

**BC 19-08**  
**GENERAL INSTRUCTIONS, CONDITIONS AND SPECIFICATIONS FOR THE CITY OF BATTLE CREEK**

TABLE OF CONTENTS

SECTION I - GENERAL INSTRUCTION TO BIDDERS .....	2
SECTION II –GENERAL CONDITIONS OF CONTRACT .....	10
SECTION III - REQUIREMENTS FOR FEDERAL PROJECTS.....	37

**SECTION I - GENERAL INSTRUCTION TO BIDDERS**

**TABLE OF CONTENTS**

1. EXAMINATION OF SITE AND CONTRACT DOCUMENTS.....3

2. INTERPRETATION OF CONTRACT DOCUMENTS.....3

3. MAKEUP OF CONTRACT DOCUMENTS .....3

4. ORDER OF PRECEDENCE.....4

5. EQUIPMENT GUARANTIES.....4

6. STANDARD MANUFACTURER.....4

7. MATERIAL SUBSTITUTION .....4

8. MATERIAL TESTS.....4

9. WORK BY CONTRACTOR'S FORCES .....5

10. PREPARATION OF PROPOSAL .....5

11. APPROXIMATE QUANTITIES .....5

12. SUPPLEMENTAL SCHEDULE OF UNIT PRICES FOR CONSTRUCTION CHANGES .....5

13. COMMENCEMENT AND COMPLETION OF WORK .....5

14. SIGNING OF PROPOSALS .....5

15. BID SECURITY.....5

16. FILING OF PROPOSAL .....6

17. WITHDRAWAL OF PROPOSAL .....6

18. PUBLIC OPENING OF PROPOSALS.....6

19. QUALIFICATION OF BIDDERS .....6

20. DISQUALIFICATION OF BIDDERS .....6

21. AWARD OF CONTRACT .....6

22. CITY INCOME TAX .....6

23. EFFECTIVE DATE OF AWARD.....6

24. PENALTY FOR COLLUSION.....6

25. AGREEMENT, BONDS, INSURANCE.....7

26. EXECUTION OF AGREEMENT, & FILING OF BONDS & INSURANCE .....7

27. FAILURE TO EXECUTE AGREEMENT & FILE REQUIRED BONDS & INSURANCE.....7

28. FLEXIBILITY OF CONTRACT.....7

29. LEGAL DOCUMENTS.....7

30. NON-DISCRIMINATION.....7

31. CITY OF BATTLE CREEK - PAYMENT OF PREVAILING WAGES & FRINGE BENEFITS.....8

32. CONTRACT COMPLIANCE/AFFIRMATIVE ACTION PROGRAM .....8

33. MINORITY GOAL COMMITMENT .....8

34. COPELAND ANTI-KICKBACK ACT .....8

35. DISPUTES.....8

36. TERMINATION OF AGREEMENT .....9

## **1. EXAMINATION OF SITE AND CONTRACT DOCUMENTS**

- (a) Bidders shall inform themselves of all conditions under which the work is to be performed, concerning the site of the work, the structure of the ground, the obstacles which may be encountered, whether shown on the Contract Drawings or not, and all other relevant matters concerning the work to be performed.
- (b) A Contractor to whom a contract is awarded will not be allowed any extra compensation by reason of any such matters or things concerning which the Contractor did not inform himself prior to bidding. The successful Contractor must employ, as far as possible, such methods and means in the carrying out of this work as will not cause any interruption or interference with any other Contractors.
- (c) Bidders must satisfy themselves by personal examination of the locations of the proposed work and by such other means as they may prefer as to the correctness of any quantities listed in the proposal, and shall not, after submission of their proposal, dispute or complain of such estimate nor assert that there was any misunderstanding in regard to the nature or amount of work to be done.
- (d) Before submitting a proposal, each Bidder shall examine carefully the complete Contract Documents including but not limited to Invitation For Bids, Special Instructions to Bidders, Special Conditions, the Form of Agreement and Bonds, Project Specifications, Contract Drawings, General Contract Specifications Manual BC 19-08, current Specifications for Construction (MDOT) and all Addenda thereto, all of which contain provisions applicable not only to the successful bidder, but also to any of his subcontractors.
- (e) Each bidder is expected to base his bid on materials and equipment complying fully with the Contract Drawings and Specifications, and in the event he names or includes in his bid, materials or equipment which do not conform he will, if awarded a contract, be responsible for furnishing materials and equipment which fully conform at no change in his contract price.

## **2. INTERPRETATION OF CONTRACT DOCUMENTS**

If any person contemplating submitting a bid on this project is in doubt as to the true meaning of any part of the Contract Drawings, Specifications or other Sections of the Contract Documents, he may submit to the Owner a written request within fourteen (14) calendar days of receipt of the document for an interpretation thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation of the Contract Documents including the Contract Drawings will be made only by addendum duly issued or delivered by the Owner to each person receiving a set of such documents. The Owner will not be responsible for any other explanations or interpretations of the Contract Documents including the Contract Drawings.

## **3. MAKEUP OF CONTRACT DOCUMENTS**

The attention of prospective bidders is directed to the makeup of the Contract Documents on this project. The contract shall include Invitation For Bids, Special Instructions to Bidders, General Contract Specifications Manual BC19-08, current Specifications for Construction (MDOT), Proposal Forms, Contractor's Bid Bond Form, and Statement of Experience of Bidder; Special Conditions of Contract, Agreement Form, and Contractor's Forms; All Addendum's, Project Specifications, Contract Drawings, and Federal Wage Determination. It should be noted that:

- (a) Special Instructions to Bidders includes paragraphs which amplify the General Instructions to Bidders, as denoted in General Contract Specifications Manual BC 19-08.
- (b) Special Conditions of Contract includes paragraphs which amplify the General Conditions of Contract, as denoted in the General Contract Specifications Manual BC 19-08.
- (c) The Contract Specifications included in this document are divided into the major types of construction operations included under this Contract. The Section of Specifications included under each type of construction is designated as a Project Specification and the General Specifications are found in the General Contract Specifications BC 19-08. Both types of specifications become part of the contract document.
- (d) All forthcoming Addenda shall be part of the contract document.

Each General Specification in the General Contract Specifications Manual BC 19-08 covers the description of materials generally encountered in the construction carried out under the designated title of this specification and the installation of such materials. The Project Specifications and the Contract Drawings define the locations and details of the work required under this Contract and by reference to the succeeding General Specifications as denoted in the General Contract Specifications Manual BC 19-08 which materials and construction method is to be employed in each location. The Project Specifications also include specifications for all materials, equipment and construction methods for items not covered in the General Contract Specifications Manual BC 19-08.

#### **4. ORDER OF PRECEDENCE**

The Plans and specifications shall be considered to be one complete document and what is called for in one shall be considered as being called for in all. In the event that there is a conflict between the parts, the following order of precedence shall govern:

- Addenda to bidding documents
- The Contract Drawings
- The Contract Project Specifications
- The Contract General Specifications
- The Contract Special Instructions
- The Contract Special Conditions
- The City of Battle Creek General Contract 19-04

#### **5. EQUIPMENT GUARANTIES**

The attention of all bidders is directed to the condition that the Contractor and his Surety will be held responsible to the Owner that all items of equipment purchased and installed under his Contract fully meet the type, quality, design and the performance guaranties defined in the Contract Documents, and in actual operation satisfactorily perform the functions for which installed. Further, that the Owner may withhold final payment until such performance and operation is demonstrated.

It is suggested that the successful Contractor purchase all items of equipment under adequate guaranties or bonds from the manufacturers or suppliers to protect the obligation of the Contractor to the Owner on items of equipment. It should be noted that the shop drawings and details will not be reviewed by the Engineer until a form of guarantee acceptable to the Owner is submitted to the Engineer by each manufacturer or supplier through the Contractor.

#### **6. STANDARD MANUFACTURER**

Wherever the terms "standard", "recognized", or "reputable" manufacturer are used they shall be construed as meaning manufacturers who have been engaged in the business of fabricating materials, equipment or supplies of the nature called for by the Specifications for a reasonable period of time (12 months) prior to the date set for opening of bids, and who can demonstrate to the satisfaction of the Owner that said manufacturer has successfully installed equipment, materials, or supplies of the type proposed to be furnished in at least three instances, and that the performance of such materials, equipment or supplies has been satisfactory.

#### **7. MATERIAL SUBSTITUTION**

If restrictions of any Governmental Authority prohibit the purchase or use of certain items that are required by the Contract Drawings and Contract Specifications, substitution for such items will be determined by the Owner and the Engineer after the award of a construction contract.

Each Contractor shall base his bid on furnishing all items exactly as shown on the Contract Drawings and as described in the Contract Specifications. The successful Contractor will not be authorized to make any substitution on his own initiative, but in each and every instance must procure authorization from the Owner before installing any work in variance with the contract requirements.

#### **8. MATERIAL TESTS**

Attention of bidders is directed to the Material Tests which will be required on this project. All laboratory tests shall be made by a testing laboratory employed by the Owner. The costs of tests shall be paid by the Owner. The Contractor shall supply the required material, and the cost of these materials shall be merged in the prices stated on items which make up the Total Base Bid.

## **9. WORK BY CONTRACTOR'S FORCES**

Attention of bidders is directed to the provision in the General Contract Specifications Manual BC 19-08 part of this Contract requiring that not less than a stated minimum percentage of on site construction must be performed by Contractor's forces.

## **10. PREPARATION OF PROPOSAL**

Bids on this project may be submitted on the Proposal Forms furnished by the Owner and included in this document or on computer generated spread sheets previously approved by the City or MDOT. Bid prices in the Bidding Schedule are to be in figures. If any portion of the proposal is required to be given in unit prices and totals, the unit prices shall prevail, unless it clearly appears in the owners opinion that the unit prices rather than the totals are in error. If a discrepancies exists between the total base bid and the true sum of the individual bid items the true sum shall prevail. A proposal may be rejected if it does not contain a price for each and every item named in the Bidding Schedule.

Bidders are warned against making any erasures or alterations of any kind, and proposals which contain omissions, erasures, conditions, alterations or additions not called for may be rejected.

Only proposals which are made out on the regular Proposal Form included in this document will be considered. The Proposal Form must not be separated from this document.

## **11. APPROXIMATE QUANTITIES**

On all items on which bids are to be received on a unit price basis, the quantities stated in the Proposals will not be used in establishing final payment due the Contractor. The quantities stated, on which unit prices are so invited, are approximate only, and each bidder shall make his own estimate from the Contract Drawings of the quantities required on each item, and calculate his unit price bid for each item accordingly. Bids will be compared on the basis of number of units stated in the Bidding Schedules set forth in the Proposals. Payment on the contract on unit price items will be based on the actual number of units installed on the completed work.

## **12. SUPPLEMENTAL SCHEDULE OF UNIT PRICES FOR CONSTRUCTION CHANGES**

Where the Proposal Form requires a lump sum bid for a particular item (or items) and further requires bidder to submit a supplemental schedule of Unit Prices for possible construction changes in such item(s), the Owner may if it considers such Unit Prices reasonable include these prices in the Construction Contract. If the Owner considers such Unit Prices as unreasonable he may omit same from the Construction Contract.

Rejection at any time of such Unit Prices for Construction Changes as stated in the Proposal shall not otherwise affect the balance of the Proposal or Construction Contract.

## **13. COMMENCEMENT AND COMPLETION OF WORK**

Attention of bidders is directed to the provision in the Proposal Form, included herewith, for time for starting work at the site of the project. Bidder shall specify the time he proposes to start work.

Attention of bidders is also directed to the time specified in the Proposal Form for the completion of the work. Bidder shall specify the time within which he proposes to complete the work. This will be considered in determining to whom to award a contract.

## **14. SIGNING OF PROPOSALS**

If the bidder is a corporation, the legal name of the corporation shall be set forth together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation; if bidder is a co-partnership, the true name of the firm shall be set forth together with the signatures of all partners; and if bidder is an individual, his signature shall be inscribed. If signature is by an agent, other than an officer of a corporation or a member of a partnership, a power of attorney must be on file with the Owner prior to opening bids or submitting bids; otherwise, the bid may be disregarded as irregular and unauthorized.

## **15. BID SECURITY**

No proposal will be considered unless accompanied by a Bid Security as defined in the Invitation For Bids, as a guarantee that if the bid is accepted the bidder will execute an Agreement and file bonds and insurance as required by the Contract Documents within fifteen (15) days from the date of the award of the contract.

All bid securities will be held until the Agreement has been executed by the successful bidder and he has filed with the Owner the required bonds and insurance, after which bid securities will be returned to the respective bidders. Bid Bond form is provided.

**16. FILING OF PROPOSAL**

Each Proposal, properly signed, together with the bid security, all addenda, and all documents bound herewith, shall be enclosed in a sealed envelope or package addressed and entitled as specified in the Notice to Bidders and delivered to the office designated in the Invitation For Bids. The Proposal must not be removed from these bound documents.

**17. WITHDRAWAL OF PROPOSAL**

Any Proposal may be withdrawn at any time prior to the hour fixed in the Invitation For Bids for the opening of bids, provided that a request in writing, executed by the bidder, or his duly authorized representative, for the withdrawal of such bid is filed with the Owner prior to the time specified for opening of bids. The withdrawal of a bid will not prejudice the right of a bidder to file a new proposal.

**18. PUBLIC OPENING OF PROPOSALS**

Proposals will be opened and the prices bid will be read aloud publicly at the time and place indicated in the Notice to Bidders. Bidders or their agents are invited to be present.

**19. QUALIFICATION OF BIDDERS**

It is the intention of the Owner to award a contract only to a bidder who furnishes satisfactory evidence that he has the requisite experience and ability and that he has sufficient capital, facilities and plant to enable him to prosecute the work successfully and promptly, and to complete the work within the time named in the Contract Documents.

To determine the degree of responsibility to be credited to a bidder, the Owner will weigh any evidence that the bidder or personnel guaranteed to be employed in responsible charge of the work has or has not performed satisfactorily on other contracts of like nature and magnitude or comparable difficulty at similar rates of progress.

**20. DISQUALIFICATION OF BIDDERS**

More than one proposal for the work described in this Document, to be included under a Contract, from an individual, firm or partnership, a corporation or an association under the same or different names, will not be considered. Reasonable grounds for believing that any bidder is interested in more than one Proposal for the work contemplated will cause the rejection of all Proposals in which such bidder is interested. If there is reasonable grounds for believing that collusion exists among the bidders, the proposals of the participants in such collusion will not be considered.

**21. AWARD OF CONTRACT**

Award of the contract, if it be awarded, will be made as provided in the Advertisement for Bids within the time limit stated therein. The Owner reserves the right to reject any or all proposals.

**22. CITY INCOME TAX**

The Contractor shall be responsible for registering, withholding and paying city income tax on all employees performing work within the city limits of Battle Creek pursuant to Chapter 880.01 of the Codified Ordinance of Battle Creek.

**23. EFFECTIVE DATE OF AWARD**

If a contract is awarded by the Owner, such award shall be effective when formal notice of such award is signed by the authorized representative of the Owner and has been delivered to the intended awardee, or mailed to him at the main business address shown in his Proposal by some officer or agent of the Owner duly authorized to give such notice.

**24. PENALTY FOR COLLUSION**

If at any time it shall be found that the person, firm or corporation to whom the Contract has been awarded has, in presenting any bid or bids, colluded with any other party or parties, then the contract so awarded shall be null and void, and the Contractor and his sureties shall be liable to the Owner for all loss or damage which the Owner may suffer thereby, and the Owner may advertise anew for bids for said work.

**25. AGREEMENT, BONDS, INSURANCE**

The attention of bidders is specifically directed to the forms of Agreement and Bonds to be executed and types of insurance to be taken out in the event a contract award is made.

**26. EXECUTION OF AGREEMENT, & FILING OF BONDS & INSURANCE**

Copies of the Agreement in the number stated in the Form of Agreement shall be executed by the successful bidder, and returned, together with the required bonds and insurance, within fifteen (15) days from and after the date of Commission acceptance of the Contract.

**27. FAILURE TO EXECUTE AGREEMENT & FILE REQUIRED BONDS & INSURANCE**

Failure of a successful bidder to execute the agreement and file required bonds and insurance within the required time shall be just cause for the annulment of the award. On failure of a successful bidder to execute the agreement and file the required bonds and insurance within the required time, he shall forfeit his bid security as agreed as liquidated damages, and the bidder, by filing a proposal, agrees to this provision. Upon annulment of an award as aforesaid, the Owner may then award a contract to the next lowest responsible bidder.

**28. FLEXIBILITY OF CONTRACT**

The actual work performed under this contract may be increased 50% or decreased 25%.

**29. LEGAL DOCUMENTS**

All bidders will furnish to the City of Battle Creek copies of the following documents:

- (a) If the Contractor is a single proprietorship, a sworn affidavit to such effect.
- (b) Co-Partnership - A copy of the Articles of Co-Partnership to which is attached a certificate signed by one of the partners to the effect that said Articles of Co-Partnership are then in full force and effect. This certificate shall also state whether or not a Certificate of Co-Partnership has been filed in compliance with the laws of the State of Michigan.
- (c) Corporations - A certificate establishing the fact that said corporation is in good standing under the laws of the State of Michigan, procured from the Michigan Corporation and Securities Commission.

**30. NON-DISCRIMINATION**

The contractor, subcontractor, vendor or supplier, hereinafter referred to as the "contractor", will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, age\* or sex\*. The contractor will take affirmative action to insure that applicants are employed and that employees are treated during employment, without regard to their race, religion, color, national origin, age\*, sex\*, height, weight, marital status, handicap, or arrest record. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising, layoff or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, age\*, sex\*, height, weight, marital status, handicap or arrest record in compliance with Executive Order 11246 of September 24, 1964 entitled Equal Employment Opportunity as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60).

The contractor will furnish and file compliance reports with the Michigan Civil Rights Commission upon request. Such reports shall elicit information as to the practices, policies, program and employment statistics for the contractor and each subcontractor and said contractor and subcontractor\*\* shall permit access to all books, records, and accounts regarding employment practices by agents and representatives of the state duly charged investigative duties to assure compliance with this clause.

Breach of the covenants herein may be regarded as a material breach of the contract, or purchasing agreement, as provided in Public Act 453, 1976, as amended and may be processed thereunder.

The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Department of Civil Rights\*\* and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

\* See Public Act 453, 1976 as amended, Article 2, Sec. 202 (1).

Sec. 202. (1) An Employer shall not:

- (a) Fail or refuse to hire, or recruit, or discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition or privilege of employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status.
- (b) Limit, segregate, or classify an employee or applicant for employment in a way which deprives or tends to deprive the employee or applicant of an employment opportunity, or otherwise adversely affects the status of an employee or applicant because of religion, race, color, national origin, age, sex, height, weight, or marital status.
- (c) Segregate, classify, or otherwise discriminate against a person on the basis of sex with respect to a term, condition, or privilege of employment, including a benefit plan of system.

\*\*Except for contracts entered into with parties employing less than three (3) employees.\*\*

### **31. CITY OF BATTLE CREEK - PAYMENT OF PREVAILING WAGES & FRINGE BENEFITS**

The City of Battle Creek has passed an ordinance which requires that no initial contract, agreement, understanding or other arrangement which exceeds \$500,000 Contractors must include the latest Wage Determination wage scales in their bid price for all initial contracts/agreements exceeding \$500,000.

If applicable, the Contractor may obtain the latest wage determination upon request to either the Contract Compliance Office or Purchasing Office.

No contract, agreement, understanding or other arrangement, whether oral or written, for the performance of services or work for and on behalf of the City of Battle Creek, involving craftsmen, mechanics and laborers employed directly upon the site of the work shall be entered into, approved or executed unless such contract, agreement, understanding or arrangement requires that all craftsmen, mechanics and laborers so employed shall receive at least the prevailing wages and fringe benefits for corresponding classes as determined and published by the Davis-Bacon Division of the United States Department of Labor for the greater Battle Creek area. In addition, such contract, agreement, understanding or arrangement shall provide that all subcontracts entered into by the Contractor, and all such contracts, agreements, understanding or arrangements shall provide that all contractors and subcontractors engaged in the performance of services or work for the City to which this applies shall, at the request of the City, furnish proof satisfactory to the City that the foregoing provisions of such contract and subcontract are being complied with.

### **32. CONTRACT COMPLIANCE/AFFIRMATIVE ACTION PROGRAM**

The City of Battle Creek is committed to a Contract Compliance/Affirmative Action Program to ensure that all citizens have the opportunity for the equality of treatment in service and employment. All bidders doing business with the city in the amount of \$10,000 or more during any fiscal year shall comply with the provisions of the Contract Compliance plan. Completed Contract Compliance forms must be returned with the bid document.

### **33. MINORITY GOAL COMMITMENT**

Pursuant to Resolution 495 of 1995, all contracts, agreements understanding or other arrangements, whether oral or written, over ten thousand dollars (\$10,000) for the performance of service or work for and on behalf of the City of Battle Creek involving craftsmen, mechanics, and laborers employed directly upon the site of work, shall be performed by contractors or subcontractors who have, as a goal, the employment of ten percent (10%) minority workers on the site of the job.

### **34. COPELAND ANTI-KICKBACK ACT**

Copeland Anti-Kickback Act Title 18, U.S.C. June 25, 1948 Section 874, Kickbacks from Public Employees: Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion, or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined not more than \$5,000 or imprisoned not more than five (5) years, or both."

### **35. DISPUTES**

Except as otherwise provided in the Contract, any dispute concerning a questions of fact arising under the Contract which is not disposed of by agreement shall be decided by the City of Battle Creek's Project Manager who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Project Manager shall be final, unless determined by a court of competent jurisdiction to have been

fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute thereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with Project Manager's decision.

This clause does not preclude consideration of law questions in connection with decision provided for in this clause, provided that nothing in this Contract shall be construed as making final the decision of any administrative official, representative or board on a question of law.

### **36. TERMINATION OF AGREEMENT**

This agreement may be terminated for reasons of convenience or default.

- (a) Termination for Convenience: The City of Battle Creek may terminate this Agreement, in whole or in part, at any time by written notice to the Contractor. The Contractor shall be paid its costs, including Contract closeout costs and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to be paid the Contractor. If the Contractor has any property in its possession belonging to or paid for by the City of Battle Creek, the Contractor will account for same, and dispose of it in the manner the City of Battle Creek directs.
- (b) Termination For Default: If the Contractor does not deliver the complete Project in accordance with this Agreement or if the Contractor fails to comply with any other provisions of the Agreement, The City of Battle Creek may terminate, revoke or rescind this Agreement for default. Termination, revocation or rescission shall be effected by serving notice on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the Contract price for the portions of the Project furnished, accepted, and found in compliance with the terms and conditions of this Agreement.

If it is later determined by the City of Battle Creek that the Contractor has an excusable reason for not performing, such as a strike, fire or flood, events which are not the fault of, or are beyond the control of the Contractor. The City of Battle Creek, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Termination, revocation or recession of this Agreement for default shall not affect or impair any rights or claims of the City of Battle Creek to damages for breach of any covenants of this Agreement by the Contractor. Further, should the Contractor fail to comply with the conditions of the Agreement or fail to complete the specified work or furnish the specified services as stipulated in the Agreement, the City of Battle Creek reserves the right to purchase on the open market, or to complete the required work at the expense of the Contractor and to pursue all other recoveries available to the City of Battle Creek under Michigan law. In the event of a dispute under this Agreement, the City of litigations shall be Calhoun County, Michigan.

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BC 19-08  
SECTION II –GENERAL CONDITIONS OF CONTRACT

TABLE OF CONTENTS

I. GENERAL CONDITIONS.....12

1. Definitions ..... 12

2. Contract Documents Defined ..... 13

3. Abbreviations Used ..... 13

4. Contractor's Bonds..... 14

5. Contractor's Insurance ..... 15

6. Titles and Headings ..... 16

7. Progress Schedule and Reports ..... 16

8. Location of Existing Utilities and Piping ..... 16

9. Soil Boring Data ..... 17

10. Labor Provisions ..... 17

11. Notice of Starting Work ..... 17

12. Effect of Extension of Time ..... 17

13. Extra Work ..... 17

14. Assignment of Contract..... 17

15. Subcontractors ..... 18

16. Discrepancies..... 18

17. Liability of Owner's Representatives and Officials ..... 18

18. Effect of Inspection and Payments ..... 18

II. LEGAL RELATIONS AND RESPONSIBILITY ..... 18

1. Laws to be Observed ..... 18

2. Provisions of Law ..... 18

III. RESPONSIBILITIES AND RIGHTS OF CONTRACTOR.....19

1. Deliveries to Contractor..... 19

2. Office of Contractor at Site..... 19

3. Attention to Work..... 19

4. Work Which May Not be Subcontracted ..... 19

5. Patents ..... 19

6. Access to Work ..... 20

7. Construction Site..... 20

8. Signs ..... 20

9. Construction Photographs ..... 20

10. Liability of Contractor ..... 20

11. Assumption of Risks..... 21

12. Responsibility for Damage ..... 21

13. Protection of Persons and Property ..... 21

14. Protection of Contractor's Work and Property ..... 21

15. Protection of Existing Structures..... 22

16. Maintenance of Traffic..... 22

17. Preservation of Stakes and Marks ..... 22

18. Approval of Contractor's Plans..... 22

19. Suggestions to Contractor ..... 22

20. Licenses, Permits and Regulations..... 22

21. Taxes..... 22

22. Construction Utilities ..... 23

23. Cooperation..... 23

24. Subcontractors ..... 23

25. Termination of Unsatisfactory Subcontractors ..... 23

26. Records of Employees and any Federal Reporting Methods ..... 23

27. Removal of Condemned Materials and Structures ..... 23

28. Errors and Omissions..... 24

29. Proof of Compliance with Contract ..... 24

30. Cleaning Up ..... 24

GENERAL CONDITIONS OF CITY CONTRACTS

31.	Final Guaranty.....	24
32.	Ownership of Drawings and Records .....	24
33.	Right of Review .....	24
IV.	RESPONSIBILITY AND RIGHTS OF OWNER.....	25
1.	Surveys and Staking .....	25
2.	Rights-of-Way .....	25
3.	Authority of the Engineer.....	25
4.	Inspection.....	25
5.	Retention of Imperfect Work .....	26
6.	Changes in Work.....	26
7.	Additional Drawings by Owner .....	26
8.	Emergency Protection.....	26
9.	Suspension of Work .....	26
10.	Right of Owner to Terminate Contract .....	27
11.	Termination of Agreement.....	27
12.	Placing Portions of Work in Service.....	27
13.	Sequence and Progress of Work .....	28
V.	WORKMANSHIP, MATERIALS AND EQUIPMENT .....	28
1.	Workmanship .....	28
2.	Interpretation of Specifications and Drawings .....	28
3.	General Quality of Materials .....	28
4.	Quality in Absence of Detailed Specifications .....	28
5.	Materials and Equipment Specified by Name .....	28
6.	Approval of Materials and Equipment .....	29
7.	Drawings of Equipment and Fabricated Materials .....	29
8.	Equipment Drawings .....	29
9.	Samples .....	30
10.	Tests.....	30
11.	Material Tests.....	30
12.	Storage of Materials .....	30
13.	Operating and Maintenance Instructions .....	31
14.	Compliance with State Safety Code .....	31
15.	Fuel Storage.....	31
VI.	PROSECUTION OF WORK .....	31
1.	Equipment and Methods .....	31
2.	Time of Completion .....	31
3.	Avoidable Delays .....	31
4.	Unavoidable Delays .....	32
5.	Notice of Delays .....	32
6.	Extension of Time .....	32
7.	Unfavorable Weather and Other Conditions .....	33
VII.	PAYMENTS AND CONTRACT COMPLETION .....	33
1.	Progress Estimates and Payments.....	33
2.	Alterations, Omissions and Extra Work .....	33
3.	Owner's Right to Withhold Certain Amounts.....	33
4.	Compensation for Extra Work and Work Omitted.....	34
5.	Time for Completion of Contract.....	35
6.	Excess Cost of Field Engineering and Inspection for Time Extension .....	35
7.	Acceptance of Work .....	35
8.	Final Estimate, Final Contract Supplement & Payment.....	35

## GENERAL CONDITIONS OF CITY CONTRACTS

### I. GENERAL CONDITIONS

#### 1. Definitions

Whenever any word or expression defined in this paragraph, or pronoun used in its stead, occurs in these Contract Documents, it shall have, and is mutually understood to have, the meanings hereinafter given unless the context clearly indicates otherwise.

- (a) "Contract Documents" or "Contract Document" shall mean and include all those documents listed and included under the definition of "Contract Documents" in these General Conditions.
- (b) "Contract" or "Construction Contract" means and includes all of the Contract Documents, referred to in the General Conditions, covering the performance of the work and the furnishing of all labor, equipment, materials and other property required for the doing of the work, and covering the doing of all other things required by said Contract Document.
- (c) "Instructions to Bidders" shall mean and include both the Special Instructions to Bidders and the General Instructions to Bidders which are bound herewith.
- (d) "Conditions", "Contract Conditions" or "Conditions of Contract" shall mean both the Special Conditions of Contract and the General Conditions of Contract which are bound herewith.
- (e) "General Conditions" or "General Conditions of Contract" shall mean and include those "General Conditions" which are bound herewith.
- (f) "Owner" or "City of Battle Creek" or "City" shall mean the City of Battle Creek, Michigan, acting through the City Commission or any other board, official or officials to which or to whom the power belonging to the Commission shall by virtue of any act or acts thereafter passed are held to appertain.
- (g) "Specifications" or "Contract Specifications" shall mean and include all those "Contract Specifications" which are bound herewith, and which are listed, mentioned or referred to in the Special Conditions of Contract in the paragraph entitled "Contract Specifications", and include but are not limited to "Project Specifications" and "General Specifications".
- (h) "Contract Drawings" or "Plans" shall mean and include all drawings which have been prepared by or in behalf of the Owner, as a basis for proposals, when duly made a part of this Contract by incorporation or reference; all drawings submitted in pursuance of the terms of this Contract by the successful bidder with their proposal and by the Contractor to the Owner if and when approved by the Engineer; and all drawings submitted by the Engineer to the Contractor during the progress of the work as provided for in the Contract.
- (i) "Work" or "Project" shall mean and include the doing of all things required of the Contractor under the Contract Documents, including but not limited to the furnishing, construction and installation of all equipment, facilities and improvements therein mentioned, and the furnishing of all labor, materials, equipment, tools and other things necessary therefore, all as provided by the Contract Documents.
- (j) "Contractor" or "Construction Contractor" shall mean the party to whom the Contract for the work described in the Contract Documents has been awarded and who executes the Agreement for the doing of the work covered by the Contract.
- (k) "Subcontractor" shall mean a person, firm or corporation, other than the Contractor, supplying labor and materials, or labor only, at the site of the work.
- (l) "Inspector" shall mean the engineering or technical inspector or inspectors duly authorized or appointed by the Engineer or by the Owner, limited to the particular duties entrusted to him or them.

## GENERAL CONDITIONS OF CITY CONTRACTS

- (m) "Date of Award" of Contract shall mean the date formal notice of such award, signed by the Owner, has been delivered to the intended awardee, or mailed to him at the main business address shown in their Proposal by some officer or agent of the Owner duly authorized to give such notice.
- (n) "Day" or "Days", unless herein otherwise expressly defined, shall mean working day or days.
- (o) "Where "as shown", "as indicated", and "as detailed", or words of similar import are used, it shall be understood that reference to the Contract Documents which are a part of the Contract Documents is made unless stated otherwise. Where "as directed", "as permitted", "approved", or words of similar import are used, it shall be understood that the direction, requirements, permission, approval, or acceptance of the Engineer is intended unless stated otherwise. "Provide" shall be understood to mean "provide complete in place", that is, "furnish and install".
- (p) Equipment supplier means the manufacturer who fabricates and/or assembly units to make up a complete equipment item. It does not mean a subcontractor who purchases an item of equipment from a manufacturer.

### 2. Contract Documents Defined

A Contract Document consists of and includes the following:

A. Volume

- (a) Invitation For Bids
- (b) Special Instructions to Bidders
- (c) Proposal
- (d) Special Conditions of Contract
- (e) Agreement
- (f) Contract Specifications including all documents, and papers included in or referred to in the foregoing.
- (g) The Bonds and Insurance Certificates and Policies.
- (h) General Instructions, Conditions and Specifications as denoted in General Manual BC 19-08.

B. Volume II Contract Drawings

C. Addenda Any and all Addenda to the foregoing.

### 3. Abbreviations Used

Wherever abbreviations are used in this Contract Document, each such abbreviation shall have the following listed meaning:

(a) Units of Measure

- CY     Cubic Yard
- Ft.     Feet
- Lbs     Pounds
- M       One Thousand
- MFBM   One Thousand Feet  
          Board Measure
- C       Centigrade
- F       Fahrenheit
- HP      Horsepower
- KVA     Kilovolt Ampere
- BTU     Brittish Thermal Unit

(b) Types and Units

- PVC     Polyvinyl Chloride
- MJ      Mechanical Joint
- B & S   Bell and Spigot
- T & G   Tongue and Groove
- SS      Single Strength
- DS      Double Strength

## GENERAL CONDITIONS OF CITY CONTRACTS

VC	Vitrified Clay
RC	Reinforced Concrete
MH	Manhole
CB	Catchbasin
ES	Extra Strength

### (c) Organizations and Publications

AASHTO	American Association of State Highway and Transportations Officers
ACI	American Concrete Institute
AGA	American Gas Association
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
AMCA	Air Moving and Conditioning Association, Inc.
ASA	American Standards Association, Inc.
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigerating, and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWWA	American Water Works Association
AWI	Architectural Woodwork Institute
CS	Commercial Standard - U.S. Department of Commerce
FSS	Federal Supply Service
FM	Factory Mutual Laboratories
IBR	Institute of Boiler and Radiator Maintenance
MDOT	MI Department of Transportation
MRDTI	Metal Roof Deck Technical Inst.
MSS	Manufacturers Standardization Society of The Valve and Fitting Industry
NBBPVI	National Board of Boiler and Pressure Vessel Inspectors
NBFU	National Board of Fire Underwriters
NCPWB	National Certified Pipe Welding Bureau
NEC	National Electrical Code
NEMA	National Electrical Manufacturers Association
NFPA	National Fire Protection Assoc.
NLMA	National Lumber Manufacturers Association PCA Portland Cement Association
UL	Underwriters Laboratory
UBC	Uniform Building Code

## 4. Contractor's Bonds

The city reserves the right to approve the surety company. The surety company must have an A.M. Best's rating, or equivalent of "A".

- (a) Faithful Performance Bond: As a part of the execution of this Contract, the Contractor shall furnish to the Owner a bond payable to the Owner in the form of Faithful Performance Bond set forth herein, secured by a surety company acceptable to the Owner, conditioned upon the faithful performance of all covenants and stipulations under this contract. The amount of the bond shall be not less than One Hundred Percent (100%) of the total contract amount, as this sum is set forth in the Agreement. Further, this bond will act as a Defective Material Bond in an amount equal to One Hundred Percent (100%) of the total contract amount, to hold good for a period of one (1) year after the completion and acceptance of the work to protect the Owner against the results of defective materials, workmanship and equipment during that time.
- (b) Labor and Material Bond: As a part of the execution of this contract, the Contractor shall furnish to the Owner a bond of a surety company acceptable to the Owner in a sum of One Hundred Percent (100%) of the total contract amount, as this sum is set forth in the Agreement for the payment in full of all persons,

## GENERAL CONDITIONS OF CITY CONTRACTS

companies or corporations who perform labor upon or furnish material to be used in the work under this contract. Said bond shall be in the same form as the form of Labor and Material Bond contained herein.

- (c) Notification of Surety Companies: The Contractor shall advise the surety companies and other signers of any of the bonds listed above to familiarize themselves with all of the conditions and provisions of this contract, and they shall waive the right to special notification or any change or modification of this contract or of extension of time, or of decreased or increased work, or of the cancellation of the contract or of any other act or acts by the Owner or its authorized employees and agents, under the terms of this contract and failure to so notify the aforesaid surety companies of changes shall in no way relieve the surety companies of their obligations under their contract.

### 5. Contractor's Insurance

The Contractor shall at the time of execution of this contract, file with the Owner the Certificate of Insurance, which shall cover all of their insurance as required herein, including evidence of payment of premiums thereon, and the policy or policies of insurance covering said Owner, the Engineer and their officers, agents and employees. Each such policy and certificate shall be satisfactory to the Owner and shall bear an endorsement precluding the cancellation or reduction in coverage without giving to the Owner at least thirty (30) days prior notice thereof in writing. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from their operations under this Contract.

- (a) Public Liability and Property Damage Insurance: The Contractor shall take out, pay for and maintain until completion of the work required by this contract, public liability and property damage insurance (except automotive equipment) as shall protect him from claims for bodily injury and property damage which may arise because of the nature of the work or from operations under this contract.

The Contractor shall also name the Owner, the Engineer and their officers, agent and employees as additional insured to protect their interests. Both bodily injury and property damage insurance must be on an occurrence basis; and said policy shall provide that the coverage afforded thereby shall be primary coverage to the full limit of liability stated in the declarations, and if said Owner, or the Engineer and their officers, agents and employees have other insurance against the loss covered by said policy, that other insurance shall be excess insurance only.

The public liability and property damage insurance shall not be deemed to require the Contractor to have their subcontractors named as co-insured in their policy of public liability and property damage; but the policy shall protect him from contingent liability which may arise from operations of their subcontractors. Also, the Contractor shall secure certificates of insurance to provide coverage under this contract up to the limits as is required of the Contractor.

Each of said policies of insurance shall provide coverage in the following minimum amounts: For bodily injury, \$1,000,000 each person, \$1,000,000 each occurrence and \$1,000,000 aggregate limit; property damage, \$1,000,000 on account of any one occurrence with an aggregate limit of not less than \$1,000,000.

- (b) Comprehensive Automobile Liability: The Contractor shall also take out, pay for and maintain until completion and acceptance of the work required by this contract, automobile public liability and property damage insurance as shall protect him from claims for bodily injury or property damage which may arise from the use of motor vehicles engaged in various operations under this contract.

The policy or policies for automobile insurance shall provide coverage in the following minimum amounts: For bodily injury, \$1,000,000 each person, \$1,000,000 each occurrence and property damage, \$1,000,000 each occurrence.

At the option of Contractor, primary limits may be less than required, with an umbrella policy providing the additional limits needed. This form of insurance will be acceptable provided that the primary and umbrella policies both provide the insurance coverages herein required, and further provided that the umbrella policy minimum limits of coverage are \$1,000,000 per occurrence and \$1,000,000 aggregate. The umbrella coverage shall not apply to Owner's and Engineer's protective policy.

## GENERAL CONDITIONS OF CITY CONTRACTS

- (c) Workers' Compensation Insurance: Before beginning the work, the Contractor shall furnish to the Owner satisfactory proof that he has taken out, for the period covered by the work under this contract, full compensation insurance for all persons which he may employ directly or through subcontractors in carrying out the work contemplated under this contract, and Employer's Liability Insurance and/or United States Longshoremen and Harbor Workers Compensation Act and Liability under Admiralty or Federal Jurisdiction. Such insurance shall be maintained in full force and effect during the period covered by this contract.

In addition to the insurance listed above, the Contractor shall take out and maintain during the life of this contract, Workers' Compensation Diseases Insurance for all persons whom he may employ directly or through subcontractors, in carrying out the work contemplated under this contract. Such insurance shall be maintained in full force and effect during the period covered by this contract.

- (d) Notification of Insurance Companies: The Contractor shall advise all insurance companies to familiarize themselves with all of the conditions and provisions of this contract, and insurance companies shall waive the right to special notification or any change or modification of this contract or of extension of time, or of decreased or increased work, or of the cancellation of the contract or of any other act or acts by the Owner or its authorized employees and agents, under the terms of this contract and failure to so notify the aforesaid insurance companies of changes shall in no way relieve the insurance companies of their obligation under this contract.
- (e) Hold Harmless Agreement: The Contractor shall defend, indemnify and save harmless the Owner, the Engineer and all of their officers, agents, and employees from all suits, actions or claims of any character brought for or on account of any injuries to or death of or damages received by any person, persons or property resulting from the operations of the Contractor or any of its subcontractors, in prosecuting the work under this contract.

### 6. Titles and Headings

The titles and subheadings printed on the Contract Drawings, in the Contract Conditions, in the Contract Specifications and elsewhere in the Contract Documents are inserted for the convenience of reference only, and shall not be taken or considered as having any bearing on the interpretation thereof.

### 7. Progress Schedule and Reports

Before beginning work, the Contractor shall file with the Engineer a proposed schedule of the work to be performed under this Contract and the date of commencing and finishing each. On sewer, water and paving projects where construction on two or more streets, roads or easements is contemplated, the Contractor shall also indicate the starting and completion date of all items of work required on each street, road or easement. On the last day of each calendar month two (2) copies of the schedule shall be submitted to the Engineer with notes thereon indicating the percentage of completion of each subdivision of the work on that date. The form of the schedule shall be approved by the Engineer.

### 8. Location of Existing Utilities and Piping

The location of existing piping and underground utilities, such as gas mains, water mains, electric duct lines, etc., as shown on the Contract Drawings, have been taken from the record drawings of the parent Utility Companies where available. However, the Owner does not assume responsibility for the possibility that during construction utilities other than those shown may be encountered or that actual location of those shown may be different from the locations designated on the Contract Drawings.

At the locations wherein detailed positions of these facilities become necessary to the new construction, the Contractor shall, at their expense, furnish all labor and tools to either verify and substantiate the record drawing location or definitely establish the position of the facilities.

Because of the nature of the work, adjustments may be required in new construction to meet existing conditions. Such adjustments shall be made by the Contractor without additional cost to the Owner.

## GENERAL CONDITIONS OF CITY CONTRACTS

### 9. Soil Boring Data

Copies of results of soil borings, if borings were taken by the Owner in the vicinity of the proposed construction site, are available to the Contractor for inspection but are not a part of the Contract Documents. These borings are presented for whatever purpose the Contractor chooses to make of them. The Owner makes no representation or warrant regarding the number, location, spacing or depth of borings taken, nor of the accuracy or reliability of the information given in the results thereof. Further, the Owner does not assume responsibility for the possibility that during construction the soil and ground water condition may be different than indicated. Neither does the Owner assume responsibility for variations of soil and ground water at locations between borings. Contractors are required to make their own borings explorations and observations to determine soil and ground water conditions.

The Contractor shall plan the work based upon their own boring information.

### 10. Labor Provisions

(a) Labor Conduct. The Contractor shall employ none but competent and skilled workmen and foremen in the conduct of work on this contract. The Owner shall have the authority to order the Contractor to remove from the work any of Contractor's employees who refuse to obey instructions relating to the carrying out of the provisions and intent of the provisions of the contract, or who are incompetent, unfaithful, abusive, threatening or disorderly in their conduct, and any such person shall not again be employed on this project.

(b) Sunday, Holiday and Night Work. No work shall be done between the hours of 6:00 p.m. and 7:00 a.m., nor on Sundays or legal holidays, except such work as is necessary for the proper care and protection of work already performed or except in case of an emergency and, in any case, only with the permission of the Engineer.

It is understood, however, that night work may be established as a regular procedure by the Contractor if he first obtains the written permission of the Engineer, and that such permission may be revoked at any time by the Engineer if the Contractor fails to maintain at night adequate force and equipment for reasonable prosecution and to justify inspection of the work.

### 11. Notice of Starting Work

The Contractor shall notify the Engineer in writing forty-eight (48) hours before starting work at the site of the work of their intentions to do so. In case of a temporary suspension of work, he shall give reasonable notice before resuming work.

### 12. Effect of Extension of Time

The granting of any extension of time on account of delays which in the judgment of the Owner are avoidable delays shall in no way operate as a waiver on the part of the Owner of its rights under this Contract.

### 13. Extra Work

If extra work orders are given in accordance with the provisions of this contract, such work shall be considered a part hereof and subject to each and all of its terms and requirements.

### 14. Assignment of Contract

The Contract may not be assigned in whole or in part except upon the written consent of the Owner. Any assignment agreement shall be subject to review and approval by the Owner.

## GENERAL CONDITIONS OF CITY CONTRACTS

### 15. Subcontractors

No subcontractor will be recognized as such, and all persons engaged in the work of construction will be considered as employees of the Contractor and he will be held responsible for their work, which shall be subject to the provisions of the contract.

### 16. Discrepancies

Anything called for by one of the Contract Documents and not called for by others shall be of like effect as if required or called for by all. Any discrepancies between any parts of the Contract Documents shall be called to the attention of the Engineer for decision before proceeding with the work affected thereby.

### 17. Liability of Owner's Representatives and Officials

No official or employee of the Owner, nor the Engineer, nor any authorized assistant or agent of any of them, shall be personally responsible for any liability arising under this contract. The Engineer shall not be responsible for construction means, methods, techniques, sequences or procedures, time of performance or for safety precautions and programs in connection with the construction work. The Engineer shall not be responsible for the Contractor's failure to carry out the work in accordance with the construction contract. The Engineer shall not be responsible for acts or omissions of the Contractor, any subcontractor, or any of their agents or employees, or any other persons performing the work.

### 18. Effect of Inspection and Payments

Neither the observation by the Engineer nor by any of their agents, nor by an inspector, nor any order, measurement, approved modification, certificate or payment of money, nor acceptance of any part or whole of work, nor any extension of time, nor any possession by the Owner or its agents, shall operate as a waiver of any provision of this contract or of any power reserved therein to the Owner, or any right to damages thereunder; nor shall the waiver of any breach of this contract be held to be a waiver of any other or subsequent breach. All remedies shall be taken and construed as cumulative.

## II. LEGAL RELATIONS AND RESPONSIBILITY

### 1. Laws to be Observed

The Contractor shall keep himself fully informed of all existing and future Federal, State, County and Municipal laws, ordinances and regulations which in any manner affect those engaged or employed in the work or the materials used in the work or the conduct of the work or the rights, duties, powers or obligations of the Owner or of the Contractor or which otherwise affect the Contract, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. He shall at all times observe and comply with, and shall cause all their agents, subcontractors and employees to observe and comply with, all laws, ordinances, regulations, orders and decrees; and shall protect and indemnify the Owner, the Engineer and all of their officers, agents and employees, against any claim, loss or liability arising or resulting from or based upon the violation of any such laws, ordinance, regulation, order or decree, whether by themselves or by their agents, subcontractors or employees. If any discrepancy or inconsistency is discovered in the plans, Contract Drawings, Contract Specifications or other Contract Documents for the work in relation to such laws, ordinance, regulation, orders or decree, the Contractor shall forthwith report the same to the Engineer.

### 2. Provisions of Law

It is specifically provided that this Contract is subject to all applicable laws and that the rules of law shall prevail over any provision contained in any of the Contract Documents which may be in conflict thereto or inconsistent therewith.

### III. RESPONSIBILITIES AND RIGHTS OF CONTRACTOR

#### 1. Deliveries to Contractor

Delivery by Owner, or any of its agents or representatives to Contractor of any drawings, samples, notices, letters, communications or other things may be made in either of the following manners, to wit: (a) by personal delivery to Contractor, (b) by personal delivery to Contractor's foreman or superintendent at the site of the work, (c) by delivery to the Contractor's business address specified in the Proposal or specified in a written notice of changed address delivered by Contractor to Owner, or (d) by delivery to the Contractor's office at the site of the work. Delivery to the Contractor's above mentioned business may be made either by personal delivery to such address or office or by depositing the thing to be delivered in the United States Mail, postage prepaid, addressed to such address or office.

#### 2. Office of Contractor at Site

During the performance of this Contract, the Contractor may be requested to maintain a suitable office at the site of the work which shall be the headquarters of a foreman or superintendent authorized to receive drawings, instructions, or other communications, articles or things from the Owner or its agents, and any such thing given to the said foreman or superintendent or delivered to the Contractor's office at the site of the work in their absence shall be deemed to have been given to the Contractor.

#### 3. Attention to Work

The Contractor shall direct the work using their best skill and judgment and shall give their personal attention to and shall supervise the work to the end that it shall be prosecuted faithfully, and when he is not personally present on the work, he shall at all times be represented by a competent superintendent or foreman who shall be present at the work and who shall receive and obey all instructions or orders given under this Contract, and who shall have full authority to execute the same, and to supply materials, tools and labor without delay, and who shall be the legal representative of the Contractor. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, time of performance and for safety precautions and programs and for coordinating all portions of the construction. The Contractor shall be liable for the faithful observance of any instructions delivered to him or to their authorized representative.

#### 4. Work Which May Not be Subcontracted

Contractor shall give their personal attention to the fulfillment of the contract and shall keep the work under their control.

The Contractor shall perform with their own organization and with the assistance of workmen under their immediate supervision work of a value not less than thirty (30) percent of the value of all work embraced in this contract.

#### 5. Patents

Except as may be otherwise provided in the Special Conditions of Contract, the Contractor shall assume all costs arising from the use of patented materials, equipment, devices or processes used on or incorporated in the work, and agrees to indemnify and save harmless the Owner, the Engineer, and their duly authorized representatives or employees, from all suits at law, or actions of every nature for, or on account of the use of any patented materials, equipment, devices or processes.

Should the Contractor, their agents, servants or employees or any of them be enjoined from furnishing or using any invention, article, material or appliance supplied or required to be supplied or used under this contract, the Contractor shall promptly offer other articles, materials, or appliances in lieu thereof, of equal efficiency, quality, finish, or appliances in lieu thereof, of equal efficiency, quality, finish, suitability and market value, for review by the Engineer. If the Engineer should disapprove the offered substitutes and should elect, in lieu of a substitution, to have supplied, and to retain and use, any such invention, article, material, or appliance as may by this contract be required to be supplied, the Contractor shall pay such royalties and secure such valid licenses as may be requisite and necessary for the Owner and its officers, agents and employees, or any of them to use such invention, article, material or appliance without being disturbed or in any way interfered with by any proceeding in law or equity on

## GENERAL CONDITIONS OF CITY CONTRACTS

account thereof. Should the Contractor neglect or refuse to make any approved substitution promptly, or to pay such royalties and secure such licenses as may be necessary, then in that event the Engineer shall have the right to make such substitution, or the Owner may pay such royalties and secure such licenses and charge the cost thereof against any money due the Contractor from the Owner or recover the amount thereof from him and their sureties notwithstanding final payment under this contract may have been made.

### 6. Access to Work

The Contractor shall at all times provide proper facilities for access and inspection of the work by representatives of the Owner and of such official Governmental agencies as may be designated by the Owner as having jurisdictional rights to inspect the work.

### 7. Construction Site

#### (a) Use of Job Site

The Contractor shall confine their equipment, apparatus, the storage of materials, and operations of their workmen to limits indicated by the law, ordinances, permits or directions of the Owner, and shall not encumber other than the designated areas with their materials.

The Contractor shall not load or permit any part of a structure to be loaded with weight that will endanger its safety. The Contractor shall observe and enforce the Owner's instructions regarding signs, advertisements, fires and smoke.

#### (b) Use of Private Land

The Contractor shall not use any vacant lot or private land as a plant site, depository for materials, or as spill site, or for any other purpose without the written authorization of the owner of the land (or their agent), a copy of which authorization shall be filed with the Owner.

### 8. Signs

The Contractor shall place and maintain one or more sign boards as designated in Special Conditions of Contract. No other commercial or advertising signs will be allowed on the site of the work or on public property in the vicinity of the work. The layout of the sign shall be approved by the Engineer.

### 9. Construction Photographs

The Contractor shall provide no less than two (2) exposures at monthly intervals, during the construction period, construction photographs showing the progress of the work and of the exposed work completed under this contract. In addition, at the completion of the Contract, the Contractor shall provide no less than six (6) exposures of the completed work at the locations designated by the Engineer. All photographs shall be taken by a commercial photographer, shall be 4 x 5 inches film size, and shall indicate the date and the job title. Four prints, 8 x 10 inches, glossy, shall be furnished of each exposure. The photographer shall be equipped at all times to take either interior or exterior exposures. All 8 x 10 inch glossy prints of each exposure, together with all negatives, shall be delivered to the Engineer.

### 10. Liability of Contractor

The Contractor shall do all of the work and furnish all labor, materials, tools, and appliances, except as otherwise herein expressly stipulated, necessary or proper for performing and completing the work herein required in the manner and within the time specified in the Contract Documents. The mention of any specific duty or liability imposed upon the Contractor shall not be construed as a limitation or restriction of any general or other liability or duty imposed upon the Contractor by this contract, said reference to any specific duty or liability being made merely for the purpose of explanation.

The Contractor shall provide all items, materials, articles, operations or methods listed, noted, mentioned or scheduled on the drawings or in any of the Contract Documents, including all labor, material, plant, equipment, transportation and incidentals required and necessary for the completion of the work; and unless specifically shown

## GENERAL CONDITIONS OF CITY CONTRACTS

otherwise herein all plant, equipment and other work shall be complete, in place and in operation. The Contractor shall be responsible to the Owner for the acts and omissions of all their employees and all subcontractors, their agents and employees, and all other persons performing any of the work under a contract with the Contractor.

### **11. Assumption of Risks**

Until the completion and final acceptance by the Owner of all of the work under or implied by this Contract, the work shall be under the Contractor's care and charge and he shall be responsible therefore. The Contractor shall rebuild, replace, repair, restore and make good all injuries, damages, re-erection and repairs occasioned or rendered necessary by causes of any nature whatsoever, to all or any portions of the work, except as otherwise stipulated.

### **12. Responsibility for Damage**

The Contractor shall assume the defense of, and indemnify and save harmless the Owner and each and every officer, employee and agent thereof, and the Engineer from any and all loss, liability or damage and from all suits, actions, damages or claims, of every name and description, to which the Owner or the Engineer or any of their officers, employees or agents may incur or be subjected or put by reason of injury to persons or property in the execution of the work or resulting from negligence or carelessness on the part of the Contractor, their employees, subcontractor or agents, in the delivery of materials, and supplies, or by or on account of any act or omission of the Contractor, their employees, subcontractors, or agents, including, but not limited to any failure to fulfill the terms of or comply with all laws and regulations which apply to this contract; and said Owner shall have the right to estimate the amount of such damage and pay the same, and the amount so paid for such damage shall be deducted from the money due the Contractor under their contract, or the whole or so much of the money due or to become due the Contractor under this contract, as may be considered necessary by the Owner, shall be retained by the Owner until such suits or claims for damages shall have been settled or otherwise disposed of, and satisfactory evidence to that effect furnished to the Owner.

The rights of the Owner under this contract in the control of the quality and completeness of the work shall not make the Contractor an agent of the Owner, and the liability of the Contractor for all damages to persons or to public or private property, arising from the Contractor's execution of the work, shall not be lessened because of the existence, exercise or non-exercise of such rights.

### **13. Protection of Persons and Property**

The Contractor will be solely and completely responsible for conditions of the job site, including safety of all persons and property during the performance of the work. This requirement will apply continuously and not be limited to normal working hours.

The Contractor shall furnish such watchmen, guards, fences, warning signs, lights and walkways, and shall take all other precautions as shall be necessary, to prevent damage to persons or property. All structures and improvements in the vicinity of the work shall be protected by the Contractor, and if such property is damaged, injured or destroyed by the Contractor, their employees, subcontractors, or agents, it shall be restored to a condition as good as when he entered upon the work. The safety provisions of applicable laws, including but not limited to building and construction codes, shall be observed. Machinery, equipment, and all hazards shall be guarded (or hazards eliminated) in accordance with the safety provisions of the latest edition and any supplements thereto of the Manual of Accident Prevention in Construction, heretofore published by the Associated General Contractors of America, to the extent that such provisions are not in contravention to applicable law.

The duty of the Engineer to conduct construction observations of the Contractor's performance is not intended to include review of the adequacy of the Contractor's safety measures in, on or near the construction site or sites.

### **14. Protection of Contractor's Work and Property**

The Contractor shall protect their work, supplies, and materials from damage due to the nature of the work, the action of the elements, trespassers or any cause whatsoever, until the completion and acceptance of the work.

## GENERAL CONDITIONS OF CITY CONTRACTS

Neither the Owner nor any of its officers, employees or agents nor the Engineer assumes any responsibility for collecting indemnity from any persons or person causing damage to the work of the Contractor.

### **15. Protection of Existing Structures**

Unless otherwise indicated on the Contract Drawings or unless otherwise taken care of by the Owner thereof, all utilities and all structures of any nature, whether below or above ground, that may be affected by the work shall be protected and maintained by the Contractor and shall not be disturbed or damaged by him during the progress of the work; provided that should the Contractor disturb, disconnect, or damage any utility or any structure, all expenses of whatever nature arising from such disturbance or the replacement or repair thereof shall be borne by the Contractor.

### **16. Maintenance of Traffic**

Throughout the performance of the work or in connection with this contract, the Contractor shall construct and adequately maintain suitable and safe crossing over the trenches and such detours as are necessary to care for public and private traffic. The material excavated from trenches shall be compactly deposited along the sides of the trench or elsewhere in such manner as shall give as little inconvenience as possible to the traveling public, to adjoining property owners, to other contractors or to the Owner.

The traffic control devices used on construction, reconstruction and maintenance projects shall conform to the specifications, standards and criteria contained in the current edition of the Michigan Manual of Uniform Traffic Control Devices regarding design and application.

### **17. Preservation of Stakes and Marks**

The Contractor shall preserve carefully all bench marks, reference points, and stakes, and in case he causes damage or disturbance, he will be charged with the resulting expense of replacement and shall be responsible for any mistakes that may be caused by their loss or disturbance.

### **18. Approval of Contractor's Plans**

The absence of any exception taken by the Engineer of any drawing or any method or work proposed by the Contractor shall not relieve the Contractor of any of their responsibility for any errors therein and shall not be regarded as any assumption of risk or liability by the Owner or any officer or employee thereof, and the Contractor shall have no claim under the contract on account of the failure or partial failure or inefficiency of any plan or method so approved. No exception taken shall be considered to mean merely that the Engineer has no objection to the Contractor's using, upon their own full responsibility, the plans or methods proposed.

### **19. Suggestions to Contractor**

Any plan or method of work suggested by the Engineer to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor; and the Engineer and the Owner shall assume no responsibility therefore.

### **20. Licenses, Permits and Regulations**

The Contractor shall secure all Federal, State and local licenses required by law unless already obtained by the city. He shall obtain and pay for all necessary permits. He shall give all notices and comply with all laws, ordinances and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the drawings or Contract Specifications are at variance therewith, he shall promptly notify the Engineer in writing, and any necessary changes shall be adjusted as provided in the contract for changes in the work.

### **21. Taxes**

Contractor shall, without additional expense to the Owner, pay all applicable Federal, State and local sales and other taxes, except taxes and assessments on the real property comprising the site of the project.

## GENERAL CONDITIONS OF CITY CONTRACTS

### **22. Construction Utilities**

The Contractor, for and in behalf of their work under this Contract shall provide and maintain all necessary utilities, such as water supply, electrical power, telephones, roads, fences, sanitary facilities, suitable storage places, etc., except as may be otherwise specifically stipulated in the Special Conditions of Contract. Sanitary facilities shall be suitable for those employed on this contract and of a type that will not create a public nuisance. He shall provide and maintain an adequate portable water supply for use of employees at the site of the work. Sanitary facilities and portable water supply shall be subject to approval of local and State Departments of Health.

### **23. Cooperation**

The Contractor shall cooperate with all other contractors who may be performing work in behalf of the Owner and workmen who may be employed by the Owner on any work in the vicinity of the work to be done under this contract; and he shall so conduct their operation as to interfere to the least possible extent with the work of such contractors or workmen. He shall make good promptly at their own expense, any injury or damage that may be sustained by other contractors or employees of the Owner at their hands.

Any difference or conflict which may arise between the Contractor and other contractors, or between the Contractor and workmen of the Owner in regard to their work shall be adjusted and determined by the Engineer.

If the work of the Contractor is delayed because of any acts or omissions of any other contractor of the Owner, the Contractor shall on that account have no claim against the Owner other than for an extension of time.

### **24. Subcontractors**

The Contractor shall notify the Owner in writing of the names of all subcontractors he proposes to employ on the contract and shall not employ any subcontractors until the Owner's approval has been obtained.

The Contractor agrees to be fully and directly responsible to the Owner for all acts and omissions of their subcontractors and of any other person employed directly or indirectly by the Contractor or subcontractors, and this contract obligation shall be in addition to the liability imposed by law upon the Contractor.

Nothing contained in this Contract Documents shall create any contractual relationship between any subcontractor and the Owner. It shall be further understood that the Owner will have no direct relations with any subcontractor. Any such necessary relations between Owner and subcontractor shall be handled by the Contractor.

The Contractor agrees to bind every subcontractor (and every subcontractor of a subcontractor, etc.) by all terms of the Contract Documents as far as applicable to the subcontractors' work unless specifically noted to the contrary in a subcontract approved in writing as adequate by the Owner.

### **25. Termination of Unsatisfactory Subcontractors**

Should any subcontractor fail to perform in a satisfactory manner the work undertaken by him, such subcontract shall be terminated immediately by the Contractor upon notice from the Owner.

### **26. Records of Employees and any Federal Reporting Methods**

The Contractor shall keep an accurate record showing the names, place of residence, citizenship, occupation and per diem pay, of each person engaged in the execution of the contract; and he shall cause every subcontractor under him, who shall undertake the performance of any part of the contract, to also keep a similar record of each person engaged in the execution of said subcontract. All such records shall be available at any time to the Engineer or duly authorized representative.

### **27. Removal of Condemned Materials and Structures**

The Contractor shall remove from the site of the work, without delay, all rejected or condemned materials or structures of any kind brought to or incorporated in the work, and upon their failure to do so, or to make satisfactory progress in so doing within forty-eight (48) hours after the service of a written notice from the Engineer, the rejected

## GENERAL CONDITIONS OF CITY CONTRACTS

or condemned material or work may be removed by the Owner and the cost of such removal shall be taken out of the money that may be due or may become due the Contractor on account of or by virtue of this contract. No such rejected or condemned material shall again be offered for use by the Contractor under this contract.

### **28. Errors and Omissions**

If the Contractor, in the course of the work, finds any errors or omissions in the Contract Drawings, or in the layout as given by survey points and instructions, or if he finds any discrepancy between the Contract Drawings and physical conditions of the locality, he shall promptly notify the Engineer of the same for correction. Any work done after such discovery, until authorized, will be done at the Contractor's risk.

### **29. Proof of Compliance with Contract**

In order that the Engineer may determine whether the Contractor has complied with those requirements of this contract, compliance with which is not readily ascertainable through inspection and tests of the work and materials, the Contractor shall, at any time requested, submit to the Engineer properly authenticated documents or other satisfactory proofs as to their compliance with such requirements.

### **30. Cleaning Up**

The Contractor shall not allow the site of the work to become littered with trash and waste material, but shall maintain the same in a neat and orderly condition throughout the construction period. The Engineer shall have the right to determine what is or is not waste material or rubbish and the place and manner of disposal.

On or before completion of the work, the Contractor shall thoroughly clean all pits, pipes, chambers, or conduits which are a part of the work or premises which he has entered upon, shall tear down and remove all temporary structures built by him and shall remove rubbish of all kinds from any of the grounds he has occupied and leave them in a neat and clean condition.

### **31. Final Guaranty**

All work shall be and is guaranteed by the Contractor for a period of one year from and after the date of final acceptance of the work by the Owner.

If, within said guaranty period, repair or changes are required in connection with guaranteed work, which, in the opinion of the Engineer, is rendered necessary as the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the contract, the Contractor shall, promptly upon receipt of notice from the Owner, and without expense to the Owner (a) place in satisfactory condition in every particular all of such guaranteed work, correct all defects therein; and (b) make good all damage to the building or site, or equipment or contents thereof, which in the opinion of the Engineer, is the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the contract; and (c) make good any work or material, or the equipment and contents of buildings, structure or site disturbed in fulfilling any such guarantee.

If the Contractor, after notice, fails within ten (10) days to proceed to comply with the terms of this guaranty, the Owner may have the defects corrected, and the Contractor and their surety shall be liable for all expense incurred, provided, however, that in case of an emergency where, in the opinion of the Engineer, delay would cause serious loss or damage, repairs may be made without notice being given to the Contractor and the Contractor shall pay the cost thereof.

### **32. Ownership of Drawings and Records**

The City of Battle Creek shall retain all rights to data provided in this contract.

### **33. Right of Review**

The City of Battle Creek or their grantor agency is duly authorized to examine any books, documents, papers and records of the contractor which are directly pertinent to the contract.

#### **IV. RESPONSIBILITY AND RIGHTS OF OWNER**

##### **1. Surveys and Staking**

The Engineer will provide control stakes for general layout and control grades for the construction work. It shall be the Contractor's responsibility to transfer the line and grade to finish grade as required. The Contractor will be held responsible for correct alignment and grade of projects constructed, and no claim for extra will be allowed for alleged inaccuracy of grade stakes. The Contractor shall give 48 hours notice for any staking required.

##### **2. Rights-of-Way**

The Owner will provide all rights-of-way and easements in or beneath which pipes and other structures will be constructed by the Contractor under this Contract.

##### **3. Authority of the Engineer**

The Engineer shall be an arbiter between the Owner and the Contractor.

All work done under this contract shall be done in accordance with the Contract Documents and in good workmanlike manner. To prevent disputes and litigation, the Engineer shall in all cases determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this contract; shall decide all questions relative to the true construction, meaning, and intent of the Contract Specifications and the Contract Drawings; shall decide all questions which may arise relative to the classifications and measurements of quantities and materials and the fulfillment of this contract; and shall have the power to reject or condemn all work or material which does not conform to the terms of this contract. Their estimate and decision in all matters shall be a condition precedent to an appeal to the Owner, or the right of the Contractor to receive, demand, or claim any money or other compensation under this contract and a condition precedent to any liability on the part of the Owner to the Contractor on account of this contract. Whenever the Engineer shall be unable to act, in consequence of absence or any other cause, then such engineer as the Engineer or the Owner shall designate shall perform any and all of the duties and be vested with any or all of the powers herein given to the Engineer.

##### **4. Inspection**

The Engineer and their representatives shall at all times have access to the work whenever it is in preparation or progress, and the Contractor shall provide proper facilities for such access and for observation.

If the Contract Specifications or other Contract Documents, the Engineer's instruction, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the Engineer timely notice of its readiness for observation and if the observation is by another authority than the Engineer, of the date fixed for such observation.

If any work shall be covered up without approval or consent of the Engineer, it must if required by the Engineer be uncovered for examination and properly restored at the Contractor's expense.

Re-examination of any work may be ordered by the Engineer, and, if so ordered, the work must be uncovered by the Contractor. If such work is found to be in accordance with the Contract Documents, the Owner will pay the cost of re-examination and replacement. If such work is not in accordance with the Contract Documents, the Contractor shall pay such cost.

Properly authorized inspectors shall be considered to be the representatives of the Owner limited to the duties and power entrusted to them. It will be their duty to inspect materials and workmanship of those portions of the work to which they are assigned, either individually or collectively, under the instructions of the Engineer and to report any and all deviations from the Contract Drawings, Contract Specifications, and other Contract provisions which may come to their notice. Any inspector shall have the right to order the work to which he is assigned stopped, if in their judgment such action is necessary to (a) allow proper inspection, (b) avoid irreparable damage to the work or (c) avoid subsequent condemnation of work which could not be readily replaced or restored to an acceptable condition.

## GENERAL CONDITIONS OF CITY CONTRACTS

Such stoppage shall be for a period reasonably necessary for notification of the Engineer and for the Engineer to determine that the work will in fact proceed in due fulfillment of all contract requirements.

### 5. Retention of Imperfect Work

If any portion of the work done or material furnished under this Contract shall prove defective and not in accordance with the Contract Documents, and if the imperfection in the same shall not be of sufficient magnitude or importance to make the work impracticable or will create conditions which are dangerous or undesirable, the Engineer shall have the right and authority to retain such work instead of requiring the imperfect work to be removed and reconstructed but he shall recommend to the Owner such deductions therefore in the payments due the Contractor as may be just and reasonable, and Owner may make such deductions as are reasonable.

### 6. Changes in Work

The Engineer shall have the right, in writing, to order additions to, omissions from, or corrections, alterations and modifications in the line, grade, form, dimensions, plan or kind or amount of work or materials herein contemplated, or any part thereof, either before or after the beginning of construction. Changes involving an increase or decrease in the cost of the work or inconsistent with the Contract Drawings or the Contract Specifications shall be approved in accordance with the paragraph "Alterations, Omissions and Extra Work" of these General Conditions, and then such order will be binding upon the Contractor.

Such alterations shall in no way affect, vitiate, or make void this contract or any part thereof, except that which is necessarily affected by such alterations and is clearly the evident intention of the parties to this contract.

In case of neglect or refusal by the Contractor to perform any extra work which may be authorized by the Owner or to make satisfactory progress in the execution of the same, the Owner may employ any person or persons to perform such work and the Contractor shall not in any way interfere with or molest the person or persons so employed.

### 7. Additional Drawings by Owner

The Contract Drawings made a part of this contract at the time of its execution are intended to be comprehensive and to indicate in more or less detail the scope of the work. In addition to these drawings, however, the Engineer may furnish such additional drawings from time to time during the progress of the work as are necessary to make clear or to define in greater detail the intent of the Contract Specifications and Contract Drawings, and the Contractor shall make their work conform to all such drawings.

### 8. Emergency Protection

In case of an emergency which threatens loss, damage or injury to persons or property and which requires immediate action to remedy, then and in that event, the Engineer, with or without notice to the Contractor may provide suitable protection to the said property and persons by causing such work to be done and such material to be furnished as shall provide such protection as the Engineer may consider necessary and adequate.

The cost and expense of such work and material so furnished shall be borne by the Contractor and if the same shall not be paid on presentation of the bills therefore, then such costs shall be deducted from any amounts due or to become due the Contractor.

The performance of such emergency work under the direction of the Engineer shall in no way relieve the Contractor from any damages which may occur during or after such precaution has been taken by the Engineer.

### 9. Suspension of Work

The Owner may at any time suspend the work, or any part thereof by giving reasonable notice to the Contractor. The work shall resume by the Contractor on the date fixed in a written notice from the Owner to the Contractor to do so. If such stoppage is due to no fault of the Contractor and not otherwise authorized by other provisions of the Contract Documents, the Owner shall reimburse the Contractor for such expense, if any, which is incurred by the Contractor, in connection with the work under this contract as a result of such suspension, which would not have

## GENERAL CONDITIONS OF CITY CONTRACTS

been incurred or reasonably required if there had not been such suspension, provided that there shall be no reimbursement if the period of suspension occurs after expiration of the time allowed for completion of the work, exclusive of any extension of time.

### 10. Right of Owner to Terminate Contract

In the event that any of the provisions of this contract are violated by the Contractor or by any of their subcontractors, the Owner may serve written notice upon the Contractor and the Surety of its intention to terminate this contract, such notice to contain the reasons for such intention to terminate this contract, and, unless within ten (10) days after the serving of such notice upon the Contractor, such violation shall cease or satisfactory arrangement for correction be made in writing, the contract shall upon the expiration of said ten days, cease and terminate. In the event of any such termination, the Owner shall immediately serve notice thereof upon the Surety and the Contractor, and the Surety shall have the right to perform the contract. If the Surety does not commence performance thereof within thirty (30) days from the date of the mailing to such Surety of said notice of termination, the Owner may take over the work and prosecute the same to completion by contract or force account at the expense of the Contractor, and their Surety shall be liable to the Owner for any excess cost to the Owner.

### 11. Termination of Agreement

This agreement may be terminated for reasons of convenience or default.

- a) Termination for Convenience: The City of Battle Creek may terminate this Agreement, in whole or in part, at any time by written notice to the Contractor. The Contractor shall be paid its costs, including Contract closeout costs and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to be paid the Contractor. If the Contractor has any property in its possession belonging to or paid for by the City of Battle Creek, the Contractor will account for same, and dispose of it in the manner the City of Battle Creek directs.
- b) Termination For Default: If the Contractor does not deliver the complete Project in accordance with this Agreement or if the Contractor fails to comply with any other provisions of the Agreement, The City of Battle Creek may terminate, revoke or rescind this Agreement for default. Termination, revocation or rescission shall be effected by serving notice on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the Contract price for the portions of the Project furnished, accepted, and found in compliance with the terms and conditions of this Agreement.

If it is later determined by the City of Battle Creek that the Contractor has an excusable reason for not performing, such as a strike, fire or flood, events which are not the fault of, or are beyond the control of the Contractor. The City of Battle Creek, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Termination, revocation or recession of this Agreement for default shall not affect or impair any rights or claims of the City of Battle Creek to damages for breach of any covenants of this Agreement by the Contractor. Further, should the Contractor fail to comply with the conditions of the Agreement or fail to complete the specified work or furnish the specified services as stipulated in the Agreement, the City of Battle Creek reserves the right to purchase on the open market, or to complete the required work at the expense of the Contractor and to pursue all other recoveries available to the City of Battle Creek under Michigan law.

In the event of a dispute under this Agreement, the City if Battle Creek and the Contractor agree that proper venue for purposes of litigations shall be Calhoun County, Michigan.

### 12. Placing Portions of Work in Service

If desired by the Owner, portions of the work, as completed, may be placed in service, and the Contractor shall give proper access to the work for this purpose, but such use and operation shall not constitute an acceptance of the work, and the Contractor shall be liable for defects due to faulty construction until one year after the entire work under this contract is finally accepted.

## GENERAL CONDITIONS OF CITY CONTRACTS

### 13. Sequence and Progress of Work

The Engineer shall have the power to direct the order and sequence of the work, which in general shall be to coordinate the construction of several parts of the contract to a successful completion as rapidly as possible. If at any time before the commencement or during the progress of the work the materials and procedures used or to be used appear to the Engineer as insufficient or improper for securing the quality of work required, or the required rate of progress, he may order the Contractor to increase efficiency or to improve their character and the Contractor shall conform to such order, but failure of the Engineer to demand any increase of such efficiency or any improvement shall not release the Contractor from their obligations to secure the quality of work or the rate of progress specified.

## V. WORKMANSHIP, MATERIALS AND EQUIPMENT

### 1. Workmanship

All workmanship shall be first-class, performed by persons skilled in the applicable trades, and shall be subject to the inspection, approval, or rejection of the Engineer in accordance with the requirements and intent of the Contract Documents. The Engineer shall have the right to order the Contractor to correct or replace unacceptable workmanship. Any other portions of the work disturbed or damaged by such correction or replacement shall be made good at the Contractor's expense.

### 2. Interpretation of Specifications and Drawings

The Contract Specifications and the Contract Drawings are intended to be explanatory of each other. Any work indicated on the Contract Drawings and not in the Contract Specifications, or vice versa, is to be executed as if indicated in both. All work shown on the Contract Drawings, the dimensions of which are not figured, shall be accurately followed to the scale to which the drawings are made, but figured dimensions are in all cases to be followed, where given, though they differ from scaled measurements. Large scale drawings shall be followed in preference to small scale drawings. Should it appear that the work to be done, or any of the matters relative thereto, is not sufficiently detailed or explained in these Contract Documents, including the Contract Drawings, the Contractor shall apply to the Engineer for such further explanations as may be necessary and shall conform thereto as part of this contract, so far as may be consistent with the terms of this contract. In the event of any doubt or question arising respecting the true meaning of the Contract Specifications, reference shall be made to the Engineer and their decision thereon shall be final.

### 3. General Quality of Materials

Materials and equipment shall be new and of a quality equal to that specified or approved. Mechanical and electrical equipment shall be the products or manufactures of established good reputations regularly engaged in the fabrication of such equipment. Unless otherwise noted, any equipment offered shall be current modifications which have been in successful regular operation under comparable conditions for a period of at least two years. This time requirement, however, does not apply to minor details nor to thoroughly demonstrated improvements in design or in material of construction. Work shall be done and completed in a thorough and workmanlike manner.

### 4. Quality in Absence of Detailed Specifications

Whenever under this contract it is provided that the Contractor shall furnish materials or manufactured articles or shall do work for which no detailed specifications are set forth, the materials or manufactured articles shall be of the best grade in quality and workmanship obtainable in the market from firms of established good reputation, or, if not ordinarily carried in stock, shall conform to the usual standards for first-class materials or articles of the kind required, with due consideration of the use to which they are to be put. In general, the work performed shall be in full conformity and harmony with the intent to secure the best standard of construction and equipment of the work as a whole or in part.

### 5. Materials and Equipment Specified by Name

Except as hereinafter otherwise provided, whenever any material or equipment is indicated or specified by patent or proprietary name or by the name of the manufacturer, such specification shall be considered as used for the

## GENERAL CONDITIONS OF CITY CONTRACTS

purpose of describing the material or equipment desired and shall be considered as followed by the words "or approved equal", and the Contractor may offer any material or equipment which shall be approved by the Engineer and be equal in every respect to that specified; provided, however, that written approval is obtained from the Engineer prior to incorporation into the work.

### **6. Approval of Materials and Equipment**

All materials and equipment offered to be furnished or furnished for the work are subject to inspection and approval or rejection by the Engineer. Insofar as practicable, approval shall be obtained prior to purchase and delivery of materials and equipment to the site of the work.

### **7. Drawings of Equipment and Fabricated Materials**

As soon as possible after execution of the contract, the Contractor shall submit to the Engineer a complete listing of the manufacturers of each item of equipment or assembly fabricated off the site which he proposes to furnish on the project, together with sufficient information, including shop assembly and detail drawings, manufacturers' specifications, and performance data to demonstrate clearly that the materials and equipment to be furnished comply with the provisions and intent of the Contract Specifications, Contract Drawings and Contract Documents. If the information shows any deviation from the contract requirements, the Contractor shall, by a statement in writing accompanying the submittal, advise the Engineer of the deviation and state the reason therefore.

The Contractor shall also submit to the Engineer shop drawings showing details of structural steel and concrete reinforcing steel, bending details, piping details, and of other items necessary to proper installation of materials into the completed work.

All drawings and details described above when submitted shall bear the stamp of the Contractor and initials of their authorized representative indicating that the Contractor has reviewed and approved such drawings as meeting their interpretation of the requirements of the contract.

The submittal shall be made in triplicate plus the number of copies that the Contractor desires to be returned to him. Upon review, the Engineer will return all but three copies, which will be stamped or marked either no exception taken or make corrections as noted. In the latter case, an explanation will be given of why the material or equipment is unsatisfactory.

The Contractor shall make any indicated corrections on the drawings returned and shall resubmit corrected drawings until final approval is obtained.

The absence of any exceptions taken by the Engineer of shop drawings and other data submitted by the Contractor shall not relieve the Contractor from responsibility for any errors therein or of furnishing the materials and equipment of proper dimensions, size, quantity, quality, and all performance characteristics to meet the requirements and intent of the Contract Documents.

The Contractor shall have no claim for damages or extension of time on account of any delay in the work resulting from the rejection of material or from revision and resubmission of drawings and other data for approval.

### **8. Equipment Drawings**

The Contract Drawings detail structures, piping, appurtenances, and indicate equipment to accomplish certain results. If a contract is entered into which includes items of equipment, facilities, or processes requiring any modifications or deviations from the Contract Drawings, the Contractor shall prepare and submit to the Engineer detailed drawings showing all modifications in structures, reinforcing steel, piping, electrical and mechanical work, etc., to adapt the Contract Drawings to the alternate equipment or facilities. The Engineer will review such drawings and either take no exceptions with them or indicate thereon changes necessary to comply with the project requirements. The Contractor shall revise any unapproved drawings and resubmit them to the Engineer.

## GENERAL CONDITIONS OF CITY CONTRACTS

### 9. Samples

Whenever requested by the Engineer or called for by the Contract Drawings or the Contract Specifications or Contract Documents, sample or test specimens of the materials to be used or offered for use in the work shall be obtained or prepared by the Engineer. The material for the samples shall be provided by the Contractor with the cost of such materials being merged in the prices stated on items which make up the Total Base Bid.

### 10. Tests

All tests and retests of equipment, piping and structures called for in the Contract Specifications or the Contract Drawings or Contract Documents or required by laws, ordinances, and regulations shall be provided by the Owner. Material for testing shall be provided by the Contractor, with the cost of such materials being merged in the prices stated on items which make up the Total Base Bid. All laboratory tests required shall be made by a testing laboratory employed by the Owner. All tests shall be made in accordance with specified procedures, or if not herein specified, they shall be made in accordance with applicable recognized standard practice. Laboratory tests shall be made by a recognized laboratory. Reports of tests provided by the Engineer shall be promptly submitted to the Contractor.

Tests of manufactured materials by the manufacturer at the point of manufacture, assembly and/or fabrication may be accepted by the Engineer in lieu of tests by an independent laboratory.

The Contractor shall give the Engineer sufficient notice of the time and place of any test to be made at the point of manufacture, assembly or fabrication in order that the Engineer may witness the test if he so desires.

### 11. Material Tests

Materials incorporated in this contract shall be subject to inspection and tests as follows. All tests, except as noted, shall be made by an independent established testing laboratory, employed and paid for by the Owner. Samples at the mill or factory shall be taken by a representative of the testing laboratory. Samples of construction materials from the site of the work, such as sand, gravel, concrete, cylinders, pipe, etc., for which laboratory tests are required, shall be taken, assembled or prepared on the site of the work by representatives of the testing laboratory or by the Engineer. Any necessary containers, shipping boxes or crates shall be supplied by the testing laboratory or the Engineer. The testing laboratory or the Engineer shall pay all costs of transporting samples to the laboratory. The Contractor shall furnish, without additional charge, all material that may reasonably be required for testing purposes. Visual tests of all materials and slump tests of concrete as specified in the Contract Specifications will be made by the Engineer without cost to the Contractor.

Payment for tests shall be made by the Owner. The tests to be made, the number of samples, and acceptance and rejection shall be based on the latest revised issue of standards and tentative standards of the American Society for Testing Materials unless otherwise noted in the Contract Specifications. Two signed copies of the test reports on testing laboratory forms or letterhead shall be delivered to the Contractor as soon as available.

All tests shall be made in accordance with procedures specified in the Contract Specifications, or if not herein specified, they shall be made in accordance with applicable recognized standard practice. Reports of tests provided by the Engineer shall be promptly submitted to the Contractor.

Tests of manufactured materials by the manufacturer at the point of manufacture, assembly and/or fabrication may be accepted by the Engineer in lieu of tests by an independent laboratory.

The Contractor shall give the Engineer sufficient notice of the time and place of any test to be made at the point of manufacture, assembly or fabrication in order that the Engineer may witness the test if he so desires.

### 12. Storage of Materials

Materials shall be so stored as to ensure the preservation of their quality and fitness for the work. They shall be so located and disposed that prompt and proper inspection thereof may be made.

## GENERAL CONDITIONS OF CITY CONTRACTS

### 13. Operating and Maintenance Instructions

Before final acceptance of the work, the Contractor shall deliver to the Engineer a minimum of two complete and suitable operating and maintenance instructions and parts lists for each piece of equipment or equipment assembly. These instructions and lists shall be assembled in two or more sets in an orderly arrangement and shall be accompanied by a tabulation of the information provided for each item of equipment.

### 14. Compliance with State Safety Code

All necessary machinery guards, railings and other protective devices shall be provided as specified by the State Division of Industrial Safety of the State in which the work under this contract is constructed.

### 15. Fuel Storage

1. On-site storage of any fuel (gasoline, diesel, etc.), shall be prohibited except that contained in the fuel tanks of the contractor's equipment; and, or,
2. The contractor shall defend, hold harmless and indemnify the City against all damages resulting from pollution damage caused by their equipment and/or supplies, regardless of the cause.

## VI. PROSECUTION OF WORK

### 1. Equipment and Methods

The work under this contract shall be prosecuted with all materials, tools, machinery, apparatus and labor, and by such methods as are necessary to the complete execution of everything described, shown or reasonably implied in the Contract Documents. If at any time before the beginning or during the progress of the work, any part of the Contractor's plant or equipment or any of their methods of execution of the work appear to the Engineer to be unsafe, inefficient or inadequate to insure the required quality or rate of progress of the work, he may order the Contractor to increase or improve their facilities or methods and the Contractor shall comply promptly with such orders; but neither compliance with such orders nor failure of the Engineer to issue such orders shall relieve the Contractor from their obligation to secure the degree of safety, the quality of the work and the rate of progress required. The Contractor alone shall be responsible for the safety, adequacy and efficiency of their plant, equipment and methods.

### 2. Time of Completion

The Contractor shall promptly begin the work under this contract, and all portions of the project made the subject of this contract shall be begun and so prosecuted that they shall be completed and ready for full use within the time specified elsewhere in these Contract Documents.

### 3. Avoidable Delays

Avoidable delays in the prosecution or completion of the work shall include all delays which might have been avoided by the exercise of care, prudence, foresight or diligence on the part of the Contractor.

Delays in the prosecution of parts of the work, which may in themselves be unavoidable but do not necessarily prevent or delay the prosecution of other parts of the work nor the completion of the whole work within the time herein specified, reasonable loss of time resulting from the necessity of submitting plans to the Engineer for approval and from the making of surveys, measurements and inspections, and such interruptions as may occur in the prosecution of the work on account of the reasonable interference of other contractors employed by the Owner, which do not necessarily prevent the completion of the whole work within the time herein specified, will be deemed avoidable delays within the meaning of this contract.

## GENERAL CONDITIONS OF CITY CONTRACTS

### 4. Unavoidable Delays

Unavoidable delays in the prosecution or completion of the work under this contract shall include all delays which may result through causes beyond the control of the Contractor and which he could not have provided against by the exercise of care, prudence, foresight or diligence. Orders issued by the Owner, changing the amount of work to be done, the quantity of material to be furnished, or the manner to be done, the quantity of material to be furnished, or the manner in which the work is to be prosecuted, failure of the Owner to provide rights-of-way, and unforeseen delays in the completion of the work of other contractors under contract with the Owner will be considered unavoidable delays, so far as they necessarily interfere with the Contractor's completion of the whole of the work. Delays due to adverse weather conditions will not be regarded as unavoidable delays as the Contractor should understand that such conditions are to be expected and plan their work accordingly.

### 5. Notice of Delays

Whenever the Contractor foresees any delay in the prosecution of the work, and in any event immediately upon the occurrence of any delay, he shall notify the Engineer in writing of the probability of the occurrence of such delay and its cause in order that the Engineer may take immediate steps to prevent, if possible, the occurrence or continuance of the delay, or, if this cannot be done, may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the work are to be delayed thereby.

After the completion of any part of the whole of the work, the Engineer, in approving the amount due to the Contractor, will assume that any and all delays which have occurred in its prosecution and completion have been avoidable delays, except such delays as shall have been called to the attention of the Engineer at the time of their occurrence and later found by him to have been unavoidable. The Contractor will make no claims that any delay not called to the attention of the Engineer at the time of its occurrence has been an unavoidable delay.

### 6. Extension of Time

#### (a) Unavoidable Delays

For delays which are unavoidable, as determined by the Owner, the Contractor will be allowed, if he applies for the same, an extension of time beyond the time specified for completion elsewhere in the Contract Documents, proportionate to such unavoidable delay or delays, within which to complete the Contract; and the Contractor will not be charged, because of any extension of time for such unavoidable delay, any liquidated damages or engineering and inspection costs as are charged in the case of extensions of time for avoidable delays.

#### (b) Avoidable Delay

If the work called for under this Contract is not finished and completed by the Contractor, in all parts and in accordance with all requirements, within the time specified for completion elsewhere in these Contract Documents, including extensions of time granted because of unavoidable delay, or if any time prior to the expiration of said time it should appear to Owner that the Contractor will be unable to finish and complete said work as aforesaid within said time, and if the Contractor's failure or inability to finish and complete said work as aforesaid within said time should be due, as determined by Owner, to avoidable delay or delays, then in that event the Owner, if it finds such to be for the best interests of the Owner, may, but will not be required to grant to Contractor an extension or extensions of time within which to finish and complete all said work.

If such extension of time for Avoidable Delay is not granted, the provisions of the paragraph "Right of Owner to Terminate Contract" of these General Conditions will be followed. If the time limit be so extended, the Owner shall charge to Contractor, and may deduct from the final payment for the work, all engineering, and inspection expenses incurred by Owner in connection with the work during the period of such extension or extensions, except that the cost of final surveys and preparation of final estimates will not be included in such charges. Such expenses of Owner will be computed on the basis of the per diem schedule of charges set forth in the General Conditions of Contract. In addition, if such an extension of time is granted, Contractor will be charged liquidated damages if provided for in the Special Conditions of Contract.

## GENERAL CONDITIONS OF CITY CONTRACTS

### 7. Unfavorable Weather and Other Conditions

During unfavorable weather and other unfavorable conditions, the Contractor shall pursue only such portions of the work as shall not be damaged thereby. No portions of the work whose satisfactory quality or efficiency will be affected by an unfavorable condition shall be constructed while these unfavorable conditions exist unless, by special means or precautions approved by the Engineer, the Contractor shall be able to overcome them.

## VII. PAYMENTS AND CONTRACT COMPLETION

### 1. Progress Estimates and Payments

At about the close of each month during which satisfactory progress has been made toward the final completion of the work the Engineer will make an estimate of the amount and value of the work which has been done under this Contract during that month, or since the date of the next preceding estimate. Such estimate shall not be made either wholly or in part of appraisal or estimation, and it shall be sufficient if it is approximate only. Any error or inaccuracy which may occur in any such progress estimate may be allowed for or corrected in any subsequent estimate.

The first estimate shall be of the value of the work done since the Contractor shall have begun the performance of this contract, and every subsequent estimate, except the final estimate shall be of the value of the work done since the last preceding estimate was made; provided, however, that should the Contractor fail to adhere to the program of completion fixed in this contract, the Engineer shall deduct from the next and all subsequent estimates the full calculated accruing amount of the liquidated damages (if any) to the date of said estimate, until such time as the compliance with the program has been restored; and provided, further that no estimate shall be required to be made when, in the judgment of the Engineer, the total value of the work done and materials incorporated into the work under the contract since the last preceding estimate amounts to less than Five Thousand Dollars (\$5,000.00).

The estimate shall be signed by the Contractor and Engineer and approved by the Owner, and after such approval the Owner, subject to the foregoing provisions, and partial waiver of liens, will pay or cause to be paid to the Contractor, in the manner provided by law, an amount equal to ninety-five percent (95%) of the estimated value of the work performed.

### 2. Alterations, Omissions and Extra Work

Owner reserves the right to increase or decrease the quantity of any item or portion of the work, or to omit portions of the work, as may be deemed necessary or advisable by the Owner, and, also, to make such alterations or deviations, additions to, or omissions from the work or the Contract Drawings and Specifications, as may be determined during the progress of the work to be necessary or advisable for the proper completion thereof. Upon written order of the Owner, the Contractor shall proceed with the work as increased, decreased or altered.

The Engineer is authorized to order minor changes in the work which do not involve extra cost to Owner, and which do not change the character of the work; he is not authorized to order any other changes, alterations, omissions, additions, or extra work, unless the same are approved in a Contract Supplement properly authorized in writing by the governing unit of the Owner. No claim of Contractor for extra compensation because of any change, alteration, omission, addition or extra work will be paid or be payable unless a written order for such change, alteration, omission, addition or extra work, is signed by the authorized representative of the Owner.

When any changes decrease the amount of work to be done, such changes shall not constitute a basis or reason for any claim by Contractor for extra compensation or damages on account of any anticipated profits which he thereby loses on the omitted work; and Contractor shall not be entitled to any compensation or damages therefore.

### 3. Owner's Right to Withhold Certain Amounts

The Owner may withhold from payments to the Contractor, in addition to retained percentage, such an amount or amounts as may be necessary to cover:

## GENERAL CONDITIONS OF CITY CONTRACTS

- (a) Payments that may be earned or due for just claims for labor or materials furnished in and about the work;
- (b) Defective work not remedied;
- (c) Failure of the Contractor to make proper payments to a subcontractor;
- (d) Reasonable doubt that this contract can be completed for the balance then unpaid;
- (e) Damage caused by the contractor has not been repaired;
- (f) Cost of field engineering, inspection and other expenses mentioned in paragraph VII 6, "Excess Cost of Field Engineering and Inspection for Time Extension".

The Owner will disburse and shall have the right to act as agent for the Contractor in disbursing such funds as have been withheld pursuant to this paragraph to the party or parties who are entitled to payment therefrom. The Owner will render to the Contractor a proper accounting of all such funds disbursed in behalf of the Contractor.

The Owner also reserves the right, even after full completion and acceptance of the work, to refuse payment of the final ten percent (10%) due the Contractor until it is satisfied that all subcontractors, material suppliers, and employees of the Contractor have been paid in full.

#### **4. Compensation for Extra Work and Work Omitted**

Whenever corrections, additions or modifications in the work under this Contract change the amount of work to be done or the amount of compensation due the Contractor, the Owner will prepare a Contract Supplement setting forth the extra work to be performed or work to be omitted. Such a Contract Supplement will also set forth the method of computing the added or reduced compensation to be due the Contractor. The method of computing the added or reduced compensation will be determined under one or more of the following methods as selected by the Owner.

- (a) By unit prices contained the Contractor's original Proposal and incorporated in this construction contract.
- (b) By a supplemental schedule of prices contained in the Contractor's original Proposal and incorporated in this construction contract.
- (c) By an acceptable lump sum or unit price proposal by the Contractor.
- (d) By an amount equal to the sum of the following five items as full and proper compensation:
  - (1) The necessary reasonable cost to the Contractor of the material required for the work as furnished by the Contractor and delivered by him at the site of the work.
  - (2) The necessary cost to the Contractor of the labor (including foremen devoting their exclusive attention to the work in question) required to incorporate all of said material into the work and to finish the work in accordance with direction.
  - (3) The necessary reasonable cost to the Contractor for the use of equipment used for the work.
  - (4) The cost of workers' compensation insurance premiums, State unemployment and Federal Social Security payments on the labor included in item (2).
  - (5) Fifteen percent (15%) of the sum of items (1), (2), (3) and (4) which shall be considered as covering all other expenses and profit.

Under method (d) described above, in order that a proper estimate may be made by the Engineer of the cost of labor and materials incorporated into extra work, the Contractor shall furnish weekly an itemized statement of material and labor supplied, together with the cost of such material and the wages paid, and shall furnish vouchers

## GENERAL CONDITIONS OF CITY CONTRACTS

for quantities and prices of such labor, material or work. In the event the Contractor fails to comply with the above provisions, he shall have no claim for compensation against the Owner.

In cases where a lump sum proposal is submitted by the Contractor in excess of Five Hundred Dollars (\$500.00) and the Owner considers the proposal so submitted is excessive or unreasonable for the changes or added work contemplated, the Owner reserves the right to request a proposal for the same changed items from other contractors. If a proposal for such added work is obtained from other contractors at a lesser amount, the Owner reserves the right to make an award of such work to another contractor unless the Contractor on this Contract agrees to do the added work or changed work for the price named by the other contractor.

### 5. Time for Completion of Contract

All work called for by this contract shall be completed and ready for full use within the time specified in the signed Agreement.

### 6. Excess Cost of Field Engineering and Inspection for Time Extension

This Contract provides for the payment by Contractor to the Owner of certain engineering, and inspection expenses in the event Owner should grant to Contractor an extension or extensions of time because of avoidable delay. The amount of said engineering, and inspection expenses, reimbursement of which is provided for in said paragraph, shall be computed and determined on the basis of the per hour schedule of charges for a forty-hour straight time work week as shown in Column 1 of the following schedule.

For any overtime beyond the regular 8-hour day and for any time worked on Saturday, Sunday or Holidays, the charges for such personnel will be as shown in Column 2 of the following schedule.

Column 1	Column 2 (each hour)
Engineer \$40.00	\$60.00
Inspector 30.00	45.00

### 7. Acceptance of Work

The work will be accepted in writing by the Owner when the whole shall have been completed in accordance with the terms of the Contract Documents as determined by the Owner, and its official representatives. When the work is substantially completed, the Contractor shall notify the Owner, in writing, that the work will be ready for final inspection and test on a definite date which shall be stated in such notice. The notice shall be given at least five (5) days in advance of said date and shall be forwarded through the Engineer. The Owner shall cause an inspection to be made in order to determine whether the work has been completed in accordance with the terms of the/Contract Documents.

### 8. Final Estimate, Final Contract Supplement & Payment

The Engineer shall, as soon as practicable after the final acceptance of the work under this contract, make a final estimate of the amount of work done there under and the value thereof.

A final Contract Supplement shall be prepared which will indicate the as-built quantities for all work completed and approved by the Engineer. After the approval of the final Contract Supplement by the governing body of the Owner, the Engineer will prepare the final estimate for which the Owner shall pay or cause to be paid to the Contractor, in the manner provided by law, the entire sum so found to be due hereunder, after deducting there from all previous payments and such other lawful amounts as the terms of the contract prescribe.

Neither the final payment nor any part of the retained percentage shall become due until the Contractor shall deliver to the Owner a complete release of all claims or liens arising out of the contract, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as he has knowledge or information

## GENERAL CONDITIONS OF CITY CONTRACTS

the release and receipts include all the labor and materials for which a lien or claim could be filed; but the Contractor may, if a subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Owner to indemnify the Owner against any claim or lien (in cases where such payment is not already guaranteed by surety bond). If any claim or lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

In no case will final payment be made in less than thirty-five (35) calendar days after the completion of the work and its acceptance by the Owner.

**SECTION III - REQUIREMENTS FOR FEDERAL PROJECTS**

TABLE OF CONTENTS

1.	WORK HOURS .....	38
2.	RETENTION OF RECORDS.....	38
3.	RIGHTS TO DATA .....	38
4.	INVENTIONS.....	39
5.	SUB CONTRACTOR REQUIREMENTS.....	39
6.	CLEAR AIR/CLEAN WATER REQUIREMENTS .....	40
7.	ENERGY CONSERVATION .....	40
8.	PATENT .....	40
9.	GOVERNMENT AUDIT .....	40
10.	COPYRIGHTS.....	40
11.	INSPECTION BY FEDERAL OFFICIALS .....	40
12.	RESTRICTIONS ON LOBBYING .....	41
13.	FEDERAL LAWS AND REGULATIONS .....	41
14.	PAYMENT OF PREVAILING WAGES & FRINGE BENEFITS FOR FEDERALLY FUNDED PROJECTS .....	41
15.	DEBARMENT & SUSPENSION .....	41
16.	DRUG-FREE WORKPLACE REQUIREMENTS .....	41
17.	CDBG AND HOME (ONLY) PROJECT -SECTION 3 CLAUSE .....	42
	CERTIFICATION REGARDING LOBBYING .....	43
	CERTIFICATION OF PRIMARY CONTRACTOR REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS.....	44
	CERTIFICATION OF LOWER TIER PARTICIPANTS (SUBCONTRACTORS) .....	45

## FEDERAL GUIDELINES

### 1. WORK HOURS

Contractor must comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.S. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).

### 2. RETENTION OF RECORDS

The Contractor shall permit the City or its authorized representative to inspect and audit all data and records relating to the performance of this Project for a period of three (3) years after final payment is made to the Contractor. For such inspection and audit, the Contractor shall retain all data records pertaining to this Project. The periods of access and examination for data and records which relate to litigation of the settlement of claims arising out of the performance of this Contract, or costs and expenses of this Contract as to Which exception has been taken by the City or its authorized representatives, shall continue until such litigation, claims or exceptions have been disposed of.

### 3. RIGHTS TO DATA

The Contractor agrees to comply with the following provisions:

- (a) The term "subject data" as used herein means recorded information, whether or not copyrighted, that is delivered to specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text inspections or related performance or design-type documents; machine forms such as punched cards, magnetic tape or computer memory printouts; and information retained in computer software, engineering drawings and associated lists specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Project administration.
- (b) The following restrictions apply to all subject data first produced in the performance of this Agreement:
  - (1) Except for its own internal use, the City may not publish or reproduce such data in whole or in part, or in any manner or form, nor may the City authorize others to do so, without the written consent of the Government, until such time as the Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to Agreements with academic institutions.
  - (2) As authorized by 49 CFR Part 18.34, the city reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes
- a) Any work developed under a grant, cooperative agreement, sub-grant, sub-agreement, or third party contract, irrespective of whether or not a copyright has been obtained; and
- b) Any rights of copyright to which the City of Battle Creek or a third party contractor purchases ownership with Federal assistance.
- c) The City of Battle Creek shall indemnify, save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or incidental violation by the City of Battle Creek of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this Agreement.
- d) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

## FEDERAL GUIDELINES

- e) Provisions (2)b), (2)c), and (2)d) of this Agreement are not applicable to material furnished to the City of Battle Creek by the Government and incorporated in the work furnished under the Agreement; provided that such incorporated material is identified by the City of Battle Creek at the time of delivery of such work.
- f) In the event that the Project, which is the subject of this Agreement, is not completed, for any reason whatsoever, all data developed under that Project shall be come subject data as defined in Provision (2) a) of this Agreement and shall be delivered as the Government may direct.

## 4. INVENTIONS

If any invention, improvement, or discovery of the Contractor is conceived or first actually reduced to practice in the course of or under this Project, which invention, improvement, or discovery may be patentable under the laws of the United States of America or any foreign country, the Contractor shall immediately notify the City of Battle Creek and provided a detailed report. The rights and responsibilities of the City of Battle Creek, the Contractor, and the Federal government with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.

## 5. SUB CONTRACTOR REQUIREMENTS

- A. The Contractor shall solicit minority and women-owned businesses whenever possible as referenced in 570.507 HUD requirements as sources of supplies, equipment, construction and services as sub-contractors in this procurement by :
- B. Assuring State of Michigan qualified minority and women-owned businesses are solicited. The City of Battle Creek may require proof of solicitation.
  - a) When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum minority and women-owned business participation.
  - b) )Where the requirements permits, establishing delivery schedules which will encourage participation of minority and women-owned businesses.
  - c) Using the service and assistance of the Small Business Administration, the Office of Disadvantaged Business Enterprise of the Department of Commerce or other appropriate agency as required.
- C. The low responsive, responsible bidder shall submit a list of their sub-contractor's before award of the contract. They must list all subcontractors to be associated with their bid, including the type of work to be performed. Any and all subcontractors shall be bound by all of the terms, conditions and requirements of the bid/contract; however, the prime contractor shall be responsible for the performance of the total work requirements.
- D. The Contractor shall cooperate with the City of Battle Creek in meeting its commitments and goals with regard to maximum utilization of minority and women business enterprise, and will use its best efforts to ensure that minority and women business enterprises have maximum practical opportunity to complete for subcontract work under this agreement.
- E. DEFINITIONS  
Minority Business Enterprises: A minority business enterprise is defined as a company wherein minorities constitute active participation and ownership over 50%. Minorities are defined as United States citizens who are members of the following groups of protected classes: Black, Hispanic, Oriental, Eskimo and American Indians who are certified by the Indian Affairs Commission. These groups will have the power to make policy decisions in a business and are involved in the day-to-day management of the business.

## FEDERAL GUIDELINES

Women Business Enterprise: A women business enterprise is defined as a company wherein females constitute active participation and ownership of over 50%. The female owner will have the power to make policy decisions in a business and are involved in the day-to-day management of the business.

### **6. CLEAR AIR/CLEAN WATER REQUIREMENTS**

The contractor must comply with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C., 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and E.P.A. regulations (40 CFR Part 15) for all contracts in excess of \$100,000.

### **7. ENERGY CONSERVATION**

The Contractor shall familiarize themselves and abide by the mandatory standards and policies relating to energy efficiency which are contained in the Energy Policy and Conservation Act (Public Law 94-163) and all State policies on energy efficiency.

### **8. PATENT**

The Contractor warrants that the goods do not infringe on any patent rights and agrees to infringe on any patent rights and agrees to defend, indemnify and hold the City of Battle Creek, its officers, agents employees, trustees and its successors and assigns, harmless from and against any and all liabilities, loss, damage or expense, including without limitation, court costs and reasonable attorneys' fees, arising out of any infringement of any letters, patent, trade name, trademark, copyright or trade secret by reason of the sale or use of any goods purchased under the Contract. The City of Battle Creek makes no warranty that the production, sale or use of goods under this Contract. The City of Battle Creek makes no warranty that the production, sale or use of goods under this Contract will not give rise to any such claim and the City of Battle Creek shall not be liable to the Contractor for any such claim brought against the Contractor.

### **9. GOVERNMENT AUDIT**

The Contractor shall permit the Government or its authorized representative to inspect and audit all data and records relating to the performance of this Project for a period of three (3) years after final payment is made to the Contractor. For such inspection and audit, the Contractor shall retain all data and records pertaining to this Project. The periods of access and examination for data and records which relate to litigation of the settlement of claims arising out of the performance of this Contract as to which exception has been taken shall continue until such litigation, claims or exceptions have been disposed of. All reports must follow guidelines set forth in 24 CFR number 570.507.

### **10. COPYRIGHTS**

The Federal awarding agency reserves a royalty-free, non exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal Government purposes:

- a) The copyright in any work developed under
- b) a grant, subgrant, or contract under a grant or subgrant; and
- c) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

### **11. INSPECTION BY FEDERAL OFFICIALS**

The Contractor agrees to permit the City of Battle Creek or their designee, or the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its contractors pertaining to the Project. The Contractor agrees to require each third party contractor whose contract award is not based on competitive bidding procedures to permit the City of Battle Creek, or the Controller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and

## FEDERAL GUIDELINES

records involving that contract, and to audit the books, records, and accounts involving that contract as it affects the Project.

### **12. RESTRICTIONS ON LOBBYING**

Bidders shall complete and submit as part of their bid the Certification of Restrictions on Lobbying for all projects when the total aggregate value of the contract exceeds \$100,000. The Contractor shall also submit a list of subcontracts and subcontractors which will exceed \$100,000. A Certification of Restrictions On Lobbying shall be submitted by the bidder for each listed subcontractor prior to contract award.

### **13. FEDERAL LAWS AND REGULATIONS**

The Contractor understands that Federal laws, regulations, policies, and related administrative practices applicable to this Agreement on the date the Agreement was executed may be modified from time to time. The Contractor agrees that the most recent of such Federal requirements will govern the administration of this Agreement at any particular time, except if there is sufficient evidence in Agreement of a contrary intent.

To achieve compliance with changing Federal requirements, the Contractor agrees to include in all agreements with subcontractors and third party contracts financed with HUD assistance specific notice that Federal requirements may change and the changed requirements will apply to the project as required. All standards or limits set forth in this Agreement to be observed in the performance of the Project are minimum requirements.

### **14. PAYMENT OF PREVAILING WAGES & FRINGE BENEFITS FOR FEDERALLY FUNDED PROJECTS**

No contract, agreement, understanding or other arrangement, whether oral or written, for the performance of services or work for and on behalf of the City of Battle Creek, involving craftsmen, mechanics and laborers employed directly upon the site of the work shall be entered into, approved or executed unless such contract, agreement, understanding or arrangement requires that all craftsmen, mechanics and laborers so employed shall receive at least the prevailing wages and fringe benefits for corresponding classes as determined and published by the Davis-Bacon Division of the United States Department of Labor for the greater Battle Creek area. In addition, such contract, agreement, understanding or arrangement shall provide that all subcontracts entered into by the Contractor, and all such contracts, agreements, understanding or arrangements shall provide that all contractors and subcontractors engaged in the performance of services or work for the City to which this applies shall, at the request of the City, furnish proof satisfactory to the City that the foregoing provisions of such contract and subcontract are being complied with. (See Davis-Bacon forms - Appendix A) Contractor must check with the Contract Compliance Office 10 Days before the bid opening to verify that the bid document contains the latest Wage Determination. The law requires that the determination to be used on each project must be no older than 10 days before the bid opening date.

### **15. DEBARMENT & SUSPENSION**

Debarment and Suspension (E.O.s 12549 and 12689) - No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non procurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension," as set forth in 24 CFR part 24. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

### **16. DRUG-FREE WORKPLACE REQUIREMENTS**

Drug-Free Workplace Requirements - The Drug-Free Workplace Act of 1988 (42 U.S.C. 701) requires grantees (including individuals) of federal agencies, as a prior condition of being awarded a grant, to certify that they will provide drug-free workplaces. Each potential recipient must certify that it will comply with drug-free workplace requirements in accordance with the Act and with HUD's rules at 24 CFR part 24, subpart F.

## FEDERAL GUIDELINES

### 17. CDBG AND HOME (ONLY) PROJECT -SECTION 3 CLAUSE

The Contractor will certify that they have complied with the requirements of Section 3 of the Housing & Urban Development Act of 1968, as amended, 24 CFR Part 135.

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agrees to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers; representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. .Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of sections 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

FEDERAL GUIDELINES

**CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

DATE: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

FIRM: \_\_\_\_\_

FEDERAL GUIDELINES

**CERTIFICATION OF PRIMARY CONTRACTOR REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS**

The undersigned certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- (c) Are not presently indicated for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

If the undersigned is unable to certify to any of the statements in this certification, an explanation shall be attached.

I certify or affirm the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understand that the provisions of 31 U.S.C. Section 3801 et seq. are applicable thereto.

\_\_\_\_\_  
Name & Title of Authorized Representative

\_\_\_\_\_  
Signature of Authorized Representative                      Date

The undersigned legal counsel for the applicant hereby certifies that the applicant has authority under State and local law to comply with the subject assurances and that the certification above has been legally made.

\_\_\_\_\_  
Signature of Applicant's Attorney

\_\_\_\_\_  
Date

FEDERAL GUIDELINES

**CERTIFICATION OF LOWER TIER PARTICIPANTS (SUBCONTRACTORS)**  
REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The Primary Contractor, \_\_\_\_\_, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offense enumerated in paragraph (2) of this certification; and
4. Have not within a three (3) year period preceding this application/proposal had one (1) or more public transactions (Federal, State, or Local) terminated for cause or default.

If the above named Primary Contractor is unable to certify to any of the statements in this certification, the Primary Contractor shall attach an explanation to this certification.

The Primary Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provision of 31 U.S.C. Section 3801 et seq are applicable thereto.

\_\_\_\_\_  
Signature and Title of Authorized Official

The undersigned chief legal counsel for the \_\_\_\_\_ hereby certifies that the \_\_\_\_\_ has authority under State and local law to comply with the subject assurances and that the certification above has been legally made.

\_\_\_\_\_  
Signature of Applicant's Attorney

\_\_\_\_\_  
Date