____

Bulletin Number: _____

Date: _____

Cont. Phone: _____

Field Order Number: _____

Item No.	Unit Price Work (A)	Constr. Equipment (B)	Material (C)	Field Labor (D)	Field Engineer. (E)	Shop Drafting (F)	Shop Labor (G)	Sub-Contractor Name	Sub-Contract Amount Less Premium Portion of Labor (H)	Sub-Contract Amount For Premium Portion of Labor (I)	TOTAL (Sum A Thru H) (J)
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											
11											
Sub-Total											

(K) OVERHEAD & PROFIT - MATERIALS (from GM 1781)	X (C) =	
(L) SUBCONTRACT HANDLING FEE (from GM 1781)	X (H) =	
(M) SALES/USE TAX (from GM1782)	X (C) =	
(N) TOTAL WITH MARK-UPS (J + K + L + M)	=	
(O) TOTAL WITH MARK-UPS & SUBCONTRACT PREMIUM LABOR (N + I)	=	

This Summary Form must be completed and submitted with each quotation.

GM1784_a.xls



FIELD ORDER/BULLETIN QUOTE BREAKDOWN

**CHANGES IN THE WORK
GM 1784A**

P.O. _____ Contractor: _____
 No: _____ Bull No: _____ FO. No: _____ Project: _____ Estimator: _____ Date: _____

Item No.	Description/ Drawing No.	Qty. For Unit Price Or Mat'l	Qty. For Const. Equip.	Unit	Unit Price Rate	Unit Price Work (A) Amount	Const. Equip.* (B) Amount	Material/Equip. Installed *		Field Labor *								
								Mat'l Price	Mat'l (C) Amount	Craft Ident	Hrs/Unit Measure	Total Straight Hours	Hourly Rate Straight and/or premium	Total Straight Time Portion of labor Cost	Total Premium Hours	Total Premium Time Portion of labor Cost	Labor (D) Total	
1	TOTALS																	
2	TOTALS																	

* Identify and attach supporting detail to support changes when applicable.



General Motors Corporation

Date: _____

Issued to Seller: _____

Address: _____

SALES AND USE TAX EXEMPTION CERTIFICATE

“Do not bill sales or use tax on items delivered to all shipped to locations within the states listed below.” GM holds direct pay authority with these states. As a result, in all of the identified states GM will remit directly to taxing authorities, all sales or use tax liability related to its purchase and use of tangible personal property and services (1). Therefore, effective immediately, this tax clause supersedes all tax code information found on this order except for those states not identified below. For those states not identified below, please continue to follow the specific tax code instructions found on this order. Listed below are Direct Pay Permit or Sales Tax License numbers for the eighteen (17) states, or GM locations within a state, where GM holds direct pay authority:

Georgia	044-38-00894-3	Maryland	20	Ohio	98-000613
Indiana	003-2804890001	Michigan	ME-0900440	Oklahoma	137479
Kentucky	0000-10	Mississippi	4277 (SPO only)	Pennsylvania	02-93450/DP246
Kansas	98-0003b	Missouri	11731559	Texas	1-38-0572515-0
	Fairfax only	New Jersey	NJ9-001-683/000	Virginia	9980000793
Louisiana	6009013-008DP	New York	DP-003445	Wisconsin	WDP95-01-01012
	Shreveport Only				

Further, if this order relates to the construction contract for real property, all applicable sales and use taxes are the responsibility of the contractor (with the exception of Texas), and should be included in the contractor’s bid as required pursuant to Section 3.9 of the GM 1638 (05/05) or Section 6 of the GM 1638A (08/02), unless the responsibility for payment of sales & use taxes are otherwise specifically outlined in the contract. With reference to Texas: if the order relates to a construction contract for real property, the contractor should issue all contracts as separated contracts and as such should not include sales tax in the cost of incorporated materials or equipment. In addition, the contractor should not bill GM for sales tax on the separated costs of material or labor. GM will accrue and remit the appropriate sales tax directly to the State of Texas under the direct pay permit.

Any questions on the above should be directed to the following:

Disbursement Services – Customer Communications Center
Phone: (248) 874-4636

Donald A. Panek , Supervisor-
Sales and Property Taxes

Issuing Unit: _____

Issuing Unit Contact: _____

Phone Number: _____

Date form issued: September 27, 2004

(1) Excluding all telecommunications services, Hotels, and Meal purchases. Tax is to be paid directly to the supplier of these items.



CONTRACTOR'S NOTARIZED SWORN STATEMENT
SUBCONTRACTOR/SUPPLIER PAYMENT SUMMARY

Contractor Name _____
Address: _____
City _____ State _____
GM Facility: _____
GM Contract/Purchase Order No: _____ Owner's Representative: _____
Description of Work: _____
Invoice Number: _____ Invoice Date: _____

The undersigned company (Contractor) is requesting payment of the Invoice described above for work performed under its contract (the Contract) with the Owner or Owner's Agent (GM) to make physical improvements (Improvements) to the real property (GM Facility) described above and declares that all funds received from the Owner will be applied to the Contractor's obligations to its subcontractors, suppliers, and laborers in connection with such Improvements, as set forth in the column entitled "Pay This Request" in the Subcontractor/Supplier Payment Summary attached hereto and incorporated herein by reference.

(Deponent's Name) _____, being duly sworn, deposes and says: That he/she being duly authorized makes this statement on behalf of the Contractor; That the attached Subcontractor/Supplier Payment Summary is a complete and accurate statement by the Contractor of all subcontractors, suppliers or laborers with whom the Contractor has contracted or committed for furnishing of labor and/or materials or equipment in connection with the Improvements or the Contract and a complete and accurate statement by the Contractor of the amount due to each of them as set forth opposite their names; That the amounts set forth in the Subcontractor/Supplier Payment Summary are directly related to the above stated GM Contract/Purchase Order Number and do not contain amounts for any other Improvements and/or any other GM Contract/Purchase Order Number and/or any other GM facility at a different location; That the Contractor has not procured material from or subcontracted with any person other than those set forth on the attached Subcontractor/Supplier Payment Summary, and owes no money for work for the Improvements other than the sums opposite the names indicated on the Subcontractor/Supplier Payment Summary; That the Contractor acknowledges that the Owner will be relying on the Contractor's representations and statements in this Contractor's Notarized Sworn Statement and the attached Subcontractor/Supplier Payment Summary in making any payment of the Invoice to the Contractor; and That the Contractor agrees to indemnify, defend and hold General Motors Corporation harmless from and against all costs, liabilities, expenses and damages, including court costs and attorney's fees, arising out of or resulting from any incorrect, incomplete or false statements of the Contractor in this Contractor's Notarized Sworn Statement or the attached Subcontractor/Supplier Payment Summary.

WARNING TO DEPONENT: A PERSON WHO, WITH INTENT TO DEFRAUD, GIVES A FALSE SWORN STATEMENT IS SUBJECT TO CRIMINAL PENALTIES AS PROVIDED FOR AND GOVERNED BY THE LAWS IN THE STATE WHERE THE PHYSICAL IMPROVEMENT IS TAKING PLACE.

Contractor Name: _____

BY: _____
(Deponent's Signature) (Print/type Name & Title of Deponent)

Subscribed, Sworn to and Acknowledged before me this _____ Day of _____, _____

Notary Public Name: _____
(Print or Type) (Signature)

County of _____, State of _____

My Commission Expires: _____, _____.



CONTRACTOR'S NOTARIZED SWORN STATEMENT
SUBCONTRACTOR/SUPPLIER PAYMENT SUMMARY
(ATTACHMENT)

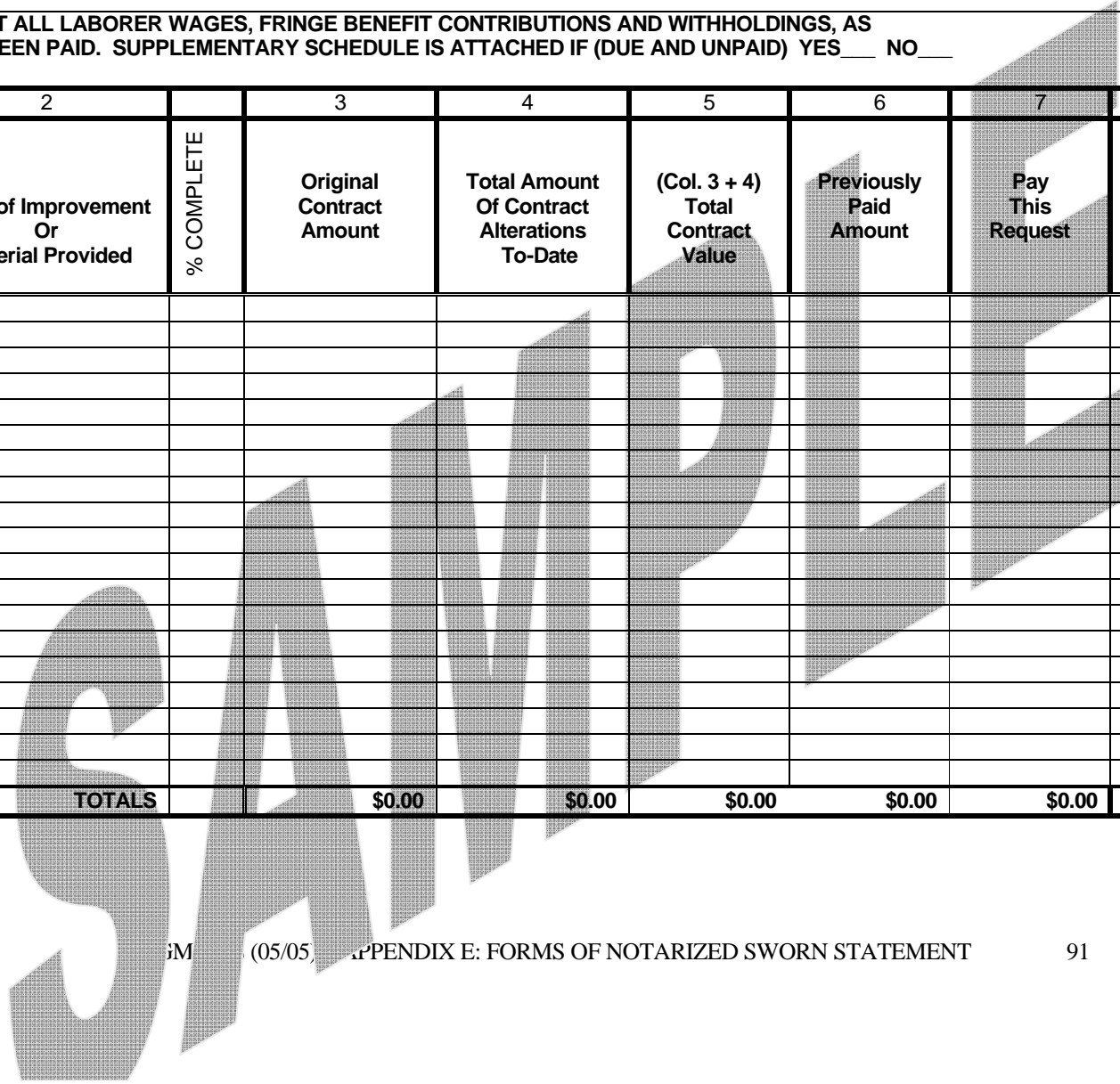
Invoice No. _____
 Invoice Date: _____
 Date: _____

Contractor Name:

GM Purchase Order No.:

DEPONENT DECLARES THAT ALL LABORER WAGES, FRINGE BENEFIT CONTRIBUTIONS AND WITHHOLDINGS, AS REQUIRED BY LAW, HAVE BEEN PAID. SUPPLEMENTARY SCHEDULE IS ATTACHED IF (DUE AND UNPAID) YES ___ NO ___

1	2		3	4	5	6	7	8	9
Name of Subcontractor, Supplier, Laborer	Type of Improvement Or Material Provided	%	Original Contract Amount	Total Amount Of Contract Alterations To-Date	(Col. 3 + 4) Total Contract Value	Previously Paid Amount	Pay This Request	Total Retention Withheld	(5-6-7) Contract Balance (Includes Column 8)
			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00





SUBCONTRACTOR'S NOTARIZED SWORN STATEMENT
SUBCONTRACTOR/SUPPLIER PAYMENT SUMMARY

Subcontractor Name _____
Address: _____
City _____ State _____
GM Facility: _____
GM Contract/Purchase Order No: _____ Owner's Representative: _____
Description of Work: _____
Subcontractor Invoice Number: _____ Subcontractor Invoice Date: _____
Contractor: _____
Contractor's Invoice Number: _____ Contractor's Invoice Date: _____

The undersigned company (Subcontractor) has entered into a contract (Subcontract) with the Contractor identified above to perform a portion of the Contractor's work under the Contractor's contract (General Contract) with the Owner or Owner's Agent (GM) to make physical improvements (Improvements) to the real property (GM Facility) described above. The Subcontractor is requesting payment of the Subcontractor's Invoice described above for work performed under the Subcontract. The Subcontractor acknowledges that the Contractor is requesting payment from GM for the Contractor's Invoice described above, which includes amounts for work performed by the Subcontractor. The Subcontractor declares that all funds received from the Contractor will be applied to the Subcontractor's obligations to its subcontractors, suppliers, and laborers in connection with such Improvements, as set forth in the column entitled "Pay This Request" in the Subcontractor/Supplier Payment Summary attached hereto and incorporated herein by reference.

(Deponent's Name) _____, being duly sworn, deposes and says: That he/she being duly authorized makes this statement on behalf of the Subcontractor; That the attached Subcontractor/Supplier Payment Summary is a complete and accurate statement by the Subcontractor of all subcontractors, suppliers or laborers with whom the Subcontractor has contracted or committed for furnishing of labor and/or materials or equipment in connection with the Improvements or the Subcontract and a complete and accurate statement by the Subcontractor of the amount due to each of them as set forth opposite their names; That the amounts set forth in the Subcontractor/Supplier Payment Summary are directly related to the above stated GM Contract/Purchase Order Number and do not contain amounts for any other Improvements and/or any other GM Contract/Purchase Order Number and/or any other GM facility at a different location; That the Subcontractor has not procured material from or subcontracted with any person other than those set forth on the attached Subcontractor/Supplier Payment Summary, and owes no money for work for the Improvements other than the sums opposite the names indicated on the Subcontractor/Supplier Payment Summary; That the Subcontractor acknowledges that the Owner will be relying on the Subcontractor's representations and statements in this Subcontractor's Notarized Sworn Statement and the attached Subcontractor/Supplier Payment Summary in making any payment of the Contractor's Invoice to the Contractor; and That the Subcontractor agrees to indemnify, defend and hold General Motors Corporation harmless from and against all costs, liabilities, expenses and damages, including court costs and attorney's fees, arising out of or resulting from any incorrect, incomplete or false statements of the Subcontractor in this Subcontractor's Notarized Sworn Statement or the attached Subcontractor/Supplier Payment Summary.

WARNING TO DEPONENT: A PERSON WHO, WITH INTENT TO DEFRAUD, GIVES A FALSE SWORN STATEMENT IS SUBJECT TO CRIMINAL PENALTIES AS PROVIDED FOR AND GOVERNED BY THE LAWS IN THE STATE WHERE THE PHYSICAL IMPROVEMENT IS TAKING PLACE.

Subcontractor Name: _____

BY: _____
(Deponent's Signature) (Print/type Name & Title of Deponent)

Subscribed, Sworn to and Acknowledged before me this _____ Day of _____, _____

Notary Public Name: _____
(Print or Type) (Signature)

County of _____, State of _____

My Commission Expires: _____.



SUBCONTRACTOR'S NOTARIZED SWORN STATEMENT
SUBCONTRACTOR/SUPPLIER PAYMENT SUMMARY
(ATTACHMENT)

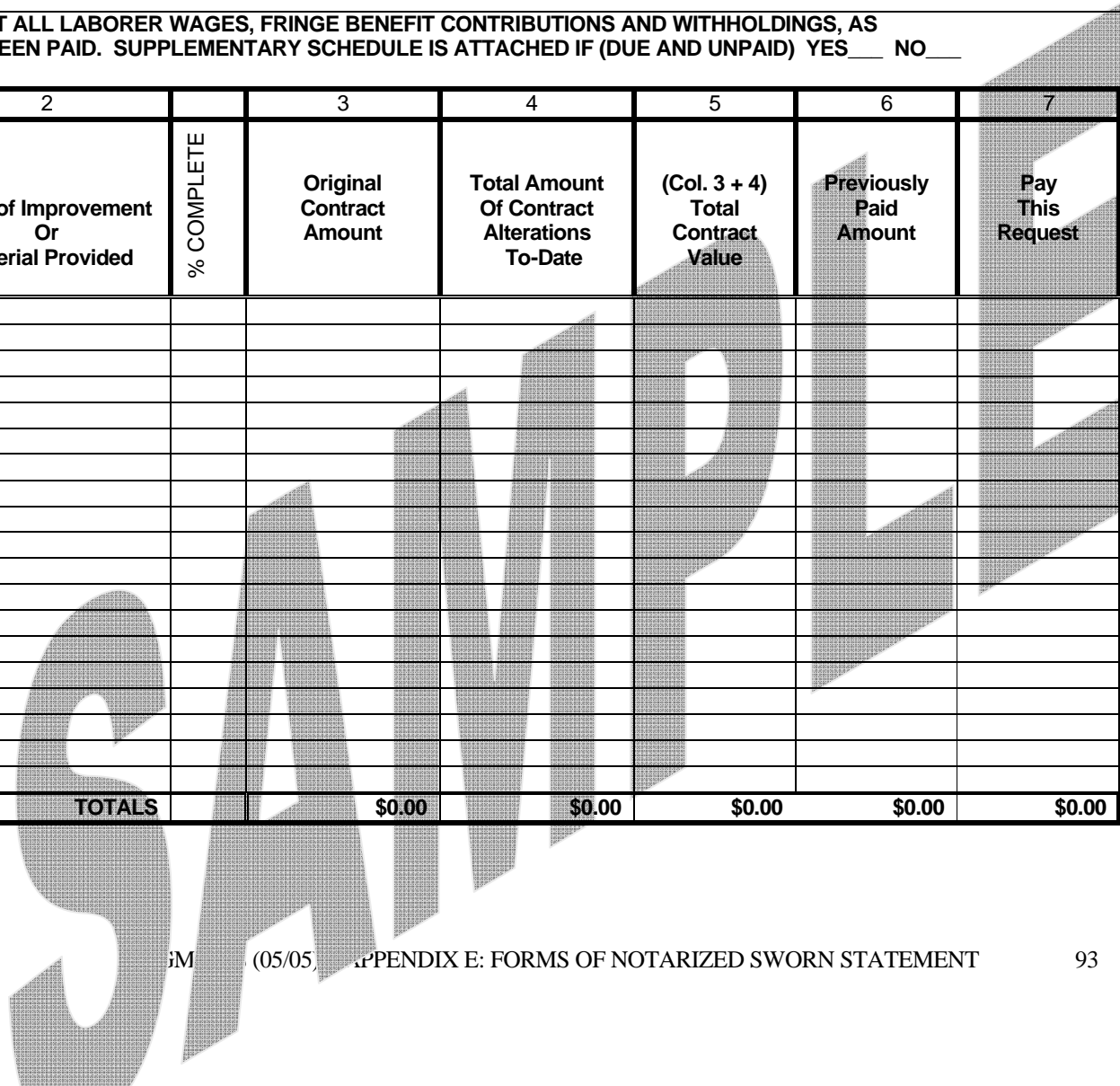
Invoice No. _____
 Invoice Date: _____
 Date: _____

Contractor Name:

GM Purchase Order No.:

DEPONENT DECLARES THAT ALL LABORER WAGES, FRINGE BENEFIT CONTRIBUTIONS AND WITHHOLDINGS, AS REQUIRED BY LAW, HAVE BEEN PAID. SUPPLEMENTARY SCHEDULE IS ATTACHED IF (DUE AND UNPAID) YES ___ NO ___

1	2		3	4	5	6	7	8	9
Name of Subcontractor, Supplier, Laborer	Type of Improvement Or Material Provided	% COMPLETE	Original Contract Amount	Total Amount Of Contract Alterations To-Date	(Col. 3 + 4) Total Contract Value	Previously Paid Amount	Pay This Request	Total Retention Withheld	(5-6-7) Contract Balance (Includes Column 8)
			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTALS			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00





**CONTRACTOR'S NOTARIZED FINAL SWORN STATEMENT IN
CONNECTION WITH CONTRACTOR'S RETENTION PAYMENT
SUBCONTRACTOR/SUPPLIER PAYMENT SUMMARY**

Contractor Name _____
 Address: _____
 City _____ State _____
 GM Facility: _____
 GM Contract/Purchase Order No: _____ Owner's Representative: _____
 Description of Work: _____
 Retention Invoice Number: _____ Retention Invoice Date: _____

The undersigned company (Contractor) is requesting payment of the Retention Invoice described above for Retention withheld under its contract (the Contract) with the Owner or Owner's Agent (GM) for physical improvements (Improvements) to the real property (GM Facility) described above.

(Deponent's Name) _____, being duly sworn, deposes and says: That he/she being duly authorized makes this statement on behalf of the Contractor; That the Subcontractor/Supplier Payment Summary attached hereto and incorporated herein by reference is a complete and accurate statement by the Contractor of all subcontractors, suppliers or laborers with whom the Contractor has contracted or committed for furnishing of labor and/or materials or equipment in connection with the Improvements or the Contract; That the Contractor has not procured material from or subcontracted with any person other than those set forth on the attached Subcontractor/Supplier Payment Summary; That the Contractor has paid in full all Subcontractors, suppliers and laborers for work performed and labor and material furnished to the Contractor in connection with the Improvements and/or the Contract; That the Contractor acknowledges that the Owner will be relying on the Contractor's representations and statements in this Contractor's Notarized Final Sworn Statement and the attached Subcontractor/Supplier Payment Summary in making payment of the Retention Invoice to the Contractor; and That the Contractor agrees to indemnify, defend and hold General Motors Corporation harmless from and against all costs, liabilities, expenses and damages, including court costs and attorney's fees, arising out of or resulting from any incorrect, incomplete or false statements of the Contractor in this Contractor's Notarized Final Sworn Statement or the attached Subcontractor/Supplier Payment Summary or resulting from any claim against the Owner or Owner's Agent or lien against the GM Facility for payment for work performed or labor or material furnished to the Contractor in connection with the Improvements or the Contract.

WARNING TO DEPONENT: A PERSON WHO, WITH INTENT TO DEFRAUD, GIVES A FALSE SWORN STATEMENT IS SUBJECT TO CRIMINAL PENALTIES AS PROVIDED FOR AND GOVERNED BY THE LAWS IN THE STATE WHERE THE PHYSICAL IMPROVEMENT IS TAKING PLACE.

Contractor Name: _____

BY: _____
 (Deponent's Signature) (Print/type Name & Title of Deponent)

Subscribed, Sworn to and Acknowledged before me this _____ Day of _____, _____

Notary Public Name: _____
 (Print or Type) (Signature)

County of _____, State of _____

My Commission Expires: _____.



PARTIAL UNCONDITIONAL WAIVER OF LIEN

Prime Contractor's Name: _____

Prime Contractor's GM Contract/Purchase Order Number: _____

Owner's/Lessee's Business Unit – Name _____

Premises (Project) Location Name: _____

Address: _____

City/County/State: _____

Party Waiving Lien: Name: _____

Address: _____

Phone No: _____

Role (Check One):
 Prime Contractor Construction Manager Subcontractor
 Materialman Laborer Consultant
 Architect/Engineer Other

Description of Work/Services Provided: _____

I/We have a contract with: _____

Original Contract Amount	\$ _____
Current Contract Amount	\$ _____
Estimated Value of Changes Not Included	\$ _____
Amount of This Partial Payment	\$ _____
Total Amount Previously Paid (Excluding This Partial Payment)	\$ _____
Total Retention Withheld	\$ _____

The undersigned, being duly authorized by the Party Waiving Lien identified above, acknowledges receipt of the Partial Payment stated above and the Total Amount Previously Paid stated above as full consideration and satisfaction for furnishing material, labor or services for construction of the Project identified above; and, by signing this Partial Waiver of Lien, does hereby waive, surrender and release any and all liens, claims or right of lien, asserted or unasserted, to the date of this partial waiver.

The undersigned covenants that any and all documents requested by the Owner/Lessee to effectuate this Partial Unconditional Waiver of Lien shall be executed on behalf of the Party Waiving Lien identified above.

AUTHORIZED PERSON

Signature _____

Name (Print/Type) _____

Capacity (Print/Type) _____ Date _____

- #1 Original - Records of Owner/Lessee
- #2 Copy - Records of _____
- #3 Copy - Records of _____



**FULL, FINAL CONDITIONAL WAIVER AND RELEASE OF LIEN
IN CONNECTION WITH CONTRACTOR'S RETENTION PAYMENT**

Prime Contractor's Name: _____

Address: _____

Phone No: _____

Prime Contractor's GM Contract/Purchase Order Number: _____

Owner's/Lessee's Business Unit – Name _____

Premises (Project) Location Name: _____

Address: _____

City/County/State: _____

Description of Work/Services Provided: _____

Original Contract Amount: \$ _____

Final Contract Amount: \$ _____

Total Amount Previously Paid
(excluding this Retention Payment) \$ _____

Amount of this Retention Payment \$ _____

The undersigned, being duly authorized by the Prime Contractor identified above acknowledges: That, except for the Retention Payment in the amount set forth above, it has been paid in full for all work performed and labor and materials furnished for construction of the Project identified above and; That, conditioned upon receipt of the Retention Payment in the amount indicated above, the undersigned does hereby waive, surrender and release any and all liens, claims or right of lien (asserted or unasserted) against the described Premises.

The undersigned covenants that any and all documents, requested by the Owner/Lessee to effectuate this Full, Final Conditional Waiver of Lien and Release shall be executed on behalf of Prime Contractor identified above.

AUTHORIZED PERSON

Signature _____

Name (Print/Type) _____

Capacity (Print/Type) _____

Date _____

Subscribed and sworn to before me, this _____ day of _____, _____, a Notary Public in and for

_____ County, State of _____.

Signature (Notary Public)
My Commission expires

#1 Original - Records of Owner/Lessee

#2 Copy - Records of _____

#3 Copy - Records of _____



**FULL, FINAL AND UNCONDITIONAL WAIVER AND
RELEASE OF LIEN**

Prime Contractor's Name: _____

Prime Contractor's GM Contract/Purchase Order Number: _____

Owner's/Lessee's Business Unit – Name _____

Premises (Project) Location Name: _____

Address: _____

City/County/State: _____

Party Waiving Lien: Name: _____

Address: _____

Phone No: _____

Role (Check One): _____ Prime Contractor _____ Construction Manager _____ Subcontractor

_____ Materialman _____ Laborer _____ Consultant

_____ Architect/Engineer _____ Other _____

Description of Work/Services Provided: _____

I/We have a contract with: _____

Original Contract Amount: \$ _____

Final Contract Amount: \$ _____

Amount of this Final Payment: \$ _____

Total Paid Amount: \$ _____
(must equal Final Contract Amount)

The undersigned, being duly authorized by the Party Waiving Lien identified above acknowledges that it has been paid in full for all work performed and labor and materials furnished for construction of the Project identified above and, by signing this Full, Final and Unconditional Waiver of Lien and Release, does hereby waive, surrender and release any and all liens, claims or right of lien (asserted or unasserted) against the described Premises.

The undersigned covenants that any and all documents, requested by the Owner/Lessee to effectuate this Full, Final and Unconditional Waiver of Lien and Release shall be executed on behalf of Party Waiving Lien identified above.

AUTHORIZED PERSON

Signature _____

Name (Print/Type) _____

Capacity (Print/Type) _____

Date _____

Subscribed and sworn to before me, this _____ day of _____, _____, a Notary Public in and for _____ County, State of _____.

Signature (Notary Public)
My Commission expires

- #1 Original - Records of Owner/Lessee
- #2 Copy - Records of _____
- #3 Copy - Records of _____



INTELLECTUAL PROPERTY RIGHTS AGREEMENT

My employer has a contract with General Motors Corporation (GM) to perform work for GM. In consideration of my assignment by my employer to perform work for GM, and of the compensation paid for my services, I assign to GM all rights, title and interest in and to all trademarks, tradenames and copyrights in any works I create relating in any way to my work for GM.

All rights to the following inventions and mask works that I conceive, make, invent, create or suggest during my assignment will be the absolute property of GM:

- Inventions and mask works relating to any matter or thing, including processes and methods of manufacture,
- that are connected with my work; or
- that are related to the business of GM. The business of GM includes the business of GM's subsidiaries, and includes the business that exists or is anticipated at the time the rights come into existence.

I will promptly disclose such inventions and mask works to GM.

- I assign to GM such inventions and mask works and all applications filed and patents and registrations granted on such inventions and mask works.

At GM's request, whether during my assignment or thereafter:

- I will execute all lawful papers that GM considers necessary or helpful:
 - in the prosecution of patent, trademark, copyright and mask work applications; or
 - in the conduct of any interference, litigation or other controversy in connection with such inventions and mask works.

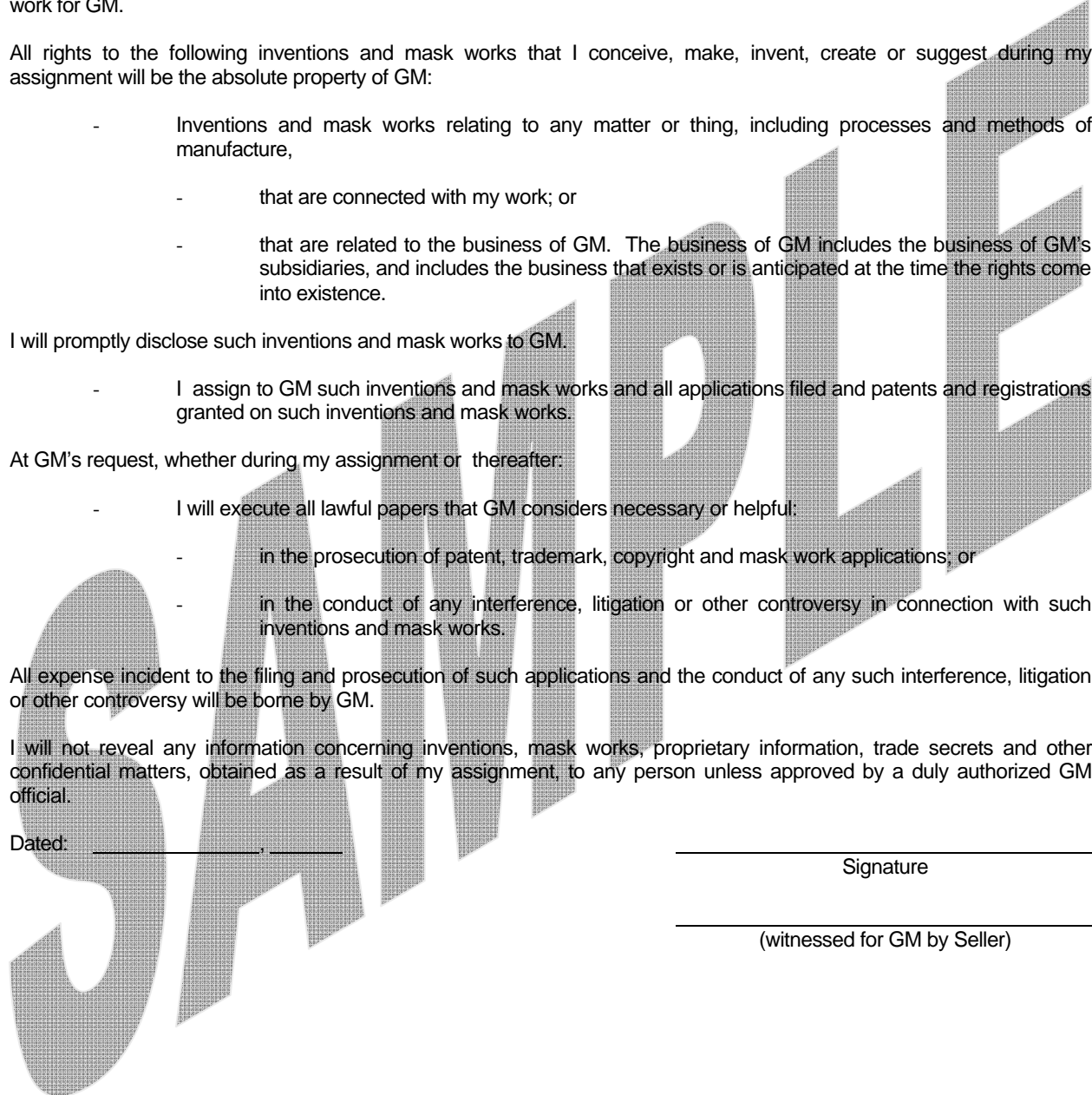
All expense incident to the filing and prosecution of such applications and the conduct of any such interference, litigation or other controversy will be borne by GM.

I will not reveal any information concerning inventions, mask works, proprietary information, trade secrets and other confidential matters, obtained as a result of my assignment, to any person unless approved by a duly authorized GM official.

Dated: _____, _____

Signature

(witnessed for GM by Seller)





CONTRACTOR GUARANTEE

Date: _____

To All Whom It May Concern: _____ of the City/Town of _____, County of _____ and State of _____, being duly sworn, deposes and says that he or she is _____

_____ of _____ (hereinafter called the Contractor); and, being duly authorized, makes this statement and guarantee on its behalf; that the Contractor, in completing the performance of a certain contract dated _____ with GM _____ (hereinafter called the Owner) for _____ (the Work) specified as Job No. _____, furnished labor or materials or both, supervision of construction or alterations and/or otherwise, in connection with the site development, remediation and/or the erection and construction of a certain building or buildings, structures and installations, situated on the following property, viz: GM _____, in the City/Town of _____, County of _____, and State of _____; that, for a valuable consideration paid to the Contractor therefor, receipt whereof is hereby confessed and acknowledged, the Contractor does hereby guarantee to the Owner that all labor and materials or both and all work performed is in accordance with the requirements of said Contract and all authorized Supplements thereto; that should any defect develop during the guarantee periods for certain trades or work, as stated herein, due to improper materials, workmanship or arrangements; the same will, upon written notice from the Owner, promptly be made good by the Contractor without expense to the Owner, and that any other work affected in correcting such defects will also be made good by the Contractor without expense to the Owner.

TRADE OR WORK

GUARANTEE FROM

GUARANTEE TO

CONTRACTOR

By: _____
(Signature)

Name: _____
(Print or Type)



SUBCONTRACTOR GUARANTEE

Date: _____

To All Whom It May Concern: _____ of the City/Town of _____
_____, County of _____ and State of _____
_____, being duly sworn, deposes and says that he or she is _____

_____ of _____ (hereinafter
called the Subcontractor); and, being duly authorized, makes this statement and guarantee on its behalf; that
the Subcontractor, in completing the performance of a certain contract agreement with _____
_____ (hereinafter called the Contractor) for _____

_____ (the Work) required by the Drawings and
Specifications (Job No.) _____, furnished labor or materials or both, supervision of
construction or alterations and/or otherwise, in connection with the site development, remediation and/or the
erection and construction of a certain building or buildings, structures and installations, situated on the
following property, viz: _____, in the City/Town of _____

_____, County of _____, and State of _____; that,
for a valuable consideration paid to the Subcontractor therefore, receipt whereof is hereby confessed and
acknowledged, the Subcontractor does hereby guarantee to the Owner and to the Contractor that all labor or
materials or both furnished and/or work performed is in accordance with the requirements of said Drawings
and Specifications and all authorized alterations and additions thereto; that should any defect develop during
the guarantee periods for certain trades or work, as stated herein, due to improper materials, workmanship or
arrangements; the same will, upon written notice from the Owner or the Contractor, promptly be made good
by the Contractor without expense to the Owner or the Contractor, and that any other work affected in
correcting such defects will also be made good by the Contractor without expense to the Owner or the Contractor.

TRADE OR WORK

GUARANTEE FROM

GUARANTEE TO

_____	_____	_____
_____	_____	_____
_____	_____	_____

SUBCONTRACTOR

By: _____
(Signature)

Name: _____
(Print or Type)



NON-DISCRIMINATION CLAUSES

A. EQUAL OPPORTUNITY CLAUSE

All provisions of 41 CFR 60-1.4, as amended, pertaining to Equal Opportunity, are hereby incorporated by reference.

B. CERTIFICATION OF NON-SEGREGATED FACILITIES

The Contractor or Subcontractor (hereinafter Contractor) certifies that facilities are provided for employees in such a manner that segregation on the basis of race, color religion, or national origin cannot result; that such segregated use will not be required by written or oral policies, nor will the Contractor tolerate such use by employee custom. The Contractor will insure that its employees are not assigned to perform their services at any location under its control, where the facilities are segregated. The term "facilities" as used herein includes waiting rooms, work areas, restaurants, and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing area, parking lots, drinking fountains, recreation or entertainment area, transportation and housing facilities providing for employees.

C. AFFIRMATIVE ACTION COMPLIANCE PROGRAM CERTIFICATION

The Contractor or Subcontractor certifies that it has developed and presently has in full force and effect a written affirmative action compliance program in accordance with the requirements set forth in Title 41, Part 60-1- Obligations of Contractors and Subcontractor, Section 60-1.40, of the Code of Federal Regulations, effective July 1, 1968, as amended.

D. AFFIRMATIVE ACTION CLAUSES

- 1) All provisions of 41 CRF 60-250, as amended, pertaining to Affirmative Action for Disabled Veterans and for Veterans of the Vietnam Era are hereby incorporated by reference where this contract is for \$10,000 or more.
- 2) All provisions of 41 CRF 60-741, as amended, pertaining to Affirmative Action for Handicapped Workers are hereby incorporated by reference where this contract is for \$2,500 or more.

E. EEO INFORMATION REPORT CERTIFICATION

The Contractor or Subcontractor certifies that E.E.O.-1, Standard Form 100 promulgated jointly by the Office of Federal Contract Compliance and the Equal Employment Opportunity Commission has been and is being filed in accordance with the requirements set forth in Title 41, Part 60-1 effective July 1, 1968, as amended.



FINAL ACCEPTANCE OF CONTRACT REQUIREMENTS

Date _____

Division _____

Project Location _____

Job No. _____

The requirements of the Contract Documents for the above mentioned Project have been completed by (Name of Contractor) _____ to the satisfaction of the Owner. This acceptance shall not be construed as a waiver by the Owner of the right to insist upon strict compliance with the requirements of the Contract Documents in the event of subsequently discovered items of non-compliance.

Signed: _____
Owner or Owner's Representative



RECEIPT FOR SALVAGED MATERIAL OR EQUIPMENT

CONTRACTOR IDENTIFICATION _____ NAME _____ DIVISION _____
ADDRESS _____ PROJECT LOCATION _____
JOB NO. _____
TELEPHONE NO. _____

SPECIFICATION REQUIREMENT:

GM 1638 APPENDIX A: CONSTRUCTION GENERAL REQUIREMENTS

SPECIAL CONDITIONS --

TRADE SPECIFICATION --

DESCRIPTION OF MATERIALS AND/OR EQUIPMENT (INCLUDING QUANTITY AND PHYSICAL CONDITION):

STORAGE AREA DESIGNATED BY OWNER:

AREA WHERE ACTUALLY STORED:

QUANTITY & STORAGE APPROVED OWNER'S REPRESENTATIVE

By: _____ (Signature) _____ (Date)

Name: _____ (Print or Type)



**RECEIVING REPORT FOR MATERIALS AND EQUIPMENT
FURNISHED BY THE OWNER**

CONTRACTOR _____ NAME _____ DIVISION _____
IDENTIFICATION _____ ADDRESS _____ PROJECT LOCATION _____
_____ JOB NO. _____
TELEPHONE NO. _____

SPECIFICATION REQUIREMENT:

GM 1638 APPENDIX A: CONSTRUCTION GENERAL REQUIREMENTS

SPECIAL CONDITIONS --

TRADE SPECIFICATION --

DESCRIPTION OF MATERIALS AND/OR EQUIPMENT (INCLUDING QUANTITY AND PHYSICAL CONDITION):

STORAGE AREA DESIGNATED BY OWNER:

CERTIFIED FOR CONTRACTOR:

By: _____
(Signature)

Name: _____
(Print or Type)

Date: _____

QUALITY OF CONDITION ACKNOWLEDGED FOR OWNER

By: _____
(Signature)

Name: _____
(Print or Type)

Date: _____



HAZARDOUS MATERIALS REQUIREMENTS

Owner Program: The Contractor shall abide by Owner's local Hazardous Material program. Hazardous Material shall not be brought on the Project Site without the approval of the Owner. The Contractor must submit a Hazardous Material approval request to Owner's designated environmental representative at least two (2) weeks before the scheduled delivery of Hazardous Material. The approval request shall contain the following:

1. Hazardous Material name;
2. Manufacturer of Hazardous Material; and
3. Material Safety Data Sheet (current or not older than three (3) years).

Restricted Hazardous Materials: Contractor shall not use Hazardous Materials that contain the following: polychlorinated biphenyls (PCBs), polybrominated biphenyls (PBBs), Asbestos Containing Materials (ACMs), methylene chloride (dichloromethane), mercury or Class I chlorofluorocarbons (Groups I through V).

Monthly Report: The Contractor shall submit a monthly report to Owner detailing the following: 1) the maximum amount of each Hazardous Material in storage at the Project Site at any time during the month; 2) storage location and container description for each Hazardous Material; and 3) the amount of Hazardous Material used during the month. Any surplus Hazardous Materials must be used on other Owner projects or removed by the Contractor from the Project Site.

Container Management: The Contractor shall develop and implement a container management program for chemicals. The program shall include, but not be limited to, the following:

1. Containment methods for all chemicals at the facility;
2. Proper marking and identification of chemical containers;
3. Storage procedures;
4. Leak and spill prevention/detection procedures; and
5. Inspection and record keeping procedures.

Spills/Releases: The Contractor shall immediately notify the Owner's Representative of any actual or potential spills, leaks or releases of Hazardous Material. Contractor shall submit to Owner a written spill report within two (2) days after the immediate notification. The report shall include the type and amount of the Hazardous Material released or spilled, location of spill or release, notifications, impact on Work or Owner's facilities and containment or clean-up activities. Contractor shall be responsible for clean-up of spills, leaks or releases that are not reportable under applicable Environmental Law. Clean-up of reportable spills or releases may, at Owner's discretion, be contracted to an emergency response provider and charged to Contractor. Disposal of any clean-up debris will be coordinated by the Owner's environmental representative and costs will be charged to Contractor.

Asbestos Management:

The following shall apply if the scope of the Contractor's Work includes removal or encapsulation of ACM at the Project Site:

Owner may provide Contractor with an asbestos survey identifying asbestos containing material (ACM) at the Project Site. Owner and Contractor shall develop the scope of work for asbestos abatement and air monitoring. The Contractor must use an Owner-approved asbestos abatement subcontractor and, if air monitoring is required by applicable law or by Owner, an Owner-approved air monitoring subcontractor. The Contractor shall immediately notify the Owner's Representative if ACM that was not previously identified is encountered during the course of work. The Contractor shall be responsible for compliance with all Environmental Laws, and any other applicable laws, codes, ordinances and regulations regarding removal, handling, storage or encapsulation of ACM, including notification requirements. The Contractor shall place removed ACM in an appropriate storage container at the Project Site or directly into ACM disposal containers provided by Owner.

Waste Management:

Waste Management Procedures: The Contractor shall follow the waste management procedures, if any, for the Project provided by the Owner. The Contractor shall notify the Owner of any waste stream not covered by the waste management procedures so Owner can develop procedures.

Off-Site Disposal/Recycling: The Owner's Representative will coordinate the off-site disposal of all hazardous and non-hazardous industrial waste. The Contractor shall be responsible for the disposal of all general trash and construction debris generated from the Work. Such disposal by the Contractor shall be at properly-licensed recycling or disposal facilities approved by Owner. The Contractor shall recycle construction and demolished materials, including, but not limited to, scrap steel, carpet, ceiling tiles, drywall, concrete and cardboard.

Containment Procedures: The Contractor is responsible for implementing on-site containment procedures for all hazardous and non-hazardous waste so that containment and storage is in compliance with applicable laws, including Environmental Laws.

Contractor must notify Owner's environmental representative if soil disruption will be greater than one (1) acre, or when conditions may cause sediment to reach surface water or a storm sewer. Contractor must use a certified storm water operator if soil disruption will be greater than five (5) acres.

Environmental Permits:

Environmental permits for air, water and will be obtained by the Owner. The Contractor shall not proceed with any construction Work until the applicable permits have been obtained. The Contractor shall comply with all environmental permit requirements applicable the Work and shall perform the Work so as not to interfere or encumber Owner's compliance with other environmental permits.



CONTRACTOR INSURANCE REQUIREMENTS (1)

(Dollars in Thousands)

WORK DESCRIPTION	General Liability (2) & (3)	Automotive Liability (2) & (4)	Worker's Comp. Employers' Liability (5)	Contractor Pollution Liability (2) & (6)	Pollution Legal Liability (7)	Aviation Liability (2)
A. All construction managers or general contractors acting Construction Manager not involved with hazardous waste, hazardous material.	5,000	5,000	Statutory \$250/250/250 or \$100/500/100	N/A	N/A	(12)
B. All contractors and transporters not involved with hazardous waste, hazardous material or asbestos.	1,000	1,000	Statutory 250/250/250 or 100/500/100	N/A	N/A	(12)
C. All contractors who treat or store hazardous waste on GM property but do not transport hazardous waste or hazardous material.	5,000	1,000	Statutory 250/250/250 or 100/500/100	1,000/2,000	N/A	(12)
D. All contractors who either transport hazardous material to GM property or transport hazardous waste either on or off GM property.	5,000	5,000(8)	Statutory 250/250/250 or 100/500/100	N/A	1,000/2,000 (9)	(12)
E. All contractors who do not transport hazardous waste or hazardous material but do treat, store, or dispose of hazardous waste off GM property.	5,000	1,000	Statutory 250/250/250 or 100/500/100	N/A	1,000/2,000 (10) or 4,000/8,000	(12)
F. All contractors who handle hazardous waste on GM property, transport off GM property and treat, store or dispose of hazardous waste off GM property.	5,000	5,000(8)	Statutory 250/250/250 or 100/500/100	1,000/2,000	1,000/2,000 (10) or 4,000/8,000	(12)
G. All asbestos contractors who do not transport asbestos.	1,000/5,000(11)	1,000	Statutory 250/250/250 or 100/500/100	N/A	N/A	(12)
H. All asbestos contractors who transport asbestos off GM property.	1,000/5,000(11)	5,000(8)	Statutory 250/250/250 or 100/500/100	N/A	N/A	(12)
I. All contractors involved in blasting and not involved with hazardous waste, hazardous material or asbestos.	10,000	1,000	Statutory 250/250/250 or 100/500/100	N/A	N/A	(12)

PAGE 2 OF CHART IDENTIFIES ADDITIONAL REQUIREMENTS AND INFORMATION ASSOCIATED WITH LISTED FOOTNOTES.

CONTRACTOR INSURANCE REQUIREMENTS

(Page 2 of 2)

In the event of a conflict between coverages and limits referenced herein and any governing regulations, the more stringent requirements shall apply.

Certificate(s) of Insurance must be in a form acceptable to Owner, underwritten by Insurance company(ies) satisfactory to Owner and licensed to do business in the state of operation where the work is to be performed. The purchase of appropriate Insurance coverage by Contractor or the furnishing of the certificate(s) of insurance shall not limit or release the Contractor from its respective obligations or liabilities under this contract. All policies of Insurance maintained by Contractor shall be primary to any coverage that may be available to Owner.

- (1) Limits shown are per occurrence minimum limits of coverage except as may be noted otherwise. All policies of Insurance shall be endorsed to provide Owner with written notice thirty (30) days prior to cancellation, modification, or material change to any policy. If professional services are provided under the contract then Professional Liability Insurance of \$5 million is required and must not include a pollution exclusion if the professional services are related to environmental work.
- (2) GM must be named as additional Insured. With respect to, and only to the extent of, claims, loss, cost and expenses for which the Contractor is required to indemnify the Construction Manager, if any, the Architect/Engineer, if any, and the Process Engineer, if any, under Section 3.16.1 of GM 1638 (05/05); the Construction Manager (if any), the Architect/Engineer (if any) and the Process Engineer (if any) shall be named as additional insureds on the Contractor's Commercial General Liability policies.
- (3) All Commercial (Broad Form Comprehensive) General Liability policies must include products, completed operations (maintained for period of two years from final acceptance of the work by the Owner); and contractual liability coverage. Per occurrence limits shown are combined single limits for personal injury and property damage. All general liability annual aggregate limits of coverage must be at least equivalent to the per occurrence limits shown, except as noted otherwise. All general liability policies (with the exceptions of Work Description C, D, E, and F of Page 1) must be written on an occurrence policy form.
- (4) All Automobile Liability policies must include coverage for owned, hired, and non-owned vehicles. Per occurrence limits shown are combined single limits for bodily injury and property damage.
- (5) All states endorsement is required if performing work outside of home office state.
- (6) Contractor Pollution Liability policy must be endorsed to provide coverage for all services performed by Contract on behalf of Owner.
- (7) Pollution Legal Liability coverage must be maintained for the Contractor's sites being utilized for the work under this contract.
- (8) Automobile liability policy must include Environmental Restoration coverage (MCS-90 Endorsement) at statutory required limits.
- (9) Required if Contractor stores hazardous waste for more than ten (10) days.
- (10) Under the Federal Resource Conservation and Recovery Act (RCRA), hazardous waste treatment, storage and disposal facilities must maintain liability coverage for sudden and accidental pollution incidents at limits at least \$1 million per occurrence, with an annual aggregate of at least \$2 million. Owners and operators of surface impoundment, landfill or land treatment facilities must additionally maintain liability coverage for gradual (non-sudden) pollution incidents of at least \$3 million per occurrence, with an annual aggregate of at least \$6 million. Policies, that is, policies combining coverage for both sudden and accidental and gradual (non-sudden) occurrences, must be at least \$4 million per occurrence (\$1 million sudden plus \$3 million non-sudden and \$8 million annual aggregate (\$2 million sudden plus \$6 million non-sudden)
- (11) Commercial (Broad Form Comprehensive) General Liability policy must be written on an occurrence basis (without a sunset clause) and include asbestos abatement liability coverage.
- (12) Required limit of aviation liability coverage is \$5 million per occurrence if Contractor utilized aircraft service of any type.

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Plaintiff/Counter-Defendant Motors Liquidation Company (“Motors Liquidation”),¹ through its undersigned counsel, submits this brief in support of its Partial Motion to Dismiss MCM Management Corp.’s Counterclaim pursuant to Fed. R. Civ. P. 12(b)(6).

I. INTRODUCTION

This action arises out of the demolition of certain former manufacturing sites owned by Motors Liquidation and/or its subsidiaries. Prior to the Petition Date, Motors Liquidation (then known as General Motors Corporation) entered into certain Demolition Contracts with MCM, which are incorporated by reference in both the First Amended Complaint and the Counterclaim.

MCM alleges that Motors Liquidation breached the Demolition Contracts in a variety of ways, causing MCM various types of damages. See, e.g., Counterclaim ¶¶ 14, 50. MCM further alleges that it continued performing under the Demolition Contracts after the Petition Date in detrimental reliance on Motors Liquidations’ alleged promise that it would enter into a new contract with MCM and give MCM additional work. Id. ¶¶ 54-59, 69. MCM avers that it incurred costs and expenses in excess of \$2,000,000 by continuing to perform under the Demolition Contracts. Id. ¶ 71.

Based on Motors Liquidation’s alleged breaches of the Demolition Contracts, MCM asserts counts for allowance of a post-petition administrative expense claim (Count I), equitable/promissory estoppel (Count II), negligent misrepresentation (Count III), breach of the

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First Amended Complaint.

implied covenant of good faith and fair dealing (Count IV), allowance of secured claim and relief from the automatic stay (Count V), and quantum meruit/unjust enrichment (Count VI).

As discussed below, even if all of MCM's factual allegations are true, these counts must be dismissed, in full or in part, for failure to state a claim upon which relief can be granted.

II. MOTION TO DISMISS STANDARD

To survive a motion to dismiss under Rule 12(b)(6), a plaintiff must provide the grounds upon which the claims rest, through factual allegations sufficient “to raise a right to relief above the speculative level.” ATSI Comms. Inc. v. Shaar Fund. Ltd., 493 F.3d 87, 98 (2d Cir. 2007) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). “Dismissal is proper if, accepting all the allegations in the complaint as true and drawing all reasonable inferences in plaintiff's favor, the complaint fails to allege any set of facts that would entitle plaintiff to relief.” Emergent Capital Inv. Mgmt., LLC v. Stonepath Group, Inc., 343 F.3d 189, 194 (2d Cir. 2003).

III. ARGUMENT

A. The State Law Claims

1. Count II of the Counterclaim for Equitable/Promissory Estoppel Fail to State a Claim Upon Which Relief Can Be Granted and Must Be Dismissed.

Count II of the Counterclaim appears to conflate two unrelated claims, one for equitable estoppel (an equitable defense) and one for promissory estoppel (a theory of implied contract). MCM alleges that, based on “equitable/promissory estoppel,” it is entitled to an administrative expense claim in the amount of \$2,000,000. It is clear, however, that neither part of Count II states a claim upon which relief may be granted.

(a) **Equitable Estoppel Is Not a Cognizable Claim Under Michigan Law**

Equitable estoppel is not a cognizable cause of action under Michigan law.²

Under Michigan law, “[e]quitable estoppel arises where a party, by representations, admissions or silence, intentionally or negligently induces another party to believe facts, and the other party justifiably relies and acts on this belief, and will be prejudiced if the first party is permitted to deny the existence of the facts.” Conel Dev., Inc. v. River Rouge Savings Bank, 269 N.W.2d 621 (Mich. Ct. App. 1978). However, “equitable estoppel ‘is not a cause of action unto itself; it is available *only as a defense*.’” Guardian Alarm Co. v. Prough, 2006 U.S. Dist. LEXIS 78873, at *19-20 (E.D. Mich. Oct. 19, 2006) (quoting Van v. Zahorik, 575 N.W.2d 566 (1997)) (emphasis added). The doctrine is “generally available as protection from a defense raised by a defendant, but *it has never been recognized as a cause of action in itself*.” Lathrup Inv. Co. v. West American Ins. Co., 2000 Mich. App. LEXIS 1147, *1 (Mich. Ct. App. Dec. 15, 2000) (citation omitted; emphasis added); see also McKeon Prods. v. Cirrus Healthcare Prods., LLC, 2009 U.S. Dist. LEXIS 41236, at *14 (E.D. Mich. Feb. 20, 2009) (“Because equitable estoppel is not a cause of action under Michigan law . . . *Defendant cannot plead it as a Counterclaim*.”) (citation omitted; emphasis added).

² The alleged wrongs giving rise to MCM’s claims took place in Michigan. The majority of the Demolition Sites are located in Michigan. Additionally, the terms and conditions incorporated into the Demolition Contracts expressly provide that the Demolition Contracts shall be governed by the law of the jurisdiction in which Motors Liquidation has its principal place of business, which is also Michigan. Accordingly, under the New York choice-of-law principles to be applied by the Court, the substantive law of Michigan governs MCM’s claims. See, e.g., Schiavone Constr. Co. v. City of New York, 99 F.3d 546, 548 (2d Cir. 1996) (finding that New York law recognizes and enforces contractual choice of law provisions); In re Thomson McKinnon Secur., Inc., 141 B.R. 559, 567 (Bankr. S.D.N.Y. 1992) (under New York choice of law principles, this court must apply the substantive tort or contract law of the state having the most significant relationship with the occurrence and with the parties).

Here, MCM has attempted to plead equitable estoppel as an affirmative cause of action against Motors Liquidation. Since Michigan law only recognizes equitable estoppel as a defense, MCM's affirmative claim must be dismissed.

(b) Promissory Estoppel Is Not a Viable Claim Where an Express Contract Exists

Rule 12(b)(6) requires the dismissal of MCM's promissory estoppel claim. Even if all of the allegations of the Counterclaim are true, there is no basis for recovery on the count for promissory estoppel because of the existence of express contracts covering the same matters as the implied contract claim.

Throughout the Counterclaim, MCM alleges that it suffered damages by performing under the express Demolition Contracts. Under the count for promissory estoppel, MCM alleges that it suffered damages by performing "*on the Demolition Contracts.*" Counterclaim ¶ 84 (emphasis added). Under Michigan law, it is well-settled that a claim for quasi-contractual relief such as promissory estoppel is not available where, as here, the plaintiff is a party to an express contract with the defendant covering the same subject matter. Groeb Farms, Inc. v. Alfred L. Wolff, Inc., 2009 U.S. Dist. LEXIS 15395, at *19-20 (E.D. Mich. 2009) ("Michigan . . . courts do not allow the equitable action of promissory estoppel where the plaintiff includes allegations of the existence of an express contract in its prayer for relief.") (citations omitted); Burbick v. Premier Steel, L.L.C., 2008 U.S. Dist. LEXIS 86670, at *9-10 (E.D. Mich. Oct. 23, 2008) ("Under Michigan law, if an enforceable express contract exists, then the plaintiff cannot state a claim for the breach of an implied contract under the equitable theories of unjust enrichment or promissory estoppel.").

The existence of an express contract precludes recovery under a theory of promissory estoppel because the equitable doctrine provides a *substitute* for consideration.

Advanced Plastics Corp. v. White Consol. Indus., 828 F. Supp. 484, 491 (E.D. Mich. 1993).

Where *actual* consideration supports an express contract, alternative theories of quasi-contractual recovery have no place. “As with a claim for unjust enrichment, ‘if the performance which satisfied the detrimental reliance requirement of the promissory estoppel theory is the same performance which represents consideration for the written contract, the doctrine of promissory estoppel does not apply.’” Hanover Exchange v. Metro Equity Group LLC, 2009 U.S. Dist. LEXIS 59992, at * (E.D. Mich. July 14, 2009) (citation omitted); McCartney v. Lakeside Comm. Bank, 2007 Mich. App. LEXIS 915, at *5 (Mich. Ct. App. Mar. 27, 2007) (“[P]romissory estoppel is not a doctrine designed to give a party to a negotiated commercial bargain a second bite at the apple in the event it fails to prove breach of contract. . . . Because a written contract underlies this case and plaintiff’s performance in reliance on the alleged promise is the same performance required under the loan agreement, plaintiff’s promissory estoppel theory is inapplicable.”).

In this case, although the parties dispute when and by whom the Demolition Contracts were breached, there is *no* dispute as to their existence. Cf. Terry Barr Sales Agency, Inc. v. All-Lock Co., 96 F.3d 174, 181 (6th Cir. 1996) (explaining that the existence of an express contract precludes a claim for implied contract, even if the parties dispute the terms, scope, or effect of that express contract). Furthermore, MCM’s alleged detrimental reliance supporting its promissory estoppel claim – its alleged continuation of demolition work – is, by MCM’s own admission, ***the same performance called for under the Demolition Contracts***. See, e.g., Counterclaim ¶¶ 84. Accordingly, MCM’s claim for promissory estoppel is inapplicable and must be dismissed.

2. Count III of the Counterclaim for Negligent Misrepresentation Fails to State a Claim Upon Which Relief Can Be Granted and Must Be Dismissed.

MCM's allegation of a negligent misrepresentation consists of the assertion that Motors Liquidation "falsely promised that it would enter into a new contract with MCM." Counterclaim ¶ 87; see also id. ¶ 70 ("Liquidation had no intention to award MCM the new contract and work. . . ."). However, MCM cannot base a claim for negligent misrepresentation on an allegedly false promise of future action.

Under Michigan law, an action for negligent misrepresentation "must be predicated upon a statement relating to *past or existing fact.*" Knapp Oil Corp. v. Marathon Oil Co., 1993 U.S. Dist. LEXIS 13069, at *24 (W.D. Mich. Aug. 9, 1993) (emphasis added). False promises of *future* action are generally not actionable as negligent misrepresentations under Michigan law:

To the extent that Hanover's negligent misrepresentation claim is predicated on defendants' misrepresentations of their intentions in the course of negotiating the agreement, however, the Court agrees that it is an untenable attempt to fit a round peg into a square hole. As Michigan law recognizes in the context of fraud, a promise to do something (or not do something) in the future can be false only if at the time it is made the promisor actually has no intention of following through. If such misrepresentation is intentional, it is actionable fraud and not negligent misrepresentation. As a practical matter, this leaves little room for an independent tort of negligent misrepresentation of one's present intentions. Although it is perhaps not completely impossible, it would be a very rare case in which a person could misrepresent his own present intentions without doing so knowingly. At any rate, there is absolutely nothing in the complaint to indicate that was the situation here. . . . Insofar as it is based on allegations that defendants falsely promised to take action in the future, Hanover's claim for negligent misrepresentation must therefore be dismissed.

Hanover Exchange, 2009 U.S. Dist. LEXIS 59992, at *29-30.

Here, as in Hanover Exchange, there is absolutely nothing in the Counterclaim to indicate that Motors Liquidation *unknowingly* misrepresented its own present intentions, as would be required to sustain MCM's claim for negligent misrepresentation based on an allegedly false promise to take future action.

Moreover, under Michigan law, a claim of negligent misrepresentation "requires plaintiff to prove 'that a party justifiably relied to his detriment on information prepared without reasonable care *by one who owed the relying party a duty of care.*'" Marble Cleary Trust v. Edward-Marlah Muzyl Trust, 686 N.W.2d 770 (2004) (citation omitted; emphasis added). Here, MCM has alleged no facts suggesting that Motors Liquidation owed it a duty of care.

Thus, MCM has failed to state a claim for negligent misrepresentation, and Count III must be dismissed.

3. Count IV of the Counterclaim for Breach of Implied Duty of Good Faith and Fair Dealing Fail to State a Claim Upon Which Relief Can Be Granted and Must Be Dismissed.

It is black-letter law that Michigan does not recognize an independent cause of action for bad faith separate and apart from a breach of contract claim. Chrysler Int'l Corp. v. Cherokee Export Co., 134 F.3d 738, 745 (6th Cir. 1998) ("Michigan recognizes no independent tort action for the alleged breach of a contract's implied covenant of good faith and fair dealing.") (citing Ulrich v. Federal Land Bank of St. Paul, 480 N.W.2d 910 (1991)); Belle Isle Grill Corp. v. City of Detroit, 666 N.W.2d 271, 279-80 (Mich. Ct. App. 2003) (affirming dismissal of claim because "Michigan does not recognize a claim for breach of an implied covenant of good faith and fair dealing").

Nor do the allegations, as pled, give rise to a breach of contract claim based on the implied covenant of good faith and fair dealing. MCM alleges that Motors Liquidation "had a duty of good faith and fair dealing with respect to the Demolition Contracts with MCM" and

breached that duty by failing to enter into new contracts with MCM. Counterclaim ¶¶ 92-93.³

However, the Demolition Contracts contain no contract term (and MCM alleges none) requiring Motors Liquidation to award additional work to MCM. In the absence of a breach of such a contractual term, MCM's claim fails and must be dismissed.

4. Count VI of the Counterclaim for Quantum Meruit/Unjust Enrichment Fails to State a Claim Upon Which Relief Can Be Granted and Must Be Dismissed.

Although Count VI of the Counterclaim is titled "Quantum Meruit," MCM seeks in this count "to recover money damages under the doctrine of quantum meruit or unjust enrichment." Counterclaim ¶ 107. No matter how it is characterized, however, this count fails because – like promissory estoppel – quantum meruit and unjust enrichment are quasi-contractual theories that are barred by the existence of the express contracts covering the same subject matter.

MCM itself admits that the work at issue was performed under the Demolition Contracts. MCM specifically alleges that it conferred a benefit upon Motors Liquidation "*in connection with and/or arising from the Demolition Contracts,*" *id.* ¶ 105 (emphasis added), and seeks additional recoveries under quasi-contract "[t]o the extent that MCM is not entitled to full recovery under the Demolition Contracts." *Id.* ¶ 107; *see also id.* ¶ 80 (incorporated by reference in Count VI) (alleging that MCM incurred losses in excess of \$2,000,000 by "continu[ing] to perform *under the Demolition Contracts*") (emphasis added).

MCM's claim fails as a matter of law. As discussed above, theories of implied contract do not exist to give a party to a negotiated commercial bargain a second bite at the

³ MCM also alleges that Motors Liquidation breached the duty of good faith and fair dealing by "improperly lock[ing] out MCM from the Demolition Sites." Counterclaim ¶ 93. However, the harm alleged by MCM has nothing to do with the alleged lock-out, whether it occurred in good faith or not; rather, the only harm that is alleged consists of the \$2,000,000 costs purportedly caused by MCM's post-petition performance under the Demolition Contracts. *Id.* ¶ 95.

apple. McCartney, 2007 Mich. App. LEXIS 915, at *5. Because the Demolition Contracts are express contracts and cover the subject matter of the demolition work performed by MCM at the Demolition Sites, MCM's claims for quantum meruit and unjust enrichment are barred and must be dismissed. See, e.g., Belle Isle Grill, 666 N.W.2d at 280 (affirming dismissal of unjust enrichment claim where lease covered the subject matter at issue because "a contract will be implied only if there is no express contract covering the same subject matter"); Elmostec Statomat, Inc. v. Visteon Corp., 2009 U.S. Dist. LEXIS 32977, at *11-12 (E.D. Mich. Apr. 17, 2009) (dismissing quantum meruit claim because "[a]n implied contract cannot be enforced where the parties have made an express contract covering the subject matter") (quoting Scholz v. Montgomery Ward & Co., 468 N.W.2d 845 (Mich. 1991)).

Accordingly, for these reasons, and the reasons discussed above with respect to promissory estoppel, MCM's claims for quantum meruit and unjust enrichment are inapplicable and must be dismissed.

B. The Bankruptcy Claims

1. Count V of the Counterclaim for Allowance of Secured Claim and Relief from the Automatic Stay Must Be Dismissed in Part.

In Count V, MCM seeks two different forms of relief – allowance of a secured prepetition claim in the amount of approximately \$22.5 million, and relief from the automatic stay to foreclose on its alleged collateral. As to the first relief requested, MCM's claim is largely based on alleged damages that are expressly barred by the terms of the Demolition Contracts. MCM's request for allowance of a secured claim should therefore be dismissed to the extent that it is predicated on damages excluded by the Demolition Contracts. As to the second request, MCM's attempt to obtain relief from the automatic stay without complying with the

requirements of the Bankruptcy Rules or Local Rules is procedurally improper and should be dismissed.

(a) **MCM’s Request for Allowance of Secured Claim Must Be Dismissed to the Extent that MCM’s Claim Is Based on Alleged Damages that Are Barred By the Demolition Contracts.**

The Demolition Contracts incorporate by reference and are governed by the General Motors Corporation and Affiliates Construction General Conditions GM 1638 (05/05) (the “General Conditions”). A copy of the General Conditions is attached hereto as Exhibit A.⁴

The General Conditions – to which MCM consented when it entered into the Demolition Contracts – contain provisions that limit the damages that a contractor may recover in the event of breach. In pertinent part, the General Conditions include the following limitations on damages:

6.4.7 Anything to the contrary stated in or implied by the Contract Documents or otherwise permitted under law notwithstanding, the Owner *shall not be liable for and shall not be required to make payments to the Contractor*, directly or on account of claims by Contractor’s Subcontractors and/or Suppliers, *for loss of anticipated profit; lost business opportunities; unabsorbed overhead*; interest on late payments or claims; costs to prepare bids; *loss of use of equipment, manpower or facilities*; unamortized depreciation of costs, and general and administrative burden charges. . . .

* * *

7.3.2 If the performance of all or any part of the Work on the Project is suspended by the Owner or otherwise is delayed or interrupted by an act of the Owner or an agent of the Owner in the administration of the Project:

* * *

⁴ Although the Court is limited to facts as stated in the complaint, it may consider exhibits or documents incorporated by reference without converting the motion into one for summary judgment. Thule AB v. Advanced Accessory Holdings Corp., 2010 U.S. Dist. LEXIS 45046, 10-11 (S.D.N.Y. May 3, 2010) (citing Int’l Audiotext Network, Inc. v. AT&T, 62 F.3d 69, 72 (2d Cir. 1995)).

7.3.2.2 The Owner shall issue a Field Order or Purchase Order Alteration to adjust the Contract Sum to cover any increase in the cost of performance of this Contract to the Contractor caused by such suspension, delay or interruption, ***not to exceed the direct, unavoidable net expenses (without mark-up for overhead or profit) incurred by the Contractor which shall, in all cases, exclude lost profits and consequential damages. . . .***

General Conditions §§ 6.4.7, 7.3.2 (emphases added).

Contrary to contractual limitation on damages to which it agreed, MCM now asserts that it is entitled to damages for, *inter alia*, lost profits stemming from selling scrap at less-advantageous ferrous, copper and aluminum prices; idle labor and equipment; overhead; and unspecified “delay” damages that appear to be duplicative of its other damages claims, totaling \$20,236,818⁵ of MCM’s \$22.5 million claim:

MCM is owed \$7,430,050 with respect to the Demolition Contract for Lansing Plants 2 & 3 and Building 70, broken down as follows:

Ferrous Pricing Losses:	\$3,062,750
Copper Pricing Losses:	\$ 212,443
Aluminum Pricing Losses:	\$ 15,500
Idle Labor:	\$ 164,823
Idle Equipment:	\$ 997,863
Overhead:	\$ 174,403
* * *	
4 Month Delay:	\$2,699,634

Counterclaim ¶ 36.

MCM is owed \$13,913,401 with respect to the Demolition Contract for Grand Blanc broken down as follows:

Ferrous Pricing Losses:	\$7,179,353
Copper Pricing Losses:	\$ 55,834
Idle Labor:	\$ 337,996
Idle Equipment:	\$3,595,277
Overhead:	\$ 589,991
10 Month Delay:	\$3,338,016

⁵ This is the amount of MCM’s damages that, as pled, clearly fall into the categories of damages excluded by the contractual limitation of damages provisions. Motors Liquidation may learn, through discovery, that other damages asserted by MCM are also barred by contract, and Motors Liquidation expressly reserves all rights with respect thereto.

* * *

Revenue Share: \$(2,187,065)

Id. ¶ 44.

Contractual agreements to limit damages are routinely upheld under Michigan law, particularly “in a commercial setting involving parties of equal bargaining power.” St. Luke’s Hospital v. SMS Computer Sys., Inc., 1993 U.S. App. LEXIS 13549, at *6 (6th Cir. June 1, 1993); Jacada (Europe) Ltd. v. Int’l Mktg. Strategies, 2003 U.S. Dist. LEXIS 26998, at *5 (W.D. Mich. Oct. 21, 2003); U.S. Fibres, Inc. v. Proctor & Schwartz, 509 F.2d 1043, 1048 (6th Cir. 1975) (upholding limitation of damages provision in contract between purchaser of machinery and manufacturer); Island Creek Coal Co. v. Lake Shore, Inc., 832 F.2d 274, 278 (4th Cir. 1987) (applying Michigan law and holding, as a matter of law, that a contract clause limiting “consequential damages” was enforceable and limited plaintiff’s recovery to direct damages).

MCM is a sophisticated commercial party that entered into a contract that expressly limited damages in the event of a breach or delay caused by Motors Liquidation. The damages limitation clauses of the General Conditions are enforceable under Michigan law, and bar at least \$20,236,818 of MCM’s \$22.5 million claim. Accordingly, MCM’s count for allowance of a secured claim must be dismissed to the extent that it is predicated on damages that are excluded by the terms of the Demolition Contracts’ General Conditions.

(b) MCM’s Claim for Relief from the Automatic Stay Is Procedurally Improper and Must Be Dismissed.

Section 362(e) of the Bankruptcy Code, Bankruptcy Rule 4001(a) and Local Rule 4001-1(a) clearly and unequivocally set forth the manner in which relief from the automatic stay must be sought, and the timetable for the Court’s consideration of such relief. Bankruptcy Rule 4001(a)(1) provides that a motion for relief from the automatic stay must be made in accordance with Rule 9014 and served on any official committees of creditors or equity security holders.

Fed. R. Bankr. P. 4001(a)(1); see also Cmt. to L.R. 4001-1 (“Bankruptcy Rule 4001(a) provides that a request for relief from the automatic stay *shall be made by motion.*”) (emphasis added).

Because “the purpose of the automatic stay is to protect creditors as well as the debtor,” Commerzanstalt v. Telewide Sys., 790 F.2d 206, 207 (2d Cir. N.Y. 1986), any request for relief from the stay should be filed in the main case with appropriate notice to interested parties.

Furthermore, Section 362(e) and Bankruptcy Rule 4001(a)(2) provide for three 30-day periods governing the timing of hearings and rulings respecting the continuation of the automatic stay. So that the Court and all interested parties are able to meet this timetable, Local Rule 4001-1(a) requires that a “party moving for relief from the automatic stay under § 362 of the Bankruptcy Code shall obtain a return date for the motion that is not more than 30 days after the date on which the motion will be filed.”

Here, MCM did not seek relief from the automatic stay by motion, but rather by filing a counterclaim in an adversary proceeding. MCM did not serve its counterclaim on any of the committees appointed in Motors Liquidation’s chapter 11 case. See Certificate of Service [Docket No. 14]. MCM did not comply with the requirement to obtain a return date that is not more than 30 days after the date on which its request for relief was filed.

MCM’s attempt to obtain relief from the automatic stay through a counterclaim in an adversary proceeding, rather than through compliance with the Bankruptcy Rules and this Court’s Local Rule, is improper. MCM’s claim for relief from the automatic stay therefore must be dismissed.

2. Count I of the Counterclaim Must Be Dismissed Because MCM Has Failed to Allege Facts Showing that It Is Entitled to an Administrative Expense Claim.

MCM alleges that after the Petition Date, it incurred “in excess of \$2,000,000 of actual, necessary costs and expenses preserving and benefiting the estate at the Demolition

Sites.” Counterclaim ¶ 76. However, MCM also alleges that the work that it performed that gave rise to these alleged costs and expenses was done pursuant to the pre-petition Demolition Contracts. See, e.g., Counterclaim ¶¶ 80, 84, 90, 105.

Work performed pursuant to a pre-petition contract is not entitled to administrative expense status simply because it happens to be performed after the petition date. See, e.g. In re Keren Ltd. P’ship, 225 B.R. 303, 308 (S.D.N.Y. 1998) (affirming bankruptcy court’s denial of application for administrative expense and explaining that “[n]otwithstanding the fact that the commission was payable post-petition, *it was fixed pre-petition as of the date of the Agreement*”) (emphasis added).

In this case, whatever MCM may be entitled to under the Demolition Contracts – a point on which the parties disagree – that amount was fixed prior to the Petition Date. There is *no* allegation by MCM that the work that it performed post-petition was beyond the scope of the fixed price of the pre-petition Demolition Contracts, for which MCM has already asserted a (disputed) claim for \$22.5 million. There is no allegation anywhere by MCM that, for example, the post-petition work that it performed was outside the scope of the work contemplated by the pre-petition Demolition Contracts, or that Motors Liquidation requested any add-ons to the pre-petition Demolition Contracts, which MCM then performed. Absent such allegations, MCM’s administrative expense claim is merely duplicative of its asserted pre-petition claim. Accordingly, the claim must be dismissed.

IV. CONCLUSION

For the foregoing reasons, Motors Liquidation respectfully requests that the Court enter an order:

1. Dismissing Count I of the Counterclaim with prejudice;

2. Dismissing Count II of the Counterclaim with prejudice;
3. Dismissing Count III of the Counterclaim with prejudice;
4. Dismissing Count IV of the Counterclaim with prejudice;
5. Dismissing Count V of the Counterclaim for Relief from the Automatic

Stay;

6. Dismissing Count V of the Counterclaim for Allowance of Secured Claim with prejudice with respect to at least \$20,236,818 of MCM's alleged damages;

7. Dismissing Count VI of the Counterclaim with prejudice; and
8. Granting such other and further relief as the Court deems appropriate.

[signature page follows]

Dated: June 22, 2010

Respectfully submitted,

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