



BOARD OF TRUSTEES

Special Session Agenda

Monday, March 4, 2024

5:00 p.m.

HPLD Administration Building

2650 W. 29th Street, Greeley, CO 0631

If you wish to address the Board via Public Comment, please attend the meeting in person. If you are unable to attend in person, you can submit public comments to the Board prior to the Board meeting via Formstack: https://hpld.formstack.com/forms/board_questions

The High Plains Library District Board may take action on any of the following agenda items as presented or modified prior to or during the meeting, and items necessary or convenient to effectuate the agenda items.

1.0 OPENING OF MEETING

- 1.1 Roll Call and Pledge of Allegiance
- 1.2 Approval of Agenda
- 1.3 Public Comment

2.0 ITEMS FOR INFORMATION/ACTION

- 2.1 Farr Regional Library/Carbon Valley Regional Library - Construction Manager at Risk RFP Release (Action) – Dr. Matthew Hortt, HPLD Executive Director

3.0 DIRECTORS REPORT

- 3.1 District Updates – Dr. Matthew Hortt, HPLD Executive Director

4.0 BOARD COMMENTS

- 4.1 Chair Report
- 4.2 Vice-Chair
- 4.3 Secretary/Treasurer
- 4.4 Committees
- 4.5 Other Board Members

5.0 ADJOURNMENT

Upcoming meetings:

March 18, 2024 at 5:00p.m.: HPLD Board of Directors Meeting - Regular Session
Centennial Park Library, 2227 23rd Avenue, Greeley, CO 80631

HIGH PLAINS LIBRARY DISTRICT

BOARD OF TRUSTEES COMMUNICATION

| |
|--|
| Meeting date: March 4, 2024 |
| Type of item: Action |
| Subject: Farr Regional Library/Carbon Valley Regional Library - Construction Manager at Risk RFP Release |
| Presented by: Dr. Matthew Horts, HPLD Executive Director |
| Recommendation: Staff recommend the Board approve the release of the Farr Regional Library/Carbon Valley Regional Library - Construction Manager at Risk RFP |

Background

The HPLD Board approved the remodeling of the Farr and Carbon Valley Regional Libraries as part of the 2024 Capital Improvement Budget. Staff have been working with Wember Inc. to develop a Construction Manager at Risk Request for Proposal (RFP) for both projects. The RFP that is proposed is written to cover both projects and allows for the awarding of both projects from one pool of submissions.

Considerations

- Project Budgets
 - Farr Regional Library Budget: \$850,000
 - Carbon Valley Regional Library: \$1,500,000
- Construction Budgets
 - Farr Regional Library Budget: \$880,000
 - Carbon Valley Regional Library: \$450,000
- RFP Timeline

| Date | Time | Event |
|----------------|--|---|
| March 4, 2024 | After Board Meeting | CM@R RFP Issued |
| March 8, 2024 | 10:00-11:00 AM @ Carbon Valley; 12:30-1:30 PM @ Farr | Non-mandatory site visit: 10:00 – Carbon Valley Regional Library, 7 Park Ave, Firestone, 12:30 – Farr Regional Library, 1939 61st Avenue, Greeley |
| March 15, 2024 | 11:00 AM | Deadline for receipt of questions and inquiries |
| March 18, 2024 | | Final responses to questions, inquiries and RFP amendments |
| March 21, 2024 | 12:00 PM | Deadline for submission of proposals from CM@R |

| | | |
|----------------|--|---|
| March 29, 2024 | | Shortlist Announced (anticipated) |
| April 5, 2024 | | Interviews of short-listed candidates |
| April 9, 2024 | | Preferred CM@R Team announced |
| April 2024 | | Selection of CM@R Firm and Negotiate Agreement |

Staff Recommendation

Staff recommend the Board approve the release of the Farr Regional Library/Carbon Valley Regional Library - Construction Manager at Risk RFP

REQUEST FOR PROPOSAL (RFP) CONSTRUCTION MANAGER AT RISK (CM@R) SERVICES



March 4, 2024

Carbon Valley Regional Library
7 Park Avenue
Firestone, CO 80504

Farr Regional Library
1939 61st Avenue
Greeley, CO 80634

Prepared by: Brooke Kardos

Wember, Inc
2580 E Harmony Rd
Fort Collins, Colorado 80528
Project Manager: Dan Spykstra
Phone: (720) 382-3795
e-mail: dspykstra@wemberinc.com
online: www.wemberinc.com

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- 1.16 COST OF PROPOSALS

2.0 PROPOSAL FORM

- 2.1 PROPOSAL FORM FOR CONSTRUCTION MANAGER AT RISK (CM@R)

3.0 ATTACHMENTS

- 3.1 EXHIBIT A: PROPOSED MASTER SCHEDULE (See prelim timeline below 1.1)
- 3.2 EXHIBIT B: CM@R SCOPE & FEE MATRIX
- 3.4 EXHIBIT C: SAMPLE CONTRACT & GENERAL CONDITIONS

1.0 GENERAL INFORMATION

1.1. INTRODUCTION AND PROJECT DESCRIPTION

This Request for Proposal ("RFP") is issued to provide the selection process for Construction Manager at Risk (CM@R) services for the Farr Regional Library located in Greeley and Carbon Valley Regional Library. Firms submitting a response to the RFP will be asked at a minimum to state their understanding/experience to the project and offer their methodology for meeting the criteria noted in this RFP as well as complete the Scope & Fee Matrix attached. Interviews will follow the submission of proposals according the schedule contained in the RFP. Planning Solutions has been contracted for design services.

PROJECT BACKGROUND

Farr Regional Library is located 1939 61st Avenue, Greeley and is 38,000 sq ft. Carbon Valley Regional Library is located at 7 Park Avenue, Firestone, and is 35,000 sq ft. High Plains Library District has selected Wember as the Owner's Representative and is currently procuring an interior design architect. Both libraries are due for an interior refresh. refresh of paint, carpet & furniture as well as some minor interior architectural changes.

PROJECT DESCRIPTION

Both libraries are due for an interior refresh of paint, flooring & furniture as well as some minor interior architectural changes of both main circulation desks, adding a door from the main library to admin & reconfiguring admin offices to maximize available offices. Carbon Valley Regional Library would also like to add a Makers Space within the existing space, this could require some design-assist from CMAR.

BUDGET

The "Hard Cost" or construction budget for the project is identified below and includes demolition, construction, general conditions, and overhead & profit. "Soft Costs" including design & engineering, permitting, FF&E, technology, contingency, 3rd party consultant service, etc. will be in addition to the Hard Cost, and maintained by the Owner.

Carbon Valley Regional Library \$880,000

Farr Regional Library \$425,000

TIMELINE

The proposed timeline is as follows:

| | |
|-----------------|---------------------|
| Design | 04/2024-08/2024 |
| Permitting/ GMP | 09/2024-09/2024 |
| Construction | 10/2024-01/2025 |
| | (subject to change) |

1.2 LOCATION

The Project is located at the locations listed above for Carbon Valley Regional Library and Farr Regional Library.

1.3 GENERAL CM@R SCOPE OF SERVICES

The exact scope of services required by the Client will be set forth in the agreement between the Client and the selected CM@R. The scope of work will consist of assisting Client's staff and consultants in completing the Pre-construction Phase of the project in preparation for final approval by the necessary municipalities and agencies. In conjunction with this approval, the CM@R will have also prepared a final Guaranteed Maximum Price (GMP). Upon approval by the Client's Board, the contractor will enter into a pre-negotiated contract to perform the construction management and general contracting services necessary to satisfactorily complete the project in compliance with the contract documents.

The CM@R's services during the Pre-Construction Services phase shall include, but may not be limited to, cost estimating, value engineering, scheduling, logistical planning, constructability analysis, bid package administration, bidding of trade contracts, and the submittal of a Guaranteed Maximum Price (GMP) Proposal for the Client's optional acceptance, reflecting the entire cost, scope of work and

quality intent of the Project before any construction funds are committed. The GMP Proposal shall be supplemented with a clearly defined and detailed breakdown of costs for the entire Project. All construction costs must be clearly defined and included in the GMP Proposal. All proposed allowances included shall be approved by the Client and shall include estimated quantities and values justified by the CM@R. All clarifications, exclusions, exceptions must be identified within pricing packages and the GMP Proposal.

The CM@R's services during the Construction Services phase shall include, but may not be limited to, construction management, administration, field supervision, coordinating subcontractors, maintaining quality, meeting schedules and providing the general conditions work for the Project.

Generally, all trade contracts shall be competitively bid and assigned to the CM@R's contract; however, when circumstances warrant it, the CM@R will be allowed to self-perform work that it traditionally performs with its own forces. This work shall be competitively bid by the CM@R against other contractors performing the same scope of work.

The CM@R shall implement and maintain a project controls system with full access to the project information by all project stake holders. The CM@R shall allow for "open book" policy and facilitate review of all Project contracts, records, accounting and other documentation and information, in any form, to the Client or persons designated by the Client for auditing purposes.

The CM@R shall participate in the use of the Clients' Project Management software (Owner InSite) and it will be managed collaboratively throughout the pre-construction and construction phase of the project. This system is the Owner's Representative's online project management system which includes, but is not limited to, managing Issues, RFI's, ASI's, Shop Drawings, Site Photos, Field Reports, Meetings, etc.

A. PRE-CONSTRUCTION SERVICES FIXED FEE

The CM@R shall participate in the continuing design process as an integral member of the Project Team and shall perform Pre-Construction Services that, in general, shall include but not be limited to the following:

- 1) Attend all necessary work sessions with the Client and Design Team to gather and distribute information on the Project as required. It is anticipated that attendance of one (1) two-hour work session, every other week, for the duration of the pre-construction period would be required.
- 2) In conjunction with the Client and Design Team, immediately identify the Project requirements and prepare a comprehensive Construction Budget. CM@R to identify all project related construction costs including (but not limited to) building and site construction, infrastructure improvement costs (on-site and off-site), construction within right-of-way, permitting and other such costs that may be of consequence to Client.
- 3) Develop and continue to refine a comprehensive Project Schedule. Identify, set decision dates, and make recommendations to the Client and the Design Team on procurement of long-lead delivery items. Update and monitor the Project Schedule with the Client and the Design Team regularly to identify deviations and changes.
- 4) Provide value engineering and life-cycle costing for all materials, equipment and systems mutually agreed upon to determine the best possible value to the Client. Conduct formal value engineering work sessions with the Client and the Design Team, and recommend design detail, system and assembly alternatives.
- 5) Prepare and monitor estimates of the construction cost during each of the design phases based on detailed quantity surveys of the Drawings and Specifications. Advise the Client and the Design Team if it appears that the construction budget will not be met and make recommendations for corrective action. Prepare and update with each cost estimate a

reconciliation report comparing the previous cost estimate, the current cost estimate, and the approved budget. Provide a narrative of the changes made from the previous versions and accompanied with an updated construction billing and cash flow forecast. Provide this service at the Schematic Design (100% SDs), Design Development (100% DDs) and Construction Documents (50% CDs). In addition to providing periodic estimates, it is expected that CM@R will work cooperatively with Client and the Design Team to provide intra-phase pricing evaluations of building systems, assemblies, and component options to facilitate timely design related decision-making as required by the Client and the Design Team.

- 6) Review the drawings and specifications as they are being prepared, and recommend alternate solutions whenever design details affect budget, schedule, constructability, and consistency with local and traditional trade practice.
- 7) Review the proposed design concepts, layouts, dimensions, clearances and advise the Client and the Design Team of possible conflicts of the M/E/P building systems with the adjacent structure and finishes. CM@R to confirm accuracy of Civil Engineer's earthmoving, import and export quantity assumptions prior to providing GMP.
- 8) Recommend a strategy for bid packaging the drawings and specifications relative to the Project approach and other pertinent considerations. Administrate the various bid packages for the Project.
- 9) Recommend and prequalify subcontractors and contract suppliers to develop a bidder's list for review and approval by the Client and the Design Team. It is the Client's policy that only prequalified subcontractors and suppliers shall be invited to bid on various procurement packages on the Project and, further, that awards are then based upon the lowest responsible and conforming bids received. Minimum of three (3) bids per subcontract or subtrade, including work to be self-performed, unless otherwise agreed to by Client.
- 10) Prepare a detailed approach to phasing of the work, mobilization, logistics, quality control and safety of the public for review by the Client and the Design Team.
- 11) Prepare and submit a final Guaranteed Maximum Price (GMP) Proposal for the Client's optional acceptance reflecting the entire cost, scope of work and quality intent of the Project before any construction funds are committed. The GMP Proposal shall be supplemented with a clearly defined and detailed breakdown of costs for the entire Project. All construction costs must be clearly defined and included in the GMP Proposal. All proposed allowances included shall be approved by the Client, and shall include estimated quantities and values justified by the CM@R. All clarifications, exclusions, exceptions must be identified within your proposal.
- 12) Identify and submit proposals for long lead items for direct purchase by the Client.
- 13) Assist the Client and the Design Team as necessary in interfacing with the Building Department and other authorities having jurisdiction over the Project in order to obtain the building permit(s) on a timely basis for the construction activities.

B. CONSTRUCTION SERVICES FEE

The CM@R shall construct the work according to the construction documents and specifications within the scheduled time frame agreed to with the Client.

1. The CM@R will work with the Client's Owner's Representative Online Project Management software to track project related information including but not limited to RFI's, ASI's, Punch List, Warranty Items, O&M Manuals
2. The CM@R will be required to provide warranty and closeout assistance. Warranty on items will be for a minimum of 1 year.

Please refer to "Exhibit B:CM@R Scope & Fee Matrix" for more information and detail related to scope of services items. This matrix is an outline of the project scope as defined by the Owner's Representative and to establish fees.

C. COST SAVINGS

To the extent the actual cost of the work may be reduced through the course of the design refinement, Procurement and Construction, the reduction in cost shall revert entirely to the benefit of the Client. There shall be no "shared savings" compensation to the CM@R.

D. CONSTRUCTION CHANGE ORDER MARK-UP

For Client approved changes to the scope of work, the CM@R shall propose a Percentage Fee for additive change orders to the Guaranteed Maximum Price (GMP) Contract amount. Deductive change orders will be credited only for the cost of the work.

E. BIDDING & CONSTRUCTION CONTINGENCY

The CM@R'S contingency shall be used to cover costs of unforeseen job conditions, omissions of the estimate (with the exception of subcontracted work), and discrepancies between subcontractor and supplier scopes of work, which are properly reimbursable as Cost of the Work but are not the basis for a change order. The CM@R'S contingency shall be used with the Client's and the Design Team's concurrence only, which shall not be unreasonably withheld. Requests for the use of the contingency shall be submitted by the CM@R within ten (10) calendar days of the event that caused such Cost of Work to be incurred, or as soon as the need is apparent, whichever is earlier. The CM@R's contingency shall not be used for repairing or replacement of the Work due to the CM@R's negligence or error. The balance of the CM@R'S contingency which has not been expended for the Project according to the procedures set forth herein shall be refunded entirely to the benefit of the Client, upon final invoicing. The CM@R shall also provide the Client and the Design Team documented status of the contingency amount on a monthly basis with each payment application.

1.5 CONTACTS

Copies of this RFP are available from the Client's Owner Representative.

Owner's Representative- Wember

Dan Spykstra
2580 E Harmony Rd
Fort Collins, Colorado 80528
Phone: (720) 382-3795
Email: dspykstra@wemberinc.com

(Owner/Client) – High Plains Library District

Dr. Matthew Hortt
2650 W. 29th Street
Greeley, CO 80651

Notice: Direct contact with the Client, the Board, or other related parties, may cause this candidate's removal from the RFP process.

1.6 SCHEDULE OF EVENTS

The anticipated schedule below outlines milestones for the CM@R procurement:

| DATE | TIME | EVENT |
|-----------------------|---|---|
| March 4, 2024 | | CM@R RFP Issued |
| March 8, 2024 | 10:00-11:00 AM @ Carbon Valley; 12:30-1:30 PM @ Farr | Non-mandatory site visit: 10:00 – Carbon Valley Regional Library, 7 Park Ave, Firestone, 12:30 – Farr Regional Library, 1939 61 st Avenue, Greeley |
| March 15, 2024 | 11:00 AM | Deadline for receipt of questions and inquiries |
| March 18, 2024 | | Final responses to questions, inquiries and RFP amendments |
| March 21, 2024 | 12:00 PM | Deadline for submission of proposals from CM@R candidates to |
| March 28, 2024 | | Shortlist Announced (anticipated) |
| April 5, 2024 | | Interviews of short-listed candidates |
| April 9, 2024 | | Preferred CM@R Team announced |
| April 2024 | | Selection of CM@R Firm and Negotiate Agreement |

1.7 PROPOSAL INSTRUCTIONS

- A. Pages in the proposal shall be typed with the maximum number of pages of proposal information (excepting cover sheet, index sheet, blank pages, table of contents, and other supplemental proposal forms required or requested) to be limited to 30 pages numbered in sequential order.
- B. **Submit a single electronic PDF file of your proposal by the submittal date/time aforementioned**; email to the Owner's Representative, Dan Spykstra, dspykstra@wemberinc.com and Brooke Kardos, bkardos@wemberinc.com.
- C. **Hard copies of the proposal response will not be accepted.**
- D. No Proposing Firm may submit more than one proposal. Multiple submissions under different names will not be accepted from one firm, Joint Venture, or association.
- E. Each respondent must comply with the submission requirements as outlined. Submittals that fail to comply with the requirements as specified may be deemed non-responsive and such determination will result in no further consideration of that respondent or the respondent's submittals by the Client. At any stage, the Client reserves the right to terminate, suspend or modify this selection process; reject any or all submittals at any time; and waive any informalities, irregularities or omissions in submittals, as the best interests of the Client may require.

**A Fee Proposal will only be asked of the firms that are shortlisted for interviews.*

1.8 PROPOSAL REQUIREMENTS

Proposals must include, but are not limited to, the following items:

Part 1 – Cover Letter & Organization Information

- A. Brief cover letter expressing interest
- B. If your firm has multiple offices, please provide this information for all offices. Indicate which office is going to perform the bulk of the services for this project.

- C. Statement of available bonding capacity for this project.

Part 2 – Project Experience

- A. Present at least three CM@R or CM/GC projects completed in the last five years similar in size and complexity. Include:
 - 1) Project location
 - 2) Project size (square feet) of the project
 - 3) Project completed construction value
 - 4) Project construction start and completion date
 - 5) Method of construction
 - 6) Other relevant project information
 - 7) General Contractor Staff directly involved with the project. Identify teams
- B. Preconstruction Manager, Project Manager, Estimator and Superintendent at a minimum
 - 1) Client/Owner contact with telephone number
 - 2) Owner's Representative contact with telephone number
 - 3) Architect contact with telephone number

Part 3 – Project Team & Staff

- A. Resumes for:
 - 1) Pre-Construction Manager
 - 2) Estimator
 - 3) Project Manager
 - 4) Project Superintendent(s)
- B. Owner and other references (including telephone numbers and email), clearly identify which project and who the reference is in relation to. Please include relevant projects team members have worked on together.
- C. Describe current workload of proposed staff and overlapping project responsibilities.
- D. Provide an organization chart graphically indicating how your firm would staff and structure the proposed team (both in the field and in the office) during the Pre-Construction and Construction phases.

Part 4 – Organization & Management of the Project

- A. What makes your pre-construction services unique? What tools do you use to enhance the process? How will preconstruction services benefit the Client? Describe your approach.
- B. Describe your approach to the schedule, specifically describe what you believe will be most critical to the schedule and if you believe the construction timeline in Section 1.1 is achievable. Describe how you would propose scheduling the work to limit the impact on library & patrons.

Part 5 – Fee Proposal

- A. Please refer to "Exhibit B:CM@R Scope & Fee Matrix" for more information and detail related to scope of services items. This matrix is an outline of the project scope as defined by the Owner's Representative. Instructions for completing the matrix are provided within the matrix. Submit/note any conditions, clarifications, or exclusions concerning Scope of Services. Please submit in Xcel format with emailed proposal. **A Fee proposal is only requested of those firms that are shortlisted for interviews.**
- ❖ Insurance certificates naming the Client as additional insured will be required prior to work commencing, but not required as part of this submittal.

1.9 QUESTIONS, INQUIRIES, AND AMENDMENTS REGARDING THIS RFP

Questions and inquiries regarding the RFP should be directed to Dan Spykstra (dspykstra@wemberinc.com) and Brooke Kardos (bkardos@wemberinc.com) by the date aforementioned. The Client will issue a response to all questions by email. Questions should not be submitted to the Client, the Board or other parties, doing so will cause this candidate's removal from the RFP process.

1.10 PROPOSING FIRMS TO FULLY INFORM THEMSELVES

Proposers are required to fully inform themselves of all project conditions which may impact their proposal and the Client's requirements prior to submitting a proposal. Proposers should become acquainted with the nature and extent of the services to be undertaken and make all necessary examinations, investigations and inspections prior to submitting a proposal. Firms proposing are responsible for examining and determining for themselves the location and nature of the proposed work, the amount and character of the labor and materials required, and the difficulties which may be encountered. If requested in advance the Client will provide the Firm proposing access to the site to conduct such examinations as each Proposing Firm deems necessary for submission of a proposal. The Proposing Firm is to consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work. The Client will not consider any claims arising from failure to take such actions.

1.11 EVALUATION & SELECTION CRITERIA

The Client reserves the right to reject any or all responses to this RFP. Final selection of the short-listed CM@R candidates will be on the basis of their apparent ability to best meet the overall expectations of the Client, as determined solely by the Client.

The Client reserves the absolute right to conduct investigations as it deems necessary for the evaluation of any proposal and to establish the experience, responsibility, reliability, references, reputation, business ethics, history, qualifications and financial ability of the firm responding. The purpose of such investigation is to determine that the CM@R has the ability, experience, resources and reputation necessary to perform the work and to support all warranties in accordance with the contract documents.

A. Interview Phase:

- 1) Selected firm be invited to participate in an interview with the Selection Committee. An interview invitation will be sent out following the submission of proposals. The invitation will explain the interview format. The purpose of the interview is to ensure a full understanding of the RFP responses, and to introduce key members of the CM@R Team.

❖ Note – Although the project cost is part the selection process, other factors will also be considered. Contract may not be awarded to the firm providing the lowest proposed fee.

1.12 SELECTION PROCESS

- A. The Client will review all responses to this RFP that meet requirements and are received prior to the designated closing date and time.
- B. Following interviews, the top firm's proposal, based on qualifications and fees, will be reviewed and, if necessary, negotiations will commence.
- C. If a satisfactory agreement with the proposer cannot be reached, at a price that is determined to be fair and reasonable, negotiations with that firm shall be formally terminated. Negotiations with the second-ranked proposer may then be initiated. Failing to accord with the second-ranked proposer, the Client shall formally terminate negotiations and may then undertake negotiations with the third-ranked proposer or re-issue the RFP at their discretion.
- D. The Client will have sole determination of which proposal is in the Client's best interest.

1.13 RIGHT OF REJECTION

The Client reserves the right to accept or reject any or all responses to this RFP and to enter into discussions and/or negotiations with one or more qualified Proposing Firms, if such action is in the best interest of the Client. The Client has the right, in its sole and absolute discretion, to select the proposal or proposals that the Client determines best meets its needs.

1.14 MODIFICATION AND WITHDRAWAL OF PROPOSAL

- A. Withdrawn proposals may be resubmitted up to the time designated for the receipt of proposals due date/time provided that they are then fully in conformance with the RFP.
- B. If, within twenty-four hours after proposals are opened, any company that provides written notice to the Client and promptly thereafter demonstrates to the reasonable satisfaction of Client that there was a material and substantial mistake in the preparation of its proposal, that company may withdraw its proposal. Thereafter, that company will be disqualified from further bidding on the Work.

1.15 PROPOSALS TO REMAIN OPEN SUBJECT TO ACCEPTANCE

All proposals shall remain open for forty-five (45) days after the day of the proposal opening, but the Client may, in its sole discretion release any proposal prior to that date.

1.16 COST OF PROPOSALS

Expenses incurred in the preparation of proposals in response to this RFP are the Proposing Firm's sole responsibility. The Client assumes no responsibility for payment of any expenses incurred by any Proposing Firm as part of the RFP process.

2.0

2.1 PROPOSAL FORM FOR CONSTRUCTION MANAGER AT RISK (CM@R)

(Please use additional sheets as necessary.)

COMPANY NAME: _____

COMPANY ADDRESS: _____

PHONE: _____ FAX: _____

CONTACT PERSON NAME: _____

CONTACT PERSON PHONE: _____

CONTACT PERSON EMAIL: _____

1. I Acknowledge that the "Sample Agreement" attached to this RFQ/P (**Exhibit D**) has been reviewed and is agreed to as shown. _____(YES/NO). Do you request amendments to the "Agreement" _____(YES/NO) Please list them if yes.
2. The undersigned Proposer declares and stipulates that this proposal is made in good faith, without collusion or connection with any other person or persons bidding for the same Work, and that it is made subject to all the terms and conditions of the Request for Proposal and associated documents, all of which have been examined by the undersigned. _____(YES/NO)
3. The submission of the proposal constitutes an agreement and shall not be withdrawn after the proposal opening for a period of forty-five days.
4. Acknowledgment that the submitting agent carries (or will carry) a license in Weld County, Colorado _____(YES/NO)
5. The Proposer hereby acknowledges receipt of addenda numbers _____ through _____.
6. List of construction items that will be self-performed.

| | | | |
|---|--|---|--|
| A | | I | |
| B | | J | |
| C | | K | |
| D | | L | |
| E | | M | |
| F | | N | |
| G | | O | |
| H | | P | |

Signature: _____ Date: _____

*** End of Proposal Form ***

| FEE PROPOSAL FORM - Carbon Valley & Farr Regional Libraries | | | | | | | | | | | | |
|---|--|--------------------|---------|-----------------------|--------------|-------------------------|---|--|--------------------------|----------|--|---|
| Submitting Firm: | | | | | | | | | | | | |
| GENERAL CONTRACTOR: Instructions for completing the this Part A: All YELLOW cells are to be filled in with one of the following responses, no items should be left blank: 1) Actual dollar amount; 2) Months; 3) Percent; 4) Self-Performed Work; 5) Included in Cell __; 6) N/A. <u>COST OF WORK or BY OTHERS is not to be entered.</u> If necessary enter an amount and note item as an allowance. | | | | | | | | | | | | |
| ARCHITECT: Instructions for completing the this Part A: All GREEN cells are to be filled in. Note scope of services anticipated in the matrix that may impact your fee | | | | | | | | | | | | |
| Description | | | | | | | | | | | | |
| 1 | Proposed Construction Value | | | \$ | 1,305,000.00 | | Not including design | Not including Design, General Conditions, Contingency, Insurance or OH&P | | | | |
| 2 | Preconstruction Services Fixed Fee (Scope per RFP Part B, all Sub-Parts with "x" in Preconstruction Column below) | | | \$ | | | Services Fixed Fee | | | | | |
| 3 | Design Services (Scope per RFP Part B, Sub-Part A "Design Services") | | | \$ | | | Fixed Fee, Design Fee Only | | | | | |
| 4 | Additional/Optional Services | | | \$ | - | | | | | | | |
| | | | | \$ | | | | | | | | |
| | | | | \$ | | | SUMMARIZES UP | | | | | |
| | | | | \$ | | | | | | | | |
| 5 | Overhead and Profit | | | \$ | - | | Enter % of construction value | | | | | |
| 6 | General Conditions (Sum calculated per RFP Part B below) | | | \$ | - | 0.0% | of construction value | | | | | |
| 7 | Total of Preconstruction, Additional/Optional Services, OH&P and General Conditions (2+4+5+6 above) | | | \$ | - | | Allowances will be "normalized" in order to provide accurate comparison of bidder totals. Favor will not be provided based upon assumed allowance values. | | | | | |
| 8 | Construction Completion Time/Anticipated Schedule (in months—decimals are ok) | | | | 4.00 | mos. | Certificate of Occupancy to be received by date in RFP | | | | | |
| 9 | General Conditions per Month | | | \$ | - | /mo. | | | | | | |
| 10 | Construction Change Order "Holiday"* (\$ amount of aggregate changes allowable without any GC markup whether self-performed or subcontractor performed.) | | | \$ | | | | | | | | |
| 11 | Construction Change Order Mark-Up (inclusive of all mark-ups OH&P, labor burden and GC's) | | | | | | | | | | | |
| 12 | Contingency Rate | | | \$ | N/A | N/A | Owner will carry contingency | | | | | |
| 13 | Umbrella and General Liability Insurance Rate | | | | | | | | | | | |
| 14 | Builder's Risk Insurance Rate | | | | | | | | | | | |
| 15 | Performance and Payment Bond Rate | | | | | | | | | | | |
| 14 | Self-Performed Work (General Contractor to list all scopes of work (in whole or part) that are intended to be self-performed, in YELLOW cells below) | | | | | | | | | | | |
| 14a | | | | | | | | | | | | |
| 14b | | | | | | | | | | | | |
| 14c | | | | | | | | | | | | |
| 14d | | | | | | | | | | | | |
| 14e | | | | | | | | | | | | |
| 14f | | | | | | | | | | | | |
| 14g | | | | | | | | | | | | |
| 14h | | | | | | | | | | | | |
| 14i | | | | | | | | | | | | |
| 14j | | | | | | | | | | | | |
| 14k | | | | | | | | | | | | |
| 14l | | | | | | | | | | | | |
| 14m | | | | | | | | | | | | |
| 14n | | | | | | | | | | | | |
| OWNER/ARCHITECT/GENERAL CONTRACTOR SCOPE COORDINATION MATRIX | | | | | | | | | | | | |
| A | | | | B | C | D | E | F | G | H | I | K |
| | | GC Preconstruction | GC OH&P | GC General Conditions | Amount | Place "X" if allowance* | Procurement Responsibility A=Architect C=Contractor O=Owner T=Team | By GC | By Architect / Engineers | By Owner | Comments | |
| A. DESIGN SERVICES | | | | | | | | | | \$0 | | |
| 1 | Design Charrette | x | | | | | | | x | | As Required for Concept Design, Schematic Design and moving through Design Development | |
| 2 | AV, Telephone, Paging Design | x | | | | | Team | | x | | Locations and Infrastructure by Design Team | |
| 3 | IT/Data, Network, Cable Design | x | | | | | Team | | x | | Locations and Infrastructure by Design Team | |
| 4 | Programming | x | | | | | | | x | | A simple and concise Programming process to confirm/update District Program | |
| 5 | Storm Water Management Plan | x | | | | | | | | | | |
| 6 | Drainage Plan: Submittals to agencies as required | x | | | | | | | | | | |
| 7 | Utility Coordination | x | | | | | | | | | | |
| 8 | Coordination with Fire Department | x | | | | | | | x | | | |
| 9 | Site Evaluation and Planning | x | | | | | | | | | | |
| 10 | Flow Tests with Fire Department | x | | | | | | | | | | |
| 11 | Architectural Design | x | | | | | | | x | | | |
| 12 | Civil Engineer Design | x | | | | | | | x | | | |
| 13 | Landscape Architect/Irrigation Design | x | | | | | | | | | | |
| 14 | Structutal Engineer Design | x | | | | | | | x | | | |
| 15 | Mechanical Engineer Design | x | | | | | | | x | | | |
| 16 | Electrical Engineer Design | x | | | | | | | x | | | |
| 17 | Lighting Engineer Design | x | | | | | | | x | | | |
| 18 | Plumbing Engineer Design | x | | | | | | | x | | | |
| 19 | Fire Suppression Design | x | | | | | | | x | | | |
| 20 | 3D-Renderings and Animations | x | | | | | | | x | | As required to communicate design, not for marketing | |
| 21 | Acoustical Consultant | x | | | | | | | x | | | |
| 22 | Cost Estimating Consultant | x | | | | | | x | x | | Design Team provide estimate validation of General Contractor estimates | |
| 23 | Furniture Design Consultant (B253™-2007) | x | | | | | | | x | | | |
| 24 | Interior Design (B252™-2007) | x | | | | | | | x | | | |
| 25 | Signage Design | x | | | | | | | x | | Code Signage, Building Signage, and interior graphics | |
| 26 | Specifications Consultant | x | | | | | | | x | | | |
| 27 | Traffic Consultant | x | | | | | | | | | | |
| 28 | Coordination with Owner's Consultants | x | | | | | | | x | | | |

| OWNER/ARCHITECT/GENERAL CONTRACTOR SCOPE COORDINATION MATRIX | | | | | | | | | | | |
|--|--|--------------------|---------|-----------------------|--------|-------------------------|--|-------|--------------------------|----------|---|
| A | | B | C | D | E | F | | G | H | I | K |
| | | GC Preconstruction | GC OH&P | GC General Conditions | Amount | Place "X" if allowance* | Procurement Responsibility A=Architect C=Contractor O=Owner T=Team | By GC | By Architect / Engineers | By Owner | Comments |
| 29 | Prepare and Present at Public Sessions and Board Meetings | x | | | | | | | x | | |
| 30 | Commisioning (B211™-2007) | | | | | | | | | x | |
| 31 | LEED Certification (B214™-2007) | x | | | | | | | | | |
| 32 | LEED Energy Modeling | x | | | | | | | | | |
| 33 | LEED Registration and Documentation | x | | | | | | | | | |
| 34 | Facility Support Services (B210™-2007) | | | | | | | | | | Not anticipated |
| 35 | Security Evaluation and Planning (B206™-2007) | x | | | | | | | x | | |
| 36 | PV Panel Design | x | | | | | | | x | | |
| 37 | Lightning Protection Design | x | | | | | | | x | | As required by code, Design Team to analyze as part of proposal |
| 38 | Fast-track Design Services | | | | | | | | | | N/A |
| 39 | Historic Preservation (B205™-2007) | | | | | | | | | | N/A |
| 40 | Surveys (Flown, ALTA, TOPO) | | | | | | | | | | Design Team and Owner to determine survey scope and data requirements |
| 41 | Code Analysis | x | | | | | | | x | | |
| 42 | Zoning Analysis | x | | | | | | | x | | Design to meet current zoning guidelines |
| 43 | Steel Stud Framing Design and Engineering | x | | | | | | x | | | |
| 44 | Prepare and Issue Meeting Minutes | x | | | | | | x | x | | |
| 45 | Prepare documents for power application with electrical utility and submit key information as required. | x | | | | | | | x | | By Architect and electrical consultant |
| 46 | Prepare bid packages for phasing of construction | x | | | | | | | x | | |
| 47 | Generate bid alternates | x | | | | | | | x | | |
| 48 | Prepare Comcheck submittal as required | x | | | | | | | x | | |
| 49 | Rezoning process | | | | | | | | | | TBD - site specific |
| 50 | Prepare a submittal log for the contractor to follow based on specifications | x | | | | | | | x | | |
| 51 | Documentation of owner existing Furniture Fixtures and Equipment | | | | | | | | x | | |
| 52 | Assist in grant writing by providing key information to Owner | x | | | | | | | | | |
| 53 | Submit applications as required for Town Planning or Zoning Approval Processes | x | | | | | | | x | | |
| 54 | Prepare bid packages, chair pre-bid meeting, log results | x | | | | | | | x | | |
| 55 | Prepare response to bidders questions, issue addendums | x | | | | | | | x | | |
| 56 | Construction: Observation and Field Reports | x | | | | | | | x | | |
| 57 | Construction: Review material inspection reports and advise if corrections are required | x | | | | | | | x | | |
| 58 | Construction: Review and make recommendations related to shop drawings | x | | | | | | | x | | |
| 59 | Close Out: Project Record Documents: Generate As-Built's in paper format including ASI, RFI's and install locations. | | | x | | | | x | x | | |
| 60 | Close Out: Project Record Documents: Review contractors posted sets during and after construction completion | | | x | | | | | x | | |
| 61 | Close Out: Project Record Documents: Generate As-Built's in Revit or Autocad format and PDF | | | x | | | | | x | | |
| 62 | Close Out: Prepare letter of substantial completion | | | x | | | | | x | | |
| 63 | Close Out: Assist Owner on resolution of warranty items | | | x | | | | x | x | | |
| 64 | Close Out: Attend 11 and 23 month walk throughs of facility | | | x | | | | x | x | x | |
| | | | | | | | | | | | |
| B. Procurement | | | | | \$0 | | | | | | |
| 1 | A/V, Telephone, Paging Design | | | | | | | | | | |
| 2 | IT/Data, Network, Cable Design | | | | | | | | | | |
| 3 | Programming Consultant | | | | | | | | | x | |
| 4 | Landscape Architect/Irrigation Design | | | | | | | | | | |
| 5 | Architectural Firm | | | | | | | | | x | |
| 6 | Civil Engineer | | | | | | | | x | | |
| 7 | Structural Engineer | | | | | | | | x | | |
| 8 | Mechanical Engineer | | | | | | | | x | | |
| 9 | Electrical Engineer | | | | | | | | x | | |
| 10 | Lighting Engineer/Designer | | | | | | | | x | | |
| 11 | Plumbing Engineer | | | | | | | | x | | |
| 12 | Acoustical Consultant | | | | | | | | x | | |
| 13 | Cost Estimating Consultant | | | | | | | | x | | |
| 14 | Furniture Design Consultant | | | | | | | | | | |
| 15 | Interior Design Consultant | | | | | | | | | | |
| 16 | Signage Design Consultant | | | | | | | | | | |
| 17 | Specifications Consultant | | | | | | | | | | |
| 18 | Traffic Consultant | | | | | | | | x | x | |
| 19 | Commissioning Consultant | | | | | | | | | x | |
| 20 | LEED Consultant | | | | | | | | x | x | |
| 21 | Security Consultant | | | | | | | | | | |
| 22 | PV Panel Consultant | | | | | | | | | | |
| 23 | Historic Preservation Consultant | | | | | | | | | | |
| 24 | Environmental Surveys (Phase I and Phase II) | | | | | | | | | | |
| 25 | Surveys (Flown, ALTA, TOPO) | | | | | | | | | | |
| 26 | Testing & Inspection (Soils) | | | | | | | | | x | |
| 27 | Testing & Inspection (Construction Materials) | | | | | | | | | x | |
| 28 | Code Consultant | | | | | | | | | | |
| 29 | Moving Consultant | | | | | | | | | | |
| 30 | Hazmat Analysis | | | | | | | | | | |
| 31 | Building Demolition Crew | | | | | | x | | | | |
| | | | | | | | | | | | |
| C. PRE-CONSTRUCTION | | | | | \$0 | | | | | | |

| OWNER/ARCHITECT/GENERAL CONTRACTOR SCOPE COORDINATION MATRIX | | | | | | | | | | | |
|--|---|--------------------|---------|-----------------------|------------|-------------------------|--|-------|--------------------------|----------|------------------------|
| A | | B | C | D | E | F | | G | H | I | K |
| | | GC Preconstruction | GC OH&P | GC General Conditions | Amount | Place "X" if allowance* | Procurement Responsibility A=Architect C=Contractor O=Owner T=Team | By GC | By Architect / Engineers | By Owner | Comments |
| 1 | Review Design Concepts | x | | | | | | | | | |
| 2 | Develop Bid Packages for sub contractors | x | | | | | | | | | |
| 3 | Material Selection and Availability Recommendations | x | | | | | | | | | |
| 4 | Building Systems Recommendations | x | | | | | | | | | |
| 5 | Coordinate Owner-Supplied Equipment | x | | | | | | | | | |
| 6 | Life Cycle Costing Analysis | x | | | | | | | | | |
| 7 | Equipment Selection and Availability Review | x | | | | | | | | | |
| 8 | Subcontractor Availability Review | x | | | | | | | | | |
| 9 | Construction Logistical & Execution Plan | x | | | | | | | | | |
| D. PROJECT COST CONTROL | | | | | \$0 | | | | | | |
| 1 | Master Budget; Generate and update | x | | | | | | x | x | | |
| 2 | Recommend approval of Contractor Invoices | | | | | | | | x | | |
| 3 | Manage cost of Alternates (trend log) | x | | | | | | | | | |
| 4 | Schematic Design Cost Estimate and Review | x | | | | | | | | | |
| 5 | Design Development Cost Estimate and Review | x | | | | | | | | | |
| 6 | Construction Document Estimate and Review | x | | | | | | | | | |
| 7 | Guaranteed Maximum Price Cost Estimate | x | | | | | | | | | |
| 8 | Construction Cash Flow Projections (Monthly) | x | | | | | | | | | |
| 9 | Review estimates for accuracy and value engineering ideas | x | | | | | | | | | |
| 10 | Verify Correctness of Quantities & Prices of Change Orders | x | | | | | | | | | |
| 11 | Continuous Project Cost Input and Response to Design Team Queries | x | | x | | | | | | | |
| E. PROJECT SCHEDULING | | | | | \$0 | | | | | | |
| 1 | Generate Design Schedule of Events | | | | | | | | x | x | |
| 2 | Master Schedule of Events including Owner items | x | | | | | | x | | | |
| 3 | Preconstruction Activity Schedule (Bar Chart) | x | | | | | | x | | | |
| 4 | Construction Activity Schedule (CPM) | | | x | | | | | | | |
| 5 | Const Activity Schedule w/ Milestones (CPM Updates) | | | x | | | | | | | |
| 6 | Shop Drawing & Submittal Schedule / Procedure | | | x | | | | | | | |
| 7 | Mock-Up Schedule & Procedure | | | x | | | | | | | |
| 8 | Generate and coordinate phasing sched w/ Owner | | | x | | | | | | | |
| 9 | Short-Interval Schedules | | | x | | | | | | | |
| 10 | Occupancy Schedules | | | x | | | | | | | |
| F. SUBCONTRACTOR SELECTION / PURCHASING | | | | | \$0 | | | | | | |
| 1 | Set Prequalification Criteria <i>including local provisions</i> | x | | | | | | x | | | |
| 2 | Recommend Subcontractor Selection Methods | x | | | | | | x | | | |
| 3 | Recommend Subcontractor Award Methods | x | | | | | | x | | | |
| 4 | Develop Subcontractor Interest | x | | | | | | x | | | |
| 5 | Prepare Bidding Schedules | x | | | | | | x | | | |
| 6 | Issue Plans, Specifications & Addenda | x | | | | | | x | | | |
| 7 | Receive Bids | x | | | | | | x | | | |
| 8 | Analyze Bids | x | | | | | | x | | | |
| 9 | Recommend Award | x | | | | | | x | | | |
| 10 | Determine Local Manpower Availability | x | | | | | | x | | | |
| 11 | Prepare Subcontracts & Supplier Contracts | x | | | | | | x | | | |
| G. CONTRACT DOCUMENT COORDINATION | | | | | \$0 | | | | | | |
| 1 | Constructability Review & Recommendations | x | | | | | | | | | |
| 2 | Review For Inclusion of All Work | x | | | | | | | | | |
| 3 | Review For Adequately Phased Construction | x | | | | | | | | | |
| 4 | Identify Long-Lead Items | x | | | | | | | | | |
| 5 | Identify Commodity Shortages | x | | | | | | | | | |
| 6 | Review and Coordinate Installation of Owner Supplied Fixed Equip | | | x | | | | | | | |
| H. ARCHITECT STAFF | | | | | \$0 | | | | | | |
| 1 | Principal | | x | | | | | | x | | |
| 2 | Project Manager | | x | | | | | | x | | |
| 3 | Project Architect | | x | | | | | | x | | |
| 4 | Drafter | | x | | | | | | x | | |
| 5 | Administrative / Clerical | | x | | | | | | x | | |
| I. GENERAL CONTRACTOR STAFF | | | | | \$0 | | | | | | |
| 1 | Corporate Executives | | | | | | | | | | In Overhead and Profit |
| 2 | Principal In Charge | | | | | | | | | | In Overhead and Profit |
| 3 | Project Executive | | | | | | | | | | In Overhead and Profit |
| 4 | Operations Manager | | | | | | | | | | In Overhead and Profit |
| 5 | Senior Project Manager | | | x | | | | | | | In Overhead and Profit |
| 6 | Project Manager | | | x | | | | | | | |
| 7 | Project Engineer | | | x | | | | | | | |
| 8 | Safety Manager / Field Audit / Training | | | | | | | | | | In Overhead and Profit |
| 9 | Human Resources | | | | | | | | | | In Overhead and Profit |
| 10 | Secretarial | | | | | | | | | | In Overhead and Profit |
| 11 | Project Estimating | | | | | | | | | | In Overhead and Profit |
| 12 | Project Accounting | | | | | | | | | | In Overhead and Profit |
| 13 | Project Scheduling | | | | | | | | | | In Overhead and Profit |
| 14 | Project Purchasing | | | | | | | | | | In Overhead and Profit |
| 15 | Project Superintendent(s) | | | x | | | | | | | |
| 16 | Assistant Superintendent(s) (as required) | | | x | | | | | | | |
| 17 | Field Engineer(s) (as required) | | | x | | | | | | | |
| 18 | Mechanical & Electrical Coordinator(s) (as required) | | | x | | | | | | | |

| OWNER/ARCHITECT/GENERAL CONTRACTOR SCOPE COORDINATION MATRIX | | | | | | | | | | | |
|--|---|--------------------|---------|-----------------------|--------|-------------------------|--|-------|--------------------------|----------|---|
| A | | B | C | D | E | F | | G | H | I | K |
| | | GC Preconstruction | GC OH&P | GC General Conditions | Amount | Place "X" if allowance* | Procurement Responsibility A=Architect C=Contractor O=Owner T=Team | By GC | By Architect / Engineers | By Owner | Comments |
| 19 | Quality Control Engineer (As Required) | | | X | | | | | | | |
| 20 | Project Assistant / Clerk / Typist (As Required) | | | X | | | | | | | |
| 21 | Safety Engineer (As Required) | | | X | | | | | | | |
| 22 | Field Accounting (as required) | | | X | | | | | | | |
| 23 | Registered Surveyor (As Required) | | | X | | | | | | | |
| J. QUALITY CONTROL / WARRANTY | | | | | | | | | | | |
| | | | | | \$0 | | | | | | |
| 1 | Develop & Submit Construction Safety Plan | X | | X | | | | | | | |
| 2 | Testing & Inspection (Construction Materials) | | | | | | | | X | X | |
| 3 | Soils Investigations / Geotechnical Reports | | | | | | | | X | X | |
| 4 | Environmental Surveys | | | | | | | | | | |
| 5 | HAZMAT Analysis | | | | | | | | | | |
| 6 | Environmental Cleanup Coordination / Govt Document | | | | | | | | | | |
| 7 | Project Progress Photographs | | | | | | | | | | |
| 8 | Field Reports | | | | | | | | | | |
| 9 | Warranty Inspections Coordination | | | X | | | | | | | |
| 10 | Air & Water Balancing | | | X | | | | | | | |
| 11 | Operator On-Site Training | | | X | | | | | | | |
| 12 | Prepare Operation and Maintenance Manuals | | | X | | | | | | | |
| 13 | Review Operation and Maintenance Manuals | | | X | | | | | | | |
| 14 | Attend 11 month walk throughs of facility and assist on closing out warranty items | | | X | | | | | | | |
| 15 | Drug Testing & Screening (Field Personnel) | | | | | | | | | | |
| 16 | Attend punch list walk throughs, prepare punch list, track items through completion | | | | | | | | | | General Contractor to capture all items identified on punch list walk using bluebeam software or approved equivalent. Architect to attend all punch lists and ensure consultants are using the same format as directed by the owner |
| | | | | X | | | | | | | |
| K. TEMPORARY FACILITIES | | | | | | | | | | | |
| | | | | | \$0 | | | | | | |
| 1 | Temporary Field Office Facility | | | X | | | | | | | |
| 2 | Field Office Furniture & Equipment | | | | | | | | | | |
| 3 | Field Office Copier(s) | | | | | | | | | | |
| 4 | Field Office Fax Machine(s) | | | | | | | | | | |
| 5 | Field Office Computer(s) & Software | | | | | | | | | | |
| 6 | Field Office Supplies | | | | | | | | | | |
| 7 | GC's Storage Trailers / Sheds | | | | | | | | | | |
| 8 | Field Office Equipment Maintenance & Repairs | | | | | | | | | | |
| 9 | Architect / Engineer Temporary Office | | | | | | | | | | |
| 10 | Project Sign | | | X | | | | | | | |
| 11 | Directional / Warning Signs | | | X | | | | | | | |
| 12 | Bulletin Boards | | | X | | | | | | | |
| 13 | Potable Drinking Water / Ice / Cups | | | | | | | | | | |
| 14 | Temporary Toilets / Sanitary Sewer | | | X | | | | | | | |
| 15 | Temporary Construction Fencing | | | X | | | | | | | |
| 16 | Barricades | | | X | | | | | | | |
| 17 | Covered Walkways | | | | | | | | | | |
| 18 | Safety Equipment | | | X | | | | | | | |
| 19 | First Aid Station & Supplies | | | X | | | | | | | |
| 20 | Handrails / Toe Boards / Opening Protection | | | | | | | | | | |
| 21 | Safety Nets | | | | | | | | | | |
| 22 | Temporary Stairs | | | | | | | | | | |
| 23 | Fire Extinguishers | | | | | | | | | | |
| 24 | Flagman / Traffic Control | | | | | | | | | | |
| 25 | Job Hauling Charges | | | | | | | | | | |
| 26 | Site Security | | | | | | | | | | |
| L. TEMPORARY UTILITIES | | | | | | | | | | | |
| | | | | | \$0 | | | | | | |
| 1 | Temp Telephone Install Equipment & Monthly Fee | | | | | | | | | | |
| 2 | Telephone Expense (Long Distance Charges) | | | | | | | | | | |
| 3 | Telephone Expense (Internet Charges) | | | | | | | | | | |
| 4 | Cellular Phone Charges | | | | | | | | | | |
| 5 | 2-Way Radio Equipment | | | | | | | | | | |
| 6 | Temporary Electrical Service / Distribution | | | | | | | | | | |
| 7 | Temporary Electrical Wiring & Lighting | | | | | | | | | | |
| 8 | Light bulbs & Temp Electrical Maintenance | | | | | | | | | | |
| 9 | Electrical Power Consumption Expense | | | | | | | | | | |
| 10 | Temporary Water Service / Distribution | | | | | | | | | | |
| 11 | Temporary Water Consumption Expense | | | | | | | | | | |
| 12 | Temporary Gas Service / Distribution | | | | | | | | | | |
| 13 | Temporary Gas Service Consumption Expense | | | | | | | | | | |
| 14 | Temporary Field Office Heating Energy Cost | | | | | | | | | | |
| 15 | Temporary Heating Service (Permanent System) | | | | | | | | | | |
| 16 | Permanent Heat System Filter Replacement | | | | | | | | | | |
| 17 | Maintenance Cost (Permanent Heat System) | | | | | | | | | | |
| M. CLEAN-UP | | | | | | | | | | | |
| | | | | | \$0 | | | | | | |
| 1 | Daily Clean-Up | | | X | | | | | | | |
| 2 | Final Clean-Up | | | X | | | | | | | |
| 3 | Final Glass Cleaning | | | X | | | | | | | |
| 4 | Debris Hauling/Removal | | | X | | | | | | | |
| 5 | Trash Chutes | | | | | | | | | | |
| 6 | Trash Dumpsters | | | X | | | | | | | |
| 7 | Dump Permits & Fees | | | X | | | | | | | |

| OWNER/ARCHITECT/GENERAL CONTRACTOR SCOPE COORDINATION MATRIX | | | | | | | | | | | |
|--|--|--------------------|---------|-----------------------|--------|-------------------------|--|-------|--------------------------|----------|----------|
| A | | B | C | D | E | F | | G | H | I | K |
| | | GC Preconstruction | GC OH&P | GC General Conditions | Amount | Place "X" if allowance* | Procurement Responsibility A=Architect C=Contractor O=Owner T=Team | By GC | By Architect / Engineers | By Owner | Comments |
| 8 | Dust Control | | | X | | | | | | | |
| 9 | Street Cleaning | | | X | | | | | | | |
| N. WEATHER PROTECTION | | | | | \$0 | | | | | | |
| 1 | Remove Snow & Ice | | | | | | | | | | |
| 2 | Temporary Enclosures (Buildings) | | | | | | | | | | |
| 3 | Temporary Weather Protection for Sub Trades | | | | | | | | | | |
| O. ON-SITE EQUIPMENT / HOISTING | | | | | \$0 | | | | | | |
| 1 | Automobile(s) & Fuel | | | | | | | | | | |
| 2 | Hoisting Equipment & Fuel | | | | | | | | | | |
| 3 | Material/Personnel Hoist(s) | | | | | | | | | | |
| 4 | Crane & Hoist Operator(s) | | | | | | | | | | |
| 5 | Small Tools (GC's Only) | | | | | | | | | | |
| 6 | Rental Equipment | | | | | | | | | | |
| 7 | Fuel for Rental Equipment | | | | | | | | | | |
| P. LEED CERTIFICATION | | | | | \$0 | | | | | | |
| 1 | MR2.1 Const Waste Management, Salvage or Recycle 50% | | | | | | | | | | |
| 2 | MR2.2 Const Waste Management, Salvage Additional 25% | | | | | | | | | | |
| 3 | MR5.1 Local/Regional Materials, 20% Manufactured Locally | | | | | | | | | | |
| 4 | MR5.2 Local/Regional Materials, 10% Harvested Locally | | | | | | | | | | |
| 5 | IAQ3.1 Construction IAQ Management Plan, Const | | | | | | | | | | |
| 6 | IAQ4.1 Low-Emitting Materials, Adhesives & Sealants | | | | | | | | | | |
| 7 | IAQ4.2 Low-Emitting Materials, Paints | | | | | | | | | | |
| 8 | IAQ4.3 Low-Emitting Materials, Carpet | | | | | | | | | | |
| 9 | IAQ4.4 Low-Emitting Materials, Composite Wood | | | | | | | | | | |
| Q. DOCUMENT REPRODUCTION / PRINTING | | | | | \$0 | | | | | | |
| 1 | Schematic Drawings & Specifications | | | | | | | | | | |
| 2 | Design Document Drawings & Specifications | | | | | | | | | | |
| 3 | Construction Drawings & Specifications | | | | | | | | | | |
| 4 | Subcontractor / Supplier Prequalification Forms | | | X | | | | | | | |
| 5 | Bidding Instructions | | | X | | | | | | | |
| 6 | Postage & Express Delivery Costs | | | X | | | | | | | |
| 7 | Subcontract & Supplier Contract Agreement Forms | | | X | | | | | | | |
| 8 | Shop Drawing Reproduction | | | X | | | | | | | |
| 9 | As-Built Documents (Mark-ups & Recording) | | | X | | | | | | | |
| 10 | As-Built Documents (Printing) | | | X | | | | | | | |
| 11 | Maintenance Manuals (From Subs) | | | X | | | | | | | |
| 12 | Operation Manuals (From Subs) | | | X | | | | | | | |
| 13 | Estimating Forms | | | | | | | | | | |
| 14 | Schedule Report Forms | | | | | | | | | | |
| 15 | Accounting Forms | | | | | | | | | | |
| 16 | Field Reporting Forms | | | | | | | | | | |
| 17 | Cost Reporting Forms | | | | | | | | | | |
| 18 | Special Forms | | | | | | | | | | |
| R. INSURANCE & BONDS | | | | | \$0 | | | | | | |
| 1 | Design professional liability insurance | | | | | | | | | | |
| 2 | Builder's Risk Insurance | | | | | | | | | | |
| 3 | Builder's Risk Deductible | | | X | | | | | | | |
| 4 | Special Insurance - O & E | | | X | | | | | | | |
| 5 | General Liability Insurance | | | | | | | | | | |
| 6 | Umbrella Liability Insurance | | | | | | | | | | |
| 7 | Excess Liability Insurance | | | | | | | | | | |
| 8 | Completed Products Insurance | | | | | | | | | | |
| 9 | Professional Liability Insurance | | | X | | | | | | | |
| 10 | Workman's Compensation Insurance (GC's Only) | | | | | | | | | | |
| 11 | FICA / Medicare Insurance (GC's Only) | | | | | | | | | | |
| 12 | Federal Unemployment Insurance (GC's Only) | | | | | | | | | | |
| 13 | State Unemployment Insurance (GC's Only) | | | | | | | | | | |
| 14 | Payment & Performance Bond | | | | | | | | | | |
| 15 | Subcontractor & Supplier Bonds | | | | | | | | | | |
| S. PERMITS & FEES | | | | | \$0 | | | | | | |
| 1 | Foundation Permit | | | | | | | | | | |
| 2 | Superstructure Permit | | | | | | | | | | |
| 3 | Building Permit (General) | | | X | | | | | | | |
| 4 | Mechanical Building Permit | | | X | | | | | | | |
| 5 | Electrical Building Permit | | | X | | | | | | | |
| 6 | Plan Check Fees | | | | | | | | | | |
| 7 | Street Use Permit | | | | | | | | | | |
| 8 | Curb & Gutter Permit | | | | | | | | | | |
| 9 | Sidewalk Permit | | | | | | | | | | |
| 10 | Street / Curb Design Charge | | | | | | | | | | |
| 11 | Sign Permits | | | | | | | | | | |
| 12 | Site Drainage (Erosion Control) Permit | | | | | | | | | | |
| 13 | Electrical Primary Construction Fee | | | | | | | | | | |
| 14 | Water Service Construction Fee | | | | | | | | | | |
| 15 | Gas Service Construction Fee | | | | | | | | | | |
| 16 | Water Tap (Inspection) Fee | | | | | | | | | | |

| OWNER/ARCHITECT/GENERAL CONTRACTOR SCOPE COORDINATION MATRIX | | | | | | | | | | | |
|--|--|--------------------|---------|-----------------------|--------|-------------------------|--|-------|--------------------------|----------|----------|
| A | | B | C | D | E | F | | G | H | I | K |
| | | GC Preconstruction | GC OH&P | GC General Conditions | Amount | Place "X" if allowance* | Procurement Responsibility A=Architect C=Contractor O=Owner T=Team | By GC | By Architect / Engineers | By Owner | Comments |
| 17 | Sanitary Tap (Inspection) Fee | | | | | | | | | | |
| 18 | Storm Tap (Inspection) Fee | | | | | | | | | | |
| 19 | Special Tap Fees | | | | | | | | | | |
| 20 | Contractor's Licenses | | | | | | | | | | |
| 21 | Zoning Fees | | | | | | | | | | |
| 22 | Construction Equipment Licenses | | | | | | | | | | |
| 23 | Construction Equipment Permits | | | | | | | | | | |
| T. OTHER COSTS | | | | | \$0 | | | | | | |
| 1 | Sales & Use Taxes (As Required) | | | | | | | | | | |
| 2 | Davis Bacon/Prevailing wages | | | | | | | | | | |
| 3 | Creation of Owner Moving Transition Manual, RFP and management | | | | | | | | | | |
| 4 | Owner Moving Costs | | | | | | | | | | |
| 5 | Video record with proper sound system Owner Training | | | X | | | | | | | |
| U. ADDITIONAL ITEMS | | | | | \$0 | | | | | | |
| 1 | (enter additional items as necessary) | | | X | | | | | | | |
| 2 | (enter additional items as necessary) | | | X | | | | | | | |
| 3 | (enter additional items as necessary) | | | X | | | | | | | |
| 4 | (enter additional items as necessary) | | | X | | | | | | | |
| 5 | (enter additional items as necessary) | | | X | | | | | | | |
| 6 | (enter additional items as necessary) | | | X | | | | | | | |
| 7 | (enter additional items as necessary) | | | X | | | | | | | |
| 8 | (enter additional items as necessary) | | | X | | | | | | | |
| | | | | | | | | | | | |

DRAFT AIA® Document A133™ – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

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

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

« »« »
« »
« »
« »

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

« »« »
« »
« »
« »

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

« »
« »
« »

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

« »« »
« »
« »
« »

The Owner and Construction Manager agree as follows.

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

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

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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

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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT (to be executed upon Owner approval)

EXHIBIT B INSURANCE AND BONDS

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EXHIBIT D Billable Rate Schedule

EXHIBIT E Project Specific Program and Scope

EXHIBIT F Owner Program

Exhibit G Schedule

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

«Refer to Exhibit F Owner Program »

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

« »

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

«See Project description above »

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

« »

.2 Construction commencement date:

« »

.3 Substantial Completion date or dates:

« »

.4 Other milestone dates:

« »

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:

(Identify any requirements for fast-track scheduling or phased construction.)

« The Team should assume an early site grading package and multiple bid packs to assist in expediting the project as allowed by Authorities Having Jurisdiction »

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

« »

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere.)

« No defined measurable criteria including LEED, Green Globes or other rating systems are anticipated. The design team will work with the owner to incorporate best practices beyond the current code requirements. »

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

(List name, address, and other contact information.)

« »

« »

« »

« »

« »

« »

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:

(List name, address and other contact information.)

«« Wember Inc. »
« 7350 East Progress Place, Suite 100 »
« Greenwood Village, Colorado 80111 »
« Paul Wember »
« T: (303) 378-4130 »
« E: pwember@wemberinc.com »

§ 1.1.10 The Owner shall retain the following consultants and contractors:

(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

« »
« »
« »
« »
« »

.2 Civil Engineer:

« »
« »
« »
« »
« »

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

« »

§ 1.1.11 The Architect's representative:

(List name, address, and other contact information.)

« »
« »
« »
« »
« »
« »

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

(List name, address, and other contact information.)

« »
« »
« »
« »
« »
« »

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

(List any Owner-specific requirements to be included in the staffing plan.)

« __NAME__ to be superintendent, __NAME__ to be project manager, __NAME__ to be pre-construction manager »

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:
(List any Owner-specific requirements for subcontractor procurement.)

« per the agreement »

§ 1.1.15 Other Initial Information on which this Agreement is based:

« »

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's written acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified using the A133 Exhibit A format which will include Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager shall possess relevant experience and capabilities to deliver the Work with regard to this project type. The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Construction Manager shall perform its operations in an open book collaborative process during the Project, including Work performed through the General Conditions costs. An open book approach requires the Construction Manager to make available to the Owner, in detail, all correspondence, documentation and transactions related to the Project, in a timely manner. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified and agreed to by Owner and Construction Manager, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term “Contractor” as used in A201–2017 shall mean the Construction Manager.

§ 2.4 Definitions

§ 2.4.1 **The Contract.** The Documents that form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Documents that form the Contract shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Construction Manager

§ 2.4.2 **The Work.** The term “Work” means the construction and related services required to fulfill the Construction Managers obligations under the Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Construction Manager. The Work may constitute the whole or a part of the Project.

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

§ 2.4.4 **Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Construction Manager, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 2.4.5 **Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Construction Manager proposes to conform to the Documents for those portions of the Work for which the Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples.

§ 2.4.6 **Owner.** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 2.4.7 **Construction Manager.** The Construction Manager is the person or entity identified as such in the Agreement and is referred to throughout the Documents as if singular in number. The term “Construction Manager” means the Construction Manager or the Construction Manager’s authorized representative

§ 2.4.8 **Consultant.** A Consultant is a person or entity providing professional services for the Project for all or a portion of the Work, and is referred to throughout the Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 2.4.9 **Architect.** The Architect is a person or entity providing design services for the Owner for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Documents as if singular in number.

§ 2.4.10 **Confidential Information.** Confidential Information is information containing confidential or business proprietary information that is clearly marked as “confidential.”

§ 2.4.11 **Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Amendment for Substantial Completion of the Work.

§ 2.4.12 **Day.** The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently; provided, however, that the written agreement shall set forth a description of the Work to be performed by the Construction Manager, the time in which the Work is to be performed, method of compensation, any insurance and bond requirements for the Work, and a date on which the Construction Manager may terminate this Agreement pursuant to §13.1.1. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except those included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction

Manager shall take into consideration cost reductions, material cost volatility, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, pedestrian and vehicular traffic control, temporary parking, materials storage, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project. The Construction Manager shall furnish to the Owner and Architect for review and approval, a list of proposed Subcontractors and material suppliers who are to furnish materials or equipment from whom bids will be requested for each portion of the Work. The Owner and Architect will promptly reply in writing to the Construction Manager if the Owner or Architect knows of any objection to such Subcontractor or material supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed Subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed Subcontractor or supplier.

§ 3.1.11.3 Direct Work shall be defined as actual Work described in Article 6 of this Agreement that has not already been secured through the General Conditions Costs.

§ 3.1.11.4 Self-Performed Work means Direct Work performed by the Construction Managers own forces. In the event the Construction Manager prefers to perform Work for any principal portions of the Work, other than General Conditions or emergency safety activities, with its own forces, the Construction Manager must secure this Work through a competitive process approved by the Owner. Construction Manager may not perform Direct Work with

its own forces unless the Owner approves in writing. The Owner shall be entitled to require the Construction Manager to obtain competitive bids from at least two (2) additional qualified and approved Subcontractors or general trades contractors. The Construction Manager shall work with the Architect to develop the appropriate bid packages to procure the work. The Construction Manager shall submit its own bid to the Owner at least one (1) day prior to the time of the Subcontractors' sealed bid deadline. The Construction Manager and Subcontractors' bids shall be opened simultaneously in the presence of the Owner and Construction Manager, who shall jointly analyze the bids for price, thoroughness, schedule, proposed staff and relevant experience. The Owner shall be entitled to determine, in its best interest and with sole and absolute discretion, whether the Construction Managers request to self-perform Work will be authorized. Owner may require the Work to be performed by a Subcontractor regardless of whether it appears that the Construction Manager can self-perform the Work in accordance with the requirements of the Contract Documents applicable thereto. There may be limited scopes of Work that the Owner may approve to be self-performed by the Construction Manager that are not secured through a competitive process.

§ 3.11.1.5 Construction Manager shall administer and account for all costs, management and financial tracking of any self-performed work as though it were being performed under a separate contract. If self-performed Work is awarded to the Construction Manager through a competitive a competitive bidding process, the pricing for such Work shall be in accordance with the Construction Manager's bid (subject to the Final Guaranteed Maximum Price). If self-performed Work is awarded to the Construction Manager without competitive bidding for limited scopes of work, such Work shall be billed at the Construction Manager's actual direct cost exclusive of any mark-ups for profit, overhead, General Conditions cost or other fees, other than the Construction Manager's overall fee stated in article 5.1.1. of this agreement.

§ 3.1.11.6 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering, delivery, and storage of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

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

§ 3.1.13.3 Unless otherwise provided in the Documents, the Construction Manager shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project. If Construction Manager's Guaranteed Maximum Price includes fees that Owner has paid or is required to pay, Construction Manager shall deduct these fees from the Contract Sum as a deductive Change Order. Construction Manager shall undertake and perform all actions required by and all actions necessary to maintain in full force and effects all permits and licenses required for the Work.

§ 3.1.13.4 "Key Notices" under this Contract are notices regarding any Contract default, contractual dispute, or termination of the Contract.

(a) Key Notices shall be given in writing and shall be deemed received if given by: (i) confirmed electronic transmission (as defined in subsection (b) below) when transmitted, if transmitted on a business day and during normal business hours of the recipient, and otherwise on the next business day following transmission; (ii) certified mail, return receipt requested, postage prepaid, three (3) business days after being deposited in the United States mail; or (iii) overnight carrier service or personal delivery, when received. For Key

Notices, the parties will follow up any electronic transmission with transmittal of a hard copy of the communication by the means described in subsection (a)(ii) or (a)(iii) above within twenty-four (24) hours of the electronic transmission. All communications or notices between the parties that are not Key Notices may be done via electronic transmission. Notice shall be given to the parties at the following addresses.

OWNER:

« Owner »
«ATTN: Name»
«Address»
«Address»
«Telephone: »
«Email: »

CONTRACTOR:

« Company »
«ATTN: Name»
«Address»
«Address»
«Telephone: »
«Email: »

All Key Notices to the Owner shall include a reference to the Contract including the Contractor's name and the date of the Contract.

Electronic Transmissions. The parties agree that: (i) any notice or communication transmitted by electronic transmission, as defined below, shall be treated in all manner and respects as an original written document; (ii) any such notice or communication shall be considered to have the same binding and legal effect as an original document; and (iii) at the request of either party, any such notice or communication shall be re-delivered or re-executed, as appropriate, by the party in its original form. The parties further agree that they shall not raise the transmission of a notice or communication, except for Key Notices, by electronic transmission as a defense in any proceeding or action in which the validity of such notice or communication is at issue and hereby forever waive such defense. For purposes of this Contract, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, but specifically excluding facsimile transmissions and texts.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

« »

§ 3.2 Guaranteed Maximum Price Proposal and Contract Time

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following in A133 Exhibit A:

- .1 Attachment A – Budget Summary, a detailed estimate stating the Fee (converted to lump sum), General Conditions costs, (as a not-to-exceed amount);
- .2 Attachment B – Detailed General Conditions costs, (as a not-to-exceed amount);
- .3 Attachment C – Approved Labor Burden rates;
- .4 Attachment D – Staff Assignment Matrix;
- .5 Attachment E – List of allowances;

- .6 Attachment F – List of unit prices;
- .7 Attachment G – List of clarifications and exclusions;
- .8 Attachment H – Critical path construction schedule;
- .9 Attachment I – Insurance Certificates;
- .10 Attachment J – List of Contract Documents upon which Guaranteed Maximum Price is based;
- .11 Attachment K – List of Construction Manager provided equipment along with billable rates;

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency and disclose in the GMP proposal a contingency of no more than 3%. The contingency is not to be used without written advance approval from the Owner. The Construction Manager shall not include or add any Fee to the Construction Managers Contingency in the Guaranteed Maximum Price. The Construction Managers Contingency is not available for use by the Construction Manager for mistakes that result from Self- performed Work, mistakes by the subcontractors or material suppliers, or any warranty work or for any purpose deemed outside the scope of Work. At Final Completion of the Project, any unused portion of the Construction Manager's Contingency remaining in the Guaranteed Maximum Price shall be returned to the Owner.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. If the Guaranteed Maximum Price exceeds the Owner's Budget the Construction Manager will work with the Architect and Owner to bring the project within budget in a timely manner.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price using the AIA A133 Exhibit A format which will include the information upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.2.10 The Final Guaranteed Maximum Price shall be established by incorporating the Construction Manager's General Condition cost approved during the Construction Manager Selection Process. Construction Manager shall competitively bid all Direct work to a minimum of (3) Subcontractors for each subcontracted scope of Work unless the Owner agrees otherwise in advance writing. Once bids are received, the Construction Manager shall share the results of the bidding process with the Owner and Architect and make recommendations on the selection of the Subcontractor or material supplier based on cost, schedule, and other factors that will maximize the success of the Project. The Construction Manager shall notify the Owner in a timely fashion when it intends to conduct scope and price confirmation meetings with bidders. The Owner may at its sole discretion elect to participate in the scope confirmation meetings with the Construction Manager.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner’s execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work as determined by the Construction Manager or as directed by the Owner. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 As part of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner’s budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner’s other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner’s budget for the Cost of the Work, the Owner shall notify the Construction Manager. The Owner, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project’s scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other

information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement..

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

« »

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

« »

Individual or Position**Rate**

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within «Twelve » (« 12») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's acceptable invoice. Undisputed amounts shall be remitted from Owner to Construction manager within 30 days of Owner's receipt of acceptable invoice. .

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**§ 6.1 Contract Sum**

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

« _____ percent (____%) » of the total Cost of the Work, which will be included in the Guaranteed Maximum Price. Guaranteed Maximum Price will be converted to a lump sum at the time of approval of the Guaranteed Maximum Price Amendment. »

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

«Additive Change Orders will be subject to an increase at the rate of ____ percent (____)% of the cost of work. To the greatest extent practical during the course of the project, the Construction Manager shall net individual additive deductive proposed changed items together into Change Orders to minimize increases to the Construction Managers lump sum fee. »

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

«The maximum allowable mark-up by the Subcontractor on its sub-contractors shall be Ten percent (10%) »

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed « » percent (« » %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

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

«Time is of the essence in completing the Work. In the event of delay in the completion of the Work as specified beyond the Completion Date, the Construction Manager shall be liable for liquidated damages because of such delay. For each and every day of delay past the Completion Date (including and, as adjusted by, time extensions) of this Contract, the Construction Manager will be liable to the Owner, as liquidated damages (and not as a penalty), in the amount of \$2,000 for each and every calendar day the Construction Manager is at fault for the delay. The Owner reserves the right to deduct said liquidated damages from any amount due the Construction Manager under this Contract or, at its option, to collect such liquidated damages directly from the Construction Manager or its surety.

»

§ 6.1.7 Other:

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

«All savings remaining between the actual final contract sum and the guaranteed maximum price shall revert 100% to the Owner. »

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work, provided a Change Order has substantive impact on the critical path of the approved project schedule.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to “cost” and “fee,” and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 6.1.2 of this Agreement.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site and performing Work, with the Owner’s prior approval in accordance with the approved wages, salaries or hourly billable rates reflected in Exhibit D which include all fringe benefits and labor burden. Under no circumstances shall salaried employees be compensated for overtime without the Owner’s prior written approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, in

accordance with the approved wages, salaries or hourly billable rates reflected in Exhibit D which include all fringe benefits and labor burden. Under no circumstances shall salaried employees be compensated for overtime without the Owner's prior written approval.:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

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§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Intentionally omitted.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior written approval. Owner will not pay for relocation and temporary living unless these expenses were clearly included within the proposed General Condition costs at the time of the selection of the Construction Manager and have been approved in writing by the Owner.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work. Travel expenses must be approved in writing by the Owner prior to the expense being incurred. Payment for travel shall be reimbursed at cost without mark-up. Travel expenses for the Construction Manager's Executives and Officers will not be reimbursed under any circumstances, unless they are assigned full time on site to the Project.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term “related party” shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager’s own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager’s list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection

by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep and provide the Owner with Access to the full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ 10.1. Audits

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. During the Work and for a period of three years following completion of all Work contemplated hereunder, the Owner and the Owner's Auditors shall, during regular business hours, be afforded access to, and shall be permitted to audit and copy the Construction Managers records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractors' proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. If any such audit reveals overpayment from Owner to Construction Manager for the Work or any portion thereof, Construction Manager shall remit payment to Owner immediately for the total amount overpaid. Failure to remit payment as required shall be considered a material breach of this agreement.

§ 10.2. Equipment

Equipment purchased and charged to the Project as a Cost of the Work shall become the property of the Owner. Any lease/purchase rental arrangements must be disclosed to the Owner in a timely manner. If the Construction Manager purchases equipment under a lease/purchase arrangement whereby rental payments are charged to the Owner as a cost of the Work, an appropriate credit shall be given to the Owner for the fair market value of the equipment at the time it was last used on the Project. For Construction Manager owned equipment, the Construction Manager shall maintain daily equipment usage reports. The equipment use reports shall be used by the Construction Manager to determine the most economical billing rage (hourly, weekly, monthly) to the Owner.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. The Construction Manager may apply for payment to the Owner no more frequently than every thirty (30) days for Work completed.

« »

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the «first » day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the « » day of the « » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « » (« ») days after the Architect receives the Application for Payment.

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

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus certified payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the

Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

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

In addition to any amounts withheld from payment pursuant to any other provision in this Agreement, Owner shall retain from progress payments, until payment is due under the terms and conditions governing final payments, amounts as follows:

- .1 Owner shall retain five percent (5%) of each progress payment to a maximum of five percent (5%) of the Contract Sum.
- .2 In no event shall the amount retained be reduced to less than five percent (5%) of the Contract Sum until after final acceptance of the Project by the Owner.

« »

§ 11.1.8.1.1 The following items are not subject to retainage:

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

«Permit fees and insurance and bond costs »

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

§ 11.1.10 Except with the Owner’s prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site. Materials or equipment approved for advance payments shall be securely stored in locations that are bonded and insured. Construction Manager shall provide evidence of adequate property insurance satisfactory to the Owner when requesting advanced payment. Materials or equipment not delivered at the site and approved for advanced payment will pass to Owner once payment has been made. Construction Manager will provide an acceptable Bill of Sale and will cause such materials or equipment to be marked as Owner’s Property. If visual inspection is required by the Owner, then it will be provided within the Cost of the Work.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager’s Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic

verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.
- .4 a final Certificate for Occupancy has been issued by the municipality having authority.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 60 (sixty) days after the issuance of the Architect's final Certificate for Payment, and confirmation that all items listed on the "Punch List" attached to the letter of substantial completion are confirmed complete by the Owner or Architect.

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price.

ARTICLE 12 CLAIMS AND DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim subject to, but not resolved by, mediation between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, the Owner shall determine the actual value received from the Construction Managers Preconstruction services. The Construction

Manager shall be compensated for these services based on the actual value that the Owner receives up to the maximum agreed to amount for those services.

§ 12.2 Binding Dispute Resolution

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

(Check the appropriate box.)

[☐] Arbitration pursuant to Article 15 of AIA Document A201–2017

[☒] Litigation in a court of competent jurisdiction

[☐] Other: (Specify)

<< >>

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

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as

the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

« In case of such termination for the Owner's convenience, the Construction Manager shall be entitled to receive payment for Work properly executed including overhead and profit. »

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

After execution of the Preconstruction Agreement, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B

§ 14.3.1.7 **Additional Insured Obligations.** The Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner and the Owner's representative, Wember, Inc. as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance satisfactory to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide performance and payment bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.3.3 Construction Manager's insurance is primary and non-contributory with any other insurance available to the Owner. The Owner reserves the right to request completed copies of the Construction Managers Insurance policies and endorsements to confirm the coverage disclosed in any insurance certificates presented by the Construction Manager.

§ 14.3.4 The Construction Manager shall maintain, and shall provide subcontractor default insurance acceptable to Owner or be required to provide performance bonds and material payment bonds for each subcontractor as agreed to at the time of the guaranteed maximum price. Performance and Payment Bonds shall (a) be executed by corporate surety licensed to do business in the State, (b) be in customary form, (c) be in the amount payable to Construction Manager hereunder or to such subcontractor pursuant to its contract with the Construction Manager and (d) be payable to the owner and (e) listed on the Federal Register as an acceptable corporate sureties.

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

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

« »

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

« »

- .6 Other Exhibits:
(Check all boxes that apply.)

[« »] AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

« »

[« »] Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|----------|-------|------|-------|
| | | | |

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

« »

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

OWNER (Signature)

« »« »

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

« »« »

(Printed name and title)

DRAFT AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

<< >>
<< >>

THE OWNER:

(Name, legal status and address)

<< >>
<< >>
<< >>

THE ARCHITECT:

(Name, legal status and address)

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ADDITIONS AND DELETIONS:

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

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

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

§ 1.2 Correlation and Intent of the Contract Documents

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

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

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

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

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

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

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

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

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

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

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

§ 2.2 Evidence of the Owner's Financial Arrangements

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

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

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

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

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements,

assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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

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

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the Work within the Contract Time, or fails to remove and discharge (within ten (10) days) any lien filed upon Owner's property by anyone claiming by, through, or under Contractor or disregards the instructions of the Owner when based on the requirements of the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

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

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

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

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

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

§ 3.3 Supervision and Construction Procedures

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

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable herefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

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

§ 3.3.4 The Contractor shall be solely responsible for locating all existing underground installations, including Underground Utilities and their service connections, in advance of excavating or trenching, by contacting the utility owners thereof and any available ONECALL Service and prospecting, and any resulting damage from failure to do so. Notwithstanding utility locate services that may be provided in the field by utility owners, Contractor remains ultimately responsible to determine the actual location of all Underground Utilities, facilities, structure, or installations. The Contractor shall use his own information and shall not rely upon any information shown or not shown on the plans or on field locates provided by the utility owner concerning existing Underground Utilities, facilities, structure, or installations. Any delay, additional work, or extra cost to the Contractor caused by existing Underground Utilities, facilities, structures or installations shall not constitute a claim for extra work, additional payment, or damage.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, required insurance and bonds, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor has the responsibility to ensure that all equipment and material suppliers and subcontractors, their agents, and employees adhere to the Contract Documents, and that they order material and equipment on time, taking into account the current market and delivery conditions, and that they provide equipment and materials on time. The Contractor shall coordinate its Work with that of all others on the Project, including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan the most effective and efficient methods of overall installation.

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

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

§ 3.4.4 All work necessary to be performed after regular working hours, on weekends or legal holidays, shall be performed without an increase to the Guaranteed Maximum Price unless changes by owner requires work beyond regular hours to meet initial schedule.

§ 3.4.5 Unless otherwise specifically required, all materials and equipment incorporated in the Work shall be new, free of faults and defects, and shall conform to the Contract Documents. If required, the Contractor shall furnish satisfactory evidence to the type and quality of materials and equipment.

§ 3.4.6 Colorado labor shall be employed to perform the Work to the extent of not less than eighty (80%) percent of each type or class of labor in several classifications of skilled and common labor employed on such project or public works. "Colorado labor," as used in this Article, means any person who is a resident of the State of Colorado, at the time of employment, without discrimination as to race, color, religion, creed, national origin, sex, age, or handicap.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's

warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Materials shall conform to manufacturer's standards in effect at the date of execution of the Construction Contract and shall be installed in strict accordance with manufacturer's directions. The Contractor shall, if required by the Owner, furnish satisfactory evidence as to the kind and quality of any materials. All packaged materials shall be shipped to the site in the original containers.

§ 3.5.2 The warranty provided in this Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy required or provided by law or by the Contract Documents and (ii) notwithstanding anything to the contrary contained in the Contract Documents, this warranty shall commence on substantial completion notwithstanding any partial occupancy prior thereto). The Contractor shall promptly repair and replace, at Contractor's sole cost and expense, any materials, equipment or Work covered by this warranty which is in violation of this warranty. All warranty work shall be coordinated with Owner in order to limit the disruption of operation of the completed Project. Such warranty work shall be completed in compliance with the terms and conditions of the Contract Documents.

§ 3.5.3 Owner and Contractor agree and acknowledge that Owner is entering into this Contract in reliance on Contractor represented expertise and ability to provide Construction Management services. Contractor agrees to use its best efforts, skill, judgment, and abilities to perform the Work and to further the interests of Owner in accordance with the requirements and procedures set forth in the Contract Documents.

§ 3.5.4 Unless directed by the Owner the Contractor's duties shall not be diminished nor shall Contractor be released from any liability by any review and/or approval by Owner, it being understood that Owner's review and/or approval of Submittals shall be for informational purposes only and not for purposes of approving or determining the propriety of the documents and the Owner is ultimately relying upon the Contractor's skill and knowledge in performing the Work.

§ 3.5.5 The Contractor's warranties and obligations under the provisions of Section 13.1.12 shall survive the completion of the Work or earlier termination of the Contract.

§ 3.5.6 The Contractor warrants that it will perform the Work in a timely, accurate and complete manner in accordance the provisions of the Contract Documents. The Contractor shall guarantee the Work against defects in workmanship and materials for a period of 1 year, or longer if a longer period is set forth elsewhere in the Contract documents, commencing on the date of substantial completion of the Work by the Owner's Representative (the "Warranty Period"). The Contractor shall promptly replace any materials or re-perform any portion of the Work found to be defective within the Warranty Period in accordance with this Contract and without expense to the Owner. The time allowed for such corrective action shall be mutually agreed upon by the Owner and the Contractor. If the Contractor fails to proceed promptly in accordance with these guarantees, the Owner reserves the right to place the Contractor in default of its contractual obligations and may have the Work performed at the expense of the Contractor. This provision shall survive the completion of the Work and the termination of this Order. The above guarantee does not limit any claims that the Owner may otherwise have against the Contractor. The Contractor shall also assign to the Owner any longer-term guarantee of materials used by the Contractor as may be provided by the manufacturer, per the material specifications and contract documents.

Any portion of the Work repaired or replaced under the Warranty obligation of Contractor shall carry an additional Warranty subject to all terms and conditions here for 1 calendar year after repair and replacement.

§ 3.5.7 At least 60 calendar days prior to the expiration of the Warranty Period, the Owner shall have the option to make an inspection to determine whether the Work has been completed in accordance with this Contract and may submit a written list of any defects to the Contractor (the "Warranty Work"). In the event the Owner chooses this option, the Contractor shall promptly correct all Warranty Work without additional cost to the Owner within the Warranty Period. If any Warranty Work cannot be corrected within the Warranty Period, the Contractor shall submit written notification to the Owner for approval requesting an extension of time to complete such item (the "Request for Extension of Warranty Work"). The Request for Extension of Warranty Work must be received by the Owner within seven calendar days of the Contractor's receipt of the Warranty Work and shall include the Contractor's justification for the request and a schedule for completion of the Warranty.

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

§ 3.6 Taxes

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

§ 3.6.2 It is understood that this project will receive tax exempt status. Owner to provide contractor with tax exempt certificate upon execution of Contract in order for Contractor to apply for a project specific tax exempt certificate from the state of Colorado. The exemption does not apply to purchases or rentals of equipment, supplies, or tools by the contractor that she or he uses to perform construction services for a tax-exempt entity. A contractor must apply for an exemption certificate prior to starting work on any tax-exempt construction project.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 10 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts; as well as fees or any other costs for which allowances are established.
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 Superintendent

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

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

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

§ 3.10 Contractor's Construction and Submittal Schedules

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

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

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

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work and as a condition precedent to Final Payment as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

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

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

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design

professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. If Contractor performs any design services in connection with the Work, Contractor or his design professional will meet and comply with Professional Liability insurance requirements as set forth elsewhere in this agreement in its entirety.

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

§ 3.12.11 By providing Submittals the Contractor represents to the Owner that it has (1) reviewed and check for conformance against the construction documents, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.12 All professional design services or certifications as required by the contract documents to be provided by the Contractor, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract, on a weekly basis minimum, and more often as needed to maintain a functional, efficient and safe construction site to the reasonable satisfaction of Owner. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

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

§ 3.16 Access to Work

§ 3.16.1 The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located. The Contractor shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 3.16.2 The Owner and its representatives shall at all times have access to the work. The Contractor shall provide proper facilities for access to and for inspection of the Work for the purpose of determining compliance with this Agreement and quality of workmanship and material. The Owner may order that portions of the Work be uncovered, exposed or made available for observation, inspection or testing. The Contractor shall provide all labor, tools, materials equipment and supplies necessary to comply with the request of the Owner. If any of the work is determined to be defective due to Contractor or subcontractor, the Contractor shall bear all costs involved to bring the Work into compliance with the Contract, including, without limitation, the cost to replace any materials, to re-perform or to reconstruct the Work.

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 Contractor agrees to indemnify and hold harmless the Architect, Owner's Representative, Owner and its officers, and employees from and against all claims, liability, damages, losses, and expenses, including reasonable attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage to the extent caused in whole or in part by, the negligent act, omission, error, professional error, or other fault of the Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor.

If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the Owner may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

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

§ 3.18.3 Contractor shall provide Owner with immediate written notification as to any circumstances to which this Section 3.18 may give rise to an Owner indemnification promptly after Contractor becomes aware of such circumstances.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

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

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

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

§ 4.2.4 Communications

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

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

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but

rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 Mutual Responsibility

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

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

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

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

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

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

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

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

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

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

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

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

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

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

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

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

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by Force Majeure as defined in paragraph 13.7; (4) by delay authorized by the Owner; or (5) by other causes that the Contractor asserts, justify delay, then the Contract Time shall be extended for such reasonable time and reasonable direct and indirect costs associated with delays if any as the Owner may determine and only if such delay will prevent Contractor from achieving Substantial Completion by the contract time. Subject to Article 15.

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

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

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

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

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

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

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

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

§ 9.5 Decisions to Withhold Certification

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 failure to carry out the Work in accordance with the Contract Documents or unsatisfactory execution of the work.
- .8 any other reasonable basis to withhold certification. Owner shall have no liability whatsoever for interest or other charges resulting from withholding of payment for any reason stated in the Contract.

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

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

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

joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

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

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

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

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

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

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

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

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

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within forty five (45) days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

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

Work for its intended use. As a condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive days or as agreed upon by the Owner and Contractor in writing. The Work shall not be considered ready for Substantial Completion if any of the following conditions exist:

- .1 punch list work in excess of \$10,000 in value remains to be completed that would prevent or interfere with the Owner's occupancy and normal operations and intended use of the facility in Owner's reasonable judgment;
- .2 Incomplete or defective work remains which would prevent or interfere with the Owner's occupancy and normal operations and intended use of the facility;
- .3 The building mechanical systems have not been tested, balanced;
- .4 The building electrical and life safety systems have not been tested;
- .5 Final clean-up is not complete to support the occupancy and intended use of the facility outside of clean-up associated with punch list items to be completed (outside of clean as an item);
- .6 Approvals and Temporary or Full Certificates of Occupancy (Whichever occurs first) by regulatory officials are not received and complete.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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

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

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

§ 9.9 Partial Occupancy or Use

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

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

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not: (1) constitute acceptance of Work not complying with the requirements of the Contract Documents, (2) relieve the Contractor from responsibility for loss or damage because of or arising out of defects in, or malfunctioning of, any Work, material or equipment, nor from any other unfulfilled obligations or responsibilities under the Contract Documents, or (3) commence any warranty period under the Contract Documents, provided that Contractor shall not be liable for ordinary wear and tear resulting from such partial occupancy.

§ 9.10 Final Completion and Final Payment

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

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

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

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

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 faulty or defective Work appearing after Substantial Completion;
- .4 terms of special warranties required by the Contract Documents; or
- .5 replacement of material or equipment which is rejected if found, after the date of final payment, to be defective, or inferior in quality or uniformity, to the material or equipment specified, or is not as represented to the Architect and Owner.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.1.1 At all times through performance of this contract, the Contractor shall be familiar with and comply with all local noise ordinances in the performance of the Work. The Contractor shall not conduct work in excess of the permissible decibel levels provided by local noise ordinances. The Contractor shall provide the Owner with prior notice of any known Work that may result in such excessive noise levels.

§ 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall

be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 Finishes, structures, utilities, service roads, landscaping located on the property not included in the contract documents shall be protected against damage or interrupted services at all times by the Contractor during the term of the Work. Adequate floor and wall protection must be provided by the Contractor during performance of the Work. The Contractor shall be responsible for repairing or replacing any and all property which is damaged by reason of the Contractor's operation on the property to satisfaction of the Owner.

§ 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site except to the extent caused by the negligence of the Owner.

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

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

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall take reasonable action, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7. The Contractor shall notify the Owner as soon as an emergency affecting safety of persons on the property is discovered.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

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

Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents and Exhibit B.

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

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

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Additional Named Insured

§ 11.2.1 The Owner and Wember, Inc. shall be named as an additional insured under the Contractor's Automobile, Commercial General, and Umbrella Liability coverages, and the Commercial General Liability additional insured coverage shall include products and completed operations coverage. The Contractor's Automobile, Commercial General, and Umbrella Liability additional insured coverage shall be primary with respect to claims made by the Owner.

§ 11.3 Builder's Risk/Property Insurance

§ 11.3.1 The Contractor shall purchase and maintain property insurance upon the entire Work at the site to the full insurable value thereof. Such insurance shall be in a company or companies against which the Owner has no reasonable objection.

This insurance shall include the interests of the Owner, the Contractor, subcontractors and sub-subcontractors in the Work as additional insureds, providing that such insurance is primary with respect to claims made by the additional insureds, and be in the form of "all risk" insurance for physical loss or damage with all exclusions deleted. If not covered under all risk insurance or otherwise provided in the Contract Documents, the Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit when such portions of the Work are to be included in a Request for Payment under paragraph 9.3.2.

§ 11.3.1.1 The form of policy for this coverage shall be "Completed Value". The coverage under this policy shall include contemplated work and work in progress.

§ 11.3.1.2 If by the terms of this insurance any mandatory deductibles are required, or if the Contractor should elect, to purchase this insurance with deductible amounts, the Contractor shall be responsible for payment of the amount of all deductibles in the event of a claim.

§ 11.4 General Requirements

§ 11.4.1 At any time and upon request, the Contractor shall file two (2) certified copies of all policies with the Project Manager. If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner, then the Contractor shall bear all reasonable costs properly attributable thereto. The Owner reserves the right to request and receive a certified copy of any policy at any time, and any and all endorsements to said policy.

§ 11.4.2 All insurance policies and/or certificates of insurance required under the Contract Documents shall be issued subject to the following stipulations by the Insurer:

- .1 Underwriter shall have no right of recovery or subrogation against the Owner or Wember, Inc., it being the intent of the parties that the insurance policy so effected shall protect both parties and be primary coverage for any and all losses covered by the described insurance.

- .2 The clause entitled "Other Insurance Provisions" contained in any policy including the Owner as an additional insured shall not apply to the Owner.
- .3 The insurance companies issuing the policy or policies shall have no recourse against the Owner for payment of any premiums due or for any assessments under any form of any policy.
- .4 Any and all deductibles contained in any insurance policy shall be assumed by and shall be the sole liability of the Contractor.

§ 11.4.3 Additional coverages or higher limits of liability may be required by the Owner should the scope or nature of the work change during the course of the Construction Contract. All liability insurance and builder's risk/property insurance policies required by this Article shall specifically provide that all coverage limits shall be exclusive of costs of defense, including attorneys' fees.

§ 11.4.4 The Contractor shall be solely responsible for ensuring that all subcontractors or suppliers obtain and maintain in force for the term of this Construction Contract insurance policies sufficient to meet the minimum coverages required under the Contract Documents.

§ 11.4.5 Nothing contained in this Article 11 shall be construed as limiting the extent of the Contractor's responsibility for payment of damages or liability resulting from his operations under the Construction Contract. Contractor agrees that he alone shall be completely responsible for procuring and maintaining insurance coverage to insure the Work and protect the Owner and Wember, Inc. against loss. Any approvals of Contractor's insurance coverages by the Owner or the Project Manager shall not operate to the contrary.

§ 11.4.6 The risk of loss to any property to be provided by Contractor to Owner pursuant to the Contract Documents shall be upon the Contractor until said property has been finally accepted by Owner.

§ 11.4.7 Nothing in this Article 11 shall be deemed or construed as a waiver of any of the protections to which Owner may be entitled under the Constitution of the State of Colorado or pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended.

§ 11.4.8 The Contractor shall provide the certificates of insurance and all endorsements required under the Contract Documents before commencing any Work. **It shall be an affirmative obligation of Contractor to provide written notice to the Owner within two (2) days of the cancellation of or material change to any of the policies required herein and failure to do so shall constitute a material breach of the Contract.**

§ 11.4.9 All insurance required under the Contract Documents shall be obtained from financially responsible insurance companies with a current Best's Insurance Guide Rating of A- and Class VII or better, licensed in the State of Colorado, and approved by the Owner, and shall be maintained until the Contractor's Work is accepted by the Owner. The Contractor shall provide the certificates of insurance required under the Contract Documents before commencing any Work. The Owner may, in writing, specifically indicate its approval or disapproval of each separate policy provided pursuant to the Contract Documents.

§ 11.4.10 All policies under the Contract Documents that are scheduled to expire prior to the time the Contractor's Work is finally accepted by the Owner shall be renewed prior to the scheduled expiration date and evidence of such renewal shall be submitted to the Owner for approval.

§ 11.4.11 If any of the policies required under the Contract Documents shall be or at any time become unsatisfactory to the Owner as to form or substance, or if a company issuing any such policy shall be or at any time become unsatisfactory to the Owner, Owner shall so advise Contractor who shall promptly obtain a new policy, submit the same to the Owner for approval, and thereafter submit a certificate of insurance as hereinabove provided.

§ 11.4.12 All liability insurance and builder's risk/property insurance policies required by this Article shall be occurrence-based policies.

§ 11.5 Owner's Insurance

§ 11.5.1 Contractor shall provide Builders Risk insurance on a completed value basis covering the Work in its entirety and during the course of construction.

§ 11.5.2 Not Used

§ 11.5.3 Not Used

§ 11.6 Waivers of Subrogation

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

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

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

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

§11.7 Adjustment and Settlement of Insured Loss

§ 11.7.1 Not Used

§ 11.7.2 Not Used

§ 11.8 PERFORMANCE BOND AND PAYMENT BOND

§ 11.8.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

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

§ 11.8.3 The Contractor shall furnish, at the Contractor's expense, a separate performance bond and a labor and materials bond, for an amount not less than 100% of the Contract Price. The bonds shall be issued by a qualified corporate surety licensed to transact business in Colorado and appearing as a licensed corporate surety on the Federal Register. If at any time during performance of the Work the surety on the bonds shall be disqualified from doing business in Colorado, or shall become insolvent or otherwise impaired, the Contractor shall furnish bonds from an alternate surety acceptable to the Owner. The bonds shall remain in effect until completion of all warranty and guaranty work and shall be delivered to the Owner prior to the commencement of the Work. The Contractor

shall secure an increase in the bonds in an amount equal to the cost of any additional work authorized pursuant to a duly executed change order or contract amendment.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. All such Work shall be coordinated with Owner in order to limit the disruption of operation of the completed Project. All such warranty work shall be completed in compliance with the terms and conditions of the Contract. This provision or any other provision in this Section 12.2.2 does not relieve the Contractor in any way of conforming to the requirements of the Contract or correcting items not compliant with the Contract per applicable laws, statutes or any regulations, whether they are observable, concealed or in any other condition or status.

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

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

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for

correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and the Owner shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary

by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

§ 13.5 Interest

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

§ 13.6 Mandatory Immigration Provisions

§ 13.6.1 Contractor acknowledges that, prior to executing the Agreement, Contractor has certified that it does not knowingly employ or contract with an illegal alien to perform work under the Agreement and that the Contractor has participated in the E-Verify Program (formerly known as the Basic Pilot Program1) (the "E-Verify Program") or the Colorado Department of Labor and Employment (the "Department") program established by § 8-17.5-102(5)(c), C.R.S. (the "Department Program") in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement.

§ 13.6.2 Contractor shall not: (a) Knowingly employ or contract with an illegal alien to perform work under the Agreement; or (b) Enter into a contract with a subcontractor who fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

13.6.3 The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in the E-Verify Program or the Department Program. (a) In the event the Contractor uses the Department Program for the employment verification described herein, the Contractor shall comply with the requirements mandated by § 8-17.5-102(5)(c), C.R.S. including: i. The Contractor shall comply with the provisions of § 8-17.5-102(5)(c), C.R.S.; and ii. Contractor shall notify the Owner of its determination to participate in the Department Program, and iii. The Contractor must, within twenty days after hiring an employee who is newly hired to perform work under the Agreement, affirm that the Contractor has examined the legal work status of the employee, retained file copies of the documents required by 8 U.S.C. § 1324a and not altered or falsified the identification documents for the employee, and the Contractor must provide a written, notarized copy of the affirmation of compliance with § 8-17.5-102(5)(c), C.R.S. to the Owner.

13.6.4 Contractor shall not:

(a) Knowingly employ or contract with an illegal alien to perform work under the Agreement; or

(b) Enter into a contract with a subcontractor who fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

13.6.5 The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in the E-Verify Program or the Department Program.

(a) In the event the Contractor uses the Department Program for the employment verification described herein, the Contractor shall comply with the requirements mandated by § 8-17.5-102(5)(c), C.R.S. including:

13.6.6 The Contractor shall comply with the provisions of § 8-17.5-102(5)(c), C.R.S.; and ii. Contractor shall notify the Owner of its determination to participate in the Department Program, and iii. The Contractor must, within twenty days after hiring an employee who is newly hired to perform work under the Agreement, affirm that the Contractor has examined the legal work status of the employee, retained file copies of the documents required by 8 U.S.C. § 1324a and not altered or falsified the identification documents for the employee, and the Contractor must provide a written, notarized copy of the affirmation of compliance with § 8-17.5-102(5)(c), C.R.S. to the Owner.

§ 13.7 Force Majeure. Neither the Contractor nor the Owner shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by “force majeure.” As used in this Agreement, “force majeure” means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, pandemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

§ 13.8 Order Of Precedence

§ 13.8.1 In the case of conflicts between the Drawings and Specifications, the Specifications shall govern. In any case of conflicts, omissions or errors in figures, drawings or specifications, the Contractor shall immediately submit the matter to the Owner and Architect for clarification. The Architect’s clarifications are final and binding on all Parties, subject to an equitable adjustment in Contract Time or Contract Sum pursuant to Articles 7 and 8 or dispute resolution in accordance with Article 15.

§ 13.8.2 Where figures are given, they shall be preferred to scaled dimensions.

§ 13.8.3 Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in the Contract Documents, shall be interpreted in accordance with their well-known meanings.

§ 13.8.4 In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written modifications to this Agreement; (b) this Agreement; (c) Drawings (large scale governing over small scale), Specifications and Addenda issued prior to the execution of this Agreement; (d) approved Submittals; (e) information furnished by the Owner; (f) other documents listed in the Agreement. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

§ 13.9 General Consultation. The Contractor shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 13.10 When applicable law requires that services be performed by licensed professionals, the Contractor shall provide those services through qualified, licensed professionals.

§ 13.11 The Contractor, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 13.12 Progress Reports

§ 13.12.1 The Contractor shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Contractor, the Contractor shall report information below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;

- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Contractor's compensation and Reimbursable Expenses, if any;
- .11 Additional information as agreed to by the Owner and Contractors.

§ 13.13 Key Personnel, Contractors and Suppliers

§ 13.13.1 The Contractor shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable and timely objection.

§ 13.13.2 If the Contractor changes any of the personnel, Contractors or suppliers identified in the Exhibit A Amendment, the Contractor shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 10 days to the Contractor in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 10 day period shall constitute notice of no reasonable objection.

§ 13.13.3 Except for those persons or entities already identified or required in the Exhibit A Amendment, the Contractor as soon as practicable after execution of the Exhibit A Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

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

§ 13.13.5 No provision of this Agreement shall be construed or interpreted: i) to directly or indirectly obligate Owner to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or iii) as a donation or grant by Owner to or in aid of any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may, at its option, suspend the Work if the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents;
- .4 Because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work; or
- .5 Because the Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may, at its option, suspend the Work, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials or equipment to complete the Work in a diligent, efficient, timely, workmanlike, skillful and careful manner;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial or material breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

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

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

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

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

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

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

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall be entitled to receive payment for Work properly executed Work

§ 14.3.4 The terms of this Contract are contingent upon sufficient appropriations and authorizations being made by the Owner for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the Owner, this Contract shall terminate, without penalty or expense to the Owner of any kind whatsoever, upon written notice being given by the Owner to the Contractor. Upon receipt of such notice, the Contractor shall take immediate action to mitigate any damage or additional expense.

§ 14.3.4 No provision of this Agreement shall be construed or interpreted: i) to directly or indirectly obligate Owner to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or iii) as a donation or grant by Owner to or in aid of any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

§ 15.1.2.1 The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law.. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.2.2 The Contractor shall maintain at the site for the Client a fully accessible electronic record copy of all drawings, specifications, addenda, Change Orders and other modifications, in good order and marked currently to record all changes during construction. The record drawings will be accessible to the Owner and their representatives for review and coordination. If the record drawings are not maintained to the satisfaction of the Owner and the Contractor fails or refuses to keep these documents current, the Contractor shall not be entitled to progress payments until it makes the necessary changes to the documents to make them current.

§ 15.1.2.3 The Contractor and their subcontractors shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 15.1.2.4 The Contractor shall perform the Work in accordance with the Contract Documents. The Contractor shall not be relieved of the obligation to perform the Work in accordance with the Contract Documents by the activities, tests, inspections or approvals of the Owner.

§ 15.1.2.5 Neither the Contractor nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful

orders of public authorities. If the Contractor determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Contractor shall execute a Modification to the Contract.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

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

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor intends to make a Claim for an increase in the Contract Sum, written notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor intends to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

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

§ 15.1.6.3 Notwithstanding any other provision of Article 15, all claims for extensions of time shall be made in writing to the Owner within 7 days after the beginning of the delay; otherwise, they may be disallowed.

It is expressly understood and agreed, by and between the Contractor and Owner, that the Contract Time for the completion of the Work is a reasonable time, taking into consideration the climatic and economic conditions and other factors prevailing in the locality of the Work. The Contract Time anticipates "Normal" weather and climate conditions in and around vicinity of the project site during the times of year that the construction will be carried out. Extensions of time based upon weather conditions shall be granted only if the Contractor demonstrates clearly that such conditions would not have been reasonably anticipated, and that such conditions adversely affected the Contractor's Work and thus required additional time to complete the Work.

The following specifies the procedure for the determination of time extensions for weather delays:

(a) An actual adverse weather day must prevent Work for 50 percent or more of the Contractor's workday, delay Work critical to the timely completion of the Project, and be documented by the Contractor. The Contractor shall notify the Owner in writing if Work cannot proceed on a given date, within two calendar days of that date. The

Owner will use the above written notification in determining the number of calendar days for which Work was delayed during each month.

(b) The Contractor shall track approved weather delays in the meeting minutes. If necessary, a Change Order will be executed for an increase in the Contract Time along with the issuance of substantial completion.

(c) The Contractor's Project Schedule must reflect the above-anticipated adverse weather delays on all weather-dependent activities. The Contractor shall comply with the portions of the Contract Documents relating to its Project Schedule and amendments thereto which result from the "unusually severe" weather condition.

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state

the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines. Owner is a public entity and as such is a political subdivision of the state of Colorado. The provisions of this Agreement shall be deemed to include the statutory provisions of Article 26 of Title 38, Colorado Revised Statutes, as those statutory provisions apply to political subdivisions of the state of Colorado. To the extent the provisions of this Agreement or any other Contract Document that comprises part of this Agreement conflict with the applicable statutory provisions of Article 26 of Title 38, the provisions of Article 26 of Title 38 shall control.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.3.4 Litigation

The Contract shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any dispute concerning the Contract or the Project shall be exclusively in the federal court located in Colorado or the state court located in _____, County, State of Colorado.