

# BOARD OF TRUSTEES Regular Session and Executive Session Agenda Monday, June 17, 2024 5:00 p.m. LINC Library Innovation Center 501 8<sup>th</sup> Avenue, Greeley, CO 80631

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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 Approval of Consent Agenda
  - a. May 20, 2024 Regular Session Meeting Minutes
  - b. Mead and DSS Construction Manager at Risk Contracts
  - c. CVRL and Farr Regional Library Architecture Contract
- 1.4 The Good We Do
- 1.5 Public Comment

## 2.0 ITEMS FOR INFORMATION/ACTION

- 2.1 Annual Comprehensive Financial Report (Action) Natalie Wertz, HPLD Finance Manager, and Alanna Moses, Anderson & Whitney
- 2.2 Board Recruitment (Action) Dr. Matthew Hortt, HPLD Executive Director

- 2.3 Friends of Raymer MOU (Action) Dr. Matthew Hortt, HPLD Executive Director
- 2.4 Policies Updates (Action) Dr. Matthew Hortt, HPLD Executive Director
  - a. Reconsideration of Library Resources Policy
  - b. Programs Policy
  - c. Scope of Collection Policy
  - d. Archival Collection Policy
  - e. Artwork Policy
  - f. Meeting Spaces Policy
  - g. Specialty Checkout Policy
  - h. Circulation Policy
  - i. Fines and Fees Policy

# **3.0 DIRECTORS REPORT**

- Review Draft Agenda Dr. Matthew Hortt, HPLD Executive Director
   a. July 15, 2024 RS
- 3.2 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 EXECUTIVE SESSION PURSUANT TO C.R.S. § 24-6-402(4)

5.1 C.R.S. § 24-6-402(4)(e) Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators – Town of Mead Intergovernmental Agreement

# 6.0 ADJOURNMENT

Upcoming meetings:

July 15, 2024 at 5:00p.m.: HPLD Board of Directors Meeting - Regular Session Erie Community Library, 400 Powers Street, Erie, CO 80516



BOARD OF TRUSTEES DRAFT - Regular Session Minutes Monday, May 20, 2024 5:00 p.m. Glenn A. Jones, MD Memorial Library 400 S. Parish Avenue, Johnstown, CO 80534

# 1.0 OPENING OF MEETING AT 5:03PM

1.1 Roll Call and Pledge of Allegiance All were Present unless noted:

Chair Mary Heberlee Vice-Chair Joyce Smock Secretary/Treasurer Nick Nakamura Trustee Deana Lemos-Garcia was excused Trustee Teresa Nuñez attended virtually Trustee Gerri Holton attended virtually Trustee Michael Wailes

Quorum was established.

Legal Counsel William Garcia

HPLD Staff: Dr. Matthew Hortt, Marjorie Elwood, Natalie Wertz, and Kim Parker

Guests: Tony Brewer, Malcomb Fleming, Bob Grand, Quentin Rockwell

# Chair Mary Heberlee read the following statement into record:

High Plains Library District is dependent on the trust of its community to successfully achieve its mission. Therefore, it is crucial that all Trustees conduct business on behalf of the High Plains Library District with the highest level of integrity, truth, and honor, avoiding any impropriety or the appearance of impropriety.

1.2 Approval of Agenda

Dr. Hortt explained that the Mead IGA was not submitted in time for this meeting, and so the item will be moved to next month. Also, the Trustees did not feel a need to discuss the re-entry policy. Therefore, the Executive Session will be removed from this agenda.

MOTION to approve the amended agenda: Secretary/Treasurer Nick Nakamura SECOND: Trustee Michael Wailes DISCUSSION: None VOTE: 5:0

- 1.3 Approval of Consent Agenda
  - a. April 15, 2024 Regular and Executive Sessions Meeting Minutes
  - April 22, 2024 Special and Executive Sessions Meeting Minutes MOTION to approve the consent agenda: Vice-Chair Joyce Smock SECOND: Secretary/Treasurer Nick Nakamura

# **DISCUSSION:** None **VOTE:** 5:0

## 1.4 The Good We Do

Dr. Hortt shared that on May 4<sup>th</sup>, the modular building at Grover was set and it has been gutted and is now being reframed.

## 1.5 Public Comment

Bob Grand presented a plea for Keenesburg and Lochbuie to have permanent libraries. He stated that the problem is not a lack of funds at Hudson, but an unwillingness to do so on Hudson's part. He asked that HPLD provide library services to all residents.

# 2.0 ITEMS FOR INFORMATION/ACTION

2.1 Mead Library Design (Action) - Dr. Matthew Hortt, HPLD Executive Director, and Studiotrope Secretary/Treasurer Nick Nakamura recused himself from the discussion and left the room at 5:18p.m.

Dr. Hortt reported that Studiotrope is working on designs for a 12,500 square foot prototype building that includes a Facilities' garage for Mead. It is designed with space for expansion, and the design plans line up with other buildings the town is doing. The Board saw photos and discussed the plans and the improvements that have been made to the plans.

MOTION to approve the Mead Library Design: Trustee Michael Wailes SECOND: Vice-Chair Joyce Smock DISCUSSION: None VOTE: 4:0

Secretary/Treasurer Nick Nakamura returned to the room after the discussion.

2.2 I-25 Erie Gateway URA (Action) Dr. Matthew Hortt, HPLD Executive Director & Malcomb Fleming, Economic Development & TOEURA Town of Erie

At the April Board Meeting, Trustees directed Dr. Hortt and Legal Counsel Garcia to write a counteroffer for the I-25 Erie Gateway Urban Renewal Area proposal. The amended proposal was presented to Erie, and they accepted it. As before, the URA will be for 25 years and HPLD will share 100% of the tax revenue in the area. Because of the changes, it now states that the TIF Revenue Cap will be \$5,000,000, rather than \$10,000,000.

Malcomb Fleming introduced the topic and offered to answer any questions.

Legal Counsel and Staff recommend that the Board approve the URA and signing of the TIF Agreement.

MOTION to approve the I-25 Erie Gateway Urban Renewal Area Proposal and TIF Agreement, and direct the Executive Director to sign the TIF Agreement: Secretary/Treasurer Nick Nakamura SECOND: Trustee Michael Wailes DISCUSSION: None VOTE: 5:0

2.3 Sale of former Lincoln Park Library (Information) – Dr. Matthew Hortt, HPLD Executive Director

Chair Mary Heberlee shared that this has come full circle: the purchase of the building was done in Johnstown at Dr. Hortt's first meeting and the District received the sale contract on his 6<sup>th</sup> anniversary with HPLD. The contract was signed on May 7<sup>th</sup> for \$1,000,000 and the earnest money has been paid, so due diligence is being done. The 60-day terms will make closing around July 8<sup>th</sup>.

Trustees recommended that the large HPLD sign on the building be moved to the Grover building.

#### For Information Only – No action is needed

2.4 Legislative Update (Information) – Dr. Matthew Hortt, HPLD Executive Director

Dr. Hortt shared three updates that were either signed by Governor Polis or were waiting for his signature, and Legal Counsel Bill Garcia expounded on them.

Staff are watching Colorado Senate Bill 24-233: Property Tax Cut. This bill was written to cap local property tax revenue growth to 5.5%, starting in tax year 2025. It will impact the District if passed.

➢ CO SB 24-216: Standards for Decisions Regarding Resources.

This bill sets up procedures for the reconsideration of materials and programs. At the time of this meeting, it was approved but not yet signed. If a library has a policy, they can use it. HPLD has it documented in their Procedures, but not in their Policies; so staff will work with the Governance Committee to put a policy in place. Some modifications that will be made because of the Bill are (1) that materials will now stay in circulation during reconsideration review period, (2) there will now be a two-year waiting period for any material that has been challenged to be contested again, and (3) that staff cannot be disciplined if they refuse to remove a material during the review process, as long as they are acting in good faith.

➢ House bill 24-1454: Grace Period to the Noncompliance Digital Accessibility. This is an existing bill that requires digital ADA standards to be in place, for both public and internal sites. This now allows the penalties for not complying to be extended from July 1, 2025 to July 1, 2026, as long as a company is working in good faith, which HPLD is.

For Information Only – No action is needed

#### **3.0 DIRECTORS REPORT**

3.2

3.1 Review Draft Agenda – Dr. Matthew Hortt, HPLD Executive Director a. June 17, 2024 RS

District Updates – Dr. Matthew Hortt, HPLD Executive Director Marjorie Elwood and Melissa Beavers went to the National Children's Museum Conference in Wisconsin to check out vendors and new products for LINC.

Dr. Hortt went to the Colorado Public Libraries Directors Retreat.

LINC's one-year anniversary celebration was May 11<sup>th</sup>, and it was well-attended. In fact, their attendance for the year was 266,740. This year from January through April, their attendance was 93,603.

The District has kicked off their Carbon Valley and Farr Regional Libraries' refresh projects.

LINC Staff also hosted the Colorado Association of Libraries Makerspace Workshop.

The League of Women Voters contacted staff, and have a member who is interested in attending the HPLD Board meetings.

Dr. Hortt introduced Kristi Plumb, the Director of the Glenn A. Jones, MD Library in Johnstown, and thanked her for hosting the meeting. She reported that this was the first day of the Summer Reading Adventure sign up, and they had 151 registrations. They brought in a

petting zoo to kick it off and had 300 participants. She added that something that makes them unique from other libraries in the District is that everyone in Johnstown does programming.

## 4.0 BOARD COMMENTS

- 4.1 Chair Mary Heberlee is proud of the progress that we've made in expanding services in all corners of the district and is glad we are helping volunteer libraries as well, because that helps expand services. It's the right thing to do to hold steady and continue with the projects we've got going.
- 4.2 Vice-Chair Joyce Smock, too, thinks now is the time to do these things. She appreciates what we are able to do right now in expanding the district.
- 4.3 Secretary/Treasurer Nick Nakamura thanked Melissa Beavers and reported that he and his wife attended LINC's anniversary celebration.
- 4.4 Trustee Teresa Nuñez restated the sentiment in the room, and then told that she appreciates the programming in the Ft. Lupton and Carbon Valley libraries. She showed a pot that she had made at CVRL. She then reported that at HPLD's Foundation meeting, Niamh Mercer, Foundation Director, gave a presentation on the Foundation's strategic plan from 2019 to present, and then they did a swot analysis.

Trustee Gerri Holton had nothing new to add

Trustee Michael Wailes thanked Kristi Plumb for hosting.

# 5.0 ADJOURNMENT AT 6:24PM

There being no further business,

MOTION to adjourn the meeting: Secretary/Treasurer Nick Nakamura SECOND: Vice-Chair Joyce Smock DISCUSSION: None VOTE: 5:0

Upcoming meetings:

June 17, 2024 at 5:00p.m.: HPLD Board of Directors Meeting - Regular Session LINC Library Innovation Center, 501 8<sup>th</sup> Avenue, Greeley, CO 80631

# HIGH PLAINS LIBRARY DISTRICT BOARD OF TRUSTEES COMMUNICATION

Meeting date: June 17th, 2024

Type of item: Action

Subject: Mead and DSS Construction Manager at Risk Contracts

Presented by: Dr. Matthew Hortt, HPLD Executive Director

Recommendation: Staff recommend the Board approve the Mead & DSS Construction Manager at Risk Contracts and direct the Executive Director to sign them

# Background

The High Plains Library District Board awarded the Construction Manager at Risk RFP for the Mead Library Project to Fransen Pittman and the Construction Manager at Risk RFP for the DSS Archive and Expansion to GH Phipps. The contract amounts cover preconstruction services and general condition values. The GMP (Guaranteed Maximum Price) will be determined upon completion of the architectural design.

# Considerations

- HPLD Legal Counsel has reviewed the contracts
- Both firms accepted HPLD Legal Counsel edits
- Mead Contract Fransen Pittman
  - Preconstruction: \$18,750
    - Hard Costs: Approximately \$10,000
- DSS Archive & Expansion GH Phipps
  - Preconstruction: \$20,000
  - Hard Costs: Approximately \$10,000

# Recommendation

Staff recommend the Board approve the Mead & DSS Construction Manager at Risk Contracts and direct the Executive Director to sign them

# 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 «4 » day of « September » in the year « 2023 » (In words, indicate day, month, and year.)

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

« High Plains Library District » « Dr. Matt Hortt » « 2650 W 29th St » « Greeley, CO 80631 » « 970-506-8563 » « mhortt@highplains.us »

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

« Fransen Pittman General Contractors » « Josh Davis » « 522 Main St » « Windsor, CO 80550 » « (970) 460-5250 » « jdavis@fransenpittman.com »

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

« New Library in Mead, CO » « SW corner of Highway 66 and County Road 7 » « Mead, CO 80542 »

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

« StudioTrope Design Collective (SDC) » « Joseph Montalbano » « 2942 Welton St » « Denver, CO 80205 » « (303) 847-4657 » « jomo@studiotrope.com »

The Owner's Designated Representative: (Name, address and other information)

« High Plains Library District » « Dr. Matt Hortt » « Executive Director »

#### 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.

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« 2650 W. 29th Street »

« Greeley, CO 80631 »

« 970-506-8563 » « mhortt@highplains.us »

The Construction Manager's Designated Representative: (Name, address and other information) « Fransen Pittman General Contractors »

« Josh Davis »

« 522 Main St »

« Windsor, CO 80550 »

« (970) 460-5250 »

« jdavis@fransenpittman.com »

« The Owner's Representative: »

« (Name, address and other information) »

« Wember Inc. » « Quentin Rockwell »

« 2850 E Harmony Rd #201 » « Fort Collins, CO 80528 »

«970-402-0382»

« qrockwell@wemberinc.com »

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The Owner and Construction Manager agree as follows.

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#### INITIAL INFORMATION ARTICLE 1

§ 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.)

« A new stand alone library branch in Mead, CO. »

§ 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.)

#### « SW corner of Highway 66 and County Road 7, Mead, CO »

§ 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.)

#### « \$9,000,000 »

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

.1 Design phase milestone dates, if any:

« Construction Documents by September 2024 »

.2 Construction commencement date:

« November 2024 »

.3 Substantial Completion date or dates:

« anticipated December 2025 »

.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.)

 $\ll N/A \gg$ 

**§ 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.*)

« The project is to meet current energy codes at a minimum with sustainability principles applied to where best value can be determined. The project is not pursuing certification of any type. »

**§ 1.1.6.1** If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234<sup>TM</sup>–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.)* 

```
« High Plains Library District » « »
« Dr. Matt Hortt »
« 2650 W 29<sup>th</sup> St »
« Greeley, CO 80631 »
« 970-506-8563 »
« »
```

§ 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.*)

#### $\ll$ Wember, Inc $\gg$

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« Quentin Rockwell »
« 2850 E Harmony Rd #201 »
« Fort Collins, CO 80528 »
« 970-402-0382 »
« qrockwell@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:

```
« Kumar »« »
« Jacob Hanson »
« 800 Stockton Ave #4 »
« Fort Collins, CO 80524 »
« »
```

- .2 Civil Engineer:
  - « TBD »« » « » « » « » « »
- .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.*)

```
« StudioTrope Design Collective »
« Joseph Montalbano »
« 2942 Welton St »
« Denver, CO 80205 »
« (303) 847-4657 »
« jomo@studiotrope.com »
« »
```

**§ 1.1.12** The Construction Manager identifies the following representative in accordance with Article 3: *(List name, address, and other contact information.)* 

```
« Fransen Pittman General Contractors »
« Josh Davis »
« 522 Main St »
« Windsor, CO 80550 »
« (970) 460-5250 »
« jdavis@fransenpittman.com »
« »
```

§ 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.*)

#### « Derek Lepore to be Pre-construction Manager

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Tyler Kaul to be the Project Manager Jeremy Zirbel to be Superintendent »

§ 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 this 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 the 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<sup>TM</sup>–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.

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§ 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.

#### 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 limited 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 Contractor 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 Construction Manager does not warrant or guarantee estimates and schedules except those included as part of the Guaranteed Maximum Price. 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<sup>TM</sup>–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

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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, 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<sup>TM</sup>–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

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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 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.

§ 3.1.13.1 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.

§ 3.1.13.2 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.

§ 3.1.13.3 "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

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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:**

« 2850 E Harmony Rd #201 » « Fort Collins, CO 80528 »

« qrockwell@wemberinc.com »

« 970-402-0382 »

CONTRACTOR:
« Fransen Pittman General Contractors »
« Josh Davis »
« 522 Main St »
« Windsor, CO 80550 »
« (970) 460-5250 »
« jdavis@fransenpittman.com »

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.)

#### $\ll N/A \gg$

#### § 3.2 Guaranteed Maximum Price Proposal

§ 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.

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§ 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:

1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract:

2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's Contingency set forth in Section 3.2.4; and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and

.5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency, not to exceed 3%, for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The contingency is not to be used without written advance approval from the Owner and/or Owner's Representative. No Fee is to be added to the Construction Manager's Contingency at the time of 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. 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. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration requested by the owner; (c) documented price escalation of materials and equipment; (d) DELETED; (e) Subcontractor defaults; or (f) those events the General Conditions of the contract that result in an approved extension of the Contract Time in writing by the owner but do not result in an increase in the Contract Sum. The Contingency is not available to Owner for any reason, including, but not limited to changes in scope or any other item which would enable Construction Manager to increase the Guaranteed Maximum Price under the Contract Documents. Construction Manager shall provide Owner with notice of all anticipated charges against the Contingency and shall provide Owner a weekly status report setting forth an accounting of the Contingency. Construction Manager agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Construction Manager will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Construction Manager agrees that if Construction Manager is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

§ 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 with using the AIA A133 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.

.1 Owner's approval of the total Cost of the Work and Guaranteed Maximum Price proposal;

- .2 Owner furnishing evidence of ability to finance the entire Cost of the Work;
- .3 Procurement of a complete and final Building Permit and other permits necessary for the commencement and continuity of construction operations; and
- .4 Issuance of a Notice to Proceed.

### § 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 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.

§ 3.3.2.2.1 In addition to the additional Contract time, the Construction Manager will be entitled to receive compensation for extended General Conditions and other labor and equipment costs on a per day basis.

#### § 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

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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 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, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials ..

§ 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

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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<sup>TM</sup>–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. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the 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.)

#### « \$18,750 »

§ 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.)

#### « See attached hourly billable rates provided by Fransen Pittman »

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. Amounts unpaid « thirty » ( « 30 » ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

(Insert rate of monthly or annual interest agreed upon.)

« eight » % « 8% »

#### COMPENSATION FOR CONSTRUCTION PHASE SERVICES ARTICLE 6

#### § 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.

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#### § 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.)

#### « See attached CMAR Fee and Scope Matrix »

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

#### « 7% per CMAR Fee and Scope Matrix »

§ 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 Fifteen percent (15%) »

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall be as shown in the Standard Tool and Equipment Rental Pricing List to be included with GMP packet and amendment documents.

§ 6.1.6 Liquidated damages, if any: (Insert terms and conditions for liquidated damages, if any.)

There is no bonus incentive for early completion of this Project. \$1000 / day if not completed 60 days after substantial completion or mutually agreed upon completion date should additional services extend past the substantial completion date. Dates will be finalized and included in GMP Amendment packet.

#### § 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. The Guaranteed Maximum Price shall be determined when Design Development documents are 100% complete and approved by Owner and made part of this Agreement by written amendment hereto. Construction Manager does not guarantee any specific line item estimate provided within the Guaranteed Maximum Price.

#### § 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.

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§ 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.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

#### COST OF THE WORK FOR CONSTRUCTION PHASE ARTICLE 7

### § 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, as modified by GMP Amendment. Should there be a conflict between the terms describing the Cost of the Work and GMP Amendment, the GMP Amendment shall prevail.

§ 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.

§ 7.1.4 Contractor's General Conditions Costs are defined as those costs that are itemized and identified in the GMP Amendment.

## § 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. 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, 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.)

« »

§ 7.2.3 Labor rates for 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, at rates set forth in Exhibit D.

§ 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.

§ 7.3.1 Construction Manager reserves the right to self-perform work typically performed by Subcontractors on a negotiated lump sum basis. The costs of such self-performed Work shall be treated as a Subcontract Cost for purposes of applications for payment and for calculating Construction Manager's fee and shall be included within the contract Guaranteed Maximum Price.

### § 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. Rates of Construction Manager-provided equipment are set forth in Exhibit C.

§ 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, with adequate insurance coverage evidenced by a certificate of insurance provide to the Owner, and subject to the Owner's prior approval.

#### § 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 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, irectly 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 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 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, including automobile allowance and cell phone. 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.

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### § 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, within 10 days of notice from the Construction Manager, then Owner shall be deemed to have consented to the transaction.

### § 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; or 14.5
- .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, 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. Any audit shall be performed by a qualified construction CPA selected by Owner and acceptable to Construction manager, acting in the sole interest of the Owner. The cost of the audit shall be the sole responsibility of the Owner. All audit findings will be considered confidential and can only be disclosed between Owner, Owner's Auditor and Construction Manager unless the Auditor's findings result in a dispute which reasonably requires further disclosure. Otherwise, no disclosure of any audit findings will be allowed to any other party.

#### § 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.

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#### 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, or as follows: Payments by the Owner to the Construction Manager will be in the form of a wire transfer of electronic funds.

#### $\ll N/A \gg$

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

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit 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 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. The Owner acknowledges there is only a single Guaranteed Maximum Price that applies to the entirety of the Work. The Construction Manager may in its discretion reallocate any portion of the GMP among the various items in the schedule of values, including owner approved Contingency, and neither the Owner or Architect may deny payment to the Construction Manager on the basis that such payment would cause an item in the schedule of values to be exceeded.

§ 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 and Owner with its monthly Application for Payment.

§ 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

§ 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:

That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by .1 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;

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- .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:

« 5% per state statute »

§ 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

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

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

#### $\ll N/A \gg$

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

#### $\ll N/A \gg$

§ 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 Construction Manager shall execute subcontracts in accordance with those agreements. Payments to Subcontractors shall be subject to retain ge of not less than ten percent (10%).

## § 11.1.12

Upon satisfactory completion and acceptance of the following portions of the Work, full retainage will be released to the Subcontractors performing the following Work:

> Survey: Layout; Rough Carpentry; Concrete: Doors Frames Hardware:

> > Demolition; Earthwork; Utilities; Shoring; Rebar; Caissons; Concrete Foundations: Pre-Cast Concrete; Masonry; and Structural Steel.

§ 11.1.13 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 qualified auditors who are mutually acceptable to the Owner and Contractor, but 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

- the Construction Manager has fully performed the Contract, except for the Construction Manager's .1 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. Work that is subject to a lump sum price shall not be subject to audit except for the percentage of work actually completed versus the amount billed toward the lump sum price. Agreed upon rates which form the basis of the Cost of the Work shall not be subject to 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 thirty (30) 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 14.5, 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. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

#### § 11.3 Interest

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

« » % « »

#### 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 Construction Manager shall be compensated for these services based on a breakdown of the services provided during each major phase of the design, specifically 40% for the SD Estimate, 30% for the DD Estimate, and 30% for the CD Estimate.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

« » « »

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### § 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 [ **«X** »] 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. In the event either party commences a legal proceeding against the other party to enforce or interpret this Agreement, then the prevailing party shall be awarded its attorneys' fees and costs.

#### 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, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 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 (including retention) 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 for any equipment purchased by the Construction Manager for the Work, 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 or the Construction Manager 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' 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.

#### **MISCELLANEOUS PROVISIONS** ARTICLE 14

§ 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.

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## § 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

### § 14.3.1 Preconstruction Phase

The Construction Manager shall 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

### § 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<sup>TM</sup>-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 Exhibit B

§ 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.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203<sup>TM</sup>–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:

«§14.5.1 « « Construction Manager is responsible only for construction of the Project according to the Contract Documents. Construction Manager is not a licensed design professional and has no professional qualifications in architecture, structural, mechanical, electrical, civil or acoustical engineering. Any value engineering recommendations or alternate material suggestions by Construction Manager are subject to prior approval and acceptance by Owner and Architect.

§ 14.5.2 Owner acknowledges that soil movement beneath the building improvements may cause damage to the structure. There are various ways of construction improvements on soils that move that can help reduce this risk of damage. It is Construction Manager's and Architect's responsibility to review with Owner the Soils Report and to assist Owner in becoming informed of various methods of construction and risk of damage due to soil movement associated with the various methods. It is Owner's responsibility to determine which method of constructing the improvements that Owner desires to employ and how much risk Owner is willing to accept. Owner acknowledges that it may not be possible to totally eliminate the risk of soil movement and damage to the building improvements.

§ 14.5.3 It is the responsibility of the Owner to address all potential issues with adjoining property owners such as party lines, zero lot lines, site drainage, etc. before the commencement of construction. The Construction Manager

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specifically excludes costs resulting from issues with adjoining properties.

§ 14.5.4 Due to monthly fluctuations in the construction material market, Construction Manager cannot guarantee that there will not be price increases for materials incorporated in this project. Construction Manager will do everything within reason to mitigate any such cost increases. »

§ 14.5.5 Responsibility of owner to test for and remove asbestos including if discovered during or prior to demolition phase. »

#### SCOPE OF THE AGREEMENT **ARTICLE 15**

§ 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:

- AIA Document A133<sup>TM</sup>–2019, Standard Form of Agreement Between Owner and Construction Manager .1 as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201<sup>TM</sup>–2017, General Conditions of the Contract for Construction
- .3 HPLD CMAR RFP dated 08/01/2023, Fransen Pittman Proposal dated 08/24/2023 and Fransen Pittman Fee Matrix.

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

**OWNER** (Signature)

«Dr. Matt Hortt, »« Executive Director »

(Printed name and title)

**CONSTRUCTION MANAGER** (Signature)

« Josh Davis, »« VP Operations » (Printed name and title)

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# AIA<sup>°</sup> Document A201<sup>°</sup> - 2017

## General Conditions of the Contract for Construction

#### for the following PROJECT:

(Name and location or address)

« New Library in Mead, CO »
«SW corner of Highway 66 and County Road 7 »
« Mead, CO 80542 »
« »

#### THE OWNER:

(Name, legal status and address)

« High Plains Library District » « »
« Dr. Matt Hortt »
«2650 W 29<sup>th</sup> St »
«Greeley, CO 80631 »
«970-506-8563 »
« »

#### THE ARCHITECT:

(Name, legal status and address)

« studioTrope Design Collective (sDC) »
«Joseph Montalbano »
«2942 Welton St »
«Denver, CO 80205 »
«(303) 847-4657 »
«jomo@studiotrope.com »

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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.

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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 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.

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**§ 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, Subsubcontractors, 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<sup>TM</sup>–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<sup>TM</sup>–2013, Building Information Modeling and Digital Data Exhibit, and the requisite

AIA Document G202<sup>TM</sup>–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 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 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 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 here from 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, 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

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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 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 survive the against that the Contractor as may be provided by the manufacturer, per the material specifications and contract documents.

**§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.

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§ 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 reperform or to reconstruct the Work.

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## § 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 submittal 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 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 Labor rates, 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 labor rates 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.

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## § 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 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.

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## § 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.

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**§ 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 cleanup 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 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.

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**§ 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.

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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. <u>It shall be an affirmative obligation of Contractor to provide written</u> <u>notice to the Owner within two (2) days of the cancellation of or material change to any of the policies required</u> <u>herein and failure to do so shall constitute a material breach of the Contract</u>.

**§ 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, subsubcontractors, 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 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.** 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.

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#### § 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 hat 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

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#### 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 fullfill 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 mater;
- .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

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#### § 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

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**§ 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.

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**§ 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 Contactor 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 weatherdependent 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 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.

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**§ 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 \_Weld\_\_\_\_\_, County, State of Colorado.

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

### High Plains Library District District Support Services (DSS) Expansion August 1, 2023



HPLD DSS 2650 W 29<sup>th</sup> St Greeley, CO 80631

Prepared by:

Wember 2580 E. Harmony Rd #201 Fort Collins, CO 80111 Project Manager: Dan Spykstra Phone: 720-382-3795 e-mail: dspykstra@wemberinc.com online: www.wemberinc.com

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#### 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 addition to the High Plains Library District Support Services Building (DSS) in Greeley, CO. 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. Interviews will follow the submission of proposals according the schedule contained in the RFP.

#### PROJECT BACKGROUND

High Plains Library District (HPLD) has selected Wember as the Owner's Representative and is currently seeking a General Contractor (CM@R). The project is in the early concept phase, and HPLD's goal is to bring on a General Contractor (CM@R) to provide cost estimating and constructability review throughout the design process.

#### PROJECT DESCRIPTION

HPLD would like to build a 30,000 sq ft, 3-story detached building to include a main floor receiving area and 10,000 sq ft warehouse storage,10,000 sq ft library on second floor and 10,000 sq ft office space on third floor.

Renovate the existing building entry for a more welcoming experience. Possibly renovate the 2<sup>nd</sup> floor meeting room.

Add two bays on to the book mobile garage.

#### BUDGET

The "Hard Cost" or construction budget for the project is approximately \$10,000,000, and includes demolition, construction, general conditions, and overhead & profit. "Soft Costs" including design & engineering, permitting, FF&E, technology, contingency, 3<sup>rd</sup> party consultant service, etc.) will be in addition to the Hard Cost, and maintained by the Owner.

#### TIMELINE

The proposed timeline is as follows: Schematic Design Design Development Construction Documents

Permitting/ GMP

Construction

October 2023 – February 2024 March – May 2024 June – September 2024 September 2024 – October 2024 November 2024 – December 2025 (subject to change)

#### 1.2 LOCATION

The Project is located at the current DSS building, 2650 W 29th St, Greeley, CO 80631.

#### 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 and it will be managed collaboratively throughout the pre-construction and construction phase of the project. This system is the Owner's Representatives online project management system (Owner InSIte) which includes, but not limited to, managing Budget, 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) Participate in Design team interviews and selection process on or about 9/14/23.
- 2) 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 week, for the duration of the pre-construction period would be required.
- 3) 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.
- 4) 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.
- 5) 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.

- 6) 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.
- 7) 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.
- 8) 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.
- 9) 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.
- 10) 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.
- 11) 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.
- 12) 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.
- 13) Identify and submit proposals for long lead items for direct purchase by the Client.
- 14) 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 "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. The Scope & Fee Matrix is not due with the proposal, it is only required of the short-listed firms due at the interview.

#### 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. CONSTUCTION 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, Wember, Inc LinkedIn and Client's Website.

#### **Owner's Representative- Wember**

Mr. Dan Spykstra, Owner's Representative Wember, Inc. 2580 E. Harmony Rd #201 Fort Collins, CO 80111 Phone: (720) 382-3795 Email: dspykstra@wemberinc.com

#### **Owner/Client – High Plains Library District**

Dr. Matt Hortt, Executive Director High Plains Library District 2650 W 29<sup>th</sup> Street Greeley, Colorado 80631 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
August 1, 2023		Advertise and issue CM@R RFP
August 15, 2023	9:00 AM	Non-mandatory site visit
		2650 W 29th St., Greeley, Colorado 80631
		Meet at Back (South) Parking Lot.
August 16, 2023	2:00 PM	Deadline for receipt of questions and inquiries
August 17, 2023		Final responses to questions, inquiries and RFP amendments
August 24, 2023	9:00 AM	Deadline for submission of proposals
August 25, 2023		Announce shortlist for interview
September 1, 2023	TBD	Interviews of short-listed candidates
September 5, 2023		Preferred CMAR announced
September 18, 2023		Execute Agreement with selected CM@R
October 1, 2023		Commence project design (Anticipated)

#### 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 <u>30 pages</u> numbered in sequential order.
- B. <u>Submit a single electronic PDF file of your proposal and Excel File of your fee proposal by</u> <u>the submittal date/time aforementioned</u>; email to the Owner's Representative, Conor Bancroft, whose contact listed in Section 1.5 above.
- C. 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.
- D. 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.

#### 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 Preconstruction Manager, Project Manager, Estimator and Superintendent at a minimum
  - 8) Client/Owner contact with telephone number
  - 9) Owner's Representative contact with telephone number
  - 10) 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 important or 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 the membership.

#### Part 5 – Fee Proposal

A. Please refer to exhibit "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 is to be submitted with your proposal. Instructions for completing the matrix are provided within the matrix. Submit/note any conditions, clarifications, or exclusions concerning Scope of Services. The Scope & Fee Matrix is not due with the proposal, it is only required of the short-listed firms due at the interview.

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 (<u>dspykstra@wemberinc.com</u>) and Brooke Kardos (<u>bkardos@wemberinc.com</u>) 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 shortlisted 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:

- Each 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 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.

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

(Please use additional sheets as necessary.)

COMPANY NAME:		
со	MPANY ADDRESS:	
PH	ONE:FAX:	
со	NTACT PERSON NAME:	
CONTACT PERSON PHONE:		
со	NTACT PERSON EMAIL:	
1.	I Acknowledge that the "Sample Agreement" attached to this RFQ/P ( <b>Exhibit D</b> ) 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 Douglas County, Colorado\_\_\_\_(YES/NO)
- 5. The Proposer hereby acknowledges receipt of addenda numbers \_\_\_\_\_ through \_\_\_\_\_.
- 6. List of construction items that will be self-performed.

А	Ι	
В	J	
С	K	
D	L	
Е	М	
F	N	
G	0	
Н	Ρ	

Signature:

\_\_\_\_\_Date:\_\_\_\_\_

\* \* \* End of Proposal Form \* \* \*



#### Addendum 01

Project Name:	DSS2- HPLD District Support Services Expansion part-2
Wember Project Number:	2018.35
Issue Date:	August 17, 2023
Purpose:	CMAR RFP Addendum 01

Question #1	Would it be possible to get the existing building floor plans & the site survey that was recently completed?
See ALTA attached. Building plans will be shared at the start of Design (When I find the drawings)	

Question #2	Is a copy of the district's prototype library floor plan available?
See attached	

Question #3	Please confirm that fees are not required until shortlist.
Correct, fees are not required until the interview.	

#### **Brooke Kardos**

From:
Sent:
Cc:
Subject:

Brooke Kardos Friday, August 18, 2023 11:28 AM Dan Spykstra DSS2-CMAR RFP Addendum 02

All,

Apologizes for the additional email, one clarifying question came in this morning. All proposals should be submitted to <u>dspykstra@wemberinc.com</u> and <u>bkardos@wemberinc.com</u>.

Thank you,



From: Brooke Kardos
Sent: Thursday, August 17, 2023 4:03 PM
Cc: Dan Spykstra <dspykstra@wemberinc.com>
Subject: DSS2-CMAR RFP Addendum 01

Hello,

Thank you for your interest in the High Plains Library District, District Support Services addition/renovation project. Please use this link to access the addendum and supporting documents:

CMAR Addendum 01





## High Plains Library District District Support Services Expansion

August 24, 2023

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

(Please use additional sheets as necessary.)

со	COMPANY NAME:		
со	MPANY ADDRESS:		
PH	PHONE:FAX:		
со	NTACT PERSON NAME:		
со	NTACT PERSON PHONE:		
со	NTACT PERSON EMAIL:		
1.	I Acknowledge that the "Sample Agreement" attached to this RFQ/P ( <b>Exhibit D</b> ) 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 Douglas County, Colorado(YES/NO)		
5.	The Proposer hereby acknowledges receipt of addenda numbers through		
6.	List of construction items that will be self-performed.		
А	1		
В	J		
С	К		
D	L		

Signature: Joh Davi

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Date:

\* \* \* End of Proposal Form \* \* \*

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## HUDSON LIBRARY HIGH PLAINS LIBRARY DISTRICT

N.

# 1. COVER LETTER 5. ORGANIZATION NFORMATION

Place Unwant Books

### **LETTER OF INTEREST**

Dan Spykstra, Brooke Kardos, and the High Plains Library District Selection Committee:

FP is honored to submit our qualifications for the High Plains Library District Support Services Expansion. Having completed six previous projects for your district (and working together now on Grover Bookmobile and Centennial Park Library!), we are eager to partner again and provide quality construction services. We are a company that specializes in the construction of meaningful buildings, and pride ourselves on creating lifelong partnerships through excellent services. We are thrilled to be pursuing your project that will further HPLD's mission to inspire and serve the residents of Weld County.

Fransen Pittman brings a wealth of knowledge and experience to your District. We understand the expectations it takes to deliver a **modern**, **comfortable**, **and inviting facility** to the district through the 50+ libraries we have completed over our 30 years of service to the communities of Colorado. Our **proposed team is currently completing a similar project package for Clearview Library District**, a renovation of an existing library facility and the construction of a 12,000 sqft new library. We are successful teammates and bring this strong partnership to your district.

What makes Fransen Pittman unique is our dedication to our clients to stand with them all the way to the finish line and to always step up to make things right. It is of the expectation of Fransen Pittman to deliver the **best value** and highest quality to all of our clients, and that stems from being a dedicated builder who has a deep appreciation and care for what libraries and public amenities mean for the community.

We start every project with a kick-off meeting to develop strong lines of **communication**. As a group, we establish project goals and expectations, and define success as a team. Through **teamwork**, our mission is to deliver state of the art preconstruction using our MET<sup>™</sup> process: Model, Estimate and Track. This allows HPLD to make the decisions that impact your project. We are eager to jump in to provide options, constructability advice, and ultimately, to collaborate, imagine, and develop the scope and budget that fits the expectations as a team.

To minimize disruption to library staff and promote safety, we propose building the new 3 story library/storage facility first, then remodel the Support Services Building after the new library is completed. Staff can temporarily move into the new building while we remodel the existing Support Services Building. Our construction remodeling operations can move quickly and efficiently if we have custody of the space, and staff won't be disrupted by construction.

During our construction operations, we apply all of the tools required to deliver the highest level of **quality**. We utilize in-house, 21st century technology like drones and 3D modeling software that can identify constructability best practices. With over 50 libraries under our belts, we have a breadth of building best practices for quality, end user experience, and long term life of the building.

We are so excited for this opportunity to partner again with High Plains Library District! Please contact me with any questions or concerns.

Best Regards,

Soch Dary

Josh Davis, Vice President of Northern Colorado Operations c. 720.935.0415 | jdavis@fransenpittman.com 522 Main Street Windsor, CO 80550

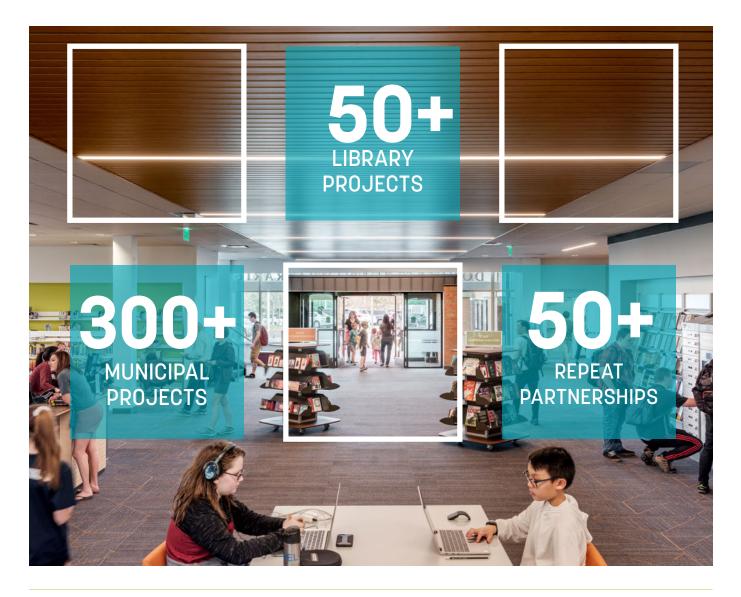




Fransen Pittman is the **right partner** for your new and renewed library facilities. We are a local Colorado firm, and we will run all of our operations out of our **Northern office in Windsor**, **Colorado**.

From ground up new builds, to complete interior renovations and everything in between, we see ourselves as **library building experts**. This experience will elevate your library projects in terms of quality, schedule, and matching vision to budget. There's no learning curve with us.

We understand what it means to overcome problems and find solutions. As your partner we pledge to navigate challenges while always seeking out innovative **solutions**. Together, we know our team can find **project efficiencies** and make your new and upgraded facilities a successful reality.





## \$300,000,000 B 0 N D I N G C A P A C I T Y

August 22, 2023

Wember 2580 E. Harmony Rd #201 Fort Collins, CO 80111 Attn: Dan Spykstra, Project Manager

#### RE: Fransen Pittman Construction Co., Inc. – Surety Qualification Letter RFP CM@R Services - High Plains Library District Support Services (DSS) Expansion

Dear Mr. Spykstra,

It has been our privilege to provide bonds for Fransen-Pittman through Travelers Casualty and Surety Company of America, who has an A.M. Best rating of "A++" (Superior) "XV" and are listed in the Department of Treasury's Listing of Approved Sureties. Fransen-Pittman has a single bonding capacity of \$150,000,000 with an aggregate bonding capacity of \$300,000,000. They have \$200,000,000 of that capacity available. Fransen-Pittman has an outstanding reputation with project owners, architects, subcontractors and suppliers and it is our opinion that Fransen-Pittman is well qualified to perform any project they wish to pursue.

We are in a position to issue 100% performance/payment bonds on behalf of Fransen-Pittman Construction should they be required, subject to favorable review of the contract documents, and normal underwriting requirements at the time of the request. The arrangement for Performance and Payment Bonds is a matter between Fransen-Pittman Construction Co., Inc. and Travelers Casualty and Surety Company of America, and neither the surety nor the agent assumes any liability to you or third parties if for any reason said bonds are not written. This letter is an indication only and not a commitment to provide bonding.

If you have any questions or need any additional information, please do not hesitate to contact me at 720-622-8357.

Sincerely,

Jucele Claroron

Sarah C. Brown, AFSB Surety Service Advisor

7600 E Orchard Road, STE 230 South | Greenwood Village, CO 80111 | (844) 484.7750 | F (515) 223.6944 | holmesmurphy.com



## CENTENNIAL PARK LIBRARY HIGH PLAINS LIBRARY DISTRICT

## CENTENNIAL PARK BRANCH LIBRARY

# **PROJECT EXPERIENCE**

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## **HIGH PLAINS LIBRARY DISTRICT**



#### **PROJECT DESCRIPTION:**

Fransen Pittman has completed multiple ground-up and renovation projects for High Plains Library District while patrons occupied the space. The projects included Erie Community Library, Glenn A. Jones, M.D. Memorial Library, Hudson Public Library, Centennial Park Library, Grover Bookmobile and the Northern Plains Public Library.

**Erie Library** expanded their current space to include additional meeting spaces, study rooms, staff space, and story time expansion. FP also expanded the parking lot.

**Glenn A. Jones** consisted of two separate phases to focus on the exterior skin refresh and the interior refresh. The exterior included demolition and reconstruction of the building's skin, while the interior refresh is to revitalize the children's and family area, the fireplace, adult pavilion, young adult, media area and ponds. The exterior refresh and interior refresh were both phased strategically to minimize disruption to the library's patrons.

**Hudson Library** was the first phase of the Town's new Civic Center which includes the Town Hall and parking adjacent to the new library. The new structure is a slab-on-grade, wood frame with standing-seam Galvalume metal roofing that sits on an undeveloped two acre site, which required an extensive new detention pond.

The Northern Plains Library was a renovation to the current space. The project adds a new outdoor space, dedicated children's area, and new meeting rooms. It also expanded the existing spaces for computers, collections, seating and reception.

**Centennial Park Library:** FP first worked on the 40,000 sqft building in 2003, and came back twenty years later when the branch was due for another refresh. Work currently includes modifying the existing ramp, upgrades to ADA, addition of natural lighting, addition of a meeting space, and a general overhaul of Children's, Young Adults and Administration areas.

**Grover Bookmobile** is providing a valuable resource to the small rural community town of Grover. Located in Weld County, Fransen Pittman provided parking, outdoor meeting spaces, landscaping, and the connection of the modular trailer. Now the Grover community has access to important resources through the High Plains Library District.



#### **PROJECT SIZE**

Erie: 13,800 SF | \$4.2M\* Hudson: 11,250 SF | \$3.0M Glenn A. Jones : 20,000 SF | \$2.2M Centennial Park: 29,000 SF | \$1.8M; \$1M NO Plains: 5,000 SF | \$1.75M Grover: \$550K

#### **SERVICE DELIVERY**

CM/GC; D/B\*

#### **KEY STAFF INVOLVED**

Project Manager: Tyler Kaul, Shawn Rhodes Superintendent: Richard Sykes, Bernardo Chavez Preconstruction: Alan Anderson Principal in Charge: John Pittman

#### **CONSTRUCTION DURATION**

Erie: 11 months Hudson: 7 months Glenn A. Jones : 6 months Centennial Park: 6 months; 5 months NO Plains: 9 months Grover Bookmobile: 4 months

#### REFERENCES

Highplains Library District Terri Redden; 303-536-4550 tredden@highplains.us

**OWNER'S REP:** Dan Skypkstra, Project Manager Wember, Inc.

#### ARCHITECT

Joseph Montalbano; studiotrope DC 303.308.1144

Barker Rinker Seacat Craig Bouck; 303-455-1366 craigbouck@brsarch.com





I want to share with you the satisfaction that the library has had with Fransen Pittman. The company stood behind their warranty, stayed on budget and performed every aspect of construction at a high level.

Terri Redden, Hudson Library



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## **CLEARVIEW LIBRARY DISTRICT**

## ADMINISTRATION RENOVATION SEVERANCE LIBRARY WINDSOR LIBRARY RENOVATION

## **PROJECT DESCRIPTION:**

Fransen Pittman is currently working in partnership with Clearview Library District on three projects: Ash Street Administration Building Renovation, Windsor Library Renovation, and the construction of the new Severance Library. The Administration renovation included MEP and furnishing upgrades; Windsor Library renovation was completed in March of 2023 and included several interior upgrades.

Currently in construction is the new 12,000 sqft Severance Library branch, which broke ground in May of 2023. The new branch, located south of Harmony Road, will provide state of the art library services to an expanded region.



## **FACTS + FIGURES:**

### DELIVERY METHOD: CM/GC PROJECT SIZE:

Admin Building: 26,800 SF | \$472K Windsor: 25,000 SF | \$855K Severance: 12,000 SF | \$5.5M

## **CONSTRUCTION DURATION**

Admin: 1 months Windsor: 5 months Severance: 6 months

**CLIENT CONTACT:** Ann Kling Clearview Library District Director, 970-686-5603

**OWNER'S REP:** Dan Skypkstra, Project Manager Wember, Inc.

## TEAM MEMBERS:

Precon Manager: Dave Eddy, Derek LePore Project Manager: Tyler Kaul, Tommy Sporleder Superintendent: Jeremy Zirbel, Cory Welch

ARCHITECT: Ratio Design Joel Miller, jmiller@ratiodesign.com











## ANYTHINK LIBRARIES

## BENNETT BRIGHTON HURON STREET WRIGHT FARMS









## **PROJECT DESCRIPTION:**

In partnership with Humphries Poli (now RATIO) architects, the FP team constructed the Bennett, Brighton, Huron Street and Wright Farms branches of Anythink Libraries.

Each library incorporated sustainable building practices, with many achieving LEED Gold, and Brighton Library being the first carbon positive library in the nation. Inspired by the trail blazing efforts of Library Director, Pam Sandlian-Smith, Fransen Pittman had a front row seat to the transformation of the traditional library experience. No longer places of silence and solitude, the Anythink team set out to reinvent libraries into collaborative, social spaces for communities to learn and connect.



### **PROJECT SIZE**

Bennett: 7,000 SF | \$1.8M Brighton: 20,248 SF | \$5.1M Huron Street: 25,100 SF | \$6.6M Wright Farms: 45,000 SF | \$9.6M

SERVICE DELIVERY CM/GC

### **KEY STAFF INVOLVED**

Project Manager: Josh Davis (Huron & Wright Farms) Superintendent: Chet Campbell/Darren Jacobsen Preconstruction: Dave Eddy Principal in Charge: John Pittman

## **CONSTRUCTION TIMELINE**

Bennett: 9 months Brighton: 12 months Huron Street: 11 months Wright Farms: 12 months

### **OWNER CONTACT**

Pam Sandlian-Smith\* (*Retiring*) Anythink Libraries Director psmith@anythinklibraries.org 303-288-2001

## ARCHITECT

Humphries Poli Architecture (now RATIO) Dennis Humphries; 303.607.0040



## GLENN A JONES LIDRARY HIGH PLAINS BRARY DISTRICT

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# PROJECT TEAM & STAFF

11

## SENIOR PROJECT MANAGER

## **TYLER KAUL**





EDUCATION Bachelor of Science Construction Management, Colorado State University, Fort Collins, CO

#### CREDENTIALS

LEED Green Associate Certified Quality Assurance Technician (CQAT) Storm Water Basic and Advanced Training OSHA 10HR CPR Certified

### AVAILABILITY

Tyler is the Project Manager on Severance Library (completion in Feb of 2024) and Centennial Park Library (est. completion in Dec of 2023). He is available and ready to assist during preconstruction and lead the construction management in Fall of 2024.

### WHY TYLER?

- Detailed and communicative
- Current library building experience
- Relevant experience with High Plains Library District

## **11 YEARS IN CONSTRUCTION, 8 YEARS WITH FP**

Tyler's work will begin with developing the project budget, determining value analysis and consulting on constructability issues. Tyler will be responsible for daily construction operations including contract administration and coordination of subcontractors and supplies. He will maintain cost and quality controls.

### **HIGHPLAINS LIBRARY DISTRICT: GLENN A JONES LIBRARY**

**Johnstown, Colorado.** Consisted of two separate phases to focus on the exterior skin refresh and the interior refresh. The exterior included demolition and reconstruction of the building's skin, while the interior refresh is to revitalize the children's and family area, the fireplace, adult pavilion, young adult, media area and ponds. The exterior refresh and interior refresh were both phased strategically to minimize disruption to the library's patrons.

### **HIGH PLAINS LIBRARY DISTRICT: ERIE LIBRARY**

**Erie, Colorado.** Addition/expansion onto existing building to include additional meeting spaces, study rooms, staff space, and story time expansion. FP also expanded the parking lot. Construction occurred without disruption to the library operations.

## HIGH PLAINS LIBRARY DISTRICT: NORTHERN PLAINS LIBRARY

**Ault, Colorado.** Renovation to the current library space. The project adds a new outdoor space, dedicated children's area, and new meeting rooms. It also expanded the existing spaces for computers, collections, seating and reception.

### **ELOISE MAY LIBRARY**

**Denver, Colorado.** Fransen Pittman originally built Eloise May Library branch as a single story facility to serve residents of Glendale, Four Square Mile, Holly Hills and the larger community. The FP team also constructed a children's addition for the library to accommodate its youngest visitors.

### **CLEARVIEW LIBRARY: SEVERANCE BRANCH**

**Severance, Colorado.** New 10,000 sqft construction of a new library district branch in Severance.

### **CLEARVIEW LIBRARY DISTRICT: WINDSOR BRANCH REMODEL**

Windsor, Colorado. Interior renovation of the current Windsor branch library.

## SUPERINTENDENT

## **JEREMY ZIRBEL**





### CREDENTIALS

Certified Quality Assurance Technician (CQAT)

OSHA 10HR and 30HR

**CPR/AED** Certified

NFPA-70E Electrical Standards Certification

### AVAILABILITY

Jeremy is the Superintendent of Severance Library (est. completion in Feb of 2024). He is not committed to any future projects and is available for the start of your project's construction.

## **24 YEARS IN CONSTRUCTION, 5 YEARS WITH FP**

Jeremy will direct all field operations for the project. He will be responsible for the day-to-day control and coordination of all field forces and will manage/monitor the project schedule; working closely with the project manager to stay ahead of all material procurement and subcontracts. The overall quality of the project is his primary responsibility.

### **CLEARVIEW LIBRARY: SEVERANCE BRANCH**

**Severance, Colorado.** New 10,000 sqft construction of a new library district branch in Severance.

### **CLEARVIEW LIBRARY DISTRICT: WINDSOR BRANCH REMODEL**

Windsor, Colorado. Renovation of the current Windsor branch library.

## SILOS WELLNESS CENTER

**Lafayette, Colorado.** Located in Lafayette, CO, The Silos is a wellness center focused on supporting the health and vitality of local community members. Silos is an 8,500 sf 2-story building with a basement located on the eastern edge of Lafayette, CO on a 31,073 sf site.

## **COLORADO SCHOOL OF MINES OPERATIONS BUILDING**

**Golden, Colorado.** Located on multiple sites, Fransen Pittman worked with Colorado School of Mines and the architect to deliver Site 1: Shops I, Shops II, & Greenhouse; Site 2: Survey Field Lot, and Site 3: Moly Addition.

## MANNING SCHOOL OF ACADEMICS AND ART

**Golden, Colorado.** New school addition construction for Jefferson County School District.

## WHY JEREMY?

- Dedication to precision
- Current library building experience



## **DEREK LEPORE**





EDUCATION BBA, Management Harding University

**BBA, Marketing** Harding University

## CREDENTIALS LEED Accredited Professional (LEED AP)

## AVAILABILITY

Derek is working with Tanner on Grover Bookmobile estimate, and is the lead estimator on Erie Town Hall Additions. He will be available to begin design/preconstruction in Fall of 2023.

## WHY DEREK?

- Community Expert
- Breadth of estimating knowledge in current Northern Colorado market

## **8 YEARS IN CONSTRUCTION, 6 YEARS WITH FP**

During the preconstruction phase, Derek will work with the project manager to generate accurate cost estimates. He will complete quantity takeoffs, define the scope of work with the subcontractors and analyze different building systems for value engineering.

## **TIMNATH POLICE SERVICES**

**Timnath, Colorado.** Partnering with the Town of Timnath to build their new Police Services building started with site selection work to find the ideal location. Then, a two story Police Services office building is finishing construction to include sally ports, evidence, processing, community and operational spaces. The 28,000 sf building will expand Timnath's police capabilities and house up to 20 officers.

## **FIRESTONE TOWN HALL**

**Firestone, Colorado.** Constructed next to the Town's existing Police Services, the new Town Hall was built to accommodate the Town's growing need for service. The \$6.5M new building houses Town offices including: Administration, Finance, Human Resources, Planning & Development, Economic Development, Public Works and the Town Clerk's Office.

## WINDSOR TOWN HALL

**Windsor, Colorado.** The Town Hall building, originally constructed in 1910, serves four floors, including the basement, and consists of approximately 29,700 square feet. The Town of Windsor is planning interior renovations to Windsor Town Hall located at 301 Walnut Street which upgraded and improved the safety and security and workflow of the building.

## **ST. JOHN THE EVANGELIST**

**Loveland, Colorado.** St. John the Evangelist was expanding service operations and needed additional space. An \$6.8M addition was constructed onto the existing building while the church remained open and operational.

## VALLEY HIGH SCHOOL AND GILCREST ELEMENTARY

**Gilcrest, Colorado.** Weld County RE-1 completed interior renovations to both Gilcrest Elementary and Valley High School. Gilcrest Elementary renovations occurred while school was out of session, and Valley HS ran from summer to summer. Valley HS required technical shuffling of students and staff to keep construction operations separate while keeping the school open and safe.



CALEB'S AVAILABILITY Caleb is currently the Project Manager on Grace Church of Arvada, opening September 2024. He will be available at the start of your project.



TANNER'S AVAILABILITY Tanner is currently the Project Estimator for Grover Library with Derek and St. Mary's Middle School. He will be available at the start of your project.

## CALEB HISS | Assistant Project Manager

## 4 years in construction, 3 years with FP

Caleb will serve as your Assistant Project Manager and he will assist Tyler throughout the duration of your project. He will assist with constructability analysis and quality reviews. He works closely with all project stakeholders and ensures that the project stays on budget and on time.

## **MOUNTAIN VIEW FIRE STATION 8 RENOVATION**

**Erie, Colorado.** Structural repairs to the fire station were needed after settlement issues caused drainage problems. Corrections to the building and parts of the site were completed to repair the building and allow for service and improved life span.

## **KNOWLEDGE QUEST ACADEMY**

**Milliken, Colorado.** Knowledge Quest Academy is a charter school in Miliken, CO that serves students in grades K-8. With funds provided by the Weld RE5J 2020 Bond, the KQA facility expansion and renovation encompasses an addition with new classrooms, restrooms, and storage/office spaces. Additionally, classroom renovations added a STEM room, art room, and additional intervention spaces.

## **BEAR CREEK ELEMENTARY**

**Boulder, Colorado.** Bear Creek was a large mechanical overhaul, adding three brand new RTU's set on newly added columns sitting on helical piers. Fransen Pittman completed HVAC and a 30,000 SF roof removal and replacement over the classrooms and kitchen/cafe space. With a fast-track project schedule, FP also completed a new kitchen rebuild, remodel of 18 classrooms and several admin service office spaces, two rebuilt parking lots and updated two playgrounds to current code.

## TANNER DEWITT | Project Estimator

## 5 years in construction, 5 years with FP

During the preconstruction phase, Tanner will work with Derek to generate accurate cost estimates. He will complete quantity takeoffs, define the scope of work with the subcontractors and analyze different building systems for value engineering.

## **GROVER BOOKMOBILE- HIGH PLAINS LIBRARY DISTRICT**

**Grover, Colorado.** The Hover Senior Living Community was the third "Green House" senior living project completed in Colorado and is the largest to date. Fransen Pittman built this ground-up project in Longmont, CO with an overall square footage of 12,140. This facility contains 4 "Green Houses" and gathering areas for residents to relax and socialize.

## AIMS COMMUNITY COLLEGE WELCOME CENTER

**Greeley, Colorado.** The 106,000 SF Welcome Center on the Aims Community College Greeley campus provides a central location for student services, community members and institutions. The north side of the building hosts an events center with 1,600 seat auditorium and 800 person capacity ballroom, while on the south side, the Welcome Center provides ease of access for commuter students. The middle of the Welcome Center boasts an outdoor courtyard and patio. Glass walls provide ample natural light and western views of the Front Range.

## **UNIVERSITY OF COLORADO, RAMY/IPHY RELOCATION**

**Boulder, Colorado.** This project added 27,000SF in new biological laboratory and office spaces for the campus' Integrative Physiology program. Surrounded by active buildings, CU's Recreation Center, and Norlin Library, the RAMY/IPHY addition required expert site logistics and creative subcontractor and material shuttling.



## **PROJECT EXECUTIVE**

## **JOSH DAVIS**





EDUCATION

Bachelor of Science in Construction Management, Colorado State University, Fort Collins, CO

## AVAILABILITY

Josh provides support and resources for all Northern Colorado operations. Is is available and ready to provide preconstruction and construction expertise.

## WHY JOSH?

- Focuses on client relationships while keeping an eye on the end goal
- Pushes commitments to completion

## **21 YEARS IN CONSTRUCTION, 19 YEARS WITH FP**

Josh brings his extensive Northern Colorado and community experience to High Plains Library District. He will ensure that the purpose and goals of your project are clearly identified and that each team member is effectively supported and efficiently working toward success.

### **ERIE TOWN HALL RENOVATION**

**Erie, Colorado.** The existing 20,065 square foot building is two stories tall, with a finished basement and was built in 1906 and remodeled in 1998 and 2015 the windows were replaced in 2019. The building currently houses multiple growing departments and serves as the central hub for Town resident services. The proposed expansion will increase the building capacity to create a "one stop shop" for public services. The proposed expansion will consist of approximately 10,000 square feet two story addition. The remaining 20,065 square feet of space will be renovated to create a continuous space for Town departments.

#### **CLEARVIEW LIBRARY DISTRICT SEVERANCE LIBRARY**

**Severance, Colorado.** \$5M new 10,000 square foot construction of a new library branch in the Town of Severance.

### AURORA PUBLIC SCHOOLS, AURORA SCIENCE AND TECH SCHOOL PH.1 & PH.2

**Aurora, Colorado.** Located on Aurora's Fitzsimons Innovation Campus, the Aurora Science Technology School (ASTS) is part of the regional DSST Public Schools, a network of public charter schools with a focus on STEM education. Serving grades six through twelve, the school provides a range of learning environments, including a suite of dedicated science classrooms.

#### COLORADO STATE UNIVERSITY, GREGORY ALLICAR MUSEUM OF ART

**Fort Collins, Colorado.** The CSU art museum offers a space for students and community members to engage with art to spark higher thinking and contemplative thought. FP constructed five new art galleries, administrative offices, and a storage/receiving area. Sustainable elements were incorporated into these additions and the project is 2 Green Globe certified.

#### NEW VISION CHARTER SCHOOL PH. I & PH. 2

**Loveland, Colorado.** New Vision partnered with FP to construct a new K-8 facility. This school was master planned in 2 phases, the first for their grade 3-8 classrooms and the second phase for grades K-2. It contains a full sized gym with a custom painted basketball court, a STEM Lab, and large gathering spaces and classrooms with ample natural light.

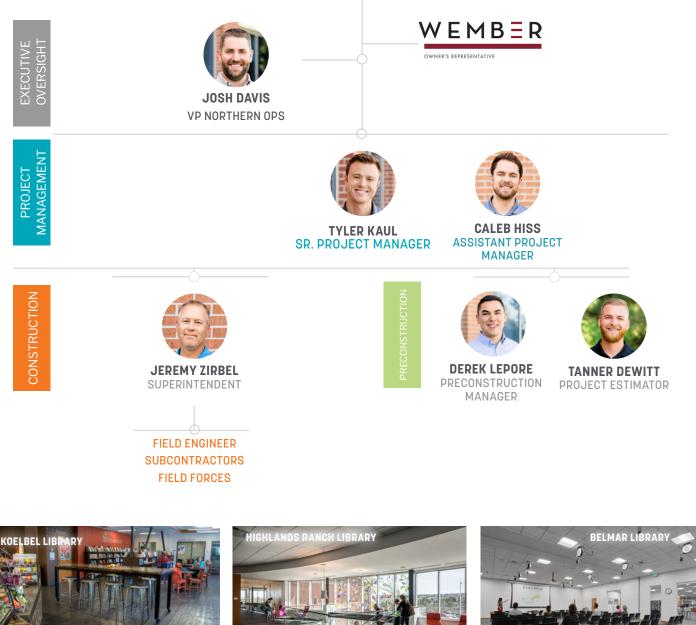
## REFERENCES

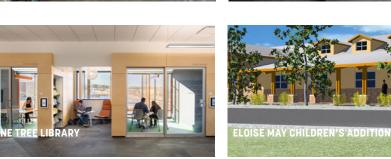
Project(s) Name	Contact Info	Involved Team Members
<b>High Plains Library District</b> Glenn A Jones Library	<b>Kristi Plumb</b> <b>Library Director</b> 970-587-2459 kplumb@highplains.us	Tyler Kaul
<b>Clearview Library District</b> Admin Building Renovation Windsor Library Renovation Severance Library	Ann Kling Library Director 970-686-5603 directo@clearviewlibrary.org	Tyler Kaul Jeremy Zirbel (Windsor Library & Severance Library)
<b>Douglas County Libraries</b> Parker Library Lone Tree Library Castle Pines Library Highlands Ranch Library Castle Rock Library	<b>Rick O'Dell</b> <b>Facilities Manager</b> 303-688-7624 rodell@dclibraries.org	Tyler Kaul (project engineer)
<b>Anythink Library District</b> Wright Farms Library Brighton Library Bennett Library Huron Library	Justin Sager JRS Development Management 858-876-5999 justin.sager@live.com	Josh Davis



## **PROJECT TEAM**









## NORTHERN PLAINS LIBRARY HIGH PLAINS LIBRARY DISTRICT

HAUNTED

# ORGANIZATION & MANAGEMENT OF THE PROJECT

## **UNIQUE PRECONSTRUCTION**

Unique to Fransen Pittman is our proprietary preconstruction process, MET<sup>TM</sup>. This tool successfully sets an accurate, concrete budget model that is safely guarded throughout the duration of your project by our team. Intangible in this process is the trust, transparency, and collaboration that is built between all stakeholders.

## Turning your District's vision into a precise plan.

Your project is at an early stage where the collaboration between Owner, Architect, and Contractor will truly elevate its success.

Driven by our firm's emphasis on quality assurance, our team always strives to "engineer value" into our projects rather than value engineer them. Our process is proactive rather than reactive: **the budget and cost estimates drive our design, rather than the other way around**. Because it's our job to discover the best value for our clients, this **proactive** attitude permeates our preconstruction process.

We bring our entire team on-board early to best identify your program's needs and start mapping out your project's budget, schedule, and quality.

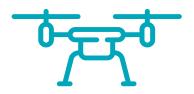
We establish individual construction systems that best meet your desired program and maximize the overall budget. We have a strong partnering relationship with Wember and experience constructing several renovations/new builds with High Plains Library District. We are ready to hit the ground running!

## How do we start?

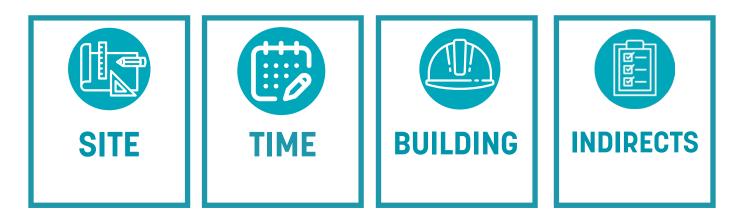
First, we start with a drone's eye view (literally!) of your project, establishing your specific project's needs and goals. We do this by using a **4 Line Item Estimate that views the project in four main dimensions: 1. Site, 2. Time, 3. Building, and 4. Indirects.** 

From there, we zoom into each category and analyze every detail in depth. Each category: Site, Time, Building, and Indirects, offers a world of possibilities for your building. While looking at your project in this 4 Line Item Estimate, we begin to uncover driving cost factors and determine efficient building strategies. This helps us understand the many ways that we can save dollars, while maximizing scope. Together, we review all of this information as a group to utilize our collective knowledge.

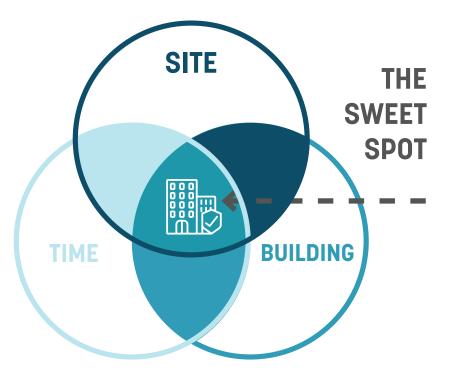
Ultimately, this allows us to find your project's "Sweet Spot"- the place where the site, time, and building features align in the most cost effective manner that meets your owner goals.



## **ESTIMATING IN FOUR DIMENSIONS** 4 LINE ITEM ESTIMATE



- **Site**: What is the size of the site and how much will we develop?
- **Time:** How much time will it take to construct the building?
- **Building**: What will the building be constructed out of and what proportion of the budget will be spent on the building?
- Indirects: Includes Insurance, plan and permit fees, bonds, use tax, overhead and profit. Indirects are agreed upon with the Owner and don't offer as much flexibility as site, time, and building.



We integrate with "drone's eye view" **4 Line Item estimates** to ensure we're on track. As design and decisions develop, we **dive deep** into the building estimates starting with an interactive **Cost Modeling Workshop**.



## MODEL, ESTIMATE, TRACK™

## COST MODELING WORKSHOP

This workshop gathers the architect, Fransen Pittman, project consultants, key subcontractors, and the Wember/ HPLD team for a day-long session to map out the entirety of the project. Within this session, varying options for each feature are presented, while FP provides expert counsel to the owner regarding decision making.

During cost modeling, FP showcases each individual component of your project. Different building systems or design features can be explored while we evaluate the cost for each option. This provides the team with real-time understanding of how decisions affect the bottom line putting everyone in their best position to make effective decisions early in the process.



### ADDED VALUE: Our Cost Model is historically within 1% of our final GMP,

meaning that it sets an accurate roadmap early in design. Inviting key trade subcontractors gives us accurate pricing on labor and materials.

## CONTINUOUS ESTIMATING

At every design milestone in the preconstruction process, Fransen Pittman will provide an estimate for your project. These estimates are backed by real-time subcontractor pricing and confirm that our team is staying consistent with the decisions made during the Cost Modeling Workshop.



## ADDED VALUE:

As the project progresses, this process ensures that we are **maintaining HPLD's priorities and communicating** frequently.

## TRACKING LOG

As the design evolves, we track every departure from the original cost model and analyze each proposed departure from a cost, schedule and quality perspective. These changes are approved by the Owner, but remain recorded as a permanent part of the tracking log. The log allows project cost to be reconciled from one milestone estimate to the next and grants decisions to be revisited at each development.



ADDED VALUE: Our tracking log allows our team to revisit design decisions and reevaluate in terms of scope, budget, and schedule.

## **COST MODEL EXAMPLE**

Our Cost Model breaks each piece of scope into three categories: High, Mid, and Low Level. As a team we explore every option together.

Leveraging the combined knowledge of subcontractors and engineers (who don't seem to get together often enough) we select options that meet constructability, maintenance, and budget goals. From there, we have a roadmap to guide the designers and the rest of preconstruction. Cost Modeling allows us to release necessary materials early.

## **ESTIMATE EXAMPLE**

We present our estimates at each design milestone (Schematic Design, Design Development, Guaranteed Maximum Price) in a 16 division line item format. Each line item is broken down by labor, material, equipment and subcontractor.

Our team is also able to provide estimate summaries in a **pie chart format** for more visual indication of how cost is distributed in different divisions.

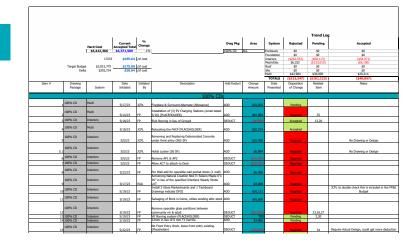
#### Number of Looksis 12 5 6 11 2000 11 2000 11 2000 11 2000 Permier of Balance Son Of Private Spaces NA 5 6 10 200 11 2000 11 2000 Number of Falseng Son Of Private Spaces NA 5 6 10 200 11 2000 11 2000 Number of Falseng Son Of Private Spaces NA 5 6 10 200 11 2000 11 2000 Number of Falseng Son Of Private Spaces NA 5 6 10 200 12 2000 12 2000 Number of Falseng Son Of Private Spaces NA 5 7 10 2000 12 2000 12 2000 Number of Falseng Son Of Private Spaces NA 5 7 10 2000 12 2000 12 2000 Description High Level Mid Level Low Level Model Down No Space Spaces Na Adverter Na 12 2000 12 2000 Down No Space Spaces Na Adverter Na 12 2000 12 2000 Down No Space Spaces Na Adverter Na 12 2000 12 2000 Down No Space Spaces Na Adverter Na 12 2000 12 2000 Down No Space Spaces Na Adverter Na 12 2000 12 2000 Down No Space Spaces Na Adverter Na 12 2000 12 2000 Down No Space Spaces Na Adverter Na 12 2000 12 20000 Down No Space Spaces

JCPL - Evergreen Remodel
Schematic Design Cost Model

	30% D	Evergreen D Budget			
	FRANSEN PITTMAN EXPECT PRECISION		ESTI BUILDING AR DRAWINGS PR DRAWINGS J	EPARED BY: E	01/05/23 17233 UA 12/14/2022
D V NO	D V SION RECAP		D V SION TOTAL	\$ PER S.F	% OF TTL
00	General Conditions		187,667	\$10.89	5.3%
01 02	General Requirements, Existing Conditions, Site Work		231,062	\$13.41	6.5%
03	Concrete		0	\$0.00	0.0%
04	Masonry		30.384	\$1.76	0.9%
05	Metals		92,993	\$5.40	2.6%
05			153.552	\$8.91	4.3%
	Carpentry				
07	Moisture Protection		24,200	\$1.40	0.7%
08	Doors, Windows & Glass		281,919	\$16.38	8.0%
09	Finishes		706,922	\$41.02	20.0%
10	Specialties		122,871	\$7.13	3.5%
11	Equipment		4,246	\$0.25	0.1%
12	Furnishings		18,707	\$1.09	0.5%
13	Special Construction		0	\$0.00	0.0%
14	Conveying Systems		0	\$0.00	0.0%
21 22 23	Mechanical		772,216	\$44.81	21.8%
26 27 28	Electrical & Low Voltage		533,350	\$30.95	15.1%
		DIRECT COST	3,160,090	\$183.37	89.34%
	State & Local Tax	4.500%	12,076	\$0.70	0.34%
	Use Tax	EXCL	Not Included		
	Permit & Plan Review Fee	ALLOW	22,998	\$1.33	0.65%
	Project Fee	2.95%	104,342	\$8.05	2.95%
	Construction Contingency Bidding and Buyout Contingency	2.50%	88,426	\$5.13 \$4.10	2.50%
	Liability Insurance	2.00%	49.695	\$4.10	2.00%
	Builder's Risk Insurance	0.05%	2.872	\$0.17	0.08%
	Project Escalation	EXCL	Not included	20.17	0.00 %
	Preconstruction Fee	CLAR	Billed outside the GMP		
	Performance and Payment Bond	LS	25,783	\$1.50	0.73%
	тот	TAL COST	\$3,537,022	\$205.25	100.0%



The tracking log keeps record of all changes made from the original cost model. These changes are presented to the Owner to be approved or rejected.







Douglas County Library Cost Model Session

## A relationship based approach

The single most important distinction when it comes to a new construction project is its team and how well that team works together. With Fransen Pittman, you will receive the benefit of a proven team that shares common goals; a team that respects, understands and leverages each other's strengths; a team that thinks outside the box and develops strategies to eliminate wasteful spending and reduces schedule duration; a team of experts in the construction industry who are dedicated to the success of your project.

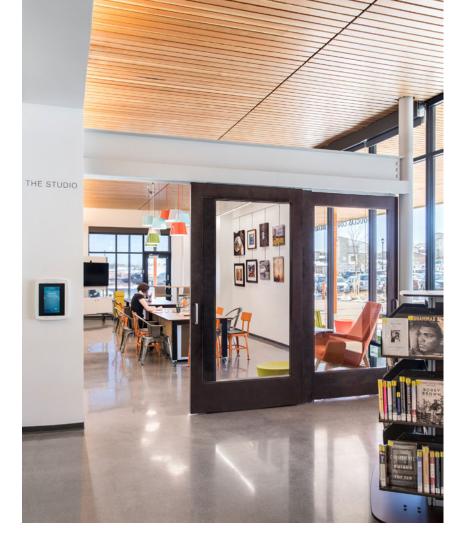
Our proposed dynamic duo, **Tyler Kaul** (Senior Project Manager), and **Jeremy Zirbel** (Superintendent), remodeled the Windsor Library and are currently building the new Severance Library and are regarded as an excellent example of successful collaboration. Tyler will be your main point of contact from day one

to project close-out. This continuity provides a clear path for communication, giving you confidence that vital information is maintained and communicated throughout the project's duration.

Our preconstruction team, **Derek LePore** (Preconstruction Manager) and **Tanner DeWitt** (Estimator) are budgeting experts. Their experience in estimating for community projects consistently leads to creative ideas and solutions.

**Josh Davis** (Project Executive) blends all areas of expertise to create an experienced team with clearly defined roles and responsibilities.

Each individual has enjoyed success on projects similar in scope to the Support Services Expansion project and would covet another opportunity to work together with High Plains Library District.



## PROJECT APPROACH

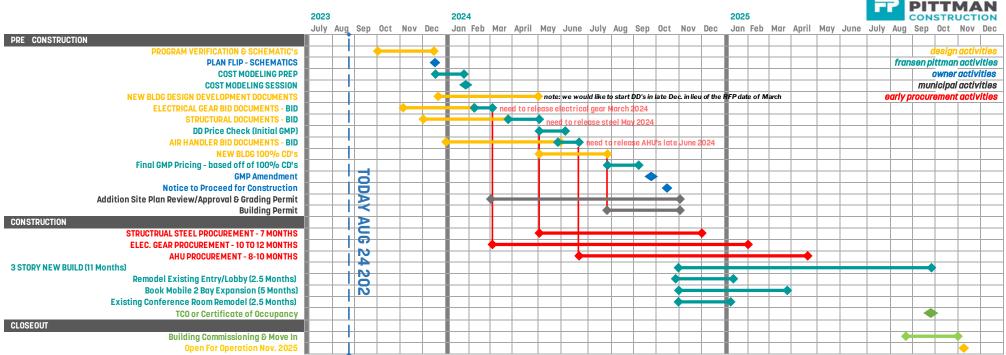
First, build the new library. Second, renovate the District Support Services Building.

This high level approach will eliminate any disruption to the existing District Support Services staff and operations. We envision constructing the new facility first, and then moving District staff temporarily to that facility while we then remodel the existing building entry and possible 2nd floor meeting room. Although we understand staff will be displaced for a short period of time, we believe this approach will ultimately minimize disruption. We can move with efficiency and agility doing the remodel work, and staff won't be affected by ongoing construction activities that negatively impacts their working environment.

We believe that the proposed timeline included in the RFP is feasible. Please see the following block schedule for design/preconstruction and construction outline.



## **BLOCK SCHEDULE - HIGHPLAINS LIBRARY DISTRICT**



FRANSEN

Communication, trust, and accountability paint Fransen Pittman's philosophy in leading successful projects. We manage our entire team with excellent communication, provide information and feedback in a timely manner, and maintain your trust throughout the project.

We employ a variety of methods to communicate with the entire team including:

- Attend every design meeting with HPLD stakeholders and the selected architect
- Host our Cost Modeling Workshop with the project team, consultants, and subcontractors
- Hold preconstruction meetings for every trade prior to their arrival onsite. Owner and Architect are encouraged to attend these sessions to best inform the project
- Host an easily accessible project dashboard on ProjectSight
- Weekly OAC meetings including everyone involved in the project to communicate budget, schedule, and weekly construction activities in advance
- At minimum, conduct daily field huddles to communicate tasks, goals, and safety procedures
- Extensive schedule/budget/workflow reviews with project leaders conducted monthly

When faced with challenges we confront them with transparency and a solutions oriented mindset. It's all about the trust we build as a team, taking the issues one by one and providing solutions to them in a transparent way. You can trust Fransen Pittman to come with solutions to evaluate our risks and focus on the problem as a team through pull planning, sub- contractor preconstruction "all hands on deck" type meetings where we pull together to solve schedule and or budget.











## LIFELONG LEARNING

Construction is a continual learning process. Building systems evolve and change and our team members keep up with it by learning new things every day. Because of our depth of library building experience, we have a strong knowledge of **best practices for best quality**.

For example, when working on Parker Library, various lessons were learned. Because libraries are high touch buildings, the materials used need to be durable and long lasting. Epoxy paint was specified on all interior finishes because of its durability. However, despite epoxy paint's durable quality, we found that it was impossible to make small repairs without flashing. The better paint choice for libraries ended up being a less expensive material on the market. After realizing this, FP repainted all areas that had epoxy paint with the material better suited for the touch-ups that high-trafficked areas require.

Another lesson we learned revolved around the front doors at both the Parker Library and Lone Tree library. The front entrances at these locations faced the West, and because of the strong Colorado winds, we soon determined that the swing doors installed weren't as durable. We took the initiative for the DougCo library district and replaced them out for slider doors.

These lessons are valuable experiences that we learn from and remember for future jobs. We keep record of these lessons within our **grassroots Quality Manual**. This Quality Manual is present on every job site and serves as a corporate memory to ensure each project is built to precision.

## LIBRARY QUALITY BEST PRACTICES

- Always maintain access to the book drop for patrons and staff, this can not be impeded during a remodel.
- When installing a new book drop ensure the stretch of straight drive is long enough before you get to the drop off point otherwise when people drive up and turn in they tend to be to far away from the drop off.
- Floor Box Locations are very critical because the majority of the stacks will have power to them.
- Sound Isolation at Study Rooms is very important. We have to understand the entire wall/door assembly for Study Rooms and Conference rooms.
- Owner FFE that has hard wired connections will need to be coordinated with line and low voltage subcontractors.
- · Depending on the AHJ they might require you to put a sprinkler head in the drop off
- Service Points are very strategic and now that there is a lot of electronic checkout going on, there are designated areas for both physical and electronic checkouts.







		F	EE PROPOS	AL FC	DRM				
	Submitting Firm:	FR/	ANSEN PITTMAN (I	MEAD L	IBRARY)				
1) A	NERAL CONTRACTOR: Instructions for completing the this Part A: All YELLOW cells a ctual dollar amount; 2) Months; 3) Percent; 4) Self-Performed Workl; 5) Included in Ce wance.								
ARC	CHITECT: Instructions for completing the this Part A: All GREEN cells are to be filled in	. Nc	ote scope of servic	es antic	cipated in the ma	atrix tl	hat m	ay impao	ct your fee
	Description								
	Proposed Construction Value	\$	7,500,000.00				cluding	Design, Ge	eneral Conditions, Contingency, Insurance or OH&P
2	<b>Preconstruction Services Fixed Fee</b> (Scope per RFP Part B, all Sub-Parts with "x" in Preconstruction Column below)	\$	18,750.00		Services Fixed Fee				
	Design Services (Scope per RFP Part B, Sub-Part A "Design Services")	\$			Fixed Fee, Design F	ee Only	/		
4	Additional/Optional Services	\$	-						
		\$							
		\$			SUMMARIZES UP				
		\$							
5	Overhead and Profit	\$	138,750.00	<b>1.9%</b>	Enter % of construc	tion valu	ue		
6	General Conditions (Sum calculated per RFP Part B below)	\$	501,373.00	6.7%	of construction valu				
7	Total of Preconstruction, Additional/Optional Services, OH&P and General Conditions (2+4+5+6 above)	\$	658,873.00		Allowances will be " assumed allowance			order to pro	ovide accurate comparison of bidder totals. Favor will not be provided based upon
8	Construction Completion Time/Anticipated Schedule (in months—decimals are ok)		10.00	mos.	Certificate of Occup	ancy to	be rece	eived by da	te in RFP
	General Conditions per Month	\$	50,137.30	/mo					
	Construction Change Order "Holiday"* (\$ amount of aggregate changes allowable without any GC	Ψ	00,107.00	/110.					
	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)		5%						
	Contingency Rate	\$		N/A	Owner will carry cor	ntingenc	;y		
	Umbrella and General Liability Insurance Rate		1.41%	<mark>,</mark>					
	Builder's Risk Insurance Rate		0.13%	<b>,</b>					
	Performance and Payment Bond Rate Self-Performed Work (General Contractor to list all scopes of work (in whole or part) that are intended to be		0.67%						
14	self-performed, in YELLOW cells below)								
14a									
14b	Survey								
14c	Layout								
14d	Rough Carpentry								
14e	Concrete (maybe)								
14f	Doors, Frames, Hardware (maybe)								
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A. DESIGN SERVICES	ပ္ပ	00	ပ္ပ	<u></u> \$0	-		By	By	By	රී
1 Design Charrette	x			ψυ				x		As Required for Concept Design, Schematic Design and moving through Design Development
2 A/V, Telephone, Paging Design	x					Team		X		Locations and Infrastructure by Design Team
3 IT/Data, Network, Cable Design	х					Team		х		Locations and Infrastructure by Design Team
4 Programming	х							х		A simple and concise Programming process to confirm/update District Program
5 Storm Water Management Plan	х						Х	Х		
6 Drainage Plan: Submittals to agencies as required	х							Х		
7 Utility Coordination	х							Х		
8 Coordination with Fire Department	х							Х		
9 Site Evaluation and Planning	х							Х		
10 Flow Tests with Fire Department	х							Х		
11 Architectural Design	х							Х		
12 Civil Engineer Design	х							Х		
13 Landscape Architect/Irrigation Design	х							Х		
14 Structutal Engineer Design	х							Х		
15 Mechanical Engineer Design	х							Х		
16 Electrical Engineer Design	х							Х		
17 Lighting Engineer Design	х							Х		
18 Plumbing Engineer Design	х							Х		
19 Fire Suppression Design	х							Х		
20 3D-Renderings and Animations	х							Х		As requried to communicate design, not for marketing
21 Acoustical Consultant	х							Х		
22 Cost Estimating Consultant	х						Х	Х		Design Team provide estimate validation of General Contractor estimates
<sup>23</sup> Furniture Design Consultant (B253 <sup>™</sup> -2007)	х							х		
<sup>24</sup> Interior Design (B252 <sup>™</sup> -2007)	х							х		
25 Signage Design	х							х		Code Signage, Building Signage, and interior graphics
26 Specifications Consultant	х							Х		
27 Traffic Consultant	х									
28 Coordination with Owner's Consultants	х							Х		
29 Prepare and Present at Public Sessions and Board Meetings	Х							Х		

12       Acoustical Consultant       I <th>OWNER/ARCHITEC</th> <th>CT/G</th> <th>ENE</th> <th>RA</th> <th>L CONTRAC</th> <th>FOR S</th> <th>SCOPE COO</th> <th>ORD</th> <th>INA<sup>-</sup></th> <th>ΓΙΟΝ</th> <th>MATRIX</th>	OWNER/ARCHITEC	CT/G	ENE	RA	L CONTRAC	FOR S	SCOPE COO	ORD	INA <sup>-</sup>	ΓΙΟΝ	MATRIX
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Discreption         Discreption <thdiscreption< th=""> <thdiscreption< th=""></thdiscreption<></thdiscreption<>			sc of		nom	lace	rocu =Arc =Coi =Cow =Tea	sy GC		šy Ow	
10. Heff or Horizon (MP 4 months)       1	30 Commisioning (B211 <sup>™</sup> -2007)	0	0	0	٩	<u>A</u>		ш			5
Bit Betty Section and Concregation.     V	31 LEED Certification (B214 <sup>™</sup> -2007)										
34 besty part shores (32 of 2007)       a       b											
B     PAC     B<	34 Facility Support Services (B210 <sup>™</sup> -2007)										Not anticipated
21     Second Seco											
Bit											As requried by code, Design Team to analyze as part of proposal
Biologhoms, LIA, [Beb]       I <td>38 Fast-track Design Services</td> <td></td>	38 Fast-track Design Services										
41       Control Analysis       V										x	
Bits     Solutional biology locational personal operational personal operational personal pers	41 Code Analysis	х							х	X	
41       Page and status determined beyond provementation beyond the status of the status determined and the		1						x	Х		Design to meet current zoning guidelines
Internation as required         March as required	44 Prepare and Issue Meeting Minutes	1						^	Х		
48       Processive Junctional as a second of a product of the basics on specifications       4 <td< td=""><td></td><td>x</td><td></td><td></td><td></td><td></td><td></td><td></td><td>х</td><td></td><td>By Architect and electrical consultant</td></td<>		x							х		By Architect and electrical consultant
47       Bestand Conversion       a       a       a       a       b	46 Prepare bid packages for phasing of construction	х							x		
48       Box       Implice a gintering protein of the folder back on specifications of the specification of the specificati											
abs       abs       abs       abs       abs       abs       abs       abs         bit       bit<		X							X		TBD - site specific
22       Asia m gant arcing by pounding by intermation to Owner       y       Image Asia manufactor and the second seco	50 Prepare a submittal log for the contractor to follow based on specifications	х		_							
383       Sector Sam Sequestion Sam Sequesticon Sam Sequestion Sam Sequestin Sam Sequesticon Sam Sequ											Minimal anticipated. Assume assisting in filling out data in required Owner forms
Processes         A         I		X							X		
SP     Percentaginal of Decision space subsidiery s	Processes	х							х		
50       Construction: Observation and Field Reports       x		1									
57       Observations Review and make iteopromodulations and allow of downloss       x											
construction:       Reserve and make recommendations related to shop drawing       x       I											
90       Oso Out: Popied Record Documents: Review contractors posted sets during and after construction completion.       1 <td></td>											
Including ASI, FTPs and install locations.       Image: Amage: Amag		х							Х		
and after construction completion       I       Y       Included in GCs       I       X         Allocate forming and PDF       Allocate forming and PDF       Included in GCs       I       X       Included in GCs       X       X       X       X       Included in GCs       I       X       Included in GCs       X       X       X       Included in GCs       X       X       Included in GCs       X       X       X       Included in GCs       X       X       Included in GCs       X       X       Included in GCs       X       X       X       Included in GCs       X       X       Included in GCs       X       X	including ASI, RFI's and install locations.			х	Included in GCs			х	х		
Bit Mode Contraction Origination       Implementation       Implementation <td></td> <td></td> <td></td> <td>х</td> <td>Included in GCs</td> <td></td> <td></td> <td></td> <td>x</td> <td></td> <td></td>				х	Included in GCs				x		
Autocal format and POF         Imbudged in Gos         Imb											
B       Cose Out Assist Owner on resolution of warranty items       I				х	Included in GCs				х		
A       Close Out: Attend 11 and 23 month walk throughs of facility       A       N<	62 Close Out: Prepare letter of substantial completion			х	Included in GCs				х		
B. Procurement         S0         No.         <	63 Close Out: Assist Owner on resolution of warranty items			х	Included in GCs			х	х		
1       N/V Telephone, Paging Design       Image: Second S	64 Close Out: Attend 11 and 23 month walk throughs of facility			х	Included in GCs			х	x	х	
1       N/V Telephone, Paging Design       Image: Second S	P. Procurement										
3) Programming Consultant       Image Anchine (Virging) Design         5) Architectural Firm       Image Anchine (Virging) Design       Image Anchine (Virging) Design       Image Anchine (Virging) Design       Image Anchine (Virging) Design         6) Cruit Engineer       Image Anchine (Virging) Design       Image Anchine (Virging) Design       Image Anchine (Virging) Design       Image Anchine (Virging) Design         7) Structural Engineer       Image Anchine (Virging) Design       Image Anchine (Virging) Design       Image Anchine (Virging) Design       Image Anchine (Virging) Design         10) Lighting Engineer       Image Anchine (Virging) Design       Image Anchine (Virging) Design       Image Anchine (Virging) Design       Image Anchine (Virging) Design         11) Runching Engineer       Image Anchine (Virging) Design       Image Anchine (Virging) Design       Image Anchine (Virging) Design       Image Anchine (Virging) Design         12) Accounting Consultant       Image Anchine (Virging) Design Consultant       Image Anchine (Virging) Design       Image Anchine (Virging) Design       Image Anchine (Virging) Design         13) Accounting Anchine (Virging) Design Consultant       Image Anchine (Virging) Design       Image Anchine (Virging) Design       Image Anchine (Virging) Design       Image Anchine (Virging) Design         14)	1 A/V, Telephone, Paging Design				ΨŪ						
4       Landscape Architect/lingation Design       I										X	
6       Coli Engineer       I       <										X	
7       Structural Engineer       Image: Structural Engineer       Image: Structural Engineer         8       Machanical Engineer       Image: Structural Engineer       Image: Structural Engineer         10       Lighting Engineer/Designer       Image: Structural Engineer       Image: Structural Engineer         11       Pumbing Engineer       Image: Structural Engineer       Image: Structural Engineer         12       Acoustical Consultant       Image: Structural Engineer       Image: Structural Engineer         13       Cost Estimating Consultant       Image: Structural Engineer       Image: Structural Engineer         13       Cost Estimating Consultant       Image: Structural Engineer       Image: Structural Engineer         14       Furniture Design Consultant       Image: Structural Engineer       Image: Structural Engineer         15       Interior Design Consultant       Image: Structural Engineer       Image: Structural Engineer         15       Interior Design Consultant       Image: Structural Engineer       Image: Structural Engineer         16       Structural Engineer       Image: Structural Engineer       Image: Structural Engineer       Image: Structural Engineer         16       Structural Engineer       Image: Structural Engineer       Image: Structural Engineer       Image: Structural Engineer         17       S										Х	
9       Electrical Engineer       I											
10       Lighting Engineer/Designer       x       x       x         11       Plumbing Engineer       x       x       x         12       Acoustical Consultant       x       x       x         13       Cost Estimating Consultant       x       x       x         14       Furniture Design Consultant       x       x       x         15       Interior Design Consultant       x       x       x         16       Signage Design Consultant       x       x       x         18       Taffic Consultant       x       x       x         19       Cormissioning Consultant       x       x       x         19       Cormissioning Consultant       x       x       x         19       Cormissioning Consultant       x       x       x         10       Consultant       x       x       x         10       Consultant       x       x       x         11       Environmental Surveys (Phase I and Phase II)       x       x       x         14       Environmental Surveys (Phase I and Phase II)       x       x       x         15       Environmental Surveys (Construction Materials)       x											
11       Plumbing Engineer       x       x       x         12       Acoustical Consultant       x       x       x         13       Cost Estimating Consultant       x       x       x         14       Furniture Design Consultant       x       x       x         15       Interior Design Consultant       x       x       x         16       Signage Design Consultant       x       x       x         17       Specifications Consultant       x       x       x         18       Traffic Consultant       x       x       x         19       Commissioning Consultant       x       x       x         10       Commissioning Consultant       x       x       x         20       LEED Consultant       x       x       x         21       Becirications Consultant       x       x       x         23       Historic Preservation Consultant       x       x       x         24       Environmental Surveys (Phase I and Phase II)       x       x       x         23       Historic Preservation Consultant       x       x       x         24       Environmental Surveys (Phase I and Phase II)       <											
13       Cost Estimating Consultant       I	11 Plumbing Engineer										
14       Furniture Design Consultant       I <td< td=""><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></td<>											
16       Signage Design Consultant       I	14 Furniture Design Consultant										
17       Specifications Consultant       I											
19       Commissioning Consultant       I<	17 Specifications Consultant										
20       LEED Consultant       I									Х		
22       PV Panel Consultant       I	20 LEED Consultant								Х		
23       Historic Preservation Consultant       I											
25       Surveys (Flown, ALTA, TOPO)       I <td< td=""><td>23 Historic Preservation Consultant</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></td<>	23 Historic Preservation Consultant										
26Testing & Inspection (Soils)III<											
28       Code Consultant       I	26 Testing & Inspection (Soils)									х	
29       Moving Consultant       I										Х	
30       Hazmat Analysis       Image: Sector	29 Moving Consultant										
C. PRE-CONSTRUCTION     SO       1     Review Design Concepts     X	30 Hazmat Analysis						v				
1 Review Design Concepts x							X				
					\$0						
	Review Design Concepts     Develop Bid Packages for sub contractors	X X									

	OWNER/ARCHITECT/GENERAL CONTRACTOR SCOPE COORDINATION MATRIX										
	А	В	С	D	E	F		G	Н		К
		GC Preconstruction	GC OH&P	GC General Conditions	Amount	Place "X" if allowance*	Procurement Responsibility A=Architect C=Contractor 0=Owner T=Team	By GC	By Architect / Engineers	By Owner	Comments
	Material Selection and Availability Recommendations Building Systems Recommendations	x x									
5	Coordinate Owner-Supplied Equipment	х									
7	Life Cycle Costing Analysis Equipment Selection and Availability Review	X X									
	Subcontractor Availability Review Construction Logistical & Execution Plan	x x									
	D. PROJECT COST CONTROL				\$0						
1	Master Budget; Generate and update	х			<b>۵</b> ۵			x	х		
	Recommend approval of Contractor Invoices Manage cost of Alternates (trend log)	х							Х		
4	Schematic Design Cost Estimate and Review Design Development Cost Estimate and Review	x x									
6	Construction Document Estimate and Review	х									
8	Guaranteed Maximum Price Cost Estimate Construction Cash Flow Projections (Monthly)	x x									
	Review estimates for accuracy and value engineering ideas Verify Correctness of Quantities & Prices of Change Orders	X X									
	Continuous Project Cost Input and Response to Design Team Queries	x		Х	Included in GCs						
	E. PROJECT SCHEDULING				\$0						
2	Generate Design Schedule of Events Master Schedule of Events including Owner items	х						x	Х	Х	
	Preconstruction Activity Schedule (Bar Chart) Construction Activity Schedule (CPM)	х		x	Included in GCs			Х			
	Const Activity Schedule w/ Milestones (CPM Updates)			х	Included in GCs Included in GCs						
7	Shop Drawing & Submittal Schedule / Procedure Mock-Up Schedule & Procedure			х	Included in GCs						
	Generate and coordinate phasing sched w/ Owner Short-Interval Schedules				Included in GCs Included in GCs						
	Occupancy Schedules				Included in GCs						
	F. SUBCONTRACTOR SELECTION / PURCHASING				\$0						
2	Set Prequalification Criteria <i>including local provisions</i> Recommend Subcontractor Selection Methods	X X						X X			
	Recommend Subcontractor Award Methods Develop Subcontractor Interest	x x						X X			
5	Prepare Bidding Schedules Issue Plans, Specifications & Addenda	x x						x x			
7	Receive Bids	х						х			
9	Analyze Bids Recommend Award	x x						X X			
	Determine Local Manpower Availability Prepare Subcontracts & Supplier Contracts	X X						X X			
	G. CONTRACT DOCUMENT COORDINATION				\$0						
1	Constructability Review & Recommendations	Х			ΨŬ						
3	Review For Inclusion of All Work Review For Adequately Phased Construction	x x									
5	Identify Long-Lead Items Identify Commodity Shortages	x x									
	Review and Coordinate Installation of Owner Supplied Fixed Equip				Included in GCs						
	H. ARCHITECT STAFF	I			\$0			<u>.                                    </u>			
2	Principal Project Manager		x x						X X		
	Project Architect Drafter		x x						x x		
	Administrative / Clerical		х						х		
	I. GENERAL CONTRACTOR STAFF				\$501,373						In Overhead and Drafit
2	Corporate Executives Principal In Charge										In Overhead and Profit In Overhead and Profit
	Project Executive Operations Manager										In Overhead and Profit In Overhead and Profit
5	Senior Project Manager Project Manager			X	\$123,464						In Overhead and Profit
7	Project Engineer			X X	\$91,775						
9	Safety Manager / Field Audit / Training Human Resources										In Overhead and Profit In Overhead and Profit
10	Secretarial Project Estimating										In Overhead and Profit In Overhead and Profit
12	Project Accounting										In Overhead and Profit
14	Project Scheduling Project Purchasing										In Overhead and Profit In Overhead and Profit
	Project Superintendent(s) Assistant Superintendent(s) (as required)			X X	\$253,752 Not Required						
17	Field Engineer(s) (as required) Mechanical & Electrical Coordinator(s) (as required)			х	If required. Cost of Not Required	Work					
19	Quality Control Engineer (As Required)			Х	•						
20	Project Assistant / Clerk / Typist (As Required)			Х	\$32,382						

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		CO	0 0 0	CO	Amo	Place	Proo A=A C=C C=C O=C T=T	By (	By /	By (	Con
	Safety Engineer (As Required) Field Accounting (as required)			x x							
	Registered Surveyor (As Required)			x							
	J. QUALITY CONTROL / WARRANTY				\$2,500						
	Develop & Submit Construction Safety Plan	х		х	\$2,500		l				
	Testing & Inspection (Construction Materials)								х	Х	
	Soils Investigations / Geotechnical Reports Environmental Surveys								X	Х	
5	HAZMAT Analysis										
	Environmental Cleanup Coordination / Govt Document Project Progress Photographs				\$2,500						
8	Field Reports				Included in GCs						
9 10	Warranty Inspections Coordination Air & Water Balancing				Included in GCs Cost of Work						
11	Operator On-Site Training				Cost of Work						
	Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals				Included in GCs Included in GCs				$\left  - \right $		
14	Attend 11 and 23 month walk throughs of facility and assist on closing out										
	warranty items				Included in GCs						
15	Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track items through	$\left  - \right $			Included in GCs						General Contractor to capture all items identified on punch list walk using bluebeam
	completion				Included in GCs						software or approved equivalent. Architect to attend all punch lists and ensure consultants are using the same format as directed by the owner
	K. TEMPORARY FACILITIES Temporary Field Office Facility			_	<b>\$45,414</b> \$27,319		r		[ ]		r
2	Field Office Furniture & Equipment				\$3,412						
	Field Office Copier(s) Field Office Fax Machine(s)										
5	Field Office Computer(s) & Software										
	Field Office Supplies				\$3,412						
	GC's Storage Trailers / Sheds Field Office Equipment Maintenance & Repairs				\$4,728						
9	Architect / Engineer Temporary Office				<b>.</b>						
	Project Sign Directional / Warning Signs				\$1,500						
12	Bulletin Boards										
13 14	Potable Drinking Water / Ice / Cups Temporary Toilets / Sanitary Sewer				\$1,208 \$2,259						
15	Temporary Construction Fencing				\$2,200						
	Barricades Covered Walkways										
	Safety Equipment				\$1,576						
	First Aid Station & Supplies										
	Handrails / Toe Boards / Opening Protection Safety Nets										
22	Temporary Stairs										
	Fire Extinguishers Flagman / Traffic Control										
25	Job Hauling Charges										
26	Site Security										
	L. TEMPORARY UTILITIES				\$11,027						
	Temp Telephone Install Equipment & Monthly Fee Telephone Expense (Long Distance Charges)										
3	Telephone Expense (Internet Charges)										
4	Cellular Phone Charges				\$3,152						
	2-Way Radio Equipment Temporary Electrical Service / Distribution										
7	Temporary Electrical Wiring & Lighting										
	Light bulbs & Temp Electrical Maintenance Electrical Power Consumption Expense				\$7,875						
10	Temporary Water Service / Distribution				Cost of Work						
	Temporary Water Consumption Expense Temporary Gas Service / Distribution				Cost of Work						
	Temporary Gas Service / Distribution Temporary Gas Service Consumption Expense										
14	Temporary Field Office Heating Energy Cost										
	Temporary Heating Service (Permanent System) Permanent Heat System Filter Replacement										
	Maintenance Cost (Permanent Heat System)										
	M. CLEAN-UP				\$0						
1	Daily Clean-Up				Cost of Work						
2	Final Clean-Up Final Glass Cleaning				Cost of Work Cost of Work						
	Final Glass Cleaning Debris Hauling/Removal				Cost of Work						
5	Trash Chutes				Cost of Work						
	Trash Dumpsters Dump Permits & Fees				Cost of Work Cost of Work						
8	Dust Control				Cost of Work						
9	Street Cleaning				Cost of Work						l
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	OWNER/ARCHITEC										
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		3C P	6C 0	9 C G	mor	Place "X" if a	Procurement   A=Architect C=Contractor O=Owner T=Team	By GC	By Ar	By O	Ĩ.
	N. WEATHER PROTECTION	0	0	0	 \$0				ш	<u> </u>	0
	Remove Snow & Ice				Cost of Work						
	Temporary Enclosures (Buildings)				Cost of Work						
3	Temporary Weather Protection for Sub Trades				Cost of Work						
	O. ON-SITE EQUIPMENT / HOISTING				\$0						
	Automobile(s) & Fuel				Included in Rate						
	Hoisting Equipment & Fuel Material/Personnel Hoist(s)				Cost of Work Cost of Work						
	Crane & Hoist Operator(s)				Cost of Work						
	Small Tools (GC's Only)				Cost of Work						
6	Rental Equipment				Cost of Work						
7	Fuel for Rental Equipment				Cost of Work						
	P. LEED CERTIFICATION				\$0	1		í	i		
1	MR2.1 Const Waste Management, Salvage or Recycle 50%				Not Required						
	MR2.2 Const Waste Management, Salvage Additional 25%				Not Required						
	MR5.1 Local/Regional Materials, 20% Manufactured Locally MR5.2 Local/Regional Materials, 10% Harvested Locally		<u> </u>		Not Required Not Required						
	IAQ3.1 Construction IAQ Management Plan, Const				Not Required						
6	IAQ4.1 Low-Emitting Materials, Adhesives & Sealants				Not Required						
	IAQ4.2 Low-Emitting Materials, Paints				Not Required						
	IAQ4.3 Low-Emitting Materials, Carpet IAQ4.4 Low-Emitting Materials, Composite Wood				Not Required Not Required						
3	ערייבייד בטיייברווונוווין ויומנכוומוז, כטוווףטאוש ויוסטע				not nequiled						
	Q. DOCUMENT REPRODUCTION / PRINTING				\$4,550						
	Schematic Drawings & Specifications										
	Design Document Drawings & Specifications Construction Drawings & Specifications	ļ						ļ			
	Subcontractor / Supplier Prequalification Forms				Included in GCs						
5	Bidding Instructions				Included in GCs						
	Postage & Express Delivery Costs				\$2,275						
	Subcontract & Supplier Contract Agreement Forms Shop Drawing Reproduction				Included in GCs \$2,275						
	As-Built Documents (Mark-ups & Recording)				Included in GCs						
10	As-Built Documents (Printing)				Included in GCs						
	Maintenance Manuals (From Subs)				Included in GCs						
	Operation Manuals (From Subs) Estimating Forms				Included in GCs						
	Schedule Report Forms										
	Accounting Forms										
	Field Reporting Forms										
	Cost Reporting Forms Special Forms										
10	Special Forms										
	R. INSURANCE & BONDS				\$165,107						
-	Design professional liability insurance				<i> </i>	1					
	Builder's Risk Insurance										
	Builder's Risk Deductible				\$9,482						
	Special Insurance - O & E General Liability Insurance										
	Umbrella Liability Insurance										
7	Excess Liability Insurance										
	Completed Products Insurance										
	Professional Liability Insurance Workman's Compensation Insurance (GC's Only)				\$105,375						
	FICA / Medicare Insurance (GC's Only)										
12	Federal Unemployment Insurance (GC's Only)										
	State Unemployment Insurance (GC's Only)				<b>A</b>						
	Payment & Performance Bond Subcontractor & Supplier Bonds				\$50,250						
10											
	S. PERMITS & FEES				\$0			• •	<u> </u>		
	Foundation Permit										
	Superstructure Permit Building Permit (General)				TBD as required b	V SCODO					
	Mechanical Building Permit				TBD as required b						
5	Electrical Building Permit				TBD as required b						
	Plan Check Fees										
	Street Use Permit Curb & Gutter Permit				<u> </u>						
	Sidewalk Permit										
10	Street / Curb Design Charge										
	Sign Permits										
	Site Drainage (Erosion Control) Permit Electrical Primary Construction Fee				TBD as required b	y scope					
	Water Service Construction Fee										
15	Gas Service Construction Fee										
	Water Tap (Inspection) Fee										
	Sanitary Tap (Inspection) Fee Storm Tap (Inspection) Fee				<u> </u>						
	Special Tap (inspection) Fee				<u> </u>						
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OWNER/ARCHITECT/GENERAL CONTRACTOR SCOPE COORDINATION MATRIX										
A	В	С	D	E	F		G	Н	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
20 Contractor's Licenses				Included						
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			Х	Included						
U. ADDITIONAL ITEMS				\$3,400						
1 Textura				\$3,400						
2 (enter additional items as necessary)										
3 (enter additional items as necessary)										
4 (enter additional items as necessary)										
5 (enter additional items as necessary)										
6 (enter additional items as necessary)										
7 (enter additional items as necessary)										
8 (enter additional items as necessary)										

## 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 «1» day of « November » in the year « 2023 » (In words, indicate day, month, and year.)

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

« High Plains Library District » « Dr. Matt Hortt » « 2650 W 29th St » « Greeley, CO 80631 » « 970-506-8563 » « mhortt@highplains.us »

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

« GH Phipps » « Tim Johnson » « 4800 Innovation Dr » « Fort Collins, CO 80525 » «970-776-5500» « tim.johnson@ghphipps.com »

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

« HPLD District Support Services Building Addition/Renovation » « 2650 W 29th St » « Greeley, CO 80631 »

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

« Eppstein Uhen Architect (EUA) » « Rvan Wallace » « 189 Wynkoop St #700 » « Denver, CO 80202 » « (303) 595-4500 »

The Owner's Designated Representative: (Name, address and other information)

« High Plains Library District » « Dr. Matt Hortt » « Executive Director » « 2650 W. 29th Street » « Greeley, CO 80631 »

#### 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<sup>TM</sup>-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.

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« 970-506-8563 » « mhortt@highplains.us »

The Construction Manager's Designated Representative:

(Name, address and other information)

« Gerald H. Phipps, Inc dba GH Phipps Construction Company »

« Tim Johnson »

« 4800 Innovation Drive »

« Fort Collins, CO 80525 »

«970-776-5500»

« tim.johnson@ghphipps.com »

« The Owner's Representative: »

« (Name, address and other information) »

« Wember Inc. »

« Quentin Rockwell »

« 2850 E Harmony Rd #201 »

« Fort Collins, CO 80528 »

«970-402-0382»

« qrockwell@wemberinc.com »

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

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#### INITIAL INFORMATION ARTICLE 1

§ 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.)

« Expand and renovate the Administrative Support Services Building to include, at minimum, warehouse storage, garage space, maintenance shop, library archive facility and additional office space »

§ 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.)

« 2650 W 29th St, Greeley, CO »

§ 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.)

### « \$10,000,000 »

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

.1 Design phase milestone dates, if any:

« Construction Documents by September 2024 »

.2 Construction commencement date:

« November 2024 »

.3 Substantial Completion date or dates:

« anticipated December 2025 »

.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.)

 $\ll N/A \gg$ 

§ 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.)

« The project is to meet current energy codes at a minimum with sustainability principles applied to where best value can be determined. The project is not pursuing certification of any type. »

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234<sup>TM</sup>–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.)

```
« High Plains Library District » « »
« Dr. Matt Hortt »
« 2650 W 29th St »
« Greeley, CO 80631 »
« 970-506-8563 »
« »
```

§ 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.)

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```
« Wember, Inc »
« Quentin Rockwell »
« 2850 E Harmony Rd #201 »
« Fort Collins, CO 80528 »
« 970-402-0382 »
« qrockwell@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:
  - « TBD »« » « » « » « » « »

.2 Civil Engineer:

«	TBD »«	»
~	»	
~	»	
«	»	
~	»	

.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.*)

```
« Eppstein Uhen Architect (EUA) »
« Ryan Wallace »
« 189Wynkoop St #700 »
« Denver, CO 80202 »
« (303) 595-4500 »
« »
```

**§ 1.1.12** The Construction Manager identifies the following representative in accordance with Article 3: *(List name, address, and other contact information.)* 

```
« GH Phipps »
« Tim Johnson »
« 4800 Innovation Dr »
« Fort Collins, CO 80525 »
« 970-776-5500 »
« tim.johnson@ghphipps.com »
« »
```

§ 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.*)

#### « Ralph Kasper to be Pre-construction Manager »

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« Nate Ainsworth to be the Project Manager » « Jamie Mendez to be Superintendent »

§ 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 this 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 the 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<sup>TM</sup>–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.

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§ 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.

#### 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 limited 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 Contractor 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 Construction Manager does not warrant or guarantee estimates and schedules except those included as part of the Guaranteed Maximum Price. 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<sup>TM</sup>–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

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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, 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<sup>TM</sup>–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

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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 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.

§ 3.1.13.1 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.

§ 3.1.13.2 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.

§ 3.1.13.3 "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

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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:**

«« High Plains Library District »	
« Dr. Matt Hortt »	
« 2650 W 29th St »	
« Greeley, CO 80631 »	
« 970-506-8563 »	
« mhortt@highplains.us »	

### **OWNER'S REPRESENTATIVE:**

- « Wember, Inc » « Quentin Rockwell » « 2850 E Harmony Rd #201 »
- « Fort Collins, CO 80528 »
- « 970-402-0382 »

« qrockwell@wemberinc.com »

CONTRACTOR:

« GH Phipps » « Tim Johnson » « 4800 Innovation Dr « Fort Collins, CO 80525 » « 970-776-5500 » « tim.johnson@ghphipps.com »

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.)

### $\ll N/A \gg$

# § 3.2 Guaranteed Maximum Price Proposal

§ 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.

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§ 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:

1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract:

2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;

.3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's Contingency set forth in Section 3.2.4; and the Construction Manager's Fee;

.4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and

.5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency, not to exceed 3%, for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The contingency is not to be used without written advance approval from the Owner and/or Owner's Representative. No Fee is to be added to the Construction Manager's Contingency at the time of 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. 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. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration requested by the owner; (c) documented price escalation of materials and equipment; (d) DELETED; (e) Subcontractor defaults; or (f) those events the General Conditions of the contract that result in an approved extension of the Contract Time in writing by the owner but do not result in an increase in the Contract Sum. The Contingency is not available to Owner for any reason, including, but not limited to changes in scope or any other item which would enable Construction Manager to increase the Guaranteed Maximum Price under the Contract Documents. Construction Manager shall provide Owner with notice of all anticipated charges against the Contingency and shall provide Owner a weekly status report setting forth an accounting of the Contingency. Construction Manager agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Construction Manager will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Construction Manager agrees that if Construction Manager is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

§ 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 with using the AIA A133 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.

.1 Owner's approval of the total Cost of the Work and Guaranteed Maximum Price proposal;

- .2 Owner furnishing evidence of ability to finance the entire Cost of the Work;
- .3 Procurement of a complete and final Building Permit and other permits necessary for the commencement and continuity of construction operations; and
- .4 Issuance of a Notice to Proceed.

# § 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 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.

§ 3.3.2.2.1 In addition to the additional Contract time, the Construction Manager will be entitled to receive compensation for extended General Conditions and other labor and equipment costs on a per day basis.

# § 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

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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.

#### **OWNER'S RESPONSIBILITIES** ARTICLE 4

# § 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 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, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials ...

§ 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.

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**§ 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<sup>™</sup>-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. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the 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.)

### « \$20,000 »

**§ 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.*)

# « See attached hourly billable rates provided by GH Phipps »

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. Amounts unpaid « thirty » ( « 30 » ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

(Insert rate of monthly or annual interest agreed upon.)

« eight » % « 8% »

# 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:

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

# « See attached CMAR Fee and Scope Matrix »

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

### « 7% per CMAR Fee and Scope Matrix »

§ 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 Fifteen percent (15) »

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall be as shown in the Standard Tool and Equipment Rental Pricing List to be included with GMP packet and amendment documents.

### § 6.1.6 Liquidated damages, if any:

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

There is no bonus incentive for early completion of this Project. \$1000 / day if not completed 60 days after substantial completion or mutually agreed upon completion date should additional services extend past the substantial completion date. Dates will be finalizes and included in GMP Amendment packet.

# § 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. The Guaranteed Maximum Price shall be determined when Design Development documents are 100% complete and approved by Owner and made part of this Agreement by written amendment hereto. Construction Manager does not guarantee any specific line item estimate provided within the Guaranteed Maximum Price.

# § 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.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

#### 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.

§ 7.1.4 Contractor's General Conditions Costs are defined as those costs that are itemized and identified in the GMP Amendment.

# § 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. 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, 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.)

« »

§ 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.

§ 7.3.1 Construction Manager reserves the right to self-perform work typically performed by Subcontractors on a

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negotiated lump sum basis. The costs of such self-performed Work shall be treated as a Subcontract Cost for purposes of applications for payment and for calculating Construction Manager's fee and shall be included within the contract Guaranteed Maximum Price.

# § 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. Rates of Construction Manager-provided equipment are set forth in §6.1.5.

§ 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

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 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.

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§ 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 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 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, including automobile allowance and cell phone. 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

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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, within 10 days of notice from the Construction Manager, then Owner shall be deemed to have consented to the transaction.

# § 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.

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§ 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.

# 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, or as follows:

# $\ll N/A \gg$

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

§ 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

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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 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. The Owner acknowledges there is only a single Guaranteed Maximum Price that applies to the entirety of the Work. The Construction Manager may in its discretion reallocate any portion of the GMP among the various items in the schedule of values, including owner approved Contingency, and neither the Owner or Architect may deny payment to the Construction Manager on the basis that such payment would cause an item in the schedule of values to be exceeded.

§ 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 and Owner with its monthly Application for Payment.

§ 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:

- The aggregate of any amounts previously paid by the Owner; .1
- .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;

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- .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:

« 5% per state statute »

§ 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

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

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

### $\ll N/A \gg$

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

### $\ll N/A \gg$

§ 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

Upon satisfactory completion and acceptance of the following portions of the Work, full retainage will be released to the Subcontractors performing the following Work:

> Demolition; Earthwork; Utilities: Shoring; Rebar;

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Caissons; Concrete Foundations: Pre-Cast Concrete; Masonry; and Structural Steel.

# § 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

- the Construction Manager has fully performed the Contract, except for the Construction Manager's .1 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. Work that is subject to a lump sum price shall not be subject to audit except for the percentage of work actually completed versus the amount billed toward the lump sum price. Agreed upon rates which form the basis of the Cost of the Work shall not be subject to 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 thirty (30) 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. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

# § 11.3 Interest

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

« » % « »

#### ARTICLE 12 CLAIMS AND DISPUTE RESOLUTION

# § 12.1 Initial Decision Maker

§ 12.1.1 Any Claim 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, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 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 Construction Manager shall be compensated for these services based on a breakdown of the services provided during each major phase of the design, specifically 40% for the SD Estimate, 30% for the DD Estimate, and 30% for the CD Estimate.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

«» « » « »

« »

# § 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

[ **«X** »] 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, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 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.

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§ 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:

- Take the Cost of the Work incurred by the Construction Manager to the date of termination; .1
- .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 or the Construction Manager 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:

- Take the Cost of the Work incurred by the Construction Manager to the date of termination; .1
- .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' 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;
- Subtract the aggregate of previous payments made by the Owner; and .3
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201-2017.

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§ 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

# § 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than «One Million Dollars » (\$ «1,000,000 ») for each occurrence and «Two Million Dollars » (\$ «2,000,000 ») in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than «One Million Dollars » (\$ « 1,000,000 » ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that

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such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than «One Million Dollars » (\$ «1,000,000 ») each accident, «One Million Dollars » (\$ «1,000,000 ») each employee, and «One Million Dollars » (\$ «1,000,000 » ) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than «One Million Dollars » (\$ «1,000,000 ») per claim and «One Million Dollars (\$ (1,000,000 ) ) in the aggregate.

# § 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage Limits

§ 14.3.1.7 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Owner 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 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<sup>TM</sup>-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<sup>TM</sup>–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.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203<sup>TM</sup>–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:

«§14.5.1 « « Construction Manager is responsible only for construction of the Project according to the Contract Documents. Construction Manager is not a licensed design professional and has no professional qualifications in architecture, structural, mechanical, electrical, civil or acoustical engineering. Any value engineering recommendations or alternate material suggestions by Construction Manager are subject to prior approval and acceptance by Owner and Architect.

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§ 14.5.2 Owner acknowledges that soil movement beneath the building improvements may cause damage to the structure. There are various ways of construction improvements on soils that move that can help reduce this risk of damage. It is Construction Manager's and Architect's responsibility to review with Owner the Soils Report and to assist Owner in becoming informed of various methods of construction and risk of damage due to soil movement associated with the various methods. It is Owner's responsibility to determine which method of constructing the improvements that Owner desires to employ and how much risk Owner is willing to accept. Owner acknowledges that it may not be possible to totally eliminate the risk of soil movement and damage to the building improvements.

§ 14.5.3 It is the responsibility of the Owner to address all potential issues with adjoining property owners such as party lines, zero lot lines, site drainage, etc. before the commencement of construction. The Construction Manager specifically excludes costs resulting from issues with adjoining properties.

§ 14.5.4 Due to monthly fluctuations in the construction material market, Construction Manager cannot guarantee that there will not be price increases for materials incorporated in this project. Construction Manager will do everything within reason to mitigate any such cost increases. »

§ 14.5.5 Responsibility of owner to test for and remove asbestos including if discovered during or prior to demolition phase. »

#### **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<sup>TM</sup>–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<sup>TM</sup>-2019, Exhibit A, Guaranteed Maximum Price Amendment, to be provided at time of GMP Amendment
- AIA Document A133<sup>TM</sup>-2019, Exhibit B, Insurance and Bonds, to be provided at time of GMP .3 Amendment
- AIA Document A201<sup>TM</sup>–2017, General Conditions of the Contract for Construction .4
- .5 HPLD CMAR RFP dated 08/01/2023, GH Phipps Proposal dated 08/24/2023 and GH Phipps Fee Matrix dated 08/31/2023

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

**OWNER** (Signature)

«Dr. Matt Hortt, »« Executive Director »

(Printed name and title)

**CONSTRUCTION MANAGER** (Signature)

« Tim Johnson, »« Regional Director » (Printed name and title)

# AIA<sup>°</sup> Document A201<sup>°</sup> - 2017

# General Conditions of the Contract for Construction

### for the following PROJECT:

(Name and location or address)

« HPLD District Support Services Building Addition/Renovation » «2650 W 29<sup>th</sup> St » « Greeley, CO 80631 » « »

**THE OWNER:** (*Name, legal status and address*)

« High Plains Library District » « » « Dr. Matt Hortt » «2650 W 29<sup>th</sup> St » «Greeley, CO 80631 » «970-506-8563 » « »

### THE ARCHITECT:

(Name, legal status and address)

« Eppstein Uhen Architect (EUA) »
«Ryan Wallace »
«189Wynkoop St #700 »
«Denver, CO 80202 »
«(303) 595-4500 »
»« »

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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<sup>TM</sup>, Guide for Supplementary Conditions.

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- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

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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 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.

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**§ 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, Subsubcontractors, 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<sup>TM</sup>–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<sup>TM</sup>–2013, Building Information Modeling and Digital Data Exhibit, and the requisite

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# 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 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.

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**§ 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 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 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.

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# § 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 here from 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

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#### § 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, 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.

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**§ 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 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 survive the against that the Contractor as may be provided by the manufacturer, per the material specifications and contract documents.

**§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

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#### § 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.

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# § 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.

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**§ 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 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 reperform or to reconstruct the Work. Should the work be found to be in compliance with the contract documents and/or contract, the Owner agrees to pay for all costs associated with the deconstructive investigation request including but not limited to the cost of removal, replacement, lost production associated with the down time for investigation.

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#### § 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.

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**§ 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 submittal 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.

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**§ 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 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,

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**§ 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 Labor rates, 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 labor rates 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.

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## § 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 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.

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#### § 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.

**§ 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.

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

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

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

#### § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) 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 Excessive punch list work remains to be completed that would prevent or interfere with the occupancy 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

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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** Except as related to phasing of the project, and 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

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**§ 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 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 shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform tests verifying the presence or absence. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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**§ 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.

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#### § 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

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**§ 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. <u>It shall be an affirmative obligation of Contractor to provide written</u> <u>notice to the Owner within two (2) days of the cancellation of or material change to any of the policies required</u> <u>herein and failure to do so shall constitute a material breach of the Contract</u>.

**§ 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.

## § 11.4.13 INSURANCE REQUIREMENTS

I Prior ro the commencement of any work the vendor shall forward certificates of insurance to the department specified in the award document.

II Additional insured Certificate Holder must be High Plains Library District.

III High Plains Library District must be added as an additional insured to general liability, auto liability, and any excess liability policies.

IV Insurance Minimum Requirements

Workers Compensation – statutory limits provided by an insurance carrier that is licensed to do business in Colorado. The policy shall contain a Wavier of Subrogation on behalf of High Plains Library District.

Employer's liability – Required \$100,000 each accident

\$500,000 disease policy limit

\$100,000 disease each employee

Commercial General Liability – on an Occurrence form the policy must not exclude or reduce coverage for mobile equipment, personal injury, blanket contractual; and death. Personal injury coverage must have the employee exclusion deleted. The policy shall contain a Waiver of Subrogation on behalf of High Plains Library District. \$1M each occurrence

\$2M aggregate

Commercial automobile liability insurance – including hired and non-owned vehicles. (If autos are used in the performance of work under this agreement.)

Combined single limit for bodily injury and property damage \$1M CSL per accident.

# § 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.

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

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

# § 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.

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**§ 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.** 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.

**§ 12.2.3.** 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.

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**§ 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.

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**§ 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 hat 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.

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(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 and result in closure of public offices, suspension of operations or otherwise prevents the Parties from timely performing under the Contract as originally contemplated.

#### § 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;

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- .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 Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

# § 14.2 Termination by the Owner for Cause

- § 14.2.1 The Owner may terminate the Contract if the Contractor
  - .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials or equipment to complete the Work in a diligent, efficient, timely, workmanlike, skillful and careful mater;
  - .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.

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#### § 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.

**§ 14.3.3** 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.

#### § 14.4 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 properly executed Work.

# 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.

AIA Document A201° - 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 17:40:26 ET on 04/21/2021 under Order No.1419844500 which expires on 04/21/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents<sup>®</sup> Terms of Service. To report copyright violations, e-mail copyright@ia.org. (1400460634) **§ 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 Contactor 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.

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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 weatherdependent 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

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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 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

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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 \_Weld\_\_\_\_\_, County, State of Colorado.

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

# High Plains Library District District Support Services (DSS) Expansion August 1, 2023



HPLD DSS 2650 W 29<sup>th</sup> St Greeley, CO 80631

Prepared by:

Wember 2580 E. Harmony Rd #201 Fort Collins, CO 80111 Project Manager: Dan Spykstra Phone: 720-382-3795 e-mail: dspykstra@wemberinc.com online: www.wemberinc.com

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#### 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 addition to the High Plains Library District Support Services Building (DSS) in Greeley, CO. 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. Interviews will follow the submission of proposals according the schedule contained in the RFP.

#### PROJECT BACKGROUND

High Plains Library District (HPLD) has selected Wember as the Owner's Representative and is currently seeking a General Contractor (CM@R). The project is in the early concept phase, and HPLD's goal is to bring on a General Contractor (CM@R) to provide cost estimating and constructability review throughout the design process.

#### PROJECT DESCRIPTION

HPLD would like to build a 30,000 sq ft, 3-story detached building to include a main floor receiving area and 10,000 sq ft warehouse storage,10,000 sq ft library on second floor and 10,000 sq ft office space on third floor.

Renovate the existing building entry for a more welcoming experience. Possibly renovate the 2<sup>nd</sup> floor meeting room.

Add two bays on to the book mobile garage.

#### BUDGET

The "Hard Cost" or construction budget for the project is approximately \$10,000,000, and includes demolition, construction, general conditions, and overhead & profit. "Soft Costs" including design & engineering, permitting, FF&E, technology, contingency, 3<sup>rd</sup> party consultant service, etc.) will be in addition to the Hard Cost, and maintained by the Owner.

#### TIMELINE

The proposed timeline is as follows: Schematic Design Design Development Construction Documents

Permitting/ GMP

Construction

October 2023 – February 2024 March – May 2024 June – September 2024 September 2024 – October 2024 November 2024 – December 2025 (subject to change)

#### 1.2 LOCATION

The Project is located at the current DSS building, 2650 W 29th St, Greeley, CO 80631.

#### 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 and it will be managed collaboratively throughout the pre-construction and construction phase of the project. This system is the Owner's Representatives online project management system (Owner InSIte) which includes, but not limited to, managing Budget, 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) Participate in Design team interviews and selection process on or about 9/14/23.
- 2) 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 week, for the duration of the pre-construction period would be required.
- 3) 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.
- 4) 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.
- 5) 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.

- 6) 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.
- 7) 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.
- 8) 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.
- 9) 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.
- 10) 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.
- 11) 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.
- 12) 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.
- 13) Identify and submit proposals for long lead items for direct purchase by the Client.
- 14) 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 "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. The Scope & Fee Matrix is not due with the proposal, it is only required of the short-listed firms due at the interview.

#### 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. CONSTUCTION 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, Wember, Inc LinkedIn and Client's Website.

#### **Owner's Representative- Wember**

Mr. Dan Spykstra, Owner's Representative Wember, Inc. 2580 E. Harmony Rd #201 Fort Collins, CO 80111 Phone: (720) 382-3795 Email: dspykstra@wemberinc.com

#### **Owner/Client – High Plains Library District**

Dr. Matt Hortt, Executive Director High Plains Library District 2650 W 29<sup>th</sup> Street Greeley, Colorado 80631 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
August 1, 2023		Advertise and issue CM@R RFP
August 15, 2023	9:00 AM	Non-mandatory site visit
		2650 W 29th St., Greeley, Colorado 80631
		Meet at Back (South) Parking Lot.
August 16, 2023	2:00 PM	Deadline for receipt of questions and inquiries
August 17, 2023		Final responses to questions, inquiries and RFP amendments
August 24, 2023	9:00 AM	Deadline for submission of proposals
August 25, 2023		Announce shortlist for interview
September 1, 2023	TBD	Interviews of short-listed candidates
September 5, 2023		Preferred CMAR announced
September 18, 2023		Execute Agreement with selected CM@R
October 1, 2023		Commence project design (Anticipated)

#### 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 <u>30 pages</u> numbered in sequential order.
- B. <u>Submit a single electronic PDF file of your proposal and Excel File of your fee proposal by</u> <u>the submittal date/time aforementioned</u>; email to the Owner's Representative, Conor Bancroft, whose contact listed in Section 1.5 above.
- C. 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.
- D. 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.

#### 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 Preconstruction Manager, Project Manager, Estimator and Superintendent at a minimum
  - 8) Client/Owner contact with telephone number
  - 9) Owner's Representative contact with telephone number
  - 10) 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 important or 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 the membership.

#### Part 5 – Fee Proposal

A. Please refer to exhibit "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 is to be submitted with your proposal. Instructions for completing the matrix are provided within the matrix. Submit/note any conditions, clarifications, or exclusions concerning Scope of Services. The Scope & Fee Matrix is not due with the proposal, it is only required of the short-listed firms due at the interview.

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 (<u>dspykstra@wemberinc.com</u>) and Brooke Kardos (<u>bkardos@wemberinc.com</u>) 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 shortlisted 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:

- Each 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 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.

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

(Please use additional sheets as necessary.)

COMPANY NAME:							
со	MPANY ADDRESS:						
PH	PHONE:FAX:						
со	NTACT PERSON NAME:						
со	NTACT PERSON PHONE:						
со	NTACT PERSON EMAIL:						
1.	I Acknowledge that the "Sample Agreement" attached to this RFQ/P ( <b>Exhibit D</b> ) 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 Douglas County, Colorado\_\_\_\_(YES/NO)
- 5. The Proposer hereby acknowledges receipt of addenda numbers \_\_\_\_\_ through \_\_\_\_\_.
- 6. List of construction items that will be self-performed.

А	Ι	
В	J	
С	K	
D	L	
Е	М	
F	N	
G	0	
Н	Ρ	

Signature:

\_\_\_\_\_Date:\_\_\_\_\_

\* \* \* End of Proposal Form \* \* \*



## Addendum 01

Project Name:	DSS2- HPLD District Support Services Expansion part-2					
Wember Project Number:	2018.35					
Issue Date:	August 17, 2023					
Purpose:	CMAR RFP Addendum 01					

Question #1	Would it be possible to get the existing building floor plans & the site survey that was recently completed?				
See ALTA attached. Building plans will be shared at the start of Design (When I find the drawings)					

Question #2	Is a copy of the district's prototype library floor plan available?
See attached	

Question #3	Please confirm that fees are not required until shortlist.					
Correct, fees are not required until the interview.						

### **Brooke Kardos**

From:
Sent:
Cc:
Subject:

Brooke Kardos Friday, August 18, 2023 11:28 AM Dan Spykstra DSS2-CMAR RFP Addendum 02

All,

Apologizes for the additional email, one clarifying question came in this morning. All proposals should be submitted to <u>dspykstra@wemberinc.com</u> and <u>bkardos@wemberinc.com</u>.

Thank you,



From: Brooke Kardos
Sent: Thursday, August 17, 2023 4:03 PM
Cc: Dan Spykstra <dspykstra@wemberinc.com>
Subject: DSS2-CMAR RFP Addendum 01

Hello,

Thank you for your interest in the High Plains Library District, District Support Services addition/renovation project. Please use this link to access the addendum and supporting documents:

CMAR Addendum 01



#### **GH Phipps Construction Companies**

4800 Innovation Drive Fort Collins, CO 80525 p. 970.776.5500 f. 970.498.8770

# **PROJECT PROPOSAL**

# HIGH PLAINS LIBRARY DISTRICT DSS EXPANSION

HPLD / Wember

GHPhipps

### SUBMITTAL DATE: 08/24/2023

INSPIRE

Submitted By: Tim Johnson tim.johnson@ghphipps.com office: 970.372.0518 mobile: 970.217.2792

LEAD

DELIVER



#### DATE: 08/24/2023

#### SUBMITTED TO: HPLD / WEMBER

2580 E. Harmony Road #201 Fort Collins, CO 80111

Attn: Dan Spykstra, Owner's Representative

#### **RE: High Plains Library District DSS Expansion**

#### Dear Mr. Spykstra and Dr. Hortt

Relationships are a core value upon which GH Phipps was founded 70 years ago. The relationships we have built with HPLD and Wember are rooted in trust, and create a truly unique project delivery process that results in exceptional outcomes like the LINC, Kersey, and Fort Lupton Libraries. We are thrilled to have the opportunity to submit on this exciting expansion of your District Support Services building. The opportunity to collaborate with the ownership group, through all phases of design, sets this project up for success early and we have specifically planned our RFP response to address this process including:

#### COMMITMENT OF AN EXPERIENCED PROJECT TEAM

HPLD can count on GH Phipps' unwavering commitment to provide all necessary resources to deliver the project successfully. Our capacity ensures schedule assurance and hands-on management. Tim Johnson, Project Executive, will have overall responsibility for the project while working with Ralph Kasper, Preconstruction Manager, who will leverage his recent experience working on the LINC and Fort Lupton Libraries. Our field team brings together Project Manager Nate Ainsworth, Superintendent Jamie Mendez, and Assistant PM Kai Kitagawa, who have all worked with Wember or High Plains in the past.

#### **PRO-ACTIVE PRECONSTRUCTION**

Making value-based decisions early in the preconstruction phase is crucial to meeting the milestones of your project. Ralph Kasper will work seamlessly with HPLD to address the critical planning stages of the project - ensuring a seamless transition to construction. Ralph and Scott Ready (Sr. Estimator) will provide accurate budgets and schedule-saving measures, and will release bid packages early to manage the supply chain and schedule. GH Phipps understands the budget provided to HPLD must be accurate and reliable while concurrently getting the most out of each dollar.

#### EMPLOYEE OWNED COMPANY

We are 100% employee-owned, which means all our employees are working hard to create successful partnerships and deliver an exceptional building experience. Each member of this team has a long-term interest in building great buildings, creating lasting relationships and becoming a trusted partner time and again.

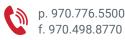
We look forward to working with High Plains Library District and Wember to provide an exceptional building experience on this project. If you have any questions regarding the information included in this submittal or need additional information, please don't hesitate to contact me. We acknowledge Addendum 1.

Sincerely,

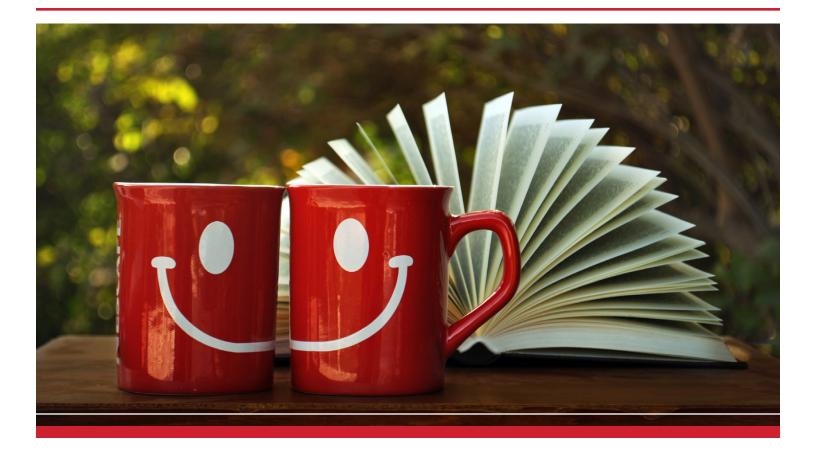
TIM JOHNSON Regional Director - Northern Colorado GH Phipps Construction Companies Email: tim.johnson@ghphipps.com | Office: 970.372.0518 | Mobile: 970.217.2792



4800 Innovation Drive Fort Collins, CO 80525







# TABLE OF CONTENTS

# 01

**Company Information** 

# **02** Project Experience

# **03** Project Team

**04** Project Management

# **01** COMPANY INFORMATION





# 00 COMPANY INFORMATION

# **EXCEPTIONAL BUILDERS**

For 70 years, GH Phipps Construction has built quality projects up and down the Front Range. We have successfully provided our construction services on hundreds of major projects in virtually every market. Our Fort Collins office will be providing services on this project. We appreciate the trust that new and expanding companies have put into us over and over again. We work hard to deliver an exceptional building experience to our clients each and every time. Our employee-owned company is respected among the top general contractors in Colorado and Wyoming. Our namesake Gerald H. Phipps' legacy lives on in the way we deliver critical projects in major markets like commercial office, healthcare, education, technology, and municipal arenas. In addition to general contracting, we also offer preconstruction, turnkey concrete, VDC/BIM, and special project services.

Today, we have a large front range presence; employing over 350 people in our 6 offices, equipment yard, and on dozens of job sites. We are a self-performing general contractor, and excel at building and driving schedules. 80% of our projects are CM/GC. This large portion of negotiated work provides most of the relevant experience in our organization. Our design build capabilities are also exceptional due to our transparent project approach and collaborative team mindset. Through a commitment to building lasting relationships, integrity, excellence, peak performance, teamwork, and open-minded innovation, we strive to continually enrich the lives of our clients and communities.



#### EXECUTIVE TEAM



Kurt Klanderud CEO

COLORADO

**WYOMING** 

LOCATIONS



**Todd Ruff** President



Roger Treichler



Jim Clawson CFO

**GH Phipps - Denver (HQ)** 5995 Greenwood Plaza Blvd, Ste 100 Greenwood Village, CO 80111 303.571.5377

**GH Phipps - Colorado Springs** 496 Nevada Mesa View Colorado Springs, CO 80907 719.633.4673

GH Phipps WY - Laramie (HQ) 1482 Commerce Drive, Unit Y Laramie, WY 82070 **GH Phipps - Fort Collins** 4800 Innovation Drive Fort Collins, CO 80525 970.776.5500

**GH Phipps - The Yard** 652 Salida Way Aurora, CO 80011 303.389.3723

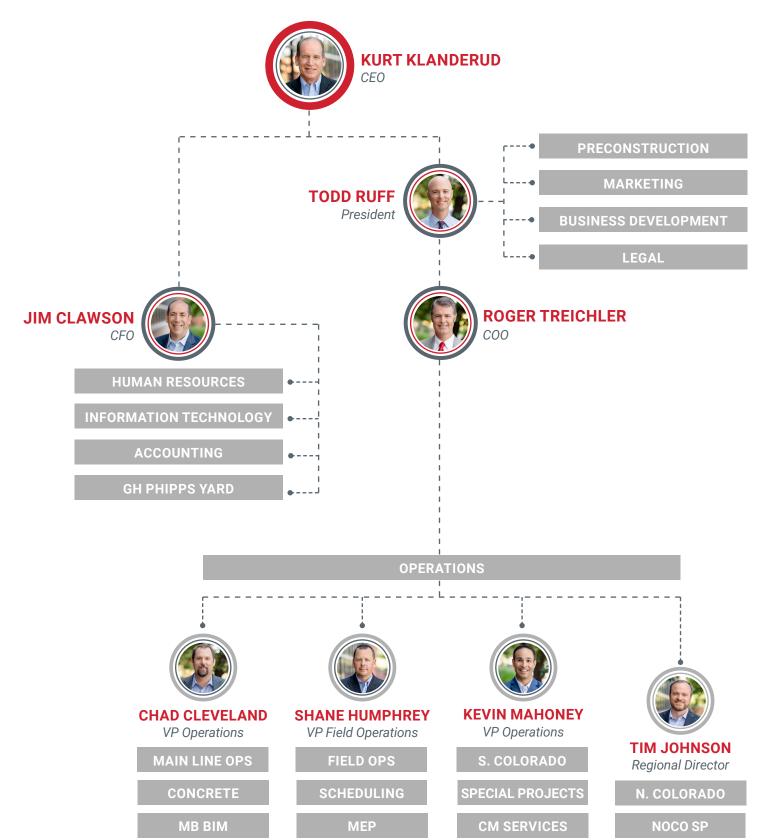
#### **GH Phipps WY - Casper**

3025 E. 2nd Street Casper, WY 82609 307.745.4866

307.745.4866



# EXECUTIVE LEVEL ORG CHART



SAFETY





UNDERSTAND. SERVICE. INNOVATE.

August 21, 2023

Wember Attn: Dan Spykstra 2580 E. Harmony Road #201 Fort Collins, CO 80111

Re: GH Phipps Construction Companies Project: HPLD District Support Services Expansion

#### Dear Mr. Spykstra:

Our agency has serviced the Surety Program of GH Phipps Construction Companies for the past 30 years. We are personally acquainted with Mr. Kurt Klanderud, CEO of GH Phipps Construction Companies. We have found him to be an individual of high moral character and integrity. GH Phipps Construction Companies is one of the finest construction firms in the Rocky Mountain Area.

Surety bonds for GH Phipps Construction Companies are written through the Continental Casualty Company. Due to the strong financial strength of this organization we are willing to give consideration to projects in excess of \$150,000,000 with an aggregate capacity in excess of \$500,000,000. This is merely a working parameter and does not constitute a maximum bond capacity. The Continental Casualty Company is listed in the most recent issue of the Federal Register, Circular 570, and US Treasury Department and possesses a current Best rating of A and a Best Financial Rating XV.

We understand that GH Phipps Construction Companies will be submitting a proposal to you the above referenced project. The addition of your projects to Phipps work program will not affect their bond capacity due to current and anticipated workloads. At present, Phipps is utilizing less than half their available bond capacity, leaving over \$300,000,000 in bond capacity available.

GH Phipps Construction Companies has an excellent reputation and experience in providing input on value engineering options to optimize construction quality and cost effectiveness within a specified budget. Other considerations within Phipps' area of expertise is project scheduling, working in occupied campuses and the construction integrity of all design alternatives.

Should Phipps be awarded the contract on the above project, we anticipate being able to provide bonds in the amount of 100% of the contract sum. Our approval of any bond requests would be conditioned upon applicable underwriting considerations at the time of the bond request. Any arrangement for bonds required by the contract is a matter between GH Phipps Construction Companies and the surety and we assume no liability to you or your third parties, if for any reason we do not execute these bonds. We have issued this letter only as a bonding reference requested by our client.

We strongly recommend GH Phipps Construction Companies to you. If you should need any additional information, please advise at your convenience.

Sincerely,

Cory A. Clauss Vice President - Surety USI Insurance Services 6501 S Fiddlers Green Circle, Suite 100 Greenwood Village, CO 80111 303.831.5218



	Client#: 1082464 GERALH										
						M/DD/YYYY)					
C B	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.										
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	Gerald H. Phipps, Inc. dba GH Phipps Construction Company 5995 Greenwood Plaza Blvd., SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.										
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	Greenwood Village, CO	8011	1		<b>5</b> 6						
						© 1	988-2015 AC	ORD CORPORATION.	All righ	ts reserved	

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SABBC



# **GH PHIPPS RECENT AWARDS**

- 2023 CISCA Founders Award Denver Central Library
- 2023 AGC Construction Health And Safety Excellence (CHASE) Award, AGC & OSHA Blue Level Partnership
- 2023 AGC Awards Colorado Stormwater Excellence Program Qualified Member
- 2023 SMPS MEA Crisis Management and Communications Award
- 2023 SMPS MEA Internal Video Award
- 2022 AGC ACE Award for TEZAK Headquarters Historic Renovation, Silver Merit for Best Building Project under \$10M
- 2022 SMPS MEA Diversity, Equity & Inclusion Communications Award
- 2022 Denver Business Journal Diversity, Equity & Inclusion Award
- 2022 ESOP Association, Western States Chapter Communications Excellence Award for Educational Materials Written
- 2022 AGC Construction Health And Safety Excellence (CHASE) Award, AGC & OSHA Partnership
- 2022 AGC CO Stormwater Excellence Program (CSEP) Award, P3 to Improve Water Quality in Our State
- 2022 NCSEA Outstanding Project Award New Buildings Under \$30M, Red Rocks Amphitheatre Stage Roof Replacement
- 2021 ACI Rocky Mountain Chapter Excellence in Concrete Award, Decorative All Copy Products Headquarters
- 2021 Mayor's Design Award Junction Food & Drink
- 2021 Mayor's Design Award Denver Botanic Gardens, Freyer-Newman Center for Science, Art and Education
- · 2021 Gallagher Best-in-Class Employer
- 2021 AGC ACE award for Children's Hospital Colorado North Campus Expansion, Best GC Project over \$70M
- 2020 AGC ACE award for NAVA Lakehouse, Best GC Project over \$70M
- 2020 IIDA Rocky Mountain Chapter, Orthopedic Spine Center of the Rockies, 1st Place
- 2020 IIDA Rocky Mountain Chapter, Children's Hospital, Merit Award
- 2020 Colorado Springs Business Journal, Best General Contractor
- 2020 AIA Design and Honor Awards, Award of Distinction Sustainability, Aerospace and Engineering Sciences Building
- 2019 AGC ACE award for Rio Grande Hospital Clinic Expansion and Renovation, Best GC Project under \$10M
- 2019 American Concrete Institute (ACI) Excellence in Concrete Construction Award for Decorative Concrete – 2nd place (International Competition)

# 02 PROJECT EXPERIENCE





# Library & Innovation Center (LINC)

Greeley, CO







# **PROJECT DETAILS**

SIZE: 42,000 SF Renovation 22,000 SF Addition COST: \$21,000,000 DELIVERY: CM/GC

SCHEDULE: 09/21 - 01/23

#### OWNER

High Plains Library District Dr. Matt Hortt, PhD. 970.506.8563 mhortt@highplains.us

#### ARCHITECT

Barker Rinker Seacat Katie Barnes, AIA 303.263.2824 katiebarnes@brsarch.com

#### **STAFF CONTINUITY**

- Tim Johnson, PX
- Ralph Kasper, Precon Manager
- Kai Kitagawa, Assistant PM

# **PROJECT DESCRIPTION**

The library and innovation center was designed to have prominent water themes inside and outside the building. The water motif will resurface on metal screens with a watershed pattern on the exterior of the building, keeping with the theme of confluence and the importance of water in the region. Inside, the more traditional library space will be called the river of books. A similar river-like design will be visible in the children's area of the building.

The 42,000 SF renovation will feature a children's museum, an art installation by Wes Sam Bruce, a children's play area, maker spaces, an outdoor amphitheater, and a sound-proofing recording studio.

A 22,000 SF addition will wrap the original building transforming it into a community center that includes a library, events space for 200 guests, and classrooms. Floor plans show will how a newspaper press becomes an innovation center, how packaging becomes the children's library, how the offices become the stacks for books, how the circular lobby becomes the inspiration for the courtyard and how the children's museum will live on the second level.

The library's construction will include the preservation of steel and other materials from the Greeley Tribune building, which served as a community landmark. In addition, GH Phipps has recently completed Kersey Library and broke ground on Fort Lupton Library for the High Plains Library District.





# **Denver Central Library Renovation**

Denver, CO



## **PROJECT DETAILS**

SIZE: 93,550 SF COST: \$45,000,000 DELIVERY: CM/GC SCHEDULE: 01/21 - 12/23

#### OWNER

City & County of Denver Curt Winn 303.710.3393 curt.winn@denvergov.org

ARCHITECT Studiotrope Design Collective Anne Pharamond 303.847.4692 apha@studiotrope.com

#### **STAFF CONTINUITY**

• Ralph Kasper, Precon Manager

# **PROJECT DESCRIPTION**

This multi-phase renovation project maintains the integrity of its original designs while making significant changes to provide spaces for current and future library services. That includes significant structural modification to "open up" the main atrium with lower profile stairs and bridges, improve wayfinding and create a new large event space for the public to enjoy.

The three story renovation includes shipping/receiving on the first floor, library on the second floor, and offices on the third floor.

Major scope includes:

- Redesign and relocate the 10,000 SF Children's Library (Completed)
- · Renovation of public restrooms (Completed)
- Elevator modernized (Completed)
- · Upgrade to a more efficient heating and air condition system and new plumbing
- Safety and security upgrades
- · Addition of an all-gender restroom on the first floor
- · Grand Hall renovation with relocated, centralized service points
- · Construction of additional meeting rooms on the second floor
- · New event space that will move out of the basement and onto the first floor
- · Large programming space on the first floor with views of Civic Center Park
- Correcting ADA issues
- · Installing new pavers and glass guardrails at Acoma Plaza



# **Fort Lupton Public & School Library**

Fort Lupton, CO



## **PROJECT DETAILS**

SIZE: 14,500 SF COST: \$6,780,000 DELIVERY: CM/GC SCHEDULE: 05/22 - 05/23

#### OWNER

High Plains Library District Thomas Samblanet 303.857.7180 x7188 tsamblanet@highplains.us

#### ARCHITECT

Barker Rinker Seacat Joel Hermann 303.455.1366 joelhermann@brsarch.com

#### **STAFF CONTINUITY**

- Tim Johnson, PX
- Ralph Kasper, Precon Manager
- Jaime Mendez, Superintendent

# **PROJECT DESCRIPTION**

The new library will include space for its book collection, plus a large multipurpose room with community access, a collaborative makerspace with 3-D printers and a variety of other tools. The library will also have a quiet reading room, a computer lab and outside children's reading area. The public library will have 14,500 square feet of space at its disposal.

The Fort Lupton Public & School Library was formed 47 years ago when the city council approved the association. In 1993, the library moved into a 16,000-square feet space in a \$1.2 million expansion at Fort Lupton High School. The public library and the high school have been attached ever since. Within the next year, the majority of the physical bond between the library and the high school will be broken. Removing public access from the existing library will better serve high school students and allow the students to freely use the library without having the leave the school building. Separating students and the public will allow for appropriate filtering of student WiFi and limit the material collection to items suitable for high school students. Keeping the public out of a school building during school hours will improve student safety.





# **Freyer-Newman Center**

Denver, CO



#### **PROJECT DETAILS**

**SIZE**: 50,000 SF **COST**: \$40,000,000 **DELIVERY**: CM/GC **SCHEDULE**: 06/18 - 02/20

#### **OWNER**

Denver Botanic Gardens Brian Vogt, CEO 780.865.3515 vogtb@botanicgardens.org

#### ARCHITECT

Davis Partnership David Daniel 303.861.8555 david.daniel@davispartnership.com

## **PROJECT DESCRIPTION**

GH Phipps and Denver Botanic Gardens relationships dates back to 1964 starting with the construction of the Conservatory and Horticulture Hall and includes 17 more projects. The most recent project in this long history is the Freyer-Newman Center. This project serves as a museum for botanic art and science with two levels of underground parking. The multi-faceted structure includes art studios and classrooms, galleries, an auditorium, a library including **a rare books room**, laboratories for research as well as conservation of botanic samples, a herbarium for preserved plant collections, and administrative office space. An interesting feature connecting Freyer-Newman Center and Gates Hall was the addition of a walking bridge.

An additional part of this project included the remodel of the historic Boettcher Memorial Center built in the 1960's. The entire basement was a gut remodel converting it into a children learning space. The project received LEED Gold Certification for new construction and major renovations.

Accredited by the American Alliance of Museums, the Gardens' living collections encompass specimens from the tropics to the tundra, showcasing a plant palette chosen to thrive in Colorado's semi-arid climate. The 24-acre urban oasis in the heart of the city, offering garden experiences for the whole family, as well as world-class education and plant conservation research programs.





# GLOBAL DOWN SYNDROME HQ

Denver, CO



## **PROJECT DETAILS**

SIZE: 60,486 SF COST: \$24,700,000 DELIVERY: Negotiated SCHEDULE: 01/17 - 07/18

#### OWNER

East 2nd Avenue Investors Mary Beth Wallingford 303.468.6661 mwallingford@ajsventures.com

#### ARCHITECT

Saiber Saiber Architecture Jonathan Saiber 303.388.3313 mail@saibersaiber.com

# **PROJECT DESCRIPTION**

GH Phipps completed this new 5-story mixed-use building with two levels of underground parking. The Global Downs Syndrome Foundation HQ Offices occupy 25,000 feet in three office levels. It has retail and vocational space, with double and single family residences on the fifth level.

This project met challenging logistics being centralized in the Cherry Creek North shopping district, with zero-lot lines, multiple adjacent construction projects, and strict neighborhood noise restrictions.

- ✓ Mixed-use, with retail on the ground level
- ✓ Residence level
- ✓ Features landscaped roof deck and community room
- ✓ 5 stories
- ✓ 2 Levels of below-grade parking





# SUSTAINABLE/CARBON-NEUTRAL DESIGN

GH Phipps is committed to working with the High Plains Library District and Wember to achieve the project's sustainability goals. During construction and upon project completion, we will educate and train the building operators on the energy efficiency components of their building to maximize the benefits of the sustainable features.

#### CASE STUDY

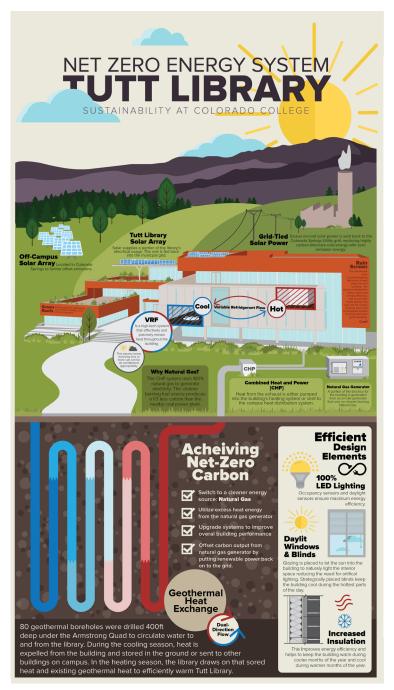
Tutt Library, Colorado College Completed in 2017 | \$35M | 99,000 SF | CM/GC

From electronics to daylight, the Tutt Library infuses sustainability throughout the facility. It is the largest carbonneutral, net-zero energy academic library in the country. It has a geothermal energy field of 80 geothermal wells on the Armstrong Quad, a 115-kilowatt rooftop solar array, a 400-kilowatt off-site solar array, and a 130-kilowatt combined heat and power system.

Installation of the new heating and cooling equipment provided challenges since the first floor was all glass, and the building needed to be opened up. The project team selected upperlevel panels to replace with glass. Design and construction challenges included minimal floor-to-ceiling heights in the existing building.

This project was highly complex because the skeleton of a historic concrete building had to be tied into a modern addition making the ceiling heights almost impossible to wire. The project team accomplished this task and overcame a tight location, a nearby historic building, an aggressive schedule, demolition of an annex, and moving half a million books out of – and then back into – the library.

This project received the 2017 Innovation Award from the National Association of College and University Business Officers.





# **03** PROJECT TEAM



03

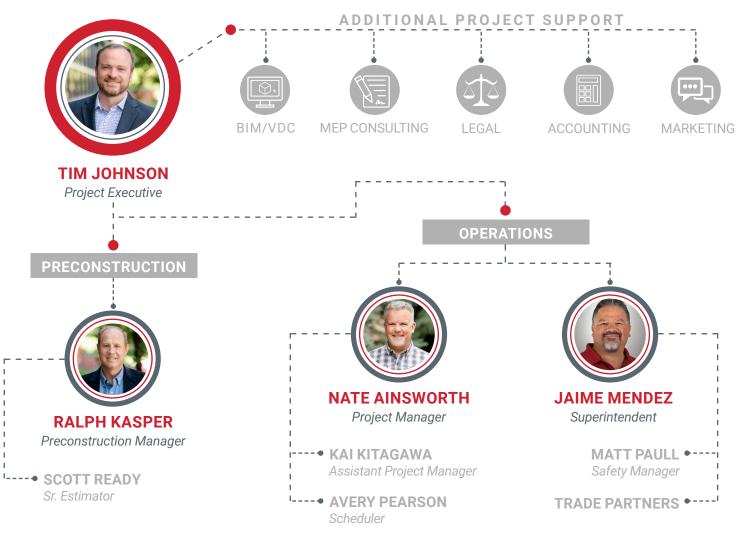


# PROJECT TEAM

# EXPERIENCED AND READY

We have hand-selected our proposed team members based on their expert skill-level, relevant project experience, and availability to turn over a high-quality, on-budget project within the confines of your schedule. This team is ready to provide you with a collaborative project approach that ensures your project will be safe and successful from kick-off to close-out.

#### **PROJECT ORG CHART**







E: tim.johnson@ghphipps.com P: 970.372.0518

## **EXPERIENCE**

17 Years Construction Experience

## **EDUCATION**

B.S. Civil Infrastructure Engineering University of Pennsylvania

#### **CERTIFICATIONS**

- ✓ Class A Contractor's License in Denver and Cheyenne / CERT00004781 & CT- 21-42193
- ✓ OSHA-30

#### **AFFILIATIONS**

- ✓ Vice Chair of the Fort Collins Building Review Commission 2016-2022
- Leadership Northern
   Colorado Class of 2023



# TIM JOHNSON, LEED® AP

### **Project Executive**

Tim brings over 17 years of wide-ranging experience which includes multiple extensive renovation projects with many of them located in Northern Colorado. He takes great pride in working through the unique challenges that renovations present and the logistics and sequencing required throughout the process. He oversees preconstruction, contracts, construction and warranty activities as he supports the Northern Colorado Region ensuring a successful project.

# **PROJECT EXPERIENCE**

#### LINC Library | Greeley, CO

Project for the High Plains Library District. Addition and renovation project will include a children's museum, innovation center, a children's area, outdoor amphitheater, soundproofed recording studio, and classrooms.

- \$21 Million | 64,000 SF

#### Fort Lupton Public & School Library | Fort Lupton, CO

Project for the City of Fort Lupton. Includes large multipurpose room with community access, a collaborative makerspace with 3-D printers and a variety of other tools. The library will also have a quiet reading room, a computer lab and outside children's reading area.

- \$6.78 Million | 14,500 SF

#### **Meeker Elementary School, Weld County School District RE-6** | *Greeley, CO* Project includes an eight-classroom addition which eliminate eight portable classrooms on the site.

- \$6.8 Million | 18,000 SF

#### **Riverdale Ridge High School CTE, School District 27J** [*Thornton, CO* The project consists of approximately 41,500 SF of remodeling throughout the existing building and a 52,000 SF addition to provide additional general classroom spaces to alleviate overcrowding.

- \$22 Million | 93,500 SF

#### 240 E. Mountain Renovation, Confidential Client | Fort Collins, CO

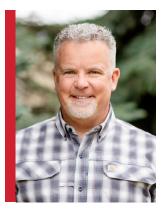
Historic renovation of a 7,400 SF, two-story building in downtown Fort Collins. The project included new open office concepts, DIRTT wall offices, a new bridge to an adjacent building over a pedestrian walkway, and new mechanical and electrical systems and services.

- \$2 Million | 7,400 SF

#### **The Exchange Entertainment Center, Brinkman Real Estate** | *Fort Collins, CO* Redevelopment of an under-utilized downtown city block into a thriving open-air central plaza surrounded by retail, creative office spaces, and shipping containers re-purposed for small food vendors.

- \$4 Million | 53,000 SF





E: nate.ainsworth@ghphipps.com P: 970.776.5445

# **EXPERIENCE**

25 Years Construction Experience

#### **EDUCATION**

B.S. Industrial Technology Roger Williams University

#### CERTIFICATIONS

- ✓ OSHA 30
- ✓ CPR / 1st Aid
- ✓ Storm Water Management Training
- ✓ CDOT Erosion Control Supervisor Training

# NATE AINSWORTH

#### **Project Manager**

As Project Manager, Nate works with field operations throughout the duration to ensure a successful transition from preconstruction to construction. He also develops and tracks all estimate/scope documents including CSR/FSR documents and develops final GMP document, setting the project up for success. Nate attends design OAC and other pertinent meetings and provides accurate estimates, cost studies, experience, and team participation.

## **PROJECT EXPERIENCE**

#### Salida High School | Salida, CO

Project for Salida R-32 School District. New ground-up high school. Main school was demolished and a historic building connected by an existing bridge was separated and remodeled to form new district admin offices and special classrooms. New 2 story, 22 classroom wing, auditorium, auto shop area with 4 lifts, 2 gymnasiums, weight room, wrestling room, locker rooms, exterior stands with lighting, sound system, and track surrounding new synthetic turf football field (BEST Grant). LEED Gold.

- \$24 Million | 96,000 SF

#### Longfellow Elementary School | Salida, CO

Project for Salida R-32 School District. New 2-story elementary school with large glulam entry. The facility includes a cafeteria with full kitchen, band/music room, expansive library, technology learning area, gymnasium, classrooms, offices, and a large outdoor playground. (BEST Grant). **CO-CHPS Certified**.

- \$20 Million | 54,000 SF

#### Fort Morgan Middle School | Fort Morgan, CO

Project for Morgan County School District. Complete greenfield ground-up school. Three 2-story classroom buildings, separate library with computer training classroom, admin building, cafeteria with full kitchen, stage/theater room, main and aux gyms, musical arts room, CTE science lab, CAD room, and complete wood shop. LEED Silver.

#### PSD Transportation Facility | Fort Collins, CO

Project for Poudre School District. New facility to maintain bus fleet. Demo of existing structures, erection of structural steel with added install of second structure within building for mechanical loft. Main building has radiant floor heating. Full fluid exchange system installed with separate wash bay, admin office, tire/parts storage, training room, and large conference room.

- \$11.3 Million | 20,000 SF

#### Kenneth Homyak PK-8 | Dacono, CO

Project for Weld RE-8. New ground up PK-8 school. 2-story academic wing, large vaulted ceiling media center, admin wing, large gymnasium/auditorium, P-K wing, cafeteria, butterfly gardens, rain gardens, playground, and a large turf multi-use athletic field.

- \$15 Million | 52,000 SF





E: jamie.mendez@ghphipps.com P: 303.886.8042

## **EXPERIENCE**

20 Years Construction Experience

## CERTIFICATIONS

- ✓ USACE QCM
- ASHE
- ✓ HCC Certified
- ✓ OSHA-30
- Two-Hour OSHA Asbestos Awareness
- ✓ First Aid/CPR
- ✓ Bloodborne Pathogens Training
- ✓ AGC Executive Leadership Academy
- ✓ Advance Stormwater Management

# **JAMIE MENDEZ**

#### **Project Superintendent**

Jamie's responsibility is to oversee the total construction effort and insure the project is constructed in accordance with design, budget and schedule. He supervises contractors and material suppliers to ensure compliance with their contract and is responsible for quality control and overall project safety. He will coordinate the construction of the project with the owner and architect.

# **PROJECT EXPERIENCE**

#### Fort Lupton Public & School Library | Fort Lupton, CO

Project for the City of Fort Lupton. Includes large multipurpose room with community access, a collaborative makerspace with 3-D printers and a variety of other tools. The library will also have a quiet reading room, a computer lab and outside children's reading area.

- \$6.78 Million | 14,500 SF

#### Ent Smokey Hill Service Center | Aurora, CO

Project for Ent Credit Union. Ground-up branch credit union facility on a 1.2-acre site. A partnership between GH Phipps, Ent Credit Union, and Keys & Lauer Architects was formed to put in place multiple Ent Credit Union branches. Projects include groundup construction, remodels, tenant build-out and service agreements throughout the Colorado Front Range.

- \$3.2 Million | 5,400 SF

#### Kersey Library | Greeley, CO

Project for the High Plains Library District. The new space provides the library with dedicated meeting and study rooms, expanded collection capacity, twice as many public computers, spaces for kids, teens, and adults, and expanded staff workspace and resources.

- \$896K | 3,400 SF

#### Daniel Felix Ritchie School of Engineering | Denver, CO

Project for the University of Denver. Facilitated BIM work, site logistics, 4D schedule simulation, virtual enclosure mock-up and MEP coordination, worked with team to implement lean construction methods. LEED Gold.

- \$53.1 Million | 130,000 SF

#### Windsor High School Innovation Center | Gilcrest, CO

Project for Weld District RE-4. This multi-phase addition project is a two-story, 28,300 SF, including a new education and administration wing, performing arts and auditorium upgrades, a new security office, and significant site work.

- \$35.2 Million | 28,300 SF





E: ralph.kasper@ghphipps.com P: 303.656.5595

## **EXPERIENCE**

**31** Years Construction Experience

#### **EDUCATION**

B.S. Construction Management University of Nevada

#### **CERTIFICATIONS**

✓ LEED Accredited Professional

 Certified Professional Estimator—American Society of Professional Estimators

✓ ENR Top 20 Under 40

#### **AFFILIATIONS**

- ✓ ACE Mentor Program of Colorado
- ✓ Restoration Outreach Programs

# RALPH KASPER, LEED® AP

#### **Preconstruction Manager**

Ralph offers more than 30 years of experience and collaboratively works with owners and design teams for success during the preconstruction phase through the end of the warranty period. His communication style is an "open book," offering transparency and no surprises, enabling clients to make well-informed decisions while maximizing program goals.

# **PROJECT EXPERIENCE**

#### Denver Central Library | Denver, CO

Project for the City and County of Denver. This multi-phase project includes significant upgrades to address safety and security issues, correct deferred maintenance, and reconfigure the building for modern library programs, services and resources.

- \$45 Million | 93,550 SF

#### LINC Library | Greeley, CO

Project for the High Plains Library District. Addition and renovation project will include a children's museum, innovation center, a children's area, outdoor amphitheater, sound-proofed recording studio, and classrooms.

- \$21 Million | 64,000 SF

#### Tutt Library Renovation | Colorado Springs, CO

Project for Colorado College. The project included adding 26,000 SF to the library and demolition of the 1980 Tutt South addition. A 9,700 SF fourth level was constructed over part of the original library. The resulting 99,000 SF renovated library houses a new Center for Immersive Learning and Engaged Teaching, adds a cafe with work spaces, numerous terraces for studying outside and a several different types of study or collaboration areas.

- \$35 Million | 99,000 SF

#### Sam Gary Library | Denver, CO

Project for the Denver Public Libraries. This **LEED Gold** Certified project used recycled materials and content, daylighting, reflective roofing, subfloor air distribution, and automated lighting and temperature monitoring, among other green features.

- \$5.8 Million | 28,500 SF

#### Louisville Public Library and Parking Garage | Louisville, CO

Project for the City of Louisville. The new library building is approximately 2.4 times the size of the former library facility. In addition to the two-story library building, there is an underground parking garage with 84 parking spaces.

- \$7 Million | 32,500 SF





E: scott.ready@ghphipps.com P: 970.556.0541

## **EXPERIENCE**

18 Years Construction Experience

#### **EDUCATION**

B.S. Construction Management Colorado State University

Colorado POST Certification Front Range Community College

#### CERTIFICATIONS

- ✓ USGBC LEED AP
- ✓ OSHA 10 Hour
- ✓ OSHA 30 Hour
- AIC Certified Professional Constructor
- ✓ CrossFit Level 1 Coach
- ✓ Leadership Weld County 2019
- ✓ First Aid and CPR

# SCOTT READY

#### Sr. Estimator

As the project's Senior Estimator, Scott provides our clients with accurate estimates, cost studies, experience, team participation, and above all, integrity and project satisfaction. He supports the preconstruction manager and preconstruction team while also providing the field and office with timely and accurate information, reports, and contracts. He also assists in keeping the project under budget and on schedule.

# **PROJECT EXPERIENCE**

#### Larimer County Coroner's Office | Fort Collins, CO

Project for Larimer County. Renovation of an existing office space into the new Coroner's office and medical examiner's laboratory. Included several commercial coolers, a Lodox xray machine, and exam rooms.

- \$2.2 Million | 12,000 SF

#### Larimer County Probation | Fort Collins, CO

Project for Larimer County. Occupied renovation of an existing core space into office space and classrooms for the new probation offices.

- \$1.2 Million | 14,250 SF

#### Foundations Church | Windsor, CO

Core and shell abandoned grocery store remodeled into a church including classrooms, worship center, offices, auditorium with large scale audio/visual, etc.

- \$1.6 Million | 18,000 SF

#### Lenski/Franklin/Highland/Hopkins Schools | Littleton, CO

Project for the Littleton Public Schools. HVAC and AV upgrades for the classrooms as well as new life safety, fire alarm and intrusion detection.

- \$5 Million | 100,000+ SF

#### Aspen Creek School | Broomfield, CO

Project for Boulder Valley School District. Addition of 4,000sf of kindergarten classrooms, AV, tech, and lifesafety upgrades throughout the building, including new soccer field, and playground equipment. Building was occupied while addition was being constructed.

- \$4.2 Million | 54,000 SF

#### 2010 Bond Schools | Thornton, CO

Project for Mapleton Public Schools. Addtions, renovations, and new construction at the Skyview Campus. Included complete renovation of Skyview High School, addition of MEC, MESA, Clayton, and Academy Schools as well as a renovation of York Elementary.

- \$4.2 Million | 54,000 SF



# STAFF WORKLOAD

Our proposed personnel will be ready to start this project immediately. They will be able to come straight off of their current projects that are wrapping up to begin construction on the High Plains Library District's DSS Expansion project.

PROPOSED PERSONNEL	CURRENT COMMITMENTS
TIM JOHNSON Project Executive	Tim oversees all projects in our Northern Colorado office and will commit 20 percent of his time during preconstruction and construction.
NATE AINSWORTH Project Manager	Nate will have one other project when the DSS expansion is under construction. He will dedicate up to 40% of his time during preconstruction and 50% of his time during construction towards the DSS project.
JAIME MENDEZ Superintendent	Jaime will provide field input during preconstruction with 10% of his time dedicated to DSS and will be 100% dedicated while under construction.
RALPH KASPER Preconstruction Manager	Ralph will dedicate 40% of his time to the project during preconstruction and 10% during construction.
SCOTT READY Sr. Estimator	Scott will dedicate 80% of his time to DSS in preconstruction and 20% during construction.





Dist in

# REFERENCES



HIGH PLAINS LIBRARY DISTRICT

Dr. Matthew Hortt, Executive Director 970.506.8563 | mhortt@highplains.us

Relevant Team Members Tim Johnson, Ralph Kasper, Jaime Mendez, Kai Kitagawa



WEMBER, INC. LINC, FORT LUPTON, AND KERSEY LIBRARIES Dan Spykstra, Project Manager

720.382.3795 | dspykstra@wemberinc.com

#### **Relevant Team Members**

Tim Johnson, Ralph Kasper, Jaime Mendez Nate Ainsworth, Kai Kitagawa, Scott Ready

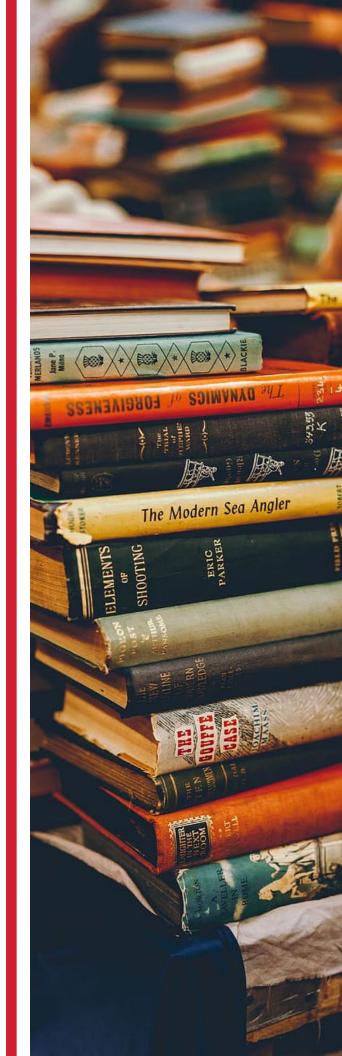


CITY & COUNTY OF DENVER DENVER PUBLIC LIBRARY RENOVATION

Curt Winn, Project Manager 303.710.3393 | curt.winn@denvergov.org

Relevant Team Members Ralph Kasper

# 04 PROJECT MANAGEMENT





# 04 PROJECT MANAGEMENT

## IT STARTS IN PRECONSTRUCTION

GH Phipps has best-in-class preconstruction services to get your project started off right. From kickoff to subcontractor selection, we are proactively looking at all of your options ahead of time to ensure we meet your project goals. We look at prefabrication, material procurement, and subcontractor selection needs to get materials to you in expedited ways. We control costs through value engineering and BIM to see all areas we could save you money, and go through every option available to ensure you are getting the highest possible quality for the lowest budget number within your project schedule.

A thorough preconstruction effort sets a project up for success from the planning stages. When our preconstruction managers take on a project, they own the process from the conceptual estimate through contracting our trade partners. Our process ensures efficiency and protects the project from cost escalation. A detailed comparison of subcontractor proposals is well defined to minimize risk to HPLD. Ralph Kasper and Scott Ready will be active participants with the architect, Wember, and HPLD stakeholders to manage preconstruction budgeting efforts through Target Value Design, along with procurement of materials and generating subcontractor interest.





#### **COST STUDY REPORT (CSR)**

Each estimate is a budget control mechanism. The line-item quantity is priced based on the latest available documents. It can be compared with the corresponding line item in the previous estimate to readily identify any changes in project scope and potential variances from the established project budget. We use our CSR to communicate and track all known open items and potential changes with cost alternative ideas to present the trending analysis. Those cost alternative ideas and design changes are identified, categorized, priced, and totaled to provide a "snapshot" of anticipated project cost and the effects on the budget. The CSR is reviewed at all design meetings/phases. This extremely useful tool makes the team aware of the total project cost weekly. It identifies outstanding cost issues, opportunities, alternative solutions, and risks while tracking team discussions and decisions.

## FINANCIAL STATUS REPORT (FSR)

GH Phipps uses the FSR to track and compare the multiple design phase estimates: Programmatic, Schematic Design, Design Development, and Construction Documents against each other. The report clearly shows the changes in costs at each scope level of work.

The benefit is two-fold:

- 1. The overall project cost estimate changes between each milestone estimate are apparent. The report shows if there are major shifts in a particular scope of work.
- Explanations of the changes are discussed and a plan of action is formulated.

The CSR trending log and the FSR Report work in combination to keep the project within budget during the design phase.

Larami	E County Community College					c	COST STUDY REPORT Sohematio Estimate March 28, 2013 Em/Job #18.0107
		Sub	mitted		Status		
ltem	Description	Date	Deduct/Add Amount *	Status	Date	Accepted Amount *	Remarks
EXTERIO							
2301	Use metal panel in \$25-35/sf range (potential for a Berridge panel)	3/27/2018	(30,000)	Accepted	4/10/18	(30,000)	
2302	Add 314 SF of Curtainwall	4/10/18	28,000	Accepted	4/10/18	28,000	
2303	Deduct 202 SF of Storefront	4/10/18	(13, 130)	Accepted	4/10/18	(13,130)	
2304	Add exterior door	4/10/18	2.500	Accepted	4/10/18	2.500	
2305	Add Metal panel - 1,090 SF	4/10/18	27,250	Accepted	4/10/18	27,250	Pricing both 22 and 24 GA
INTERIO	RS						
2401	Reduce Wood Ceiling from approx 3500sf to 2500sf	3/27/2018	(40.000)	Pending			
2402	Reised Access Flooring	3/26/2018	51,680	Rejected	3/26/2018		
2403							
QUIPM	ENT AND FURNISHINGS						
	Milwork in Innovation Center (make alternate)	3/27/2018	(20.577)	Pending			

Sample CSR

#### **CONSTRUCTABILITY REVIEWS**

Constructability Reviews are part of our pre-construction process. The Reviews leverage early contributions of knowledge and expertise using new technologies, allowing team members to achieve their potential throughout the project, and assist the entire team in the beginning of project design.

- Purpose: We use Constructability Reviews to coordinate objectives, reduce duplication, reduce costs, prevent potential conflicts, prevent rebuilding, reduce the impact of administrative costs, identify missing information, eliminate discrepancies, and facilitate more effective coordination reviews.
- Deliverable: A set of documents that allows the project to be bid, coordinated, constructed, and occupied with a minimum amount of confusion and errors while being cost effective. A constructability report will be provided at completion of SDs and during the finalization of the permit drawings for Construction Documents.

G					FINANCIAL STATUS REPORT BY CSI SECTION	T
	ool District tary 13				Date: February 19, 2019 Est/Job # 18.0630	
	DESCRIPTION	DD 11/29/2018	CD 2/19/2019	OVER UNDER	* REMARKS	
013112	General Conditions	591.467	591.467	UNDER		
	Weather Protection Allowance	32,260	32,260	ő	includes masonry & Finish Heat	
	Hoisting	158,766	158,766	0		
017125		79.921	67.839	(12.082)		
	Temporary Window Enclosures	28.627	28.627	0		
	Final Cleaning	21.846	21,846	ő		
	Building Concrete	1.030.677	755.526	(275,151)		
	Facilities and Storage	0	17,544	17,544		
033057	Site Concrete	636,235	545,720	(90,515)		
042000	Masonry	962,704	963.818	1,114	Same contractor as elementary	12
055000	Steel	1,135,999	950.273	(185,726)		
061011	Rough Carpentry	196,724	204,678	7,954		
	Millwork	420,406	370,534	(49,872)		
071100	Dampproofing	23,220	18,477	(4,743)		
071200	Waterproofing	1,215	1,984	769		
075000	Membrane Roofing/Metal Panels	821,915	785,838	(36,077)		
	Roof Hatch	6,500	6,500	0		_
078400	Fire Stopping Systems	8,450	8,450	0		
079200	Joint Sealants	35,100	35,624	524		
079500	Expansion Joint Systems	10,400	12,133	1,733		_
081100	Door Package	230,878	232,388	1,510		
083300	Overhead Doors	26,780	27,793	1,013		
088100	Glazing	427,497	430,340	2,843	Same contractor as elementary	12
088800	Kalwall	16,440	17,240	800		
092110	Drywall	1,451,841	1,425,047	(26,794)		
093000	Flooring and Tile	427,618	409,350	(18,268)		_
095100	Acoustical	361,000	354,085	(6,915)		
096200	Polished Concrete	88,242	88,610	368		
096400	Wood Flooring	43,790	60,293	16,503	Water based finishes at CD	
064000	Logo Allowance	0	10,000	10,000		
099000	Painting	167,915	154,740	(13,175)		
099000	Misc Touch-up at Completion	15,604	15,604	0		
099992	Moisture Mitigation	202,500	27,900	(174,600)	Not needed at Tandus Rolled go	bod
099994	Floor Protection and temp heating	77,220	90,342	13,122		
101100	Visual Display	0	52,935	52,935	OFCI at DD	
101400	Signage	40,900	35,911	(4,989)		
	Striping & Signs	15,306	32,413	17,107		
101453	School Zone Flashers	0	62,514	62,514		
	Cubicle Track and Curtain	1.335	1.565	230		

Sample FSR

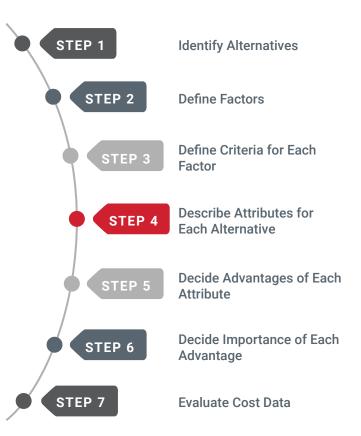


## CHOOSING BY ADVANTAGES

Another great tool we will utilize on this project is the Choosing by Advantages (CBA) process. This is a very team collaborative process designed to make decisions based upon the best advantages/ attributes the team sets up. This process can be used to choose systems (MEP, structural, skin, etc.), products (hardware, masonry, metal panels), team members (subcontractors, consultants etc.), virtually anything or component of the project. Evaluating the advantages of each system, product, team member etc. for a given attribute helps the team define the true value of each item. Cost is an attribute, however, it is the last thing to review so as not to cloud the value of the established attributes. The documentation resulting from CBA can always be retrieved to refresh memories of "why did we decide that?"

A lesson learned from the CBA process, is to make sure to level set the entire team in terms of educating them on the process. Before the CBA system is deployed on this project, we make sure all team members are up to speed on how the system works in order to make sure the time and effort is of value.

The CBA chart below is an example of how we might choose alternates for a project:



	ALTERN	NATIVES EXAMPLE	SHEET
	Cast in Place Concrete	Structural Steel (Moment)	Structural Steel (Shear)
	Score: 0	Score: 100	Score: 100
Factor: Schedule Criteria: Shorter Duration	Attribute: 150 Work Days Advantage: None	Attribute: 80 Work Days Advantage: 14 Weeks Shorter	Attribute: 80 Work Days Advantage: 14 Weeks Shorter
Factor: Cost	Score: 0	Score: 95	Score: 90
Criteria: Less Expensive Option Preferred.	<b>Attribute: \$14,100,000</b> Advantage: Baseline	<b>Attribute: \$13,500,000</b> Advantage: \$600k < Baseline	<b>Attribute: \$13,500,000</b> Advantage: \$500k < Baseline
Factor: Design Flexibility Criteria: More Flexibility to Move Structure Preferred.	Score: 70 Attribute: Structure Can Move Off Gridline Advantage: Greatest Flexibility	Score: 0 Attribute: Structure is Fixed Advantage: 0 Flexibility	Score: 60 Attribute: Structure Can Move Slightly Off Gridline Advantage: Slight Flexibility
TOTAL SCORE	70	195	250



## **CONSTRUCTION MANAGEMENT & COORDINATION**

GH Phipp's main goal for the HPLD DSS Expansion project is to provide an exceptional building experience. The methodology behind our management plan is to build a cohesive, effective team of professionals who enjoy working together to accomplish the primary objective of providing a successful project. This is accomplished by establishing trust among team members and developing solid relationships through direct communication and total transparency. Our project management plan is the combination of tools, processes, methods, systems, and people. The following diagram summarizes key topics and shows supporting activities and strengths.



#### Documentation

- Detailed Schedule
   (CPM)
- Web-Based System
- Submittals
- Continuously Updated Construction Documents
- On-site Records

## **Project Tracking**

- Cost Control
- Budget Adherence
- Budget Transparency
- Ongoing VE
- Contingency & Scope Change Management
- CSR & FSR Reports
- Progress Payment Review

## **Quality Control**

- Three Step QA/QC
  Process
- A3 QA/QC Plan
- BIM/VDC Coordination
- Site Inspections & Reports
- Toolbox Talks
- Compliance
   Standards

## Safety & Logistics

- Site Security
- Inside & Outside
   Fence
- Site Logistics
- Code of Conduct
- Timelapsed Camera
- COVID Policy
- Training

## Self Perform

- Concrete
- Building Layout & Survey
- BIM/VDC
- Selective
- Demolition
- Rough & Finished Carpentry
- Clean-up

## Close-Out

- Organized
   Warranty Process
- Punchlist Items
- Building
   Commissioning
- Comprehensive
   Owner Training
- Owner Move-In



## LEAN CONSTRUCTION

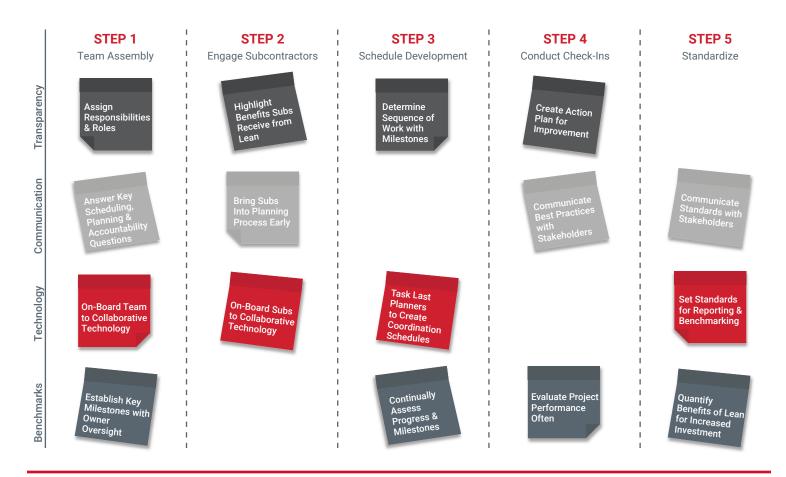
Lean is rooted in respect for the customer and in continuous improvement. At GH Phipps, we utilize our Lean Construction practices in a collaboration-based system that is founded on commitments and accountability. It keeps everyone on the project on task; including clients, stakeholders, architects, engineers, and subcontractors. We all work together, using collaborative tools, to search for ways to eliminate waste and drive significant improvements in the budget. GH Phipps concentrates on the three core Lean Construction principals to help drive success:

- 1. Early Stakeholder Involvement
- 2. Pull Planning
- 3. Weekly Work Planning & Percent Plan Complete

From processes to materials, everything needs to be communicated, understood and coordinated to ensure the best results possible. Our process focuses on trust, respect and accountability throughout all aspects of the project. Teams work together as a unit to uncover value, innovate, and align on the goals from the beginning of the project. Collaboration during the preconstruction process helps to prevent rework, conflict and costly issues on-site, all of which hold up production and can negatively affect the quality of output. Some of the common benefits we see from our Lean Construction processes throughout the project include:

- Enhanced Safety & Reduced Risks
- Greater Cost Control
- Improved Planning & Scheduling
- Higher Customer & Employee Satisfaction
- Higher Quality Completed Projects

Lean Construction increases the number of projects that are delivered on time and on budget. The example below illustrates a sample Pull Planning session on how we implement Lean across our project teams:





## SCHEDULE APPROACH

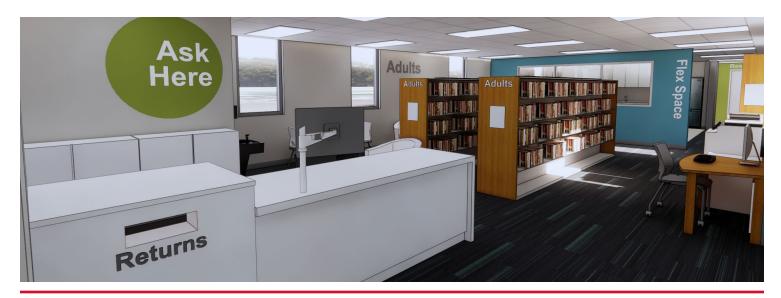
Our approach to the schedule is to manage all aspects of the project when we get engaged in design. Utilizing our in house scheduling team, we will establish a complete and accurate design schedule in collaboration with the selected design team. This design schedule will help to target key subcontractor buyouts and procure long lead materials as early as possible while collaborating with the design team to ensure adequate durations for their design milestones. We firmly believe the schedule outlined in section 1.1 of the RFP is achievable even without design progressing thus far. Our gut check using historical data would suggest that there is an opportunity to accelerate the schedule to closer to 12 months if we order long lead items like electrical gear, transformers, steel, etc. early enough to ensure we can get them when we need them. This will allow for more of the funds planned for this project to be invested in the building rather than paying for General Conditions costs.

As design documents are published, we will continue developing schedule detail and identify changes to the design that may impact the schedule. We will focus on areas of known long lead and gain additional feedback from the subcontracting community to stay on top of the continually evolving procurement environment. We are not only working on historical precedence when assuming the schedule. If any major site challenges arise, we will review and adjust accordingly. We will continue to refine the schedule through each pricing effort to reflect the current design. This early effort to refine the schedule during preconstruction will help to guide our team and yours to the start of construction.

When the job moves closer to construction, we will work with our subcontractors to validate our developed schedule. The first step is establishing the end date and then validating sequencing and durations with the subcontractors. We will meet with each subcontractor individually to walk through their role on the job step by step. This early validation helps the subcontractors prepare for the work ahead and increase their buy-in to the plan. Once all subcontractors have been validated, we will publish the construction baseline schedule. The baseline schedule establishes our team's strategy for success. Milestones will be established at this point to guide our teams to the finish line.

The team will meet bi-monthly throughout preconstruction and construction to update the schedule. Meeting more frequently increases the accuracy of our schedule updates and gives the team time to look for upcoming challenges. An accurate and up-to-date schedule helps everyone avoid pitfalls throughout a project's construction. After each schedule update, several reports will be published to the on-site team and GH Phipps leadership. These reports include a comprehensive schedule analysis that helps our team determine if the job is on a good path. If signs point to a slip in schedule, further action will be taken to deal with these issues correctly. At GH Phipps, we emphasize developing a good plan and following through with the plan. Tim remains engaged throughout this process with monthly internal team meetings and that oversight proves invaluable to support the team through the project.

For any components of construction that would impact HPLD, we would work closely with HPLD and Wember to plan ahead, schedule shuts downs at off-hours, and communicate early and often with stakeholders.



#### **04 PROJECT MANAGEMENT**



GH Phipps typically self-performs the following work items. This can be in the range of 10% 15% depending on the project type and scope. We complete the following with our own manpower, consistently earning work through competitive bidding.



## **SELECTIVE DEMOLITION**

Controlled and meticulous demolition, a key to working in historic buildings.



## CONCRETE

Concrete foundations, frames and flatwork. Turnkey concrete packages up to \$30 million.



## **BUILDING LAYOUT & SURVEY**

Benchmarks, horizontal, and vertical layout.



## BUILDING INFORMATION MODELLING (BIM)

3D clash detection, concrete lift drawings, structural, PEMB, and MEP coordination.



## **ROUGH CARPENTRY**

Wood framing, wall backing, roof blocking, templates and form work, installation of miscellaneous and ornamental steel.



**360° DOCUMENTATION** 360° cameras to document progress of a project.



## FINISH CARPENTRY & SPECIALTY INSTALLATION

Frame, doors, hardware, millwork, casework, rest-room accessories, and building specialties.



## **EXECUTION REQUIREMENTS**

Flagging, site clean-up, and temporary facilities.



QA/QC, track project progress, and systems verification.

## SELF-PERFORM WORK

GH Phipps is a true builder. Not many general contractors can say that any longer. Being a builder, we self-perform many scopes of work. Our self-performance capabilities enhance our ability to control safety, costs, schedule, quality, and certainty. By maintaining control over the important scopes of work below, we offer our clients several tangible benefits:

## **SUPPLY CHAIN & MARKET CONDITIONS**

With the ebb and flow of uncertainty in construction costs, we consistently check on current market trends and track supply chain lead times in order to provide the best value to our clients while keeping costs as low as possible.

## **CONTROL COSTS**

Self-performing numerous scopes of work benefits the Owner by achieving cost efficiency. By controlling major scopes of work, we are able to plan and execute more effectively with our workforce than relying solely on subcontractors. Because we self-perform work for ourselves and other general contractors we sharpen our pencil to stay cost competitive.

## SCHEDULE

When we control scopes of work and manpower, we control the schedule, which assures on-time project completion. Our internal planning of manpower is continuous. Our local workforce is a huge asset to driving schedule. In the recent past, the GH Phipps' workforce has been called upon to assist some of our trade partners due to lack of resources.

## QUALITY

With our craft people on-site constructing the building, it's much easier to control the quality of the product. GH Phipps holds our self-perform teams to higher standards; it's our name on the work being done and we make sure it's done right.

## CERTAINTY

All of the above benefits compile into a value of certainty. We estimate, schedule, and control the overall project with greater certainty when we self-perform work.

DRONE



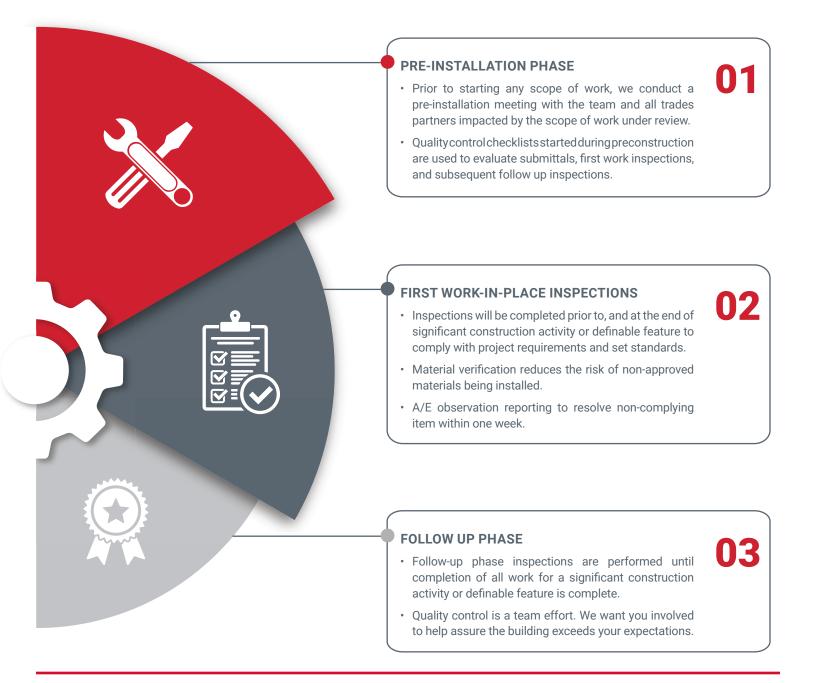
## DELIVERING A QUALITY PRODUCT

Delivering a quality project starts during pre-construction and must finish strong during construction.

During the Preconstruction Phase, a Quality Action (QA) Plan is assembled. We use an A3 document to establish the QA Plan. The A3 QA Plan is populated with information provided by the project specifications and our PYPE Auto Spec Review. In addition, information coming from the Constructability Reviews, pointing out particular concerns, will also be added to the A3. This document is owned by the Superintendent. It is his/her plan of Quality Control (QC) execution.

## **THREE STEP QA/QC PROCESS**

We will follow a tried and true three-step process for each major scope of work:





#### 2.0

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

(Please use additional sheets as necessary.)

COMPANY NAME: GH Phipps Construction

COMPANY ADDRESS: 4800 Innovation Drive, Fort Collins, CO 80525

**PHONE:** 970.776.5500

FAX: 970.498.8770

CONTACT PERSON NAME: Tim Johnson

CONTACT PERSON PHONE: 970.217.2792

CONTACT PERSON EMAIL: tim.johnson@ghphipps.com

- I Acknowledge that the "Sample Agreement" attached to this RFQ/P (<u>Exhibit D</u>) has been reviewed and is agreed to as shown. <u>YES</u> (YES/NO). Do you request amendments to the "Agreement" <u>NO</u> (YES/NO) Please list them if yes.
- 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. <u>YES</u> (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 Douglas County, Colorado<u>YES</u>(YES/NO)
- 5. The Proposer hereby acknowledges receipt of addenda numbers <u>1</u> through <u>1</u>.
- 6. List of construction items that will be self-performed.

А	Concrete	I	Drone Work (QA/QC & Systems Verification)
В	Selective Demolition	J	
С	Building Layout & Survey	K	
D	BIM/VDC	L	
Е	Rough Carpentry	М	
F	360* Documentation	Ν	
G	Finish Carpentry & Specialty Installation	0	
Н	Execution Requirements	Р	

Signature:

Date: 8/24/23

\* \* \* End of Proposal Form \* \* \*

			FEE PROPOS	AL F	ORM							
	Submitting Firm:	G⊦	Phipps Constructio	n Con	npanies							
<b>)</b> A	ERAL CONTRACTOR: Instructions for completing the this Part A: All YELLOW cells ctual dollar amount; 2) Months; 3) Percent; 4) Self-Performed Workl; 5) Included in C vance.										amount and note item as a	an
ARC	HITECT: Instructions for completing the this Part A: All GREEN cells are to be filled i	n. No	ote scope of servic	es an	ticipated in the ma	trix t	hat n	nay in	npact your fee			
	Description											
	Proposed Construction Value	\$	10,000,000.00		Not including design Services Fixed Fee	Not inc	cluding	g Desigi	n, General Conditions,	Contingency, Insu	rance or OH&P	
	Preconstruction Services Fixed Fee (Scope per RFP Part B, all Sub-Parts with "x" in Preconstruction Column below)		20,000.00									
	Design Services (Scope per RFP Part B, Sub-Part A "Design Services")	\$			Fixed Fee, Design F	ee Onl	у					
	Additional/Optional Services	\$	-									
		\$										
		\$			SUMMARIZES UP							
		\$										
	Overhead and Profit	\$					ue					
	General Conditions (Sum calculated per RFP Part B below)	\$	473,956.00	4.7%								
,	Total of Preconstruction, Additional/Optional Services, OH&P and General Conditions (2+4+5+6 above)	\$	788,956.00		assumed allowance			i order t	o provide accurate coi	nparison of bidder	totals. Favor will not be provided b	based upon
;	Construction Completion Time/Anticipated Schedule (in months—decimals are ok)		13.00	mos	Certificate of Occup	ancy to	be rea	ceived b	y date in RFP			
	General Conditions per Month	\$	36,458.15	/mo.								
	Construction Change Order "Holiday"* (\$ amount of aggregate changes allowable without any GC											
	markup whether self-performed or subcontractor performed.)	\$	100,000.00									
1	Construction Change Order Mark-Up (inclusive of all mark-ups OH&P, labor burden and GC's)		7%									
2	Contingency Rate	\$	N/A	N/A	Owner will carry con	tingenc	у					
3	Umbrella and General Liability Insurance Rate		0.95%									
	Builder's Risk Insurance Rate		0.12%									
	Performance and Payment Bond Rate	_	0.58%	<mark>0</mark>								
	Self-Performed Work (General Contractor to list all scopes of work (in whole or part) that are intended to b self-performed, in YELLOW cells below)	Ð										
	Concrete foundations and flatwork	_										
4b	Backing and blocking / rough carpentry	_		-								
4c	Millworkk installation	-										
4d	Demolition	_										
4e 4f	Doors / frames / hardware installatin Layout / Surveying	-										
41 4g	Daily clean-up / Final Cleaning	-										
<del>4</del> 9 4h	Erosion control and maintenance	-										
4i												
4j												
4k												
41												
4m												
4n												
	OWNER/ARCHITECT/GEN	ER	AL CONTRAC	TOR	SCOPE COO	DRD	INA		N MATRIX			
	A B C	D	E	F		G	Н				К	
	Ę		SUOT		ance* ponsibility		gineers					
	struction				f allowan int Respo it tor		ct / Eng					

	Precons	OH&P	: General	mount	Place "X" if	Procuremer A=Architect C=Contract O=Owner T=Team	By GC	Architec	Owner	mments
A. DESIGN SERVICES	ပဗ	ပဗ	ပ္ပ	¥0	-		By	By	By	రి
1 Design Charrette	x			ψυ				x		As Required for Concept Design, Schematic Design and moving through Design Development
2 A/V, Telephone, Paging Design	х					Team		X		Locations and Infrastructure by Design Team
3 IT/Data, Network, Cable Design	х					Team		х		Locations and Infrastructure by Design Team
4 Programming	х							х		A simple and concise Programming process to confirm/update District Program
5 Storm Water Management Plan	х						Х	Х		
6 Drainage Plan: Submittals to agencies as required	х							Х		
7 Utility Coordination	Х							Х		
8 Coordination with Fire Department	Х							Х		
9 Site Evaluation and Planning	Х							Х		
10 Flow Tests with Fire Department	х							Х		
11 Architectural Design	х							Х		
12 Civil Engineer Design	х							Х		
13 Landscape Architect/Irrigation Design	х							Х		
14 Structutal Engineer Design	х							Х		
15 Mechanical Engineer Design	Х							Х		
16 Electrical Engineer Design	х							Х		
17 Lighting Engineer Design	х							Х		
18 Plumbing Engineer Design	х							Х		
19 Fire Suppression Design	х							Х		
20 3D-Renderings and Animations	х							Х		As requried to communicate design, not for marketing
21 Acoustical Consultant	х							Х		
22 Cost Estimating Consultant	х						Х	Х		Design Team provide estimate validation of General Contractor estimates
<sup>23</sup> Furniture Design Consultant (B253 <sup>™</sup> -2007)	х							х		
<sup>24</sup> Interior Design (B252 <sup>™</sup> -2007)	х							х		
25 Signage Design	х							х		Code Signage, Building Signage, and interior graphics
26 Specifications Consultant	х							Х		
27 Traffic Consultant	х									
28 Coordination with Owner's Consultants	Х							Х		
29 Prepare and Present at Public Sessions and Board Meetings	х							Х		

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	Α	В	С	D	E	F		G	Н	I	К
		GC Preconstruction	GC OH&P	GC General Conditions	Amount	Place "X" if allowance*	Procurement Responsibility A=Architect C=Contractor O=Owner T=Team	y GC	y Architect / Engineers	y Owner	omments
30	Commisioning (B211 <sup>™</sup> -2007)	G	G	ტ	Ä	Ē	<b>₫</b> ₹ΰ0≓	By	By	× By	Ŏ
31	LEED Certification (B211 <sup>TM</sup> -2007)	х							х	^	
	LEED Energy Modeling	х							х		
	LEED Registration and Documentation Facility Support Services (B210 <sup>™</sup> -2007)	Х							х		Not anticipated
	Security Evaluation and Planning (B206 <sup>TM</sup> -2007)	х							х		
36	PV Panel Design	X							X		
	Lightning Protection Design	Х							х		As requried by code, Design Team to analyze as part of proposal N/A
	Fast-track Design Services Historic Preservation (B205 <sup>™</sup> -2007)										N/A
40	Surveys (Flown, ALTA, TOPO)									х	Design Team and Owner to determine survey scope and data requirements
	Code Analysis Zoning Analysis	X							x x		Design to meet current zoning guidelines
	Steel Stud Framing Design and Engineering	X X						х			
	Prepare and Issue Meeting Minutes	х							х		for Design Meetings
	Prepare documents for power application with electrical utility and submit key information as required.	х							х		By Architect and electrical consultant
46	Prepare bid packages for phasing of construction	Х							х		
	Generate bid alternates Prepare Comcheck submittal as required	x x							x x		
	Rezoning process	^							^		TBD - site specific
	Prepare a submittal log for the contractor to follow based on specifications	х							х		
	Documentation of owner existing Furniture Fixtures and Equipment								х		Minimal anticipated. Assume assisting in filling out data in required Owner forms.
	Assist in grant writing by providing key information to Owner Submit applications as required for Town Planning or Zoning Approval	Х							Х		
	Processes	х							х		
54	Prepare bid packages, chair pre-bid meeting, log results	Х							Х		
	Prepare response to bidders questions, issue addendums	Х							х		
	Construction: Observation and Field Reports Construction: Review material inspection reports and advise if corrections are	Х							Х		
	required	Х							Х		
	Construction: Review and make recommendations related to shop drawings	х							х		
	Close Out: Project Record Documents: Generate As-Builts in paper format including ASI, RFI's and install locations.			х	w/ GC Staff			х	х		
	Close Out: Project Record Documents: Review contractors posted sets during and after construction completion			х	w/ GC Staff				x		
	Close Out: Project Record Documents: Generate As-Builts in Revit or Autocad format and PDF			x	w/ GC Staff				х		
	Close Out: Prepare letter of substantial completion			х	w/ GC Staff				х		
63	Close Out: Assist Owner on resolution of warranty items			х	w/ GC Staff			х	х		
64	Close Out: Attend 11 and 23 month walk throughs of facility			х	w/ GC Staff			х	х	х	
					<b>\$</b> 0						
	B. Procurement A/V, Telephone, Paging Design				\$0						
2	IT/Data, Network, Cable Design										
	Programming Consultant Landscape Architect/Irrigation Design									Х	
5	Architectural Firm									Х	
	Civil Engineer Structural Engineer								X X		
8	Mechanical Engineer								х		
	Electrical Engineer Lighting Engineer/Designer								X X		
11	Plumbing Engineer								Х		
	Acoustical Consultant Cost Estimating Consultant								X X		
14	Furniture Design Consultant								~		
	Interior Design Consultant Signage Design Consultant										
17	Specifications Consultant										
	Traffic Consultant Commissioning Consultant								Х	X X	
20	LEED Consultant								х	X X	
	Security Consultant PV Panel Consultant										
23	Historic Preservation Consultant										
	Environmental Surveys (Phase I and Phase II)										
	Surveys (Flown, ALTA, TOPO) Testing & Inspection (Soils)									х	
27	Testing & Inspection (Construction Materials)									Х	
	Code Consultant Moving Consultant										
30	Hazmat Analysis										
31	Building Demolition Crew						Х				
	C. PRE-CONSTRUCTION				\$0						
	Review Design Concepts Develop Bid Packages for sub contractors	X X									
	,										

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F	Α	В	С	D	E	F		G	н	1	К
		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
	Material Selection and Availability Recommendations	Х									
	Building Systems Recommendations Coordinate Owner-Supplied Equipment	x x									
	Life Cycle Costing Analysis	x									
7	Equipment Selection and Availability Review	х									
	Subcontractor Availability Review Construction Logistical & Execution Plan	X X									
3		~									
	D. PROJECT COST CONTROL				\$0				1		
	Master Budget; Generate and update Recommend approval of Contractor Invoices	Х						Х	X X		
	Manage cost of Alternates (trend log)	х							~		
4	Schematic Design Cost Estimate and Review	Х									
	Design Development Cost Estimate and Review Construction Document Estimate and Review	X X									
7	Guaranteed Maximum Price Cost Estimate	X									
8	Construction Cash Flow Projections (Monthly)	Х									
	Review estimates for accuracy and value engineering ideas Verify Correctness of Quantities & Prices of Change Orders	X X									
	Continuous Project Cost Input and Response to Design Team Queries	X X		х	w/ GC Staff						
	E. PROJECT SCHEDULING Generate Design Schedule of Events				\$26,149				x	x	
2	Master Schedule of Events including Owner items	х						х	^		
3	Preconstruction Activity Schedule (Bar Chart)	х						Х			
4 5	Construction Activity Schedule (CPM) Const Activity Schedule w/ Milestones (CPM Updates)		$\vdash$	X X	\$26,149 w/ CPM Updates						
	Shop Drawing & Submittal Schedule / Procedure				w/ CPM Updates						
	Mock-Up Schedule & Procedure				w/ CPM Updates						
	Generate and coordinate phasing sched w/ Owner Short-Interval Schedules				w/ CPM Updates w/ CPM Updates						
	Occupancy Schedules				w/ CPM Updates						
	F. SUBCONTRACTOR SELECTION / PURCHASING Set Prequalification Criteria including local provisions	х		-	\$0			Х			
	Recommend Subcontractor Selection Methods	x						x			
	Recommend Subcontractor Award Methods	х						X			
	Develop Subcontractor Interest Prepare Bidding Schedules	X X						X X			
6	Issue Plans, Specifications & Addenda	х						х			
	Receive Bids Analyze Bids	X						X			
	Recommend Award	X X						X X			
10	Determine Local Manpower Availability	х						х			
11	Prepare Subcontracts & Supplier Contracts	Х						Х			
	G. CONTRACT DOCUMENT COORDINATION				\$0					<u> </u>	
	Constructability Review & Recommendations	х									
	Review For Inclusion of All Work Review For Adequately Phased Construction	X X									
4	Identify Long-Lead Items	X									
5	Identify Commodity Shortages	Х									
6	Review and Coordinate Installation of Owner Supplied Fixed Equip				w/ GC Staff			<u> </u>			
	H. ARCHITECT STAFF				\$0						
	Principal Project Manager		X						X		
	Project Manager Project Architect		X X						X X		
4	Drafter		Х						х		
5	Administrative / Clerical		х						х		
	I. GENERAL CONTRACTOR STAFF				\$447,807					1	
	Corporate Executives										In Overhead and Profit
	Principal In Charge Project Executive										In Overhead and Profit In Overhead and Profit
	Operations Manager										In Overhead and Profit
5	Senior Project Manager				NA						In Overhead and Profit
	Project Manager Project Engineer			X X	\$99,886 \$100,405						
8	Safety Manager / Field Audit / Training			~	φτου, <del>4</del> 00						In Overhead and Profit
9	Human Resources										In Overhead and Profit
	Secretarial Project Estimating										In Overhead and Profit In Overhead and Profit
12	Project Accounting										In Overhead and Profit
	Project Scheduling										In Overhead and Profit
	Project Purchasing Project Superintendent(s)			x	\$231,655						In Overhead and Profit
16	Assistant Superintendent(s) (as required)			х	NA						
17	Field Engineer(s) (as required)				NA						
	Mechanical & Electrical Coordinator(s) (as required) Quality Control Engineer (As Required)				NA NA						
	Project Assistant / Clerk / Typist (As Required)			x	\$13,361						

	OWNER/ARCHITEC	:T/G	ENE	RA	L CONTRAC	TORS	SCOPE CO	ORD	INA <sup>.</sup>	TION	MATRIX
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		Prec	ОН&Р	General	ount	"Х" а	Procureme A=Architeo C=Contrac O=Owner T=Team	gC	Arch	Owner	e E
		GC I	000	U U U	Amo	Place	Proc A=A C=C O=O T=T	By G	By A	By C	Co
	Safety Engineer (As Required)				NA						
	Field Accounting (as required)				NA						
23	Registered Surveyor (As Required)			Х	\$2,500						
	J. QUALITY CONTROL / WARRANTY				\$750	<u> </u>					
	Develop & Submit Construction Safety Plan	х		Х							
2	Testing & Inspection (Construction Materials)								Х	Х	
3 4	Soils Investigations / Geotechnical Reports Environmental Surveys								Х	Х	
	HAZMAT Analysis										
6	Environmental Cleanup Coordination / Govt Document										
	Project Progress Photographs				\$750						
8 9	Field Reports Warranty Inspections Coordination				w/ GC Staff w/ GC Staff						l
9 10	Air & Water Balancing				NA						
11	Operator On-Site Training				w/ GC Staff						
	Prepare Operation and Maintenance Manuals				w/ GC Staff						
	Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out				w/ GC Staff						
	warranty items				w/ GC Staff						
15	Drug Testing & Screening (Field Personnel)				w/ GC Staff						
	Attend punch list walk throughs, prepare punch list, track items through										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
	completion				w/ GC Staff						consultants are using the same format as directed by the owner
1	K. TEMPORARY FACILITIES Temporary Field Office Facility				<b>\$63,809</b> \$31,578				-		r
	Field Office Furniture & Equipment				w/ Copier						
3	Field Office Copier(s)				\$7,651						
	Field Office Fax Machine(s)				w/ Copier						
	Field Office Computer(s) & Software Field Office Supplies				w/ Copier \$2,087						
	GC's Storage Trailers / Sheds				\$2,007 NA						
	Field Office Equipment Maintenance & Repairs				w/ Copier						
9	Architect / Engineer Temporary Office				NA						
	Project Sign Directional / Warning Signs				\$1,646 \$1,441						
	Bulletin Boards				w/ Project Sign						
	Potable Drinking Water / Ice / Cups				\$1,739						
	Temporary Toilets / Sanitary Sewer				\$10,962						
	Temporary Construction Fencing Barricades				\$2,996 NA						
	Covered Walkways				NA						
	Safety Equipment				\$1,605						
	First Aid Station & Supplies				\$535						
	Handrails / Toe Boards / Opening Protection				NA						
	Safety Nets Temporary Stairs				NA NA						
	Fire Extinguishers				\$1,569						
24	Flagman / Traffic Control				NA						
	Job Hauling Charges				NA						
26	Site Security				NA						
	L. TEMPORARY UTILITIES				\$3,991	I					
	Temp Telephone Install Equipment & Monthly Fee				NA						
	Telephone Expense (Long Distance Charges)	$\vdash$	$\mid$		NA \$2.001						
	Telephone Expense (Internet Charges) Cellular Phone Charges				\$3,991 w/ GC Staff		ļ				
	2-Way Radio Equipment				NA						
6	Temporary Electrical Service / Distribution				NA						
	Temporary Electrical Wiring & Lighting				NA						
	Light bulbs & Temp Electrical Maintenance Electrical Power Consumption Expense				NA NA - By Owner						
	Temporary Water Service / Distribution				NA - By Owner NA		ļ				
11	Temporary Water Consumption Expense				NA - By Owner						
	Temporary Gas Service / Distribution	$\vdash$	$\mid$		NA NA By Owner						
	Temporary Gas Service Consumption Expense Temporary Field Office Heating Energy Cost				NA - By Owner NA						
	Temporary Heating Service (Permanent System)				NA						
16	Permanent Heat System Filter Replacement				NA						
17	Maintenance Cost (Permanent Heat System)				NA						
	M. CLEAN-UP				\$55,534	L					
	Daily Clean-Up				\$22,534						
2	Final Clean-Up				\$12,000						
3	Final Glass Cleaning				w/ Final Cleaning						
	Debris Hauling/Removal				w/ Dumpsters NA			<b> </b>			
	Trash Chutes Trash Dumpsters				NA \$21,000	Х					
	Dump Permits & Fees				w/ Dumpsters						
8	Dust Control				NA						
9	Street Cleaning				NA			<b> </b>			
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		901	000	909	Amc	Plac	Procuremen A=Architect C=Contracto O=Owner T=Team	By GC	By ⊅	By C	Сод
	N. WEATHER PROTECTION			1	\$15,000			1	1		
1	Remove Snow & Ice Temporary Enclosures (Buildings)				\$5,000 NA	X					
3	Temporary Weather Protection for Sub Trades				\$10,000	Х					
	O. ON-SITE EQUIPMENT / HOISTING				\$0						
1	Automobile(s) & Fuel				w/ GC Staff						
	Hoisting Equipment & Fuel Material/Personnel Hoist(s)				NA NA						
	Crane & Hoist Operator(s)				NA						
5	Small Tools (GC's Only)				w/ GC Staff						
	Rental Equipment Fuel for Rental Equipment				NA NA						
	P. LEED CERTIFICATION MR2 1 Const Waste Management, Salvage or Recycle 50%				<b>\$0</b> NA						
2	MR2.1 Const Waste Management, Salvage or Recycle 50% MR2.2 Const Waste Management, Salvage Additional 25%				NA						
	MR5.1 Local/Regional Materials, 20% Manufactured Locally				NA						
4 5	MR5.2 Local/Regional Materials, 10% Harvested Locally IAQ3.1 Construction IAQ Management Plan, Const				NA NA						
6	IAQ4.1 Low-Emitting Materials, Adhesives & Sealants				NA						
	IAQ4.2 Low-Emitting Materials, Paints IAQ4.3 Low-Emitting Materials, Carpet				NA NA						
	IAQ4.3 Low-Emitting Materials, Composite Wood				NA						
					0.9						
	Q. DOCUMENT REPRODUCTION / PRINTING Schematic Drawings & Specifications				\$0						
2	Design Document Drawings & Specifications										
	Construction Drawings & Specifications Subcontractor / Supplier Prequalification Forms				w/ Precon Fee						
5	Bidding Instructions				w/ Precon Fee						
	Postage & Express Delivery Costs Subcontract & Supplier Contract Agreement Forms				w/ Precon Fee w/ Precon Fee						
	Subcontract & Supplier Contract Agreement Forms Shop Drawing Reproduction				w/ GC Staff						
9	As-Built Documents (Mark-ups & Recording)				w/ GC Staff						
	As-Built Documents (Printing) Maintenance Manuals (From Subs)				w/ GC Staff w/ GC Staff						
12	Operation Manuals (From Subs)				w/ GC Staff						
13 14	Estimating Forms Schedule Report Forms										
15	Accounting Forms										
16	Field Reporting Forms Cost Reporting Forms										
17	Special Forms										
	R. INSURANCE & BONDS				\$153,000	ł			I		
	Design professional liability insurance Builder's Risk Insurance										
3	Builder's Risk Deductible				\$10,000 typically						
	Special Insurance - O & E General Liability Insurance				NA						
	General Liability Insurance Umbrella Liability Insurance										
7	Excess Liability Insurance										
	Completed Products Insurance Professional Liability Insurance				\$95,000						
10	Workman's Compensation Insurance (GC's Only)				w/ GC Staff						
	FICA / Medicare Insurance (GC's Only) Federal Unemployment Insurance (GC's Only)				w/ GC Staff w/ GC Staff						
13	State Unemployment Insurance (GC's Only)				w/ GC Staff						
	Payment & Performance Bond				\$58,000 NA						
10	Subcontractor & Supplier Bonds										
	S. PERMITS & FEES				\$38,958					_	
	Foundation Permit Superstructure Permit				NA						
3	Building Permit (General)				\$38,458						
	Mechanical Building Permit Electrical Building Permit				NA NA						
6	Plan Check Fees										
7	Street Use Permit										
	Curb & Gutter Permit Sidewalk Permit										
10	Street / Curb Design Charge										
	Sign Permits Site Drainage (Erosion Control) Permit				\$500						
13	Electrical Primary Construction Fee				φ500						
	Water Service Construction Fee										
	Gas Service Construction Fee Water Tap (Inspection) Fee										
17	Sanitary Tap (Inspection) Fee										
	Storm Tap (Inspection) Fee Special Tap Fees										
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	OWNER/ARCHITECT/GENERAL CONTRACTOR SCOPE COORDINATION MATRIX										
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		GC Preconstruction	GC OH&P	GC General Conditions	Amount	Place "X" if allowance*	Procurement Responsibility A=Architect C=Contractor 0=Owner T=Team	By GC	By Architect / Engineers	By Owner	Comments
20	Contractor's Licenses	Ŭ		-	w/ OH&P						
	Zoning Fees										
	Construction Equipment Licenses										
	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										
	Owner Moving Costs										
5	Video record with proper sound system Owner Training			Х	w/ GC Staff						
	U. ADDITIONAL ITEMS				\$0						
	(enter additional items as necessary)										
	(enter additional items as necessary)										
	(enter additional items as necessary)										
	(enter additional items as necessary)										
	(enter additional items as necessary)										
6	(enter additional items as necessary)										
7	(enter additional items as necessary)										
8	(enter additional items as necessary)										

## HIGH PLAINS LIBRARY DISTRICT BOARD OF TRUSTEES COMMUNICATION

Meeting date: June 17th, 2024

Type of item: Action

Subject: CVRL & Farr Regional Library Architecture Contract

Presented by: Dr. Matthew Hortt, HPLD Executive Director

Recommendation: Staff recommend the Board approve the CVRL & Farr Regional Library Architecture Contracts and direct the Executive Director to sign them

## Background

In April the High Plains Library District Board Awarded the Architecture Contracts for the remodeling of both CVRL & Farr Regional Libraries to VFLA. Since that time Staff and Legal Counsel have been working with the firm on the contracts for both projects. For accounting purposes, the projects will be contracted and billed separately.

## Considerations

- HPLD Legal Counsel has reviewed the contracts
- The firm accepted HPLD Legal Counsel edits
- CVRL Contract VFLA
  - Design Services: \$52,750
  - Other Services: \$3,000
- Farr Contract VFLA
  - Design Services: \$30,000
  - Other Services: \$1,500

## Recommendation

Staff recommend the Board approve the CVRL & Farr Regional Library Architecture Contracts and direct the Executive Director to sign them

## AIA Document B133 - 2019

Standard Form of Agreement Between Owner and Architect,

Construction Manager as Constructor Edition

AGREEMENT made as of the « 15th » day of « April » in the year « 2024 » (In words, indicate day, month and year.)

**BETWEEN** the Architect's client identified as the Owner: (Name, legal status, address, and other information)

« High Plains Library District » « » « Dr. Matt Hortt » « 2650 W 29th St » « Greeley, CO 80631 » « 970-506-8563 » «»

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

« VFLA Architecture + Interiors» « » « 419 Canyon Ave #200 » « Fort Collins, CO 80521» « » « »

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

«Carbon Valley Regional Library Refresh» «7 Park Ave, Firestone, CO 80504» «see attached RFP for scope »

The Construction Manager (if known): (Name, legal status, address, and other information)

« PCL »« » « 2000 S Colorado Blvd, Ste 2-500 » « Denver, CO 80222 » « »

The Owner and Architect 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.

This document is intended to be used in conjunction with AIA Documents A201-2017™, General Conditions of the Contract for Construction; 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; and A134-2019™ 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 without a Guaranteed Maximum Price. AIA Document A201™-2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- SUPPLEMENTAL AND ADDITIONAL SERVICES 4
- **OWNER'S RESPONSIBILITIES** 5
- COST OF THE WORK 6
- 7 COPYRIGHTS AND LICENSES
- **CLAIMS AND DISPUTES** 8
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- **MISCELLANEOUS PROVISIONS** 10
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- SCOPE OF THE AGREEMENT 13

#### 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:

(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 A – Design RFP for initial program information. »

## § 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.)

## « Carbon Valley Regional Library, 7 Park Ave, Firestone, CO 80504 »

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1: (Provide total and, if known, a line item breakdown.)

« Carbon Valley Regional Library \$880,000 »

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

Design phase milestone dates, if any: .1

## « Construction documents by September 2024 »

.2 Construction commencement date:

#### « October-November 2024 »

.3 Substantial Completion date or dates:

« January 2025 »

.4 Other milestone dates:

« »

**§ 1.1.5** The Owner intends to retain a Construction Manager pursuant to the following agreement: (*Indicate agreement type.*)

- [ **«X** »] 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.
- [ « »] AIA Document A134–2019, 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 without a Guaranteed Maximum Price.

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

(List number and type of bid/procurement packages.)

« None anticipated at this time »

§ 1.1.7 The Owner's anticipated Sustainable Objective for the Project: (*Identify and describe the Owner's Sustainable Objective for the Project, if any.*)

«The project is to meet current energy codes at a minimum with sustainability principles applied to where best value can be determined. The project is not pursuing certification of any type. »

**§ 1.1.7.1** If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E234<sup>TM</sup>–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 Architect 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.

**§ 1.1.8** The Owner identifies the following representative in accordance with Section 5.4: *(List name, address, and other contact information.)* 

```
« « High Plains Library District » « »
« Dr. Matt Hortt »
«2650 W 29<sup>th</sup> St »
«Greeley, CO 80631 »
«970-506-8563 »
mhortt@highplains.us »
« »
« »
```

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

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

#### « Wember, Inc. »

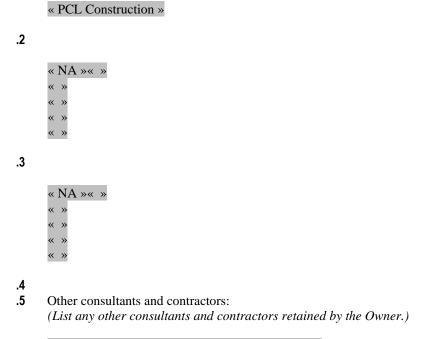
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« Brooke Kardos » « 7350 East Progress Place STE 100 » « Greenwood Village Colorado 80111-2126 » « T: 720-708-7022» « E: PM Email bkardos@wemberinc.com»

§ 1.1.10 The Owner shall retain the following consultants and contractors: (List name, legal status, address, and other contact information.)

> .1 Construction Manager:

> > (The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1)



« Sturgeon Electric for data and an AV company. »

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4: (List name, address, and other contact information.)

```
« VFLA Architecture + Interiors »
« 419 Canyon Ave #200 »
« Fort Collins, CO 80521 »
« »
« »
« »
```

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2: (List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Mechanical and Plumbing Engineer:

```
« TBD »« »
« »
« »
```

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	« » « »
.2	Electrical Engineer :
	« TBD »« »
	« »
	« »
	« »
	« »
.3	:
	« TBD »« »
	« »
	« »
	« »
	« »

§ 1.1.12.2 Consultants retained under Supplemental Services:

§ 1.1.13 Other Initial Information on which the Agreement is based:

#### « See EXHIBIT A - RFP dated 3/4/2024 & Addendum 01 dated 3/18/24 »

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation as an approved additional service. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

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## § 2.6 Insurance.

- § 2.6.1 Workers' Compensation insurance as required by the Labor Code of the State of Colorado and Employers Liability Insurance. Minimum Employer's Liability Limits include FIVE HUNDRED THOUSAND DOLLARS (\$500,000) for disease policy limit, disease of each employee, and each accident AND Employer's Liability Limits include FIVE HUNDRED THOUSAND DOLLARS (\$500,000) aggregate. The workers compensation liability insurance policies required by this Agreement shall contain a waiver of subrogation against the Owner and Wember Inc..
- § 2.6.2 Commercial General Liability insurance with a minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall include the Owner, its officers and its employees and Wember Inc. and its officers and employees, as additional insureds, with primary and non-contributory coverage as respects Owner, its officers and its employees, and shall contain a severability of interests provision. The commercial general liability insurance policies required by this Agreement shall contain a waiver of subrogation against the Owner and Wember Inc.. The Architect shall maintain this coverage in effect during the term of this Agreement and for eight (8) years after the Date of substantial completion of the Project.
- § 2.6.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) per person in any one occurrence. The policy shall include the Owner, its officers, and its employees, and Wember Inc. and its officers and employees as additional insureds, with primary coverage and non-contributory with respect to owners, officers, and employees, and shall contain a severability of interests provision. The Automobile liability insurance policies required by this Agreement shall contain a waiver of subrogation against the Owner.
- § 2.6.4 Umbrella/Excess Liability insurance with a minimum limit of TWO MILLION DOLLARS (\$2,000,000) for bodily injury and property damage in any one occurrence. The policy shall include the Owner, its officers and employees and Wember, Inc., and its officers and employees as additional insureds shall include waiver of subrogation provisions and include primary and non-contributory provisions and a severability of interests clause. The Umbrella/Excess Liability insurance shall be excess insurance with respect to the minimum General Liability, Automobile Liability and Employers Liability portion of Workers Compensation.
- § 2.6.4.1 The Parties acknowledge and agree that, pursuant to 2.6.7, below, subcontractor Integrated Mechanical Engeering and Ripley Design are subconsultants whose work is of a relatively small scope. The requirements of 2.6.4, above shall not apply to Integrated Mechanical Engineering. The requirements of 2.6.4 shall be modified to ONE MILLION DOLLARS (\$1,000,000) for Ripley Design solely.
- § 2.6.5 Professional Liability coverage with a minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each claim and TWO MILLION DOLLARS (\$2,000,000) aggregate. Professional liability insurance is required for consultant subcontractors only if such subcontractor is providing architectural, engineering, or other professional services subject to state licensure. If the required minimum Professional Liability coverage is written on a CLAIMS MADE form, Architect shall maintain the required minimum Professional Liability coverage for a period of eight (8) years after the date of substantial completion or provide satisfactory evidence to Owner of the purchase of adequate tail coverage for the complete eight (8) year post-substantial completion period. The retroactive date on any such claims made policy shall not be later than the execution date of this agreement.

- § 2.6.6 A certificate of insurance, acceptable to the Owner, with copies of additional insured endorsements shall be provided by the Architect's/Consultant or it's insurance broker/agent(s), and by any subcontractor or the subcontractor's broker/agents providing services through Architect, as evidence that policies providing the required minimum coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the Owner before the commencement of any services under the Agreement. Renewal certificates shall be provided promptly upon renewal of each respective policy. The insurer shall give the Owner notification of any termination by a refusal to renew the policy or of any material change in coverage of the policy in the manner provided by law, or, if none, at least thirty (30) days prior to such termination or change. The Architect shall provide written documentation identifying the Owner, Wember, Inc. and Architect as an additional insured and certified complete copies of all required policies and endorsements if so requested.
- § 2.6.7 The Architect agrees to require its subconsultants to comply with the insurance provisions required of the Architect pursuant to this Agreement; provided, however, the Architect and the Owner may mutually agree to modify these requirements for subconsultants whose work is of a relatively small scope. The Architect agrees that it will contractually obligate its subconsultants to promptly advise the Architect of any changes or lapses of the requisite insurance coverages and the Architect agrees to promptly advise the Owner of any such notices that the Architect receives from its subconsultants. The Architect assumes all responsibility for monitoring subconsultant contracts and insurance certificates for compliance with the insurance and other provisions of this Agreement until final completion of the Project including any Warranty periods.
- § 2.6.8 Failure to obtain and maintain the required insurance shall constitute a material breach of the Agreement and the Architect will be liable for any and all costs, liabilities, damages and penalties (including attorney fees, court costs and settlement expenses) resulting to the Owner and Wember, Inc. from such breach. Failure of the Architect to provide insurance as required or failure of the Owner to notify the Architect of any breach by the Architect of the requirements shall not be deemed to be a waiver by the Owner of any of the terms and conditions. The obligation to procure and maintain insurance required is a separate responsibility of the Architect and independent of the duty to furnish a copy or certificate of such insurance policies.

The Architect and it's consultants shall maintain the insurance until termination of this Agreement or until all required minimum insurance coverages and limits stated in this Agreement through completion of the Project and any applicable statutes of limitation or statutes of repose.

§ 2.6.9 Additional Insured Obligations. Except for Workers Compensation and to the fullest extent permitted by law, the Architect shall cause the Primary and Excess or Umbrella polices for Commercial General Liability, and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's and Wember, Inc.'s insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.10 The Architect shall provide certificates of insurance acceptable to the Owner, including specific additional insured policy endorsements to the Owner that evidence compliance with the requirements in this Section 2.6.

#### SCOPE OF ARCHITECT'S BASIC SERVICES ARTICLE 3

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend and document Project meetings with meeting minutes, communicate with members of the Project team, and provide written reports to the Owner and their representative.

§ 3.1.2 The Architect shall coordinate its services with sub consultants and those services provided by the Owner, the Construction Manager, and the Owner's consultants. The 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 Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

**§ 3.1.3** As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

**§ 3.1.4** The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

**§ 3.1.5** The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's written acceptance of non-conforming work, made or given without the Architect's written approval.

**§ 3.1.6** The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

**§ 3.1.7** The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

**§ 3.1.8** Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposalthe Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

**§ 3.1.9** In performing the services hereunder, the Architect shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado. The Architect shall also comply with all applicable ordinances, regulations, and resolutions of the City and other governmental authorities having jurisdiction over the project.

§ 3.2 Review of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate § 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal. The Architect shall assist the Owner in reviewing the Construction Manager's proposal. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

**§ 3.2.2** Upon authorization by the Owner, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment.

## § 3.3 Schematic Design Phase Services

**§ 3.3.1** The Architect shall review the program, and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services, and shall prepare designs and documents accordingly.

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§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager's review and the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.

§ 3.3.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality, or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

## § 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's written approval of the Schematic Design Documents, and on the Owner's written authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

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§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.4.3 Upon receipt and review of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

## § 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the written Owner's approval of the Design Development Documents, and on the Owner's written authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.5.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall develop (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's written approval of the Construction Documents.

§ 3.5.6 The Architect shall review and evaluate the updated estimate of the Cost of the Work prepared by the Construction Manager and provide its assessment of the Cost of the Work to the Owner.

## § 3.6 Construction Phase Services

## § 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201<sup>TM</sup>-2017, General Conditions of the Contract for Construction. If the Owner and Construction Manager modify AIA Document A201-2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 3.6.1.2 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance

with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, and those of its consultants but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

## § 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction (1) to become generally familiar with the progress and quality of the portion of the Work completed (2) 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 shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and shall advise the Owner and Construction Manager in writing of such non-conformance. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, 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 Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

## § 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's 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 Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall 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 Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

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## § 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule 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.

**§ 3.6.4.2** The Architect shall review and approve, or take other appropriate action upon, the Construction Manager'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. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's initial response to such requests shall be made in writing within ten business (10) days of receipt.

**§ 3.6.4.3** If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

**§ 3.6.4.4** Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within five (5) business days of receipt . If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents. Architect acknowledges that the team, including the Architect, will work through an online project management system for this project. The system is anticipated to be provided by the Owner's Representative; Owner Insite.

## § 3.6.5 Changes in the Work

**§ 3.6.5.1** 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. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

## § 3.6.6 Project Completion

- § 3.6.6.1 The Architect shall:
  - .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
  - .2 issue Certificates of Substantial Completion;
  - .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and
  - .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to (1) check conformance of the Work with the requirements of the Contract Documents and (2) Architect and their consultants shall complete a final inspection log and generate a "Punch List" that will be included in the letter of substantial completion. These issues will be tracked using collaborative software to closure by the Architect and issued to the Construction Manager; and (3). verify the accuracy and completeness of the Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

#### SUPPLEMENTAL AND ADDITIONAL SERVICES ARTICLE 4

#### § 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

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Supplemental Services	Responsibility
	(Architect, Owner, or not provided)
§ 4.1.1.1 Assistance with Selection of Construction Manager	Owner
§ 4.1.1.2 Programming	Architect to finalize
§ 4.1.1.3 Multiple Preliminary Designs	Architect
§ 4.1.1.4 Measured drawings	Architect
§ 4.1.1.5 Existing facilities surveys	Not applicable
§ 4.1.1.6 Site evaluation and planning	Architect
§ 4.1.1.7 Building Information Model management responsibilities	Architect
§ 4.1.1.8 Development of Building Information Models for post construction use	Not provided
§ 4.1.1.9 Civil engineering	Not provided
§ 4.1.1.10 Landscape design	Architect
§ 4.1.1.11 Architectural interior design	Architect
§ 4.1.1.12 Value analysis	Not Provided
§ 4.1.1.13 Cost estimating	Construction Manager
§ 4.1.1.14 On-site project representation	Not Provided
§ 4.1.1.15 Conformed documents for construction	Architect
§ 4.1.1.16 As-designed record drawings	Architect
§ 4.1.1.17 As-constructed record drawings	Construction Manager – Design Team Reviewed
§ 4.1.1.18 Post-occupancy evaluation	Architect – 11 Month Warranty Walk
§ 4.1.1.19 Facility support services	Not Provided
§ 4.1.1.20 Tenant-related services	Not Provided
§ 4.1.1.21 Coordination of the Owner's consultants	Owner
§ 4.1.1.22 Telecommunications/data design	Architect
§ 4.1.1.23 Security evaluation and planning (B206-2007)	Not Provided
§ 4.1.1.24 Commissioning (B211-2007)	Not Provided
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	Not Provided
§ 4.1.1.26 Historic preservation	Not Applicable
§ 4.1.1.27 Furniture, furnishings, and equipment design (B253 <sup>™</sup> − 2007)	Architect
§ 4.1.1.28 Other services provided by specialty Consultants	Not Provided
§ 4.1.1.29 Other Supplemental Services	Not Provided
§ 4.1.1.28 Graphics and Wayfinding	Architect
§ 4.1.1.29 Acoustical Engineering	Not Provided
§ 4.1.1.30 Envelope Consultant	Not Provided

## § 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

«4.1.2.2 As part of Basic Services, Architect shall conduct an inspection of the Project eleven (11) months after Substantial Completion for the purpose of notifying the Contract of any warranty problems observed or noted by the Owner before expiration of the one (1) year warranty.

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## **4.1.2.3**. Architect to provide low voltage cabling specifications, infrastructure, and coordination with Owner's Consultants

4.1.1.2.4. Architect to provide FF&E services from Design through install punch list coordination.»

**§ 4.1.2.5** A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

#### $\ll N/A \ \gg$

## § 4.2 Architect's Additional Services

The Architect may provide Additional Services. Additional Services will be requested by the Owner and confirmed in writing. Should the Owner request services that the Architect believes to be outside the scope of Basic or Supplemental Services, the Architect shall, before performing those services, inform the Owner in writing of the Architect's belief that the services requested are Additional Services, and shall provide an estimate in writing to the Owner of the probable total of the Additional Service Fees to be incurred in performing the services requested.

**§ 4.2.1** Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6 that necessitate major revisions in the Instruments of Service, except where necessitated by the errors or omissions of the Architect;
- .2 The project budget must be adhered to through all phases and no additional services will be granted for cost overruns related to escalation or not meeting the project budget including revisions to the design to meet the budget. The Architect shall notify Owner and Wember in writing when 80% of CMAR contract value has been reached.
- .3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors but only if the failure or delay continues after the Architect provides seven (7) days advance written notice of the need for prompt action;
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto and except where the proceeding involves issues concerning problems (actual or alleged) caused by errors or omissions of the Architect;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect;
- .12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;
- .13 Services necessitated by the Owner's delay in engaging the Construction Manager;
- .14 Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon substitutions through Design Development; architect is to be compensated for substitutions included in the Guaranteed Maximum Price Amendment.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect may provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination.

- .1
- .2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation; As a course of business, the Architect is to first reject requests for information not prepared in accordance with the Contract Documents;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service, if not related to errors, omissions, inconsistent or ambiguities in the Contract Documents;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or
- .5

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- «Two » («2») reviews of each Shop Drawing, Product Data item, sample and similar submittals of .1 the Construction Manager
- .2 « Weekly » ( « » ) visits to the site by the Architect during construction, alternating weeks meeting will be virtual. Site visits are to be documented by a field report outlining project progress and quality issues at a minimum.
- .3 « Three » ( «3 » ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 «Two » ( «2 » ) inspections for any portion of the Work to determine final completion
- .5

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within «thirty » («30 ») months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

#### **OWNER'S RESPONSIBILITIES** ARTICLE 5

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys to describe 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.

§ 5.6 The Owner 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.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234<sup>TM</sup>–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 5.9 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, and the Owner's Concurrence, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.10 Upon the Architect's request and the Owner's concurrence, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.11 Upon the Architect's request and the Owner's concurrence, 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.

§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service, provided nothing in this agreement shall be construed so as to require the Owner to determine the adequacy, accuracy, or sufficiency of the design, the Construction Documents, or the Architect's Services.

Failure of the Owner to provide notice to the Architect shall not excuse the Architect from its obligations under this Agreement, nor shall it amount to a waiver of any claims against the Architect for any errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.13 The Owner shall include the Architect in all communications with the Construction Manager 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 Construction Manager that may affect the

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Architect's services or professional responsibilities . Communications by and with the Architect's consultants shall be through the Architect.

**§ 5.14** The Owner shall coordinate the Architect's duties and responsibilities set forth in the Agreement between the Owner and the Construction Manager with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

**§ 5.15** The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

## ARTICLE 6 COST OF THE WORK

**§ 6.1** For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Manager's general conditions costs, overhead, and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

**§ 6.2** The Owner's budget for the Cost of the Work is provided in the Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

**§ 6.3** The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

**§ 6.3.1** 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 Architect and the Construction Manager shall work together to reconcile the cost estimates.

**§ 6.4** If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

**§ 6.5** If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner may:

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 terminate in accordance with Section 9.5;
- .3 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .4 implement any other mutually acceptable alternative.

**§ 6.6** If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

## ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the rights of the Owner.

§ 7.2 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 shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due, pursuant to Article 9 and Article 11. This license shall survive any termination of this Agreement, including a termination for cause or for convenience. This license shall also apply notwithstanding any dispute between the Architect and the Owner, including disputes regarding payment of sums due, The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. The Owner shall also have the right to deliver copies of the Instruments of Service to any governmental authority and to Owner's successors with respect to the Project. Deliverables will be furnished electronically, via e-mail or file-transfer website, in PDF and Revit format, at the owner's request.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, , related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect, except that the Owner may, without prior written consent by Architect, assign its license to any related entity, its construction lender for the Project, if any or subsequent owner of the property where the Project is located.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

§ 7.6 If this Contract is terminated for cause or convenience after payment to the Architect of amounts due under this Contract, the Architect shall promptly deliver to the Owner a complete set of prints and electronic copies of the Instruments of Service, as completed through the date of termination.

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§ 7.7 Upon final completion of construction and before final payment, the Architect shall review on behalf of the Owner a revised set of prints and electronic copies of the drawings and specifications showing "as-built" conditions, including Change Orders and other modifications prepared by the Construction Manager.

§ 7.8 Any set of electronic copies of drawings or specifications the Architect is required to deliver pursuant to this Contract shall be in a format acceptable to Owner including but not limited to Revit, AutoCAD and pdf complete files.

§ 7.9 The Architect's promotional and professional materials shall not include the Owner's confidential or proprietary information.

§ 7.10 The Owner may use the Instruments of Service (including, without limitation, Instruments of Service prepared by the Architect and the Architect's consultants), for planning or renovations of and additions to the Project, and the Owner may permit qualified professionals to reproduce all or portions of the Instruments of Service (including the design embodied in those Instruments of Service) for incorporation into instruments of service to be prepared by such other qualified professionals for planning or renovations of or additions to the Project or other projects for the Owner if those professionals assume all responsibility for the resulting instruments of service.

§7.11 Deliverables will be furnished electronically, via e-mail or file-transfer website, in PDF or JPG and AutoCAD format, at the conclusion or termination..

#### **ARTICLE 8 CLAIMS AND DISPUTES**

## § 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

## § 8.2 Mediation

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution. 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.

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§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation.

§ 8.2.3 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.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(*Check the appropriate box.*)

[ « »] Arbitration pursuant to Section 8.3 of this Agreement

[ **«X** » ] Litigation in a court of competent jurisdiction

[« »] Other: (Specify)

«»

If the Owner and Architect 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, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 The provisions of this Article 8 shall survive the termination of this Agreement.

#### **TERMINATION OR SUSPENSION** ARTICLE 9

§ 9.1 If the Owner fails to make undisputed payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all undisputed sums due prior to suspension and any reasonable out of pocket expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for direct and demonstrable expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for completed services performed prior to termination, Reimbursable Expenses incurred prior to termination.

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#### ARTICLE 10 **MISCELLANEOUS PROVISIONS**

§ 10.1 This Agreement shall be deemed to have been made in, and construed in accordance with the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, County of Weld, State of Colorado.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect. It is the intent of the parties that there are no intended thirdparty beneficiaries to this Agreement.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. Should the Architect become aware of the presence of hazardous materials or toxic substances on the Project site, it shall immediately report that presence to the Owner in writing.

§ 10.7 With the Owner's written approval, which shall not unreasonably be withheld, the Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. In no case shall, the Architect's materials include the Owner's confidential or proprietary information. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement 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 Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

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§ 10.10 Key Notices under this Contract are notices regarding any Contract default, contractual dispute, or termination of the Contract. 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 a hard copy of the communication by the means described in subsection (a)(ii) or (a)(iii) above. All other 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:**

« High Plains Library District » « » « Dr. Matt Hortt » «2650 W 29th St » «Greeley, CO 80631 » «970-506-8563

Architect: «VFLA Architecture + Interiors» « 419 Canvon Ave #200 » « Fort Collins, CO 80521 »

All Key Notices to the Owner shall include a reference to the Contract including the Architect's name and the date of the Contract. (b) 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.

**§ 10.12** Appropriation As a public entity, The Owner is dependent upon an annual appropriation by its Board of Trustees for funding of operating costs for each year. In the event funding is not made available by Owner's Board of Trustees, Owner shall have the right to cancel this Agreement and will notify Architect in writing within ten (10) days subsequent to such decision by the Board of Trustees. In the event of such cancellation by Owner, Architect will be paid for the reasonable value of the services rendered to the date of cancellation, not to exceed the total amount set forth in this Agreement. Upon such payment, all obligations of Architect and Owner under this Agreement will cease and terminate and the Owner shall be released from all further liability under this Agreement. The right granted to Owner by this provision may only be exercised for the express reason stated above.

§ 10.13 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 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as a stipulated sum as follows:

.1 Stipulated Sum (Insert amount)

« \$52,750.00 »

.2 Other – Printing, Insurance & Additional Items (Describe the method of compensation)

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## \$3,000.00 Reimbursables – NTE \$2000.00

§ 11.2 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows: (*Insert amount of, or basis for, compensation.*)

#### « As negotiated and approved in writing »

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus « five » percent ( «5 » %), or as follows: (*Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.*)

« Additional services shall exclude markup »

**§ 11.5** When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	« »	percent (	« »	%)
Design Development Phase	« »	percent (	« »	%)
<b>Construction Documents Phase</b>	« »	percent (	« »	%)
Construction Phase	« »	percent (	« »	%)
Total Basic Compensation	one hundred	percent (	100	%)

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

**§ 11.6** When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

**§ 11.6.1** When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

**§ 11.7** The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. (*If applicable, attach an exhibit of hourly billing rates or insert them below.*)

« Rates are for reference as project is lump sum »

Employee or Category

Rate (\$0.00)

## § 11.8 Compensation for Reimbursable Expenses

**§ 11.8.1** Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets dedicated to the sole use of the Project;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;

- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on reimbursable expenses;
- .10 Site office expenses approved in writing by the Owner;

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus «zero » percent ( « 0 » %) of the expenses incurred.

## § 11.9 Not Used

#### § 11.10 Payments to the Architect

#### § 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of «zero » (\$ «0 » ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of (x = 0) (\$ (0) ) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

#### § 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid « Thirty Five » ( «35 » ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. (Insert rate of monthly or annual interest agreed upon.)

« 1.5 » % «over prime per annum »

§ 11.10.2.2 The Owner may withhold payments from the Architect as a setoff for damage or costs resulting from the Architect's negligence. Additionally, the Owner may withhold payments from the Architect if the Contractor claims entitlement to a change order for negligent deficiencies in the Instruments of Service, or for architect's failure to comply with terms and conditions of this agreement in its entirety. If the Owner exercises its right to reasonably withhold all or part of a payment from the Architect as a setoff, then the Owner shall provide timely written notice to the Architect of the reason for the withholding. The Owner's failure to exercise its option to withhold payment under this provision shall not constitute a waiver of any of the Owner's rights under this Agreement, nor shall it constitute a waiver of any default. The Architect's failure to exercise its option to suspend services under this provision shall not constitute a waiver of any of the Architect's rights under this Agreement, nor shall it constitute a waiver of any default. Upon the Owner's exercise of its right to withhold payment under this provision. the Architect may initiate the claims procedures in accordance with Section 8 of this Agreement.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

#### SPECIAL TERMS AND CONDITIONS ARTICLE 12

Special terms and conditions that modify this Agreement are as follows: (Include other terms and conditions applicable to this Agreement.)

#### « »

#### § 12.1 MANDATORY IMMIGRATION PROVISIONS

§ 12.1.1 Consultant acknowledges that, prior to executing the Agreement, Consultant has certified that it does not knowingly employ or contract with an illegal alien to perform work under the Agreement and that the Consultant has

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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.

§ 12.1.2 Consultant 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 Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

§ 12.1.3 The Consultant 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 Consultant uses the Department Program for the employment verification described herein, the Consultant shall comply with the requirements mandated by § 8-17.5-102(5)(c), C.R.S. including: i. The Consultant shall comply with the provisions of § 8-17.5-102(5)(c), C.R.S.; and ii. Consultant shall notify the Owner of its determination to participate in the Department Program, and iii. The Consultant must, within twenty days after hiring an employee who is newly hired to perform work under the Agreement, affirm that the Consultant 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 Consultant must provide a written, notarized copy of the affirmation of compliance with § 8-17.5-102(5)(c), C.R.S. to the Owner.

# **§ 12.1.4** Consultant 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 Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

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

The Consultant shall comply with the provisions of § 8-17.5-102(5)(c), C.R.S.; and ii. Consultant shall notify the Owner of its determination to participate in the Department Program, and iii. The Consultant must, within twenty days after hiring an employee who is newly hired to perform work under the Agreement, affirm that the Consultant 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 Consultant r must provide a written, notarized copy of the affirmation of compliance with § 8-17.5-102(5)(c), C.R.S. to the Owner.

#### SCOPE OF THE AGREEMENT ARTICLE 13

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

**§ 13.2** This Agreement is comprised of the following documents identified below:

- .1 AIA Document B133<sup>TM</sup>–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition
- .2 A201–2017<sup>™</sup>, General Conditions of the Contract
- .3 Exhibit A – Design RFP dated 3/4/24, Addendum 01 dated 3/18/24, and VFLA Proposal dated 3/21/2024
- .4 Other documents:

(List other documents, if any, forming part of the Agreement.)

« »

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

**OWNER** (Signature)

« Dr. Matthew Hortt, Executive Director »« »

(Printed name and title)

**ARCHITECT** (Signature)

« Aspen Zabel, Interiors Department Director »« » (Printed name, title, and license number, if required)

# AIA<sup>°</sup> Document A201<sup>°</sup> - 2017

# General Conditions of the Contract for Construction

#### for the following PROJECT:

(Name and location or address)

#### « Carbon Valley Regional Library Refresh» «7 Park Ave, Firestone, CO 80504 » « »

## THE OWNER:

(Name, legal status and address)

```
« High Plains Library District » « »
« Dr. Matt Hortt »
« 2650 W 29<sup>th</sup> St »
« Greeley, CO 80631 »
« 970-506-8563 »
« »
« »
```

## THE ARCHITECT:

(Name, legal status and address)

```
« VFLA Architecture + Interiors»« »
« 419 Canyon Ave #200 »
« Fort Collins, CO 80521 »« »
« »
```

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- 12 UNCOVERING AND CORRECTION OF WORK

#### 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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- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

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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 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.

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**§ 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, Subsubcontractors, 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<sup>TM</sup>–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<sup>TM</sup>–2013, Building Information Modeling and Digital Data Exhibit, and the requisite

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# 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 affected by the change until reasonable evidence is provide. 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.

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**§ 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 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 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.

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# § 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

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## § 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, 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

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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 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 survive the against that 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 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.

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# § 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 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.

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- .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.

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**§ 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 be ar 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

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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 reperform 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,

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**§ 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 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.

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**§ 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.

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# § 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 to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed 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 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

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§ 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.

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§ 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 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

AIA Document A201° - 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 17:40:26 ET on 04/21/2021 under Order No.1419844500 which expires on 04/21/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail copyright@ia.org. User Notes: (1400460634) 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.

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**§ 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

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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 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 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

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**§ 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

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### § 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

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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. <u>It shall be an affirmative obligation of Contractor to provide written</u> <u>notice to the Owner within two (2) days of the cancellation of or material change to any of the policies required</u> <u>herein and failure to do so shall constitute a material breach of the Contract</u>.

**§ 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, subsubcontractors, 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.

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**§ 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.

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### § 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.** 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.

**§ 12.2.3** 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.

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### § 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 hat 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.

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**§ 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

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**§ 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 fullfill 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 mater;
- .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

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**§ 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

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### § 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 Contactor 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 weatherdependent 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 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

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**§ 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.

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# REQUEST FOR PROPOSAL (RFP) DESIGN SERVICES



## March 4, 2024

Carbon Valley Regional Library 7 Park Avenue Firestone, CO 80504

> Farr Regional Library 1939 61<sup>st</sup> Avenue Greeley, CO 80634

Prepared by: Brooke Kardos

Wember 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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### **GENERAL INFORMATION**

### 1.1. INTRODUCTION AND DESCRIPTION

This Request for Proposal ("RFP") is issued to provide the selection process for Architectural design and Engineering Professional Services for the project named above. 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 design criteria. The finalists will also be requested to participate in an interview. At that stage of the selection process, respondents will be asked to include a fee proposal for the work as outlined in this RFP.

### PROJECT BACKGROUND

Farr Regional Library is located 1939 61<sup>st</sup> 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.

### 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 makerspace within the existing building.

### **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, 3<sup>rd</sup> 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	
Permitting/ GMP	
Construction	

04/2024-08/2024 09/2024-09/2024 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 SCOPE OF SERVICES

The Design Consultant selected will provide project programming, prepare design schedule, prepare design and construction documents, work with the selected General Contractor thru pre-construction services for constructability and material selection and assist in administering construction, based on the following outline of services, as required. This outline is provided to assist proposers with submissions and presentations during the selection process and, will constitute a part of the design services contract as an attachment as well as the proposer's response to this RFP. The Client reserves the right to, at any time during this process, add, delete, or otherwise modify this outline scope as its best interests may appear.

The Client envisions retaining a General Contractor under a Construction Manager at Risk (CM@R) arrangement, with procurement occurring during the early design phase, and will look to the Design Team for assistance.

### A. Services:

Full professional design services are required with all related engineering disciplines, including but not limited to the following:

- 1. Programming
- 2. Architecture
- 3. Interior Design
- 4. High performance coordination and submittals
- 5. Structural Engineering
- 6. Mechanical and Plumbing Engineering
- 7. Electrical Engineering/Lighting Design
- 8. Acoustical Engineering
- 9. FF&E (including specifications, bidding, installation, and punch lists)
- 10. Signage/Way-finding Design
- 11. Tele/Data, IT, Security, and Audio/Visual Systems Coordination
- 12. Design Scheduling

### **B.** Coordination:

Coordination meetings with the Client, other Client consultants (including technology consultant) and user groups shall be a continuing work item for the selected Design Consultant from the 'Notice to Proceed' through warranty phase. In particular, the Design Consultant shall comply with all provisions of the Local Building Code and all other related codes, State requirements, Client standards, City Ordinances and regulations, as well as any covenants applicable to the property. <u>Also, to note is that the project will be managed collaboratively through the Owner's Representatives online project management system (Owner InSite) including but not limited to, Budgets, Issues, RFI's, ASI's, Shop Drawings, Site Photos, Field Reports, Meetings, document control, etc.</u>

### C. Project Programming:

Upon Client acceptance of the Design & Approval Schedule, the Design Consultant shall proceed with the Project Programming phase. The Design Consultant shall work closely with the Client, and others as required by Client to define the scope based on the funded project construction budget.

### D. Schematic Design:

Upon Client acceptance and approval of the Program Verification, the Design Consultant shall proceed with the Schematic Design phase. The Schematic Design shall be in the form of drawings and ancillary documents and shall provide sufficient detail to show base building modifications, site modifications, division of spaces and preliminary estimates of construction costs.

Specifically, the Schematic Design will address:

- Interior design features, materials
- Base building modifications, entries, exterior modification detailing
- Site modifications
- Identification and resolution of signage and lighting needs and issues
- Schematic construction cost estimate
- Graphic documentation

### E. Design Development:

The Design Consultant, upon Client approval of the Schematic Design, shall prepare Design Development drawings and ancillary documents as required by Client, based on the approved Schematic Design. Drawings and documents shall outline structural, acoustical, interior design, mechanical and electrical systems; shall outline all required building systems, include detailed coordination and evaluation of design impacts on O & M with Client personnel, building plans and elevations. Additionally, outline specifications, finish schedules, shall be provided. Drawings and documents shall be presented by the Design Consultant to governing jurisdictions for approval. At the 90% completion point of the Design Development phase, the Design Consultant in conjunction

with the Client shall confirm that the cost estimate does not exceed the project budget, including adequate contingency.

### F. Construction Documents:

The Design Consultant shall, upon Client approval of the Design Development Documents, shall prepare final construction drawings, specifications, and other documents, including Client furnished documents, required to bid and construct the project in its entirety. Architect shall include in specifications a log of items required to be submitted as part of the specifications.

### G. Bidding:

The Design Consultant shall, work with the Client to issue construction bid documents and addendums as required, respond to contractors bid questions, and review contractor submittals in conjunction with the Client.

### H. Plan Review and Permits:

At various review and approval stages or phases of the design effort, the Design Consultant shall deliver to Client copies (and an electronic PDF) of all documentation that is needed to complete the plan review and/or approval as applicable. Following written approval of the construction documents by the Client, the Design Consultant shall submit stamped plans for permit and other governing approvals. Following the plan review process, the Design Consultant shall incorporate any required changes/comments into the Construction Documents.

### I. Construction Administration:

The Design Consultant shall provide weekly construction observation reports during the course of the Construction Phase, shall review and comment on all submittals, assist/respond to contractor request for information (RFI's), prepare design ASI's as required for proper direction for construction, review change order for accuracy and pricing (in conjunction with their consultants), attend weekly construction meetings, and perform other services as required by the Client to complete the Project. Design Consultant shall prepare, monitor, and follow through on completion of outstanding items (punch list). Architect to be present at 11 month warranty walk-throughs. Design Team to also include updating as-built drawings (in digital format).

### J. Review and Coordination Meetings:

Sub-consultants shall be represented at all review meetings, meetings with the Building Inspection Division, the Fire Department and other municipal agencies, as required or as applicable. Coordination meetings will be led by the design team including working with utility companies, City agencies, and user groups. Internal teams include but not limited to working with vendors related to coordinating IT requirements, mechanical systems and FF&E.

### K. Building Commissioning:

The Client may retain the services of a Building Commissioning Agent during the design and construction phase. If the Client elects to execute such an option, the Design Consultant shall cooperate with the Commissioning Agent in all matters relating to the design including a peer review of all items related to building commissioning.

L. Please refer to "Master Scope of Services 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 is provided for reference and scope clarification only (fees are not due with this submission, but will be required during the interviews, if your team reaches that stage of the selection process).

### 1.4 CONTACTS

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

**Owner's Representative** 

Mr. Dan Spykstra, Owner's Representative Wember, Inc. 2580 E. Harmony Rd #201 Fort Collins, CO 80111 Phone: (720) 382-3795 Email: dspykstra@wemberinc.com

### (Owner/Client)

Dr. Matt Hortt, Executive Director High Plains Library District 2650 W 29<sup>th</sup> Street Greeley, Colorado 80631

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

### 1.5 SCHEDULE OF EVENTS

The anticipated schedule below outlines milestones for the project:

DATE	TIME	EVENT
March 4, 2024		Advertise and Issue RFP
March 8, 2024	11:00 AM @ Carbon Valley;	Non-mandatory site visit:
	Carbon valley,	11:00 – Carbon Valley Regional Library, 7 Park Ave, Firestone,
	1:00 PM @ Farr	1:00 – Farr Regional Library, 1939 61 <sup>st</sup> 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
March 28, 2024		Notification of short-listed candidates (anticipated)
April 5, 2024	TBD	Interviews of short-listed firms (anticipated)
April 9, 2024		Preferred Design Team announced
April 2024		Finalize contract negotiations (Anticipated)
April 2024		Commence project design (Anticipated)

### 1.6 **PROPOSAL INSTRUCTIONS**

- A. Pages in the proposal shall be typed with the maximum number of pages of proposal information to be limited to 30 pages (including proposal forms) numbered in sequential order.
- B. Submit proposal by the date and time aforementioned to the Owner's Representative. It is the Proposing Firms responsibility to confirm receipt by the deadline established.
- C. <u>Submit a single electronic PDF (no larger than 8MB) file including all Proposing response</u> <u>documents</u>; email to the Owner's Representatives Dan Spykstra, <u>dspykstra@wemberinc.com</u> &

Brooke Kardos, <u>bkardos@wemberinc.com</u>. Oral, telephonic, or faxed proposals are invalid and will be considered as non-responsive as outlined.

- D. No Proposing Firm may submit more than one submission. 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.

### 1.7 PROPOSAL REQUIREMENTS

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

### Part 1 – Cover Letter

a. Brief cover letter expressing interest. Identify years in business in the cover letter.

### Part 2 – Project Experience

- a. Present at least three similar projects completed in the last five years similar in size and complexity. Provide portfolio sheets including:
  - 1) Project location
  - 2) Project size in square feet
  - 3) Project completed construction value
  - 4) Project construction start and completion date
  - 5) Method of construction delivery
  - 6) Project Description
  - 7) Staff directly involved with the project.
  - 8) Owner, Contractor, and Architect contact information, email and telephone

### Part 3 – Project Team & Staff

- a. Provide an overview of your proposed team and how their experience benefits the proposed projects. (Key team members proposed should remain a part of the team assigned unless written approval from the Client is given to allow a change).
- b. Organization Chart; Provide an organization chart graphically indicating how your firm would staff and structure the proposed team. Clearly identify the main point of contact for all or each of the projects.
- c. Provide a matrix that indicates staff commitment by % by phase including SD, DD, CD and CA.
- d. Qualifications Matrix: Provide a matrix identifying the five similar projects identified under project experience along and the proposed team members. Identify the team members that actively worked on the similar project. Also include relevant qualifications on the matrix such as license in architecture, LEED, PMP Certification, etc.
- e. Resumes of team members including consultants.
  - 1) Identify their role on the project
    - 2) Identify team member credentials
    - 1.1.1.e.2.1. Identify relevant credentials such as Licensed Architect etc.
    - 3) Identify professional affiliations

### Part 4 – Qualifications Q&A

- a. Submit one or two pages with images that depict your firms and project architect's/lead designer's capabilities.
- b. Describe what makes your team different; explain how that difference adds value to the project.
- c. The Owner desires a highly collaborative process and although the agreement will not be an Integrated Project Delivery (IPD) or multi-party agreement we anticipate high levels of

collaboration to successfully deliver the project. Describe what elements of Integrated Project Delivery you would prefer to see in order to streamline the process for all team members. Include examples of implementation the design team/engineers have recently experienced.

- d. Describe your teams experience with fast-paced projects. Describe three lessons learned / concepts that should be considered in this project.
- e. Explain what you believe is the best benefit and biggest challenge of CM@R partner from the architect's perspective.
- f. How do you propose to integrate operations and maintenance considerations and stakeholder input into the design process?
- g. The Owner is considering design assist on the major trades including MEP and Structural to increase coordination and meet the proposed schedule. Describe the MEP and Structural Engineers experience with this approach, identify any lessons learned that would improve the process on this project.

### Part 5 - Fee Proposal

Please refer to "Master Scope of Services 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 is provided for reference and scope clarification only (fees are <u>not</u> due with this current submission, but will be required to be submitted at the time of the interviews, if your team reaches that stage of the selection process). Submit/note any conditions, clarifications, or exclusions concerning Scope of Services.

Shortlisted Candidates shall prepare a detailed fee proposal as outlined herein. The fee proposal is to be submitted in a sealed envelope prior to the start of their interview. Failure to provide a fee proposal which addresses each of the items listed below may result in disqualification from the RFQ/P process.

Insurance certificates naming the Client and Wember Inc. as additional insured will be required prior to work commencing, but not required as part of this submittal.

### 1.8 QUESTIONS, INQUIRIES, AND AMENDMENTS REGARDING THIS RFP

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

### 1.9 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 bid. 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.

### 1.10 EVALUATION CRITERIA

The Client Selection Committee will review all proposals and select a Proposing Firm whose proposal is deemed most suitable for the Client. Criteria used to evaluate proposals are listed below:

- A. Qualifications Proposal Phase of Selection (total points available = 100):
  - 1. Qualifications and experience of the teams, as indicated by prior successful completion of similar projects. <u>25 points</u>
  - 2. Qualifications and experience of the key individuals, (including sub-consultants) who will be assigned to this project, as indicated by prior involvement in similar projects. <u>30 points</u>
  - 3. Proposed approach to completion of the scope of work and understanding of the project and project issues. <u>30 points</u>
  - 4. References <u>15 points</u>
- B. Interview & Fee Proposal Phase of Selection:
  - Those respondents deemed best qualified will be invited to participate in an interview with the Selection Committee. An interview invitation will be sent out to the three (3) Candidates with the highest RFP submittal scores (from the above Qualifications Proposal Phase) on the date noted in the schedule of events. The invitation will explain the interview requirements and provide the time and location. The purpose of the interview is to ensure a full understanding of the RFP responses, and to introduce key members of the Design Team.
  - 2. Master Scope of Services Matrix (including fees) of the interviewed firms will be evaluated and rated in terms of responsiveness and value. If the apparent winner's fee exceeds the Owners budget and if subsequent negotiations with the apparent winner are unsuccessful, the Owner reserves the right to negotiate with the next highest-scoring Candidate.

### 1.11 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 Firm, 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.

### 1.12 ACCEPTANCE OF PROPOSAL

The successful Proposing Firm(s) will be notified in writing of the acceptance of its proposal. Upon receipt of this written notification, the successful Proposing Firm shall, within ten (10) calendar days, or such other time agreed between the parties, execute a *Professional Services Agreement* in a form approved by the Client. If the Agreement is not executed and returned to the Client within ten (10) calendar days or such other time agreed between the parties, the Client may, at its sole discretion:

- A. Treat that failure as a breach constituting a rescission of the Client's written acceptance of Proposing Firm's proposal; and
- B. Accept any other proposal; or
- C. Again call for Requests for Proposals

### 1.13 MODIFICATION AND WITHDRAWAL OF PROPOSALS

- A. Proposals may be modified or withdrawn by an appropriate document duly executed (in a manner that a proposal must be executed) and delivered to the place where proposals are to be submitted at any time prior to the opening of proposals.
- B. Proposals may also be modified or withdrawn in person by the Proposing Firm or an authorized representative provided he can prove his identity and authority.
- C. Withdrawn Proposals may be resubmitted up to the time designated for the receipt of Proposals provided that they are then fully in conformance with these Instructions to Proposing Firm's.
- D. If, within twenty-four hours after Proposals are opened, any Proposing Firm files a duly signed, written notice with 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 Proposing Firm may withdraw its proposal. Thereafter, that Proposing Firm will be disqualified.

### 1.14 PROPOSALS TO REMAIN OPEN SUBJECT TO ACCEPTANCE

All Proposals shall remain open for forty-five (45) days after the day of the Proposal opening.

### 1.15 INSURANCE

Design Consultant shall carry insurance of the type and in the amounts as described. Proof of such insurance coverage shall be presented to the Client prior to Notice to Proceed. Nothing herein shall be deemed a waiver of immunity under §24-10-101 et seq., C.R.S.

- A. Workers' compensation insurance in accordance with applicable law.
- B. Comprehensive commercial general liability insurance in the amount of \$2,000,000.00 combined single limit bodily injury and property damage, each occurrence; \$2,000,000.00 general aggregate.
- C. Automobile liability insurance in the amount of \$1,000,000.00 combined single limit bodily injury and property damage, each accident.
- D. Errors and Omissions (E&O) Insurance Design Consultants shall maintain limits of \$2,000,000 for each claim, and \$2,000,000 aggregate limit for all claims.

### 1.16 COST OF PROPOSALS

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

### 1.17 SIGNING OF AGREEMENT

When the Client gives a Notice of Award to the Successful Proposing Firm, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within ten (10) days after the Proposing Firm's receipt of the Notice of Award, the Proposing Firm shall sign and have notarized the required number of counterparts of the Agreement and attached documents and return them to the Client along with the required Bonds, insurance certificates and power of attorney authorizations. <u>PLEASE NOTE</u>: a sample agreement has been included identifying terms and conditions of the project (Exhibit 4.2). The Client reserves the right to refine the detail shown in the agreement.

### 1.18 INDEMNIFICATION

The Design Consultant shall indemnify, defend and hold harmless the Client, its members, directors, officials and employees from and against any and all claims, demands, suits, actions judgments, losses, damages, injuries, penalties, costs, expenses (including attorney's fees) and liabilities to the extent they are alleged to arise from the intentional misconduct or negligent acts or omissions of the Design Consultant or Design Consultant's sub-contractors and/or employees. The obligations of this indemnification shall survive termination of the Agreement.

#### 2.0 **PROPOSAL FORM FOR PROFESSIONAL SERVICES**

(Please use additional sheets as necessary.)

СС	OMPANY NAME:	
СС	OMPANY ADDRESS:	
PH	IONE:	FAX:
СС	ONTACT PERSON NAME:	
СС	ONTACT PERSON PHONE:	
СС	ONTACT PERSON EMAIL:	
1.		attached to this RFP has been reviewed and is agreed to as show ents to the "Agreement"(YES/NO) Please list them if yes.
2.	Acknowledgment that the submitting agent r RFP(YES/NO)	neets or exceeds insurance requirements as outlined in the
3.	connection with any other person or person	bulates that this proposal is made in good faith, without collusion is bidding for the same Work, and that it is made subject to all the posal and associated documents, all of which have been examine
4.	The submission of the proposal constitutes a for a period of forty-five days.	an agreement, and shall not be withdrawn after the proposal openir
5.	Acknowledgment that the submitting a Colorado(YES/NO)	agent carries (or will carry) a license in Weld Count
6.	The Proposer hereby acknowledges receipt	of addenda numbers through
7.	List of construction items that will be self-pe	rformed.
	A	1
	В	J
	С	К
	D	L
	E	M
	F	N
	G	0
	Н	P

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

\* \* \* End of Proposal Form \* \* \*

### 3.0 SCHEDULE OF PERSONNEL BILLING RATES

RESPONDENT:

PERSONNEL CLASSIFICATION	BILLING RATE PER HOUR
Principal	
Associate Principal	\$
Owner	\$
Project Architect	\$
Architect	\$
Intern Architect	\$
Senior Engineer	\$
Engineer	\$
Engineer In Training	\$
Urban Designer	\$
Senior CAD Operator	\$
CAD Operator	\$
Licensed Surveyor	\$
Other:	\$
Other:	\$
Other:	\$

\_\_\_\_



### Addendum 01

Project Name: Wember Project Number: Issue Date: Purpose: Carbon Valley & Farr Refresh 2018.35 March 18, 2024 RFP Addendum 01

Question #1	What site modifications are being considered? (Section D)
Carbon Valley may look into ADA accommodations from their existing patio to the existing ampitheater.	

Question #2	What modifications are being made to base building components, entries and exterior details? (Section D)
Carbon Valley would like input on adding a Holds window to their existing drive-up book-drop & look at adding handicapped parking closer to the main entrance of the building. Farr Regional Library does not have any exterior work planned.	

Question #3	What changes to lighting are being considered? (Section D)
Both locations m	hay upgrade their lighting to LED bulbs, no change to fixtures.

Question #4	Will the Design Consultant be responsible for cost estimating or validation only of GC's estimates? (Section D)
The Design Cor	nsultant will validate the GC estimate.

Question #5	What level of LEED certification is the Owner trying to achieve?
None	

Question #6	Does the proposal form for professional services and the schedule of personnel billing rates need to be included in the thirty (30) page RFP response? I see that the thirty (30) pages does include proposal forms but we would like to confirm this includes both, as fees are not a part of this phase of RFP response
Yes, billing rates	s should be included in the 30 pages.

Question #7	Will the book-drop drive-thru be included in this phase of work for the Carbon Valley Regional Library?
Yes	

Question #8	Are the exterior improvements regarding the path to an outdoor area, EV stations, and handicap spot relocation, for Carbon Valley, included in this scope of work? We understand this may require a Landscape Architect on the team, please confirm if you'd like the design team to carry this in potential of these.
Yes	

<b>Question #9</b> The work discussed in the RFP and during the site-walk is unlikely to require a structural	Question #9	The work discussed in the RFP and during the site-walk is unlikely to require a structural engineer, can Wember confirm if they would like the design team to carry one for this proposal, or address that work on an as-needed basis? Please confirm.

Structural engineer is not necessary.

Question #10	Does High Plains have a standard facility requirement for furniture manufacturers?
No	

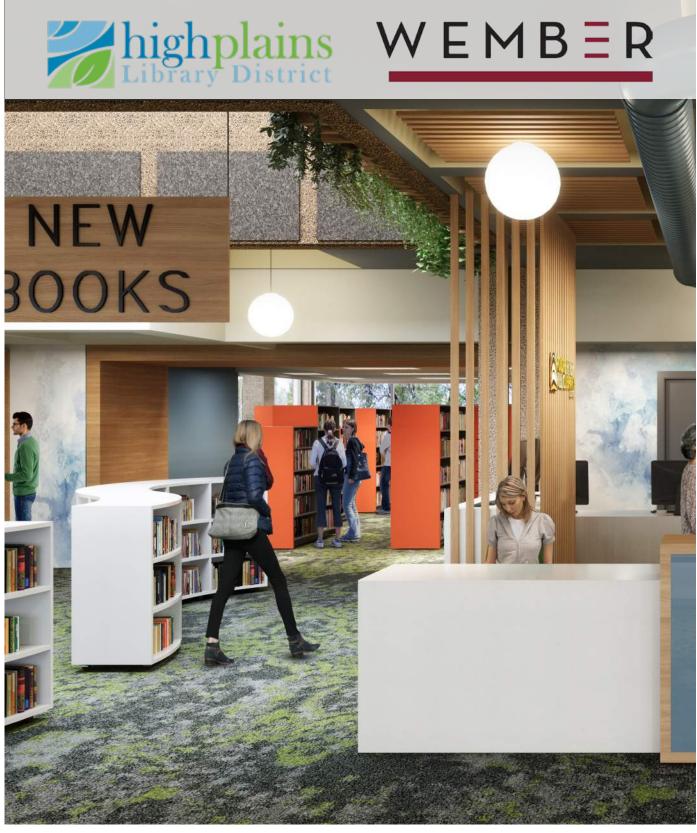
Question #11	Does any scope need to be included for wayfinding or interior signage?

If a Makers Space is added to Carbon Valley then wayfinding signage may need to be required.

Question #12	Will the furniture package selected by the design team be sent out for bid?
Yes	

Question #13	Has a CM@R partner been selected for these projects?
No. CMAR RFP schedule is same as design RFP.	

# **HIGH PLAINS LIBRARY DISTRICT** Carbon Valley Regional Library + Farr Regional Library







March 19, 2024

Mr. Dan Spykstra & Brooke Kardos Owner's Representative Wember, Inc. 2580 E. Harmony Rd #201 Fort Collins, CO 80111

RE: Carbon Valley Regional Library – Firestone, CO Farr Regional Library – Greeley, CO

Dear Mr. Spykstra & Mrs. Kardos,

I am writing to express VFLA Architecture + Interiors' keen interest in providing design services for the renovation projects at the Carbon Valley Regional Library in Firestone, Colorado, and the Farr Regional Library in Greeley, Colorado. With our extensive experience in interior renovations and commitment to delivering innovative design solutions within budgetary constraints, we are excited about the opportunity to contribute to the transformation of these esteemed community libraries.

We firmly believe in approaching every project through a spirit of partnership. With a remarkable 80% rate of return clients, we understand the value of building lasting relationships grounded in open communication, mutual trust, and successful project delivery. Our goal is not to merely complete projects but to cultivate enduring partnerships that transcend individual endeavors. By prioritizing collaboration and understanding our clients' unique vision and needs, we ensure that each project is a reflection of shared goals and aspirations.

At VFLA, we understand the importance of revitalizing public spaces to meet the evolving needs of our communities. Our approach to design emphasizes not only aesthetics but also functionality and cost-effectiveness. We believe in creating environments that foster engagement, inspiration, accessibility, and safety for all patrons. The development of legacy buildings, such as these, are successful when meeting the needs of the users and of the local communities in which they are built. As a fully capable and collaborative team working in the Northern Colorado region, we continue to provide an efficient approach to working with local municipalities that we have a vast understanding of and completing projects successfully.

With a successful presence spanning 37 years, VFLA Architecture + Interiors has established a legacy of excellence in architecture and interior design services. Our portfolio encompasses a diverse range of projects, and we are well-versed in all phases of coordination, from project programming and schematic design to construction administration and project hand-off. Our thorough approach to each phase, combined with our attention to detail, enables us to create spaces that are not only aesthetically pleasing but also functionally efficient.

Our team is comprised of dedicated professionals who are passionate about their craft and possess meticulous attention to detail. We thrive on organization and adhere to strict schedules to ensure timely project delivery without compromising quality. With every project we undertake, we strive to exceed client expectations and leave a lasting impact through thoughtful design solutions. Should we be selected for this project, we assure you that our team will dedicate the appropriate time and resources for a successful project from start to finish.

Thank you for considering VFLA for these exciting opportunities. We look forward to the possibility of working together and contributing to the success of these important community projects.

Thank you for your time,

Aspen Zabel Interior Department Director aspen@VFLA.com



PART 1 - Cover Letter

PART 2 - Project Experience

PART 3 - Project Team & Staff

PART 4 - Qualifications Q&A

# BUILD AMAZING THINGS

<<u>EXII</u>

# PART2 Project Experience



# **OLD TOWN LIBRARY CONCEPTUAL DESIGN RENOVATION**



LOCATION Fort Collins, Colorado BUILDING TYPE Conceptual Renovation SIZE 6.000 square feet renovation COMPLETION DATE TBD COMPLETION COST TBD

**KEY FEATURES** 

- Welcoming lobby
- Site line for safety & security
- Coworking space
- Flexible activity space
- Flexible book storage
- Entry into kids area
- Improved wayfinding •

# REFERENCE

Eileen McCluskey Poudre Libraries - Owner/Rep EMcCluskey@poudrelibraries.org

Aspen Zabel Designer aspen@vfla.com

**KEY STAFF MEMBERS** Aspen Zabel

Old Town Library, conveniently located in downtown Fort Collins, has been a staple of the community for many years. It is used by so many and therefore, in 2019 the library board made the decision to begin the renovation process. VFLA was brought on board to help the team generate These images are currently being conceptual ideas that will then be taken to the board for approval. From the beginning, the staff of OTL gave three main goals for their project; to create a welcoming lobby with improved wavfinding, allow the staff to have better site lines for safety and security, and create spaces that cater to many different users. As well as these main goals, the library manager wanted to give the kids area a separate

PROJECT RELEVANCE Library Space Renovation

Safety & Security Makers Space

"secrete portal". In the end, VFLA and OTL team members were able to achieve conceptual plans that would meet all of these goals.

The images seen on these sheets are taken from our 3D computer program. turned into photo realistic renders, that the staff will be able to present to the board and the Fort Collins community. We are hopeful that these conceptual ideas are approved and we can soon begin the design development and construction document phases of this project.

# THE GROUP REAL ESTATE SUCCESS CENTER



LOCATION Timnath, CO **BUILDING TYPE** Commercial Tenant Finish SIZE 3.000 square feet CONSTRUCTION DATES Sept 201 - April 2019 DELIVERY METHOD Bid/GMP

CONSTRUCTION COST \$7.1 M CONTRACTOR Elder Construction

## REFERENCE

Brandon Wells Owner - The Group bwells@thegroupinc.com 970.221.0700

Rvan Brunk Elder Construction ryan.brunk@elderconstructioninc.com 970.833.5302

Rebecca Olsen VFLA architecture + Interiors rebecca@vfla.com 970.498.2970

# **KEY STAFF MEMBERS**

Rebecca Olsen, VFLA Aspen Zabel, VFLA

For just over 40 years, The Group Real Estate has been the preeminent force in the northern Colorado real estate marked. In line with their 40th anniversary, they wanted to explore a new concept for their real estate offices, which came to fruition in this space. In keeping with their core values of relationships, lifelong learning, and community, this space was designed to incorporate those values into a concrete vision. This represents a new model for their offices, of smaller, localized spaces that can be utilized as needed and are convenient to showings. How this is seen in the new office includes the following: • In-house training with the latest in

technology Variety of options for meetings (soft seating, conference spaces, open coffee bar concept, and even a living room area), creating as much comfort in the process for their clients as possible.

## **KEY CONSULTANTS**

Integrated Mechanical APS. Inc.

• Full-glass walls of the offices create an open, inviting atmosphere

· Office concept of this space as a 'touch down' office close to homes, convenient for their clients and full of comforts for their realtors. The offices are checked out on an as-needed basis so meetings can be convenient for all.

Finishes and design were integral to this concept in providing a sense of warmth and openness. This includes a vaulted wood ceiling, subtle forms of branding, a variety of lighting, a fireplace for the living room area, details such as tile accents and the custom booth design, and even upgraded restrooms to add to the overall feel of the space as something more approachable than a typical office. This all works together to blend the difference between corporate and residential, a comfortable space that has the capabilities of the office, while feeling much like home.

PROJECT RELEVANCE Interior Renovation Interior Design & Space Planning

# **CENTENNIAL LENDING HEADQUARTERS**





**LOCATION** Firestone, CO **BUILDING TYPE** New Build SIZE 18.536 square feet **CONSTRUCTION DATES Sept 2019 -**June 2020 DELIVERY METHOD: Design, Bid, Build

CONSTRUCTION COST \$5.6 Million **CONTRACTOR Elder Construction** 

## REFERENCE

Jeff Davis Sr Vice President Centennial Lending 720-494-2745 jeff.davis@centennial-lending.com

Sean Windsor **Elder Construction** sean.windsor@elderconstructioninc.com

Andy Goldman VFLA Architecture + Interiors andv@vfla.com 970-498-2971

**KEY STAFF MEMBERS** Andy Goldman, VFLA Aspen Zabel, VFLA

During the design of the new Centennial Lending headquarters. VFLA Interior's team purposefully crafted the user experience through-out every space within this 18,500 sf building. A combination of neutral colors and rich textures create a sophisticated and timeless palette that honors the Colorado landscape. Large exterior A large break room space was windows were introduced in all areas to increase access to the sprawling

mountain views. In their new office, Centennial Lending create an elevated, approachable welcomes guests with a large twostory entry housing a 14' custom light fixture and an abundance of natural light that floods the space and carries throughout the 2-story building. To achieve the push and pull of natural light, VFLA introduced

sliding glass doors and large interior windows behind the reception desk. **KEY CONSULTANTS** 

**Raker Rhodes** 

A small conference room overlooks the double height entry with frameless glass allowing natural light to travel up and in to the second floor. Across from the small conference room, sits a large executive conference room with beautiful views of longs peak.

provided for employee use which includes two communal islands with waterfall edges. Full height custom casework and thoughtful finishes space for employees to escape and unwind. This space also features high ceilings with a custom wood plank finish, full height exterior windows, and large sliding glass doors with direct patio access.

PROJECT RELEVANCE

Training/Flex Space Safety & Security Space Planning Furniture Selection

# NUMERICA **OFFICE + WAREHOUSE**



LOCATION Fort Collins, CO **BUILDING TYPE** Commercial SIZE 28,196 square feet **CONSTRUCTION DATES July 2021 -**March 2022 DELIVERY METHOD: Design, Bid, Build

CONSTRUCTION COST \$3 M **CONTRACTOR Elder Construction** 

## REFERENCE

Jeff Poore Numerica Corporation 970-207-2200 jeff.poore@numerica.us

Rvan Brunk Elder Construction ryan.brunk@elderconstructioninc.com 970.833.5302

Aspen Zabel VFLA Architecture + Interiors aspen@vfla.com 970.498.2971

# **KEY STAFF MEMBERS**

Andv Goldman. VFLA Aspen Zabel, VFLA

During the design renovation of the The VFLA team also included open Numerica Corporation office and warehouse, VFLA Interior's team purposefully crafted the space to accommodate our client's expanding teams. The entire building was designed with future proofing in mind for continual growth.

The VFLA team designed an updated façade to add a welcoming entry appearance to the building. The interior fixtures and overall design of the space boast a mountain modern aesthetic, particularly the luxury conference rooms and break room. The larger conference room includes a high-end storage and catering bar and a full wall of back painted glass acting as a functioning white board.

**KEY CONSULTANTS** Integrated Mechanical

offices with sound control for employees. The break room space was provided for employees with the ability to host full staff meetings and events, including a large communal island with waterfall edges and booths for hoteling stations.

The 19,258 square foot warehouse portion of this project was designed to handle an expanded lab, prototyping facility and the complete assembly, calibration and test infrastructure for our client's optical and RF sensor product lines

During the design phase of this project, Numerica's President, Jeff Poore, said "We are looking forward to our vision becoming a reality very soon."

# PROJECT RELEVANCE

Interior Renovation Furniture Selection & Procurement Coordination Flexible Spaces Interior Design & Space Planning

# PART 3 Project Team & Staff



# FIRM OVERVIEW

VFLA Architecture + Interiors VFLA.com

PRIMARY CONTACT Aspen Zabel Interior Department Director 970.224.1191 main 970.498.2962 direct aspen@vfla.com

OFFICE LOCATION 419 Canyon Ave Suite 200 Fort Collins, CO 80521

# FOUNDED 1986 BY FRANK VAUGHT + JOE FRYE

# **OUR PHILOSOPHY**

To build a vibrant place for people to grow and thrive. Enhance the ideas of the community through collaborative design and leadership.

# **AREAS OF PRACTICE**

Corporate + Commercial Civic + Municipal Lab + Research Higher Education Medical Offices Warehouse + Industrial Retail + Dining Multi-Family + Mixed-Use Prototypical/Branded Designs Historic Renovation Hospitality Aviation

# DISCIPLINES

Architecture Interior Design Planning + Strategies Graphic Design







Award-winning sustainable design is merely the starting point for the range of services available to clients. As a full-capacity architecture firm, we listen to our clients and bring our diverse experience and creative problem solving skills to bear on every project.

The evolution of our name from Vaught Frye Architects in 1986 to VFLA today demonstrates the firm's commitment to bringing a multi-generational approach to projects – combining knowledgeable experience with forward-thinking innovation. Our founding partners, Frank Vaught and Joe Frye, have mentored today's partners and project managers - including our Principals Chris Aronson and Jeff Fleischer - to expand on their philosophy of client-centered service.

With our office in Fort Collins, VFLA's influence can be seen throughout Northern Colorado and Southern Wyoming – from the Underwriters' Laboratories in Laramie to the Old Town Office Building in Fort Collins, from an addition to Alder Hall on the CSU campus to multiple renovations and new construction for Aims Community College, from the Fort Collins Chamber of Commerce to the Windsor Town Hall. For projects ranging from single-family residential to healthcare complexes, we offer a complete array of architectural design, interior design, land planning, graphic design and construction phase services.

# a. & b. ORGANIZATION CHART

The hand selected key team members are beyond ready to deliver exceptional Architecture, Interior De-sign and Engineering services to Wember, High Plains and the community. With combined years of experi-ence spanning diverse project sectors, these experts bring of wealth of expertise and insight to the table.







Aspen Zabel Interior Dept. Director



Rebecca Olsen Sr. Interior Designer & Project Manager

Mechanical & Electrical Engineer





**High Plains Library District + Wember** 

# **VFLA Inc.**

Architectural / Interior Design / Space Planning FORT COLLINS, CO



Andy Goldman Licensed Architect and Sr. Quality Control



Annie Milsten Interior Designer

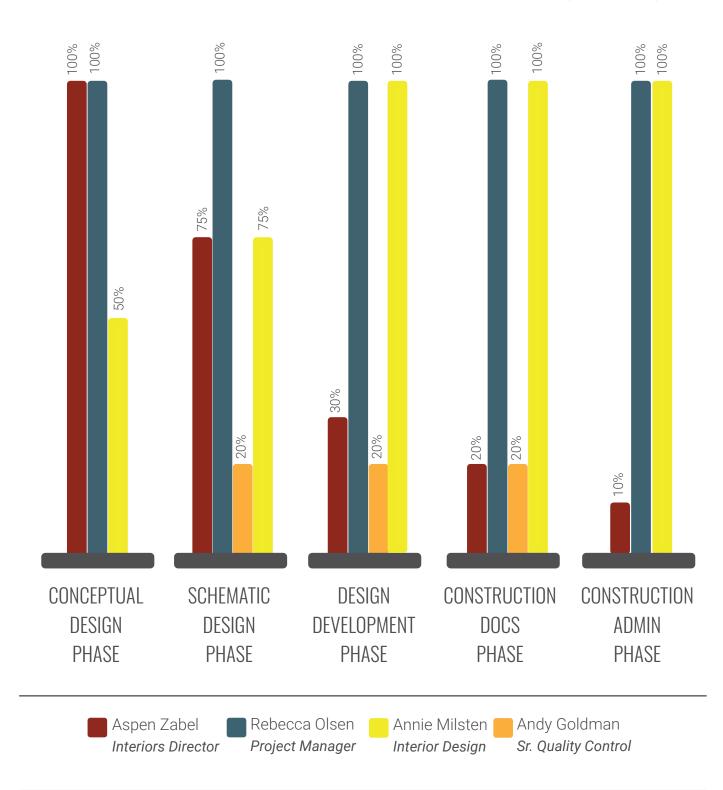
Landscape Architecture

Furniture Consult & Expert



# С. STAFF COMMITMENT

The graphic indicated denotes a time commitment based on a percentage within each designated project phase for key staff.



# d. QUALIFICATION MATRIX

PROJECT NAME	VFLA ARCHITEC + INTERIORS
FORT COLLINS LIBRARY CONCEPTUAL DESIGN	Aspen Zabel, NCIDQ
CENTENNIAL LENDING	Andy Goldman, AIA, LEED AP BD+C, USGB Aspen Zabel, NCIDQ
DENROSE	Andy Goldman, AIA, LEED AP BD+C, USGBO Aspen Zabel, NCIDQ
THE GROUP	Rebecca Olsen LEED AP Aspen Zabel, NCIDQ

## TURE INTEGRATED MECHANICAL S

BC	
с	Integrated Mechanical P.E.
	Integrated Mechanical P.E.

# ASPEN ZABEL, NCIDQ

# Interiors Department Director



# **EDUCATION** Bachelor of Science in Interior Architecture and Design, Colorado State University

CERTIFICATION NCIDQ

# **PROFESSIONAL AFFILIATIONS IIDA** International Interior Design

Ms. Aspen Zabel graduated from CSU with a BS in Interior Architecture & Design and has since been working in the industry on varying types of projects including; higher education, medical, workspace, commercial office and hospitality. She is a strong visionary team member and helps to see that a projects cohesive design is carried through from start to finish. Aspen believes that a successful project must encompass more than just architecture & design but should be thought through to every detail. With an immense passion for design, she is continuously thinking about her clients daily experience in their space. Her strengths include design cohesiveness, innovation, and attention to detail.

# **RELEVANT EXPERIENCE**

Poudre River Public Library Conceptual Design | Fort Collins, CO Centennial Lending Office Building | Firestone, CO Warehouse Twenty One Headquarters | Cheyenne, WY 4450 Denrose Office + Warehouse | Fort Collins, CO The Group Office | Timnath, CO The Group Tenant Finish - South Office | Fort Collins, CO Northeastern Junior College Applied Tech Campus | Sterling, CO Northeastern Junior College Area Vocation Building - Welding | Sterling, CO AIMS Community College General Campus Signage Design | Greeley, CO University of Wyoming - President's Office Renovation | Laramie, WY CPP Wind Headquarters | Windsor, CO Cheyenne Frontier Days Headquarters | Cheyenne, WY UW Co-Working Space | Laramie, WY

# ANDY GOLDMAN, LEED AP BD+C

Sr. Quality Control Manager



**EDUCATION** Master of Architecture, Montana State University

Bachelor of Architecture, Montana State University

# REGISTRATIONS

Architect: Colorado, California LEED AP BD+C

## **PROFESSIONAL AFFILIATIONS** USGBC

Andy joined the VFLA team in 2014 and brings more than 20 years of expérience in architecture from firms in Arizona, Colorado and California. He has vast knowledge of all facets of architecture. Having worked on a broad range of project types through all phases he brings a professional skill set including project and staff management, effective communication, client relations, and mentoring. Andy also has experience with grant applications and funding, as well as coordinating efforts to improve building energy efficiency. Andy's well-rounded experience and expertise paired with his ability to facilitate clear and effective communication make Andy a valuable member of the VFLA team.

# **RELEVANT EXPERIENCE**

Warehouse Twenty One Headquarters | Cheyenne, WY Centennial Lending Headquarters | Firestone, CO 4450 Denrose Office + Warehouse | Fort Collins, CO Northeastern Junior College Applied Tech Campus | Sterling, CO Aims Automotive & Technology - Fort Collins, CO CSU National Resources Research Center Building B - Fort Collins, CO Colorado State University 222 Laurel Street Addition - Fort Collins, CO Weld County RE3J District Administration Building - Keensburg, CO West Grand School District Renovation - Kremmling, CO Underwriters Laboratory Building | Laramie, WY Loveland Water Reclamation Facility | Loveland, CO Loveland Water Treatment Plant | Loveland, CO 2948 Ginnala Drive Water Testing | Loveland, CO XOG Headquarters + Warehouse | Windsor, CO City of Laramie Speculative Office Building - Laramie, WY Sterling High School Remodel - Sterling, CO Eaton Schools QC Reviews | Eaton, CO

# REBECCA OLSEN, LEED AP ID+C Senior Interior Designer



# **EDUCATION**

Bachelor of Science in Interior Design Colorado State University

# REGISTRATIONS

LEED AP ID+C IIDA

Ms. Rebecca Olsen attended Colorado State University where she achieved a Bachelor of Science Degree from the CIDA-accredited Interior Design program. With 22 years of experience, Rebecca has experience in a multitude of project types. She focuses on blending the line between architecture and interior design. She is an expert in LEED sustainable interiors, and has won several awards throughout her professional career, including ASID awards and several awards for historic preservation.

# **RELEVANT EXPERIENCE**

Erie Dance Studio | Erie, CO

# ANNIE MILSTEN

Interior Designer

**EDUCATION** 

State University

Summa Cum Laude



Bachelor of Science in Interior

Architecture and Design - Minor in

Construction Management, Colorado

Mrs. Annie Milsten graduated from Colorado State University with her second bachelor's degree in Interior Architecture and Design and a minor Construction Management. Before returning to school, she was a project manager at a local creative digital marketing studio, her time spent at this company inspired her to return to school to pursue her own passion of design. Client interaction and finding the best design solution for a project are the most rewarding aspects of design for Annie and she enjoys learning all that she can about the technical building components of a project.

# **RELEVANT EXPERIENCE**

Boys & Girls Club Teen Center | Loveland, CO Visit Fort Collins | Fort Collins, CO Northern CO Regional Airport FNL Terminal Building | Loveland, CO Awakened School | Loveland, CO Bricks & Minifigs | Louisville, CO Sit & Stay Dog Bar | Fort Collins, CO

Bachelor of Science in Equine Science - Minor in Business Administration Colorado State University



Colorado Dermatology | Loveland, CO Family Holistic Dentistry | Boulder, CO First National Bank | Erie, CO First National Bank | Loveland, CO First National Bank Oak Remodel | Loveland, CO Northern Colorado Veterinary Clinic | Fort Collins, CO Palmer Properties | Fort Collins, CO Richter Orthodontics | Greeley, CO Ridgeview Classical Schools | Fort Collins, CO Rocky Mountain Family Vision | Fort Collins, CO The Group Success Center | Loveland, CO Rainbow Restaurant | Fort Collins, CO Ginger and Baker Arboretum | Fort Collins, CO



# CHRIS ARONSON

# Principal in Charge



## **EDUCATION**

Bachelor of Architecture. University of Southern California Magna Cum Laude

# REGISTRATIONS

Licensed Architect in Colorado, Wvoming, Nebraska, Arizona, Texas, Kansas USGBC, LEED AP

# **PROFESSIONAL AFFILIATIONS**

American Institute of Architects Fort Collins DD, Chair NCARB



Chris Aronson is a licensed architect and Principal at VFLA. He believes that great design exists to elevate the human experience. He brings a unique background to the firm as a Colorado native with a Los Angeles architectural schooling. Chris believes each project needs to be grounded in a sense of place to its site. Chris' enthusiasm is contagious and his desire to provide high quality service to our clients makes him a key leader of our firm.

# **RELEVANT EXPERIENCE**

4450 Denrose Office + Warehouse | Fort Collins, CO The Group Office | Timnath, CO Warehouse Twenty One Headquarters | Cheyenne, WY Loveland Airport | Loveland, CO Northern Colorado Regional Airport Terminal | Loveland, CO Blue Ocean Corporate Aircraft Hangar | Loveland, CO Raindance Clubhouse and Pool House | Windsor, CO Windsor Mill Adaptive Reuse | Windsor, CO Ginger Baker Adaptive Reuse | Fort Collins, CO Union Restaurant and Bar | Fort Collins, CO Associates in Family Medicine | Windsor, CO Aronson Family Dental | Fort Collins, CO Richter Orthodontics | Greeley, CO Lee Periodontics | Fort Collins, CO Agfinity Headquarters | Loveland, CO Loveland Water and Waste Water Treatment | Loveland, CO



Ms. Klara Rossouw has been part of the Ripley Design team for over eight vears. She has experience at all different levels of the design process from schematic design, to the entitlement of difficult projects, and the detailed construction documentation of final designs. Her passions are sustainable design, and creating spaces that foster community and sense of place.

## NOTABLE EXPERIENCE POUDRE RIVER LIBRARY FORT COLLINS, CO

Klara was the designer and project manager for the entryway and arrival area renovations for the downtown Fort Collins Library. Scope included introducing a native plant palette, activating the outdoor space with instruments, and various seating areas. A small memorial was part of the design commemorating a renowned City Planner for the City of Fort Collins.

# SHERIDAN LIBRARY (ARAPAHOE LIBRARY DISTRICT) DENVER, CO

Klara was the designer and manager for the construction phase services for the recent renovations on the Sheridan Library campus. Scope include outdoor movie lawns, a discovery play area, and the introduction of new trees and a native, lowmaintenance plant palette.

# ADMINISTRATIVE BUILDING (ARAPAHOE LIBRARY DISTRICT) DENVER, CO

As lead landscape architect and project manager, Klara is leading a site wide renovation effort to activate and update the facility. Klara the project team lead the Arapahoe Library District Board of Directors to award additional scope to the outdoor areas. A large emphasis is put on sustainability, education, and outdoor comfort and choice.

# **THOMAS SEGELHORST,** PE, LEED AP<sup>®</sup>

**Professional Engineer & Founder** 



# terminology

# **RELEVANT EXPERIENCE**

BS Mechanical Engineering, Colorado State University

# REGISTRATION

**EDUCATION** 

Professional Engineer: CO, WY US Green Building Council LEED AP

# **PROFESSIONAL AFFILIATIONS**

ASHRAE ASME NCEES

Fort Collins Main Library | Fort Collins, CO Creede K-12 School | Creede, CO Clayton Academy | Fort Collins, CO Mountain View Community Church | Fort Collins, CO AIMS-Community College P.E.R.C. | Greeley, CO AIMS Community College Automotive & Technology | Windsor, CO AIMS Community College Ft. Lupton Welding | Ft. Lupton, CO CSURF Research Building | Fort Collins, CO Highlands Industrial Park | Loveland, CO

# **JANELL LOPEZ** Account Manager - Furniture Expert



**CONTACT** 

jlopez@becktoi.com

(970)893-1293

Janell will act as the primary liaison during the duration of this project, from initial meeting through final project closeout. Starting her career in design, she has in-depth knowledge and understanding of the design and specification process, as well as product offerings. Janell leverages this knowledge and experience to create one of a kind, customer focused solutions. She takes a proactive problem-solving approach to her client's needs, always striving to exceed customer expectations. Janell holds a BFA in Interior Design and has been with Beck Total Office Interiors 7 years.

# **RELEVANT EXPERIENCE** WyoTech – Laramie, WY Welcome Center + Admissions, 2023 break room, storage, modular glass walls

Carbon County – Rawlins, WY courtrooms.

Northeastern Junior College – Sterling, CO Pete's Retreat/ Student Lounge, 2023 lounge, collaborative spaces, dining, outdoor



# ROSSOUW

# Senior Project Manager

## **EDUCATION**

Bachelor of Science in Zoology Mars Hill University, NC

Masters of Landscape Architecture, Colorado State University, CO



30 years Mechanical Engineering Design 12 years Professional Mechanical Estimator 12 years Professional Mechanical Contracting Quality designs intended for years of minimal maintenance Projects completed on time, every time Small remodels through new large developments Fully versed in Architectural, Civil, Structural, and Electrical drawings and

Fluent in current installation techniques, codes, materials, and methods



Lounge, reception, system workstations, private offices, training,

COUNTY BUILDING + COURTHOUSE, 2021 - 2023 Library, common spaces, lounge, system workstations, private offices, conference/ meeting spaces, storage, sheriff's dept,

# PART 4 Qualifications Q+A

**ESCICIL** 

NEC CIT

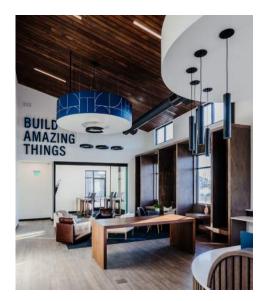
BAKER



2.

























# Qualifications Q+A

# B.

Your project is what makes the difference. Your site, team, and project goals inform our design team and inform us along our design journey. We take tremendous pride in being active listeners, idea generators, and are total design nerds. What we do is not for the faint of heart. It takes serious passion for design, attention to detail, budgets and schedules. Our staff live, work, and play in Northern Colorado. Our pride for our work can be felt by the people that experience our finished product, but just as important, we create raving fans along the way with our clients. Over 80% of our work is repeat clients or by referrals. We would not have those types of referral rates if we didn't perform for our clients.

# C.

Integrated Project Delivery is a beautiful process...when it works. It is meant to be more efficient, but if not used properly, it can make the process longer and more painful. For it to be successful, trust and patience in the process must be maintained. The owner can see large construction cost savings, large reduction in construction waste, reduction in long term maintenance costs, and overall better energy efficiency with the building. The key principles of IDP are:

- 1. Mutual Respect and Trust
- 2. Collaborative Innovation and Decision Making
- 3. Early Involvement of Key Participants
- 4. Early Goal Definition
- 5. Intensified Planning
- 6. Open Communication Culture

We have successfully used the IDP method on the following projects.

- 1. Loveland Corporate Hangar and Office Building
- 2. Warehouse 21 Marketing and Warehouse Facility
- 3. Blue Federal Credit Union Branches (all over Norther Colorado and Wyoming)
- 4. McWhinney Multifamily Projects

# D

VFLA Architecture + Interiors brings forth an impressive track record in managing and executing fast-paced projects with remarkable success. The cornerstone of our approach lies in the depth of our staff's project experience and our ability to be proactive from the start of the project. The three main lessons learned are the following:

- 1. Define the client's goals from the very beginning. Some client's find this tedious or boring, but this is the recipe for the team's decision making abilities when questions arise.
- 2. Define critical path milestones. Projects take a lot of people and coordination. If the team is not synchronized on the schedule, then people will be frustrated and the project will not be successful.
- 3. Define what success looks like. The only way to be able to measure if the project was "a success" at
- the end, is by defining it at the beginning.

Fast-paced doesn't mean frantic, it means efficient.

# E.

CMAR can be a successful project delivery method. We enjoy the collaboration and insight a contractor can bring to the project. They need to be the proper fit, and when then are, the best benefit to the client and building can be additional value for the same or lower price. Schedule and overall price can be benefits as well, however, the best benefit is client specific and the VFLA team will assist the client in defining their goals to understand what the "best benefit" means to them.

The biggest challenge to the CM@R process is selecting the CM@R early in the process when the project is in it's infancy. The CM@R selection needs to be properly run so that the client has the best fit for their project.

# F.

Like we have stated before, get stakeholder feedback and set goals. We need to understand if the district has design and maintenance standards. We would love to have a user group meeting with the maintenance team and understand buildings from their perspective. We are great a listening and incorporating feedback from user groups and stakeholders and making sure all team members, including engineer consultants, are in on this knowledge. Coordination is key.

# G.

Design assist is a great method for HVAC systems, especially in today's dynamic world. Our engineering team is a collaborative group who values the subcontractors feedback on costs, performance, and lead times. The supply chain and ever changing costs are seen first hand by subcontractors and we need their input to properly deliver a project in today's economic environment.

# OUR APPROAG









# 1. DISCOVERY

The discovery phase includes the project start-up and programming exploration. We get to know all players of the team and figure out what is more important to the client. We establish goals and set priorities. Micro-sketches are often used to work through different initial design options.

# **2.** DESIGN

The design phase is when we finalize the schematic concept and head full force into design development. We start working through coordination items with our consultants and bring the 3D model to life.

# **3.** DELIVER

The deliver phase includes our final construction document set. This is the last deliverable before construction begins and includes all coordination items between key players. We strive to put together a solid CD set so we have minimal surprises and questions during construction.

# 2.0 PROPOSAL FORM FOR PROFESSIONAL SERVICES

(Please use additional sheets as necessary.)

FAX:

**COMPANY NAME:** VFLA Architecture + Interiors

COMPANY ADDRESS: 419 Canyon Ave, Suite 200, Fort Collins, CO 80521

**PHONE**: 970-498-2962

CONTACT PERSON NAME: Aspen Zabel

CONTACT PERSON PHONE: 970-498-2962

# CONTACT PERSON EMAIL: aspen@vfla.com

- 1. I Acknowledge that the "Sample Agreement" attached to this RFP has been reviewed and is agreed to as shown. <u>yes</u> (YES/NO). Do you request amendments to the "Agreement" <u>yes</u> (YES/NO) Please list them if yes.
- 2. Acknowledgment that the submitting agent meets or exceeds insurance requirements as outlined in the RFP. <u>yes</u> (YES/NO)
- 3. 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. <u>yes</u> (YES/NO)
- 4. The submission of the proposal constitutes an agreement, and shall not be withdrawn after the proposal opening for a period of forty-five days.
- 5. Acknowledgment that the submitting agent carries (or will carry) a license in Weld County, Colorado <u>yes (YES/NO)</u>
- 6. The Proposer hereby acknowledges receipt of addenda numbers \_\_\_\_\_01 through \_\_\_\_\_01
- 7. List of construction items that will be self-performed.

A		
В	J	
C	К	
D	L	
E	M	
F	N	
G	0	
Н	P	

Signature:

\_\_\_\_\_Date: 03/19/2024

# **3.0 SCHEDULE OF PERSONNEL BILLING RATES**



TITLE

Principal Architect Associate Principal Principal Interior Designer Senior Project Architect **Project Architect** Project Manager Designer III Designer II Designer I Senior Quality Control Manager Director of Interior Design Senior Interior Designer Interior Designer II Interior Design I Intern Administrative

DIPLOY CONSIGNATION

# TITLE

Principal IV Principal III Principal II Principal I Senior Project Manager IV Senior Project Manager III Senior Project Manager II Senior Project Manager I Project Manager IV Project Manager III Project Manager II Project Manager I Project Designer IV Project Designer III Project Designer II Project Designer I Intern Administrative



TITLE

Partner Professional Engineer Design Engineer Draft/Office

\* \* \* End of Proposal Form \* \* \*

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\$145
\$125
\$120
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\$90 \$90
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RATE
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	Submitting Firm:			VFLA	Architecture + Interiors					
	uctions for completing Part A: esign Services (see note to far right of this row); 2) YELLOW	cells	are fo	r item	s not noted in Part B below	w that you	would	l like t	o clar	ify
	Description									
1	Proposed Construction Value			\$	880,000.00					
3	Design Services			\$	\$52,750	5.99%				s listed under Part B, Sub-parts A; lue is for reference only
5	5 Printing, Insurance, Additional Items			\$	\$3,000	0.34%				s listed under Part B, Sub-parts Q, R, & U; lue is for reference only
17	Other Items									
	See Assumptions/Exclusions									
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	IT/Data, Network, Cable Design Programming Storm Water Management Plan Drainage Plan: Submittals to agencies as required Utility Coordination Coordination with Fire Department Site Evaluation and Planning Flow Tests with Fire Department Architectural Design Civil Engineer Design Civil Engineer Design Structutal Engineer Design Mechanical Engineer Design Electrical Engineer Design Lighting Engineer Design Plumbing Engineer Design Fire Suppression Design 3D-Renderings and Animations	X X X X X X X X X X X X X X X X X X X			Included in line item 11 Design-Build Included in 13. Planning Design-Build \$6,500 Excluded \$4,750 Excluded. NIS \$6,100 \$3,650 Included in line 16 Design-Build	and 24	d.	x x x x x x x x x x x x x x x x x x x		moving through Design Development Locations and Infrastructure by Desgn Team Locations and Infrastructure by Desgn Team A simple and concise Programming process to confirm/update District Program
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	IT/Data, Network, Cable Design Programming Storm Water Management Plan Drainage Plan: Submittals to agencies as required Utility Coordination Coordination with Fire Department Site Evaluation and Planning Flow Tests with Fire Department Architectural Design Civil Engineer Design Landscape Architect/Irrigation Design Structutal Engineer Design Lighting Engineer Design Lighting Engineer Design Fire Suppression Design 3D-Renderings and Animations Acoustical Consultant Furniture Design Consultant (B253 <sup>™</sup> -2007)	X X X X X X X X X X X X X X X X X X X			Included in line item 11 Design-Build Included in 13. Planning Design-Build \$6,500 Excluded \$4,750 Excluded. NIS \$6,100 \$3,650 Included in line 16 Design-Build Included in line 11 and	and 24 Exclude		x x x x x x x x x x x x x x x x x x x		moving through Design Development Locations and Infrastructure by Desgn Team Locations and Infrastructure by Desgn Team A simple and concise Programming process to confirm/update District Program
3         4           5         6           7         8           9         10           11         12           13         14           15         16           17         18           19         20           21         22           23         24	IT/Data, Network, Cable Design Programming Storm Water Management Plan Drainage Plan: Submittals to agencies as required Utility Coordination Coordination with Fire Department Site Evaluation and Planning Flow Tests with Fire Department Architectural Design Civil Engineer Design Landscape Architect/Irrigation Design Structutal Engineer Design Mechanical Engineer Design Electrical Engineer Design Lighting Engineer Design Plumbing Engineer Design Fire Suppression Design Structual Consultant Acoustical Consultant	X X X X X X X X X X X X X X X X X X X			Included in line item 11 Design-Build Included in 13. Planning Design-Build \$6,500 Excluded \$4,750 Excluded. NIS \$6,100 \$3,650 Included in line 16 Design-Build Included in line 11 and 3 Estimates by GC Included in furniture co	and 24 and 24 Exclude		x x x x x x x x x x x x x x x x x x x		moving through Design Development Locations and Infrastructure by Desgn Team Locations and Infrastructure by Desgn Team A simple and concise Programming process to confirm/update District Program
3         4           5         6           7         8           9         10           11         12           13         14           15         16           17         18           19         20           21         22           23         24           25         26	IT/Data, Network, Cable Design Programming Storm Water Management Plan Drainage Plan: Submittals to agencies as required Utility Coordination Coordination with Fire Department Site Evaluation and Planning Flow Tests with Fire Department Architectural Design Civil Engineer Design Utility Cordination Rechanical Engineer Design Electrical Engineer Design Plumbing Engineer Design Site Suppression Design 3D-Renderings and Animations Acoustical Consultant Furniture Design Consultant (B253 <sup>™</sup> -2007) Interior Design Specifications Consultant	X X X X X X X X X X X X X X X X X X X			Included in line item 11 Design-Build Included in 13. Planning Design-Build \$6,500 Excluded \$4,750 Excluded. NIS \$6,100 \$3,650 Included in line 16 Design-Build Included in line 11 and 3 Estimates by GC Included in furniture co \$31,750	and 24 Exclude 24 24 24		x x x x x x x x x x x x x x x x x x x		moving through Design Development Locations and Infrastructure by Desgn Team Locations and Infrastructure by Desgn Team A simple and concise Programming process to confirm/update District Program
$\begin{array}{c} 3\\ \hline 3\\ \hline 4\\ \hline \\5\\ \hline 6\\ \hline 7\\ \hline 8\\ 9\\ \hline 10\\ \hline 11\\ 12\\ 13\\ 14\\ 15\\ \hline 16\\ 17\\ \hline 18\\ 19\\ 20\\ \hline 21\\ 22\\ \hline 23\\ 24\\ 25\\ \hline 26\\ 27\\ \end{array}$	IT/Data, Network, Cable Design Programming Storm Water Management Plan Drainage Plan: Submittals to agencies as required Utility Coordination Coordination with Fire Department Site Evaluation and Planning Flow Tests with Fire Department Architectural Design Civil Engineer Design Utility Cordination Structutal Engineer Design Electrical Engineer Design Lighting Engineer Design SD-Renderings and Animations Acoustical Consultant Furniture Design Consultant Furniture Design Specifications Consultant Traffic Consultant	x           x			Included in line item 11 Design-Build Included in 13. Planning Design-Build \$6,500 Excluded \$4,750 Excluded. NIS \$6,100 \$3,650 Included in line 16 Design-Build Included in line 11 and 3 Estimates by GC Included in furniture co \$31,750 Included in line 11 and 3	and 24 Exclude 24 24 24		x x x x x x x x x x x x x x x x x x x		moving through Design Development Locations and Infrastructure by Desgn Team Locations and Infrastructure by Desgn Team A simple and concise Programming process to confirm/update District Program
$\begin{array}{c} 3\\ \hline 3\\ \hline 4\\ \hline \\5\\ \hline 6\\ \hline 7\\ \hline 8\\ \hline 9\\ \hline 10\\ \hline 11\\ \hline 12\\ \hline 13\\ \hline 14\\ \hline 15\\ \hline 16\\ \hline 17\\ \hline 18\\ \hline 19\\ \hline 20\\ \hline 21\\ \hline 22\\ \hline 23\\ \hline 24\\ \hline 25\\ \hline 26\\ \hline 27\\ \hline 28\end{array}$	IT/Data, Network, Cable Design Programming Storm Water Management Plan Drainage Plan: Submittals to agencies as required Utility Coordination Coordination with Fire Department Site Evaluation and Planning Flow Tests with Fire Department Architectural Design Civil Engineer Design Landscape Architect/Irrigation Design Structutal Engineer Design Lighting Engineer Design Plumbing Engineer Design SD-Renderings and Animations Acoustical Consultant Furniture Design Consultant Furniture Design Specifications Consultant Traffic Consultant Coordinatio with Owner's Consultants	X X X X X X X X X X X X X X X X X X X			Included in line item 11 Design-Build Included in 13. Planning Design-Build \$6,500 Excluded \$4,750 Excluded. NIS \$6,100 \$3,650 Included in line 16 Design-Build Included in line 11 and 3 Estimates by GC Included in furniture co \$31,750 Included in line 11 and 3	and 24 Exclude 24 24 24		x x x x x x x x x x x x x x x x x x x		moving through Design Development Locations and Infrastructure by Desgn Team Locations and Infrastructure by Desgn Team A simple and concise Programming process to confirm/update District Program
$\begin{array}{c} 3\\ \hline 3\\ \hline 4\\ \hline \\5\\ \hline 6\\ \hline 7\\ \hline 8\\ \hline 9\\ \hline 10\\ \hline 11\\ \hline 12\\ \hline 13\\ \hline 14\\ \hline 15\\ \hline 16\\ \hline 17\\ \hline 18\\ \hline 19\\ \hline 20\\ \hline 21\\ \hline 22\\ \hline 23\\ \hline 24\\ \hline 25\\ \hline 26\\ \hline 27\\ \hline 28\end{array}$	IT/Data, Network, Cable Design Programming Storm Water Management Plan Drainage Plan: Submittals to agencies as required Utility Coordination Coordination with Fire Department Site Evaluation and Planning Flow Tests with Fire Department Architectural Design Civil Engineer Design Utility Cordination Structutal Engineer Design Electrical Engineer Design Lighting Engineer Design SD-Renderings and Animations Acoustical Consultant Furniture Design Consultant Furniture Design Specifications Consultant Traffic Consultant	x           x			Included in line item 11 Design-Build Included in 13. Planning Design-Build \$6,500 Excluded \$4,750 Excluded. NIS \$6,100 \$3,650 Included in line 16 Design-Build Included in line 11 and 3 Estimates by GC Included in furniture co \$31,750 Included in line 11 and 3	and 24 Exclude Exclude 24 24 providec		x x x x x x x x x x x x x x x x x x x		moving through Design Development Locations and Infrastructure by Desgn Team Locations and Infrastructure by Desgn Team A simple and concise Programming process to confirm/update District Program

30	Commisioning (B211 <sup>™</sup> -2007)								х	
31	LEED Certification (B211 <sup>TM</sup> -2007)	v			N/A Can be added as a	dditional	faa		X	
	LEED Energy Modeling	x x			N/A - Can be added as a N/A - Can be added as a					
	LEED Registration and Documentation	x			N/A - Can be added as a N/A - Can be added as a					
34	Facility Support Services (B210 <sup>™</sup> -2007)	^			IN/A - Call be auteu as a	uunionai	lee			Not anticipated
35	Security Evaluation and Planning (B206 <sup>™</sup> -2007)	х			Can be added as addition	nal foo				
	PV Panel Design	x			Can be added as addition					
	Lightning Protection Design									As requried by code, Design Team to analyze as
57	Lightining i Totection Design	х			Can be added as addition	onal fee		х		part of proposal
38	Fast-track Design Services									N/A
	Historic Preservation (B205 <sup>™</sup> -2007)									N/A
	Surveys (Flown, ALTA, TOPO)								v	Design Team and Owner to determine survey
									х	scope and data requirements
	Code Analysis	х			Included in line 11			х		
	Zoning Analysis	Х			Excluded			Х		Design to meet current zoning guidelines
	Steel Stud Framing Design and Engineering	Х					Х			
	Prepare and Issue Meeting Minutes	Х			Included in line 11 and 2	24		х		for Design Meetings
45	Prepare documents for power application with electrical	x			Included in line 16			х		By Architect and electrical consultant
	utility and submit key information as required.	^						^	-	
	Prepare bid packages for phasing of construction	х			N/A - Can be added as a			х	-	
	Generate bid alternates	х			N/A - Can be added as a	dditional	fee	х	-	
	Prepare Comcheck submittal as required	х								
49	Rezoning process									TBD - site specific
50	Prepare a submittal log for the contractor to follow based on	х			Contractor Provided			х		
	specifications	~						~		
51	Documentation of owner existing Furniture Fixtures and								х	
	Equipment								^	
52	Assist in grant writing by providing key information to Owner									Minimal anticipated. Assume assisting in filling out
										data in required Owner forms.
53	Submit applications as required for Town Planning or	x			Excluded. NIS of Projec	•		х		
	Zoning Approval Processes	*			Excluded. NIS OF Projec	L		~		
	Prepare bid packages, chair pre-bid meeting, log results	х			Included in line 11 and 2	24		Х		
55	Prepare response to bidders questions, issue addendums	X			Included in 11 12 15 16	and 24		×		
		х			Included in 11,13, 15, 16	anu 24		х		
56	Construction: Observation and Field Reports	Х			Included in 11,13, 15, 16	and 24		х		
57	Construction: Review material inspection reports and	х			Included in 11,13, 15, 16	and 24		х		
	advise if corrections are required	*			included in 11,13, 15, 16	anu 24		*		
58	Construction: Review and make recommendations related	х			Included in 44.42.45.46	and 04				
	to shop drawings	X			Included in 11,13, 15, 16	anu 24		х		
59	Close Out: Project Record Documents: Generate As-Builts									
	in paper format including ASI, RFI's and install locations.			х	Included in line 11 and 2	24	х	х		
60	Close Out: Project Record Documents: Review contractors									
	posted sets during and after construction completion			х	Included in line 11 and 2	24		х		
61	Close Out: Project Record Documents: Generate As-Builts				Included in line 11 and 1	24		×		
	in Revit or Autocad format and PDF			х	Included in line 11 and 2	24		х		
62	Close Out: Prepare letter of substantial completion									
				х	Included in line 11 and 2	24		х		
63	Close Out: Assist Owner on resolution of warranty items									
1				х	Included in line 11 and 2	24	х	х		
64	Close Out: Attend 11 month walk throughs of facility									
1				х	Included in line 11 and 2	24	х	х	х	
	B. Procurement				\$0					
1	A/V, Telephone, Paging Design	х							х	
2	IT/Data, Network, Cable Design	X							x	
	Programming Consultant	X								
	Landscape Architect/Irrigation Design	X						х		
	Architectural Firm	X						X		
	Civil Engineer	X						X		
	Structutal Engineer	X						X		
	Mechanical Engineer	x						x		
	Electrical Engineer	x						x		
	Lighting Engineer/Designer	x						x		
	Plumbing Engineer	x						x		
	Acoustical Consultant									
13	Cost Estimating Consultant	х								
	Furniture Design Consultant	x						х		
	Interior Design Consultant	x			L			x		
	Signage Design Consultant	x			L			x		
	Specifications Consultant	x			<u> </u>			x		
	Traffic Consultant	x	$\vdash$					~		N/A
10		~								

				-						
	Commisioning Consultant	Х							Х	
	LEED Consultant	Х						Х		Sustainability and energy efficient
	Security Consultant	Х							Х	
22	PV Panel Consultant	х							х	
	Historic Preservation Consultant									N/A
24	Environmental Surveys (Phase I and Phase II)	Х							Х	
	Surveys (Flown, ALTA, TOPO)	Х							Х	
	Testing & Inspection (Soils)	Х							х	Soils Report
	Testing & Inspection (Construction Materials)	х							х	Testing during construction
	Code Consultant	~						х	~	
	Moving Consultant	х						~	х	
	Hazmat Analysis	x							x	
	Building Demolition Crew	^							^	n/a
31	Building Demolition Crew									1/a
	C. PRE-CONSTRUCTION		1		\$0	1		1		
	Review Design Concepts	Х					Х	Х	Х	
	Develop Bid Packages for sub contractors	Х					Х	Х		
	Material Selection and Availability Recommendations	Х					х	х		
4	Building Systems Recommendations	Х					Х	Х		
5	Coordinate Owner-Supplied Equipment	х						х	х	
	Life Cycle Costing Analysis	х					х	х		
	Equipment Selection and Availability Review	X					X	X		
	Subcontractor Availability Review	X					x			
	Construction Logistical & Execution Plan	X					x			
- Č	Contraction Logicilion & Excounter Fill	~					^			
	D. PROJECT COST CONTROL		I		\$0					
	Master Budget: Generate and update	~			\$0				~	
	5,	X							X	
	Recommend approval of Contractor Invoices	Х	<u> </u>					Х	х	
	Manage cost of Alternates (trend log)	Х					х	Х		
	Schematic Design Cost Estimate and Review	Х					Х	Х		
	Design Development Cost Estimate and Review	Х					Х	Х		
6	Construction Document Estimate and Review	Х					х	Х		
7	Guaranteed Maximum Price Cost Estimate	Х					Х			
8	Construction Cash Flow Projections (Monthly)	Х					х	Х		
	Review estimates for accuracy and value engineering ideas	х					х	х	х	
	Verify Correctness of Quantities & Prices of Change Orders	х						х	х	Design Team to be first review
	-	^						^	^	*
11										
	Continuous Project Cost Input and Response to Design									
	Continuous Project Cost Input and Response to Design Team Queries	x					x		x	
	Team Queries	x					x		x	
	Team Queries E. PROJECT SCHEDULING				\$0		x		x	
1	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events	x			\$0		x	x		
1 2	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events  Master Schedule of Events including Owner items	x x			\$0				x	
1 2 3	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events  Master Schedule of Events including Owner items  Preconstruction Activity Schedule (Bar Chart)	x			\$0		x	x		
1 2 3 4	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events  Master Schedule of Events including Owner items  Preconstruction Activity Schedule (Bar Chart)  Construction Activity Schedule (CPM)	x x		x	\$0					
1 2 3 4	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events  Master Schedule of Events including Owner items  Preconstruction Activity Schedule (Bar Chart)	X X X		x	\$0		X			
1 2 3 4 5	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events  Master Schedule of Events including Owner items  Preconstruction Activity Schedule (Bar Chart)  Construction Activity Schedule (CPM)	X X X			\$0		X X			Design team review then owner review
1 2 3 4 5 6	Team Queries  E. PROJECT SCHEDULING Generate Design Schedule of Events Master Schedule of Events including Owner items Preconstruction Activity Schedule (Bar Chart) Const Activity Schedule (CPM) Const Activity Schedule w/ Milestones (CPM Updates) Shop Drawing & Submittal Schedule / Procedure	X X X		х	\$0		X X X X	x		Design team review then owner review
1 2 3 4 5 6 7	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events  Master Schedule of Events including Owner items  Preconstruction Activity Schedule (Bar Chart)  Construction Activity Schedule (CPM)  Const Activity Schedule w/ Milestones (CPM Updates)	X X X		x x	\$0		X X X X X	x		Design team review then owner review
1 2 3 4 5 6 7 8	Team Queries  E. PROJECT SCHEDULING Generate Design Schedule of Events Master Schedule of Events including Owner items Preconstruction Activity Schedule (Bar Chart) Construction Activity Schedule (CPM) Const Activity Schedule w/ Milestones (CPM Updates) Shop Drawing & Submittal Schedule / Procedure Mock-Up Schedule & Procedure Generate and coordinate phasing sched w/ Owner	X X X		x x x x	\$0		x x x x x x	x	X	Design team review then owner review
1 2 3 4 5 6 7 8 9	Team Queries  E. PROJECT SCHEDULING Generate Design Schedule of Events Master Schedule of Events including Owner items Preconstruction Activity Schedule (Bar Chart) Construction Activity Schedule (CPM) Const Activity Schedule w/ Milestones (CPM Updates) Shop Drawing & Submittal Schedule / Procedure Mock-Up Schedule & Procedure Generate and coordinate phasing sched w/ Owner Short-Interval Schedules	X X X		x x x	\$0		x x x x x x x	x	X	Design team review then owner review
1 2 3 4 5 6 7 8 9	Team Queries  E. PROJECT SCHEDULING Generate Design Schedule of Events Master Schedule of Events including Owner items Preconstruction Activity Schedule (Bar Chart) Construction Activity Schedule (CPM) Const Activity Schedule w/ Milestones (CPM Updates) Shop Drawing & Submittal Schedule / Procedure Mock-Up Schedule & Procedure Generate and coordinate phasing sched w/ Owner	X X X		x x x x x x	\$0		x x x x x x x x x	x	x	Design team review then owner review
1 2 3 4 5 6 7 8 9 10	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events  Master Schedule of Events including Owner items  Preconstruction Activity Schedule (Bar Chart)  Construction Activity Schedule (CPM)  Const Activity Schedule w/ Milestones (CPM Updates)  Shop Drawing & Submittal Schedule / Procedure  Mock-Up Schedule & Procedure  Generate and coordinate phasing sched w/ Owner  Short-Interval Schedules  Occupancy Schedules	X X X		x x x x x x			x x x x x x x x x	x	x	Design team review then owner review
1 2 3 4 5 6 7 8 9 10	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events  Master Schedule of Events including Owner items  Preconstruction Activity Schedule (Bar Chart)  Construction Activity Schedule (CPM)  Const Activity Schedule w/ Milestones (CPM Updates)  Shop Drawing & Submittal Schedule / Procedure  Mock-Up Schedule & Procedure  Generate and coordinate phasing sched w/ Owner  Short-Interval Schedules  Cocupancy Schedules  F. SUBCONTRACTOR SELECTION / PURCHASING			x x x x x x	\$0		x x x x x x x x x	x x x	x x x x	Design team review then owner review
1 2 3 4 5 6 7 8 9 10	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events  Master Schedule of Events including Owner items  Preconstruction Activity Schedule (Bar Chart)  Construction Activity Schedule (CPM)  Const Activity Schedule w/ Milestones (CPM Updates)  Shop Drawing & Submittal Schedule / Procedure  Mock-Up Schedule & Procedure  Generate and coordinate phasing sched w/ Owner  Short-Interval Schedules  Cocupancy Schedules  F. SUBCONTRACTOR SELECTION / PURCHASING  Set Prequalification Criteria including local provisions			x x x x x x			X X X X X X X X X	x x x	x x x x	Design team review then owner review
1 2 3 4 5 6 7 8 9 9 10 1 1 2	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events Master Schedule of Events including Owner items Preconstruction Activity Schedule (Bar Chart) Construction Activity Schedule (CPM) Const Activity Schedule (CPM) Const Activity Schedule w/ Milestones (CPM Updates) Shop Drawing & Submittal Schedule / Procedure Mock-Up Schedule & Procedure Generate and coordinate phasing sched w/ Owner Short-Interval Schedules  F. SUBCONTRACTOR SELECTION / PURCHASING Set Prequalification Criteria including local provisions Recommend Subcontractor Selection Methods			x x x x x x			x x x x x x x x x x x x x x x	x x x	x x x x x x	Design team review then owner review
1 2 3 4 5 6 7 7 8 9 10 10 1 2 3	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events  Master Schedule of Events including Owner items  Preconstruction Activity Schedule (Bar Chart)  Construction Activity Schedule (CPM)  Const Activity Schedule w/ Milestones (CPM Updates)  Shop Drawing & Submittal Schedule / Procedure  Mock-Up Schedule & Procedure  Generate and coordinate phasing sched w/ Owner  Short-Interval Schedules  F. SUBCONTRACTOR SELECTION / PURCHASING  Set Prequalification Criteria including local provisions  Recommend Subcontractor Selection Methods  Recommend Subcontractor Award Methods			x x x x x x			x x x x x x x x x x x x x x x x x x	x x x	x x x x x x x	Design team review then owner review
1 2 3 4 5 6 7 8 9 10 10 1 2 3 4	Team Queries  E. PROJECT SCHEDULING Generate Design Schedule of Events Master Schedule of Events including Owner items Preconstruction Activity Schedule (Bar Chart) Construction Activity Schedule (CPM) Const Activity Schedule w/ Milestones (CPM Updates) Shop Drawing & Submittal Schedule / Procedure Mock-Up Schedule & Procedure Generate and coordinate phasing sched w/ Owner Short-Interval Schedules  F. SUBCONTRACTOR SELECTION / PURCHASING Set Prequalification Criteria including local provisions Recommend Subcontractor Selection Methods Develop Subcontractor Interest	X X X X X X X X X X X		x x x x x x			x x x x x x x x x x x x x x x x x	x x x	x x x x x x	Design team review then owner review
1 2 3 4 5 6 7 8 9 10 1 2 3 4 5	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events Master Schedule of Events including Owner items Preconstruction Activity Schedule (Bar Chart) Construction Activity Schedule (CPM) Const Activity Schedule w/ Milestones (CPM Updates) Shop Drawing & Submittal Schedule / Procedure Mock-Up Schedule & Procedure Generate and coordinate phasing sched w/ Owner Short-Interval Schedules  F. SUBCONTRACTOR SELECTION / PURCHASING Set Prequalification Criteria including local provisions Recommend Subcontractor Award Methods Develop Subcontractor Interest Prepare Bidding Schedules	x x x x x x x x x x x x x x		x x x x x x			x x x x x x x x x x x x x x x x x x x	x x x	x x x x x x x	Design team review then owner review
1 2 3 4 5 6 7 8 9 10 1 2 3 4 5 6	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events  Master Schedule of Events including Owner items  Preconstruction Activity Schedule (Bar Chart)  Construction Activity Schedule (CPM)  Const Activity Schedule (CPM)  Const Activity Schedule (CPM)  Const Activity Schedule (CPM)  Const Activity Schedule Procedure  Mock-Up Schedule & Procedure  Generate and coordinate phasing sched w/ Owner  Short-Interval Schedules  F. SUBCONTRACTOR SELECTION / PURCHASING  Set Prequalification Criteria including local provisions  Recommend Subcontractor Award Methods  Develop Subcontractor Interest  Prepare Bidding Schedules  Issue Plans, Specifications & Addenda	X X X X X X X X X X X X X		x x x x x x			x x x x x x x x x x x x x x x	x x x	x x x x x x x	Design team review then owner review
1 2 3 4 5 6 7 8 9 10 1 2 3 4 5 6 7 7	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events  Master Schedule of Events including Owner items  Preconstruction Activity Schedule (Bar Chart) Construction Activity Schedule (CPM) Const Activity Schedule (CPM) Const Activity Schedule w/ Milestones (CPM Updates) Shop Drawing & Submittal Schedule / Procedure Mock-Up Schedule & Procedure Generate and coordinate phasing sched w/ Owner Short-Interval Schedules  F. SUBCONTRACTOR SELECTION / PURCHASING Set Prequalification Criteria including local provisions Recommend Subcontractor Selection Methods Develop Subcontractor Interest Prepare Bidding Schedules Issue Plans, Specifications & Addenda Receive Bids	x x x x x x x x x x x x x x x x x		x x x x x x			x x x x x x x x x x x x x x x x		x x x x x x x x x x	Design team review then owner review
1 2 3 4 5 6 7 8 9 10 1 2 3 4 5 6 7 8 9 10	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events  Master Schedule of Events including Owner items  Preconstruction Activity Schedule (Bar Chart)  Const Activity Schedule (CPM)  Const Activity Schedule w/ Milestones (CPM Updates) Shop Drawing & Submittal Schedule / Procedure  Mock-Up Schedule & Procedure  Generate and coordinate phasing sched w/ Owner Short-Interval Schedules  F. SUBCONTRACTOR SELECTION / PURCHASING Set Prequalification Criteria including local provisions Recommend Subcontractor Selection Methods Recommend Subcontractor Interest Prepare Bidding Schedules Issue Plans, Specifications & Addenda Receive Bids  Analyze Bids	x x x x x x x x x x x x x x x x x x		x x x x x x			x x x x x x x x x x x x x x x x x x x		x x x x x x x x x x x	Design team review then owner review
1 2 3 4 5 6 7 8 9 10 1 2 3 4 5 6 6 7 8 9 10	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events  Master Schedule of Events including Owner items  Preconstruction Activity Schedule (Bar Chart)  Construction Activity Schedule (CPM)  Const Activity Schedule (CPM)  Const Activity Schedule (Procedure  Mock-Up Schedule & Procedure  Generate and coordinate phasing sched w/ Owner  Short-Interval Schedules  F. SUBCONTRACTOR SELECTION / PURCHASING  Set Prequalification Criteria including local provisions  Recommend Subcontractor Selection Methods  Develop Subcontractor Interest  Prepare Bidding Schedules  Issue Plans, Specifications & Addenda  Receive Bids  Analyze Bids  Recommend Award	x x x x x x x x x x x x x x x x x x		x x x x x x			x x x x x x x x x x x x x x x x x x x		x x x x x x x x x	Design team review then owner review
1 2 3 4 5 6 7 8 9 10 1 2 3 4 5 6 7 7 8 9 10	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events  Master Schedule of Events including Owner items  Preconstruction Activity Schedule (Bar Chart) Construction Activity Schedule (Bar Chart) Construction Activity Schedule (CPM) Const Activity Schedule w/ Milestones (CPM Updates) Shop Drawing & Submittal Schedule / Procedure Mock-Up Schedule & Procedure Generate and coordinate phasing sched w/ Owner Short-Interval Schedules  F. SUBCONTRACTOR SELECTION / PURCHASING Set Prequalification Criteria including local provisions Recommend Subcontractor Selection Methods Develop Subcontractor Interest Prepare Bidding Schedules Issue Plans, Specifications & Addenda Receive Bids Analyze Bids Recommend Award Determine Local Manpower Availability	x x x x x x x x x x x x x x x x x x		x x x x x x			x x x x x x x x x x x x x x x x x x x		x x x x x x x x x x x	Design team review then owner review
1 2 3 4 5 6 7 8 9 10 1 2 3 4 5 6 7 7 8 9 10	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events  Master Schedule of Events including Owner items  Preconstruction Activity Schedule (Bar Chart)  Construction Activity Schedule (CPM)  Const Activity Schedule (CPM)  Const Activity Schedule (Procedure  Mock-Up Schedule & Procedure  Generate and coordinate phasing sched w/ Owner  Short-Interval Schedules  F. SUBCONTRACTOR SELECTION / PURCHASING  Set Prequalification Criteria including local provisions  Recommend Subcontractor Selection Methods  Develop Subcontractor Interest  Prepare Bidding Schedules  Issue Plans, Specifications & Addenda  Receive Bids  Analyze Bids  Recommend Award	x x x x x x x x x x x x x x x x x x		x x x x x x			x x x x x x x x x x x x x x x x x x x		x x x x x x x x x x x	Design team review then owner review
1 2 3 4 5 6 7 8 9 10 1 2 3 4 5 6 7 8 9 10 1 2 3 4 5 6 7 8 9 10	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events  Master Schedule of Events including Owner items  Preconstruction Activity Schedule (Bar Chart) Construction Activity Schedule (PM) Const Activity Schedule (CPM) Const Activity Schedule w/ Milestones (CPM Updates) Shop Drawing & Submittal Schedule / Procedure Mock-Up Schedule & Procedure Generate and coordinate phasing sched w/ Owner Short-Interval Schedules  F. SUBCONTRACTOR SELECTION / PURCHASING Set Prequalification Criteria <i>including local provisions</i> Recommend Subcontractor Selection Methods Develop Subcontractor Interest Prepare Bidding Schedules Issue Plans, Specifications & Addenda Receive Bids Analyze Bids Recommend Award Determine Local Manpower Availability Prepare Subcontracts & Supplier Contracts	x x x x x x x x x x x x x x x x x x x		x x x x x x	\$0		x x x x x x x x x x x x x x x x x x x		x x x x x x x x x x x	Design team review then owner review
1 2 3 4 5 6 7 8 9 10 1 2 3 4 5 6 7 7 8 9 10 11 2 3 4 5 6 7 8 9 10	Team Queries  E. PROJECT SCHEDULING Generate Design Schedule of Events Master Schedule of Events including Owner items Preconstruction Activity Schedule (Bar Chart) Construction Activity Schedule (Bar Chart) Construction Activity Schedule (CPM) Const Activity Schedule w/ Milestones (CPM Updates) Shop Drawing & Submittal Schedule / Procedure Mock-Up Schedule & Procedure Generate and coordinate phasing sched w/ Owner Short-Interval Schedules  F. SUBCONTRACTOR SELECTION / PURCHASING Set Prequalification Criteria including local provisions Recommend Subcontractor Selection Methods Develop Subcontractor Interest Prepare Bidding Schedules Issue Plans, Specifications & Addenda Receive Bids Analyze Bids Recommend Award Determine Local Manpower Availability Prepare Subcontracts & Supplier Contracts  G. CONTRACT DOCUMENT COORDINATION	x x x x x x x x x x x x x x x x x x x		x x x x x x			x x x x x x x x x x x x x x x x x x x		x x x x x x x x x x x	Design team review then owner review
1 2 3 4 5 6 7 8 9 10 1 2 3 4 5 6 7 8 9 10 1 1 2 3 4 5 6 7 8 9 10 11 1 2 3 4 5 6 7 7 8 9 10 10 11 10 10 10 10 10 10 10 10 10 10	Team Queries         E. PROJECT SCHEDULING         Generate Design Schedule of Events         Master Schedule of Events including Owner items         Preconstruction Activity Schedule (Bar Chart)         Construction Activity Schedule (CPM)         Construction Activity Schedule (PM)         Construction Activity Schedule (PM)         Construction Activity Schedules         Shop Drawing & Submittal Schedule / Procedure         Generate and coordinate phasing sched w/ Owner         Short-Interval Schedules         Occupancy Schedules         Set Prequalification Criteria including local provisions         Recommend Subcontractor Award Methods         Develop Subcontractor Interest         Prepare Bidding Schedules         Issue Plans, Specifications & Addenda         Receive Bids         Analyze Bids         Recommend Award         Determine Local Manpower Availability      <	x x x x x x x x x x x x x x x x x x x		x x x x x x	\$0		x x x x x x x x x x x x x x x x x x x		x x x x x x x x x x x	Design team review then owner review
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1 2 3 4 5 6 7 7 8 9 10 1 2 3 4 4 5 6 7 7 8 9 10 11 2 3 4 5 6 7 7 8 9 9 10 11 2 3 4 5 6 7 7 8 9 9 10 10 10 10 10 10 10 10 10 10 10 10 10	Team Queries         E. PROJECT SCHEDULING         Generate Design Schedule of Events         Master Schedule of Events including Owner items         Preconstruction Activity Schedule (Bar Chart)         Construction Activity Schedule (CPM)         Const Activity Schedule w/ Milestones (CPM Updates)         Shop Drawing & Submittal Schedule / Procedure         Mock-Up Schedule & Procedure         Generate and coordinate phasing sched w/ Owner         Short-Interval Schedules         Occupancy Schedules         F. SUBCONTRACTOR SELECTION / PURCHASING         Set Prequalification Criteria including local provisions         Recommend Subcontractor Selection Methods         Develop Subcontractor Interest         Prepare Bidding Schedules         Issue Plans, Specifications & Addenda         Receive Bids         Analyze Bids         Recommend Award         Determine Local Manpower Availability         Prepare Subcontracts & Supplier Contracts         G. CONTRACT DOCUMENT COORDINATION         Constructability Review & Recommendations         Review For Inclusion of All Work			x x x x x x	\$0		x x x x x x x x x x x x x x x x x x x		x x x x x x x x x x x x	Design team review then owner review
1 2 3 4 5 6 7 8 9 10 1 2 3 4 4 5 6 7 8 9 10 11 2 3 4 4 5 6 7 8 9 9 10 11 2 3 4 5 6 7 7 8 9 9 10 10 11 10 10 10 10 10 10 10 10 10 10	Team Queries         E. PROJECT SCHEDULING         Generate Design Schedule of Events         Master Schedule of Events including Owner items         Preconstruction Activity Schedule (Bar Chart)         Construction Activity Schedule (CPM)         Const Activity Schedule w/ Milestones (CPM Updates)         Shop Drawing & Submittal Schedule / Procedure         Mock-Up Schedule & Procedure         Generate and coordinate phasing sched w/ Owner         Short-Interval Schedules         Occupancy Schedules         F. SUBCONTRACTOR SELECTION / PURCHASING         Set Prequalification Criteria including local provisions         Recommend Subcontractor Selection Methods         Develop Subcontractor Interest         Prepare Bidding Schedules         Issue Plans, Specifications & Addenda         Receive Bids         Analyze Bids         Recommend Award         Determine Local Manpower Availability         Prepare Subcontracts & Supplier Contracts         G. CONTRACT DOCUMENT COORDINATION         Constructability Review & Recommendations         Review For Inclusion of All Work         Review For Adequately Phased Construction	x x x x x x x x x x x x x x x x x x x		x x x x x x	\$0		x x x x x x x x x x x x x x x x x x x		x x x x x x x x x x x x x x x x x x x	Design team review then owner review
1 2 3 4 5 6 7 8 9 10 1 2 3 4 5 6 7 8 9 10 1 2 3 4 5 6 7 8 9 10 11 2 3 4 5 6 7 8 9 10 10 11 2 3 4 5 6 7 8 9 10 10 10 10 10 10 10 10 10 10	Team Queries  E. PROJECT SCHEDULING  Generate Design Schedule of Events Master Schedule of Events including Owner items Preconstruction Activity Schedule (Bar Chart) Construction Activity Schedule (CPM) Const Activity Schedule (VM) Const Activity Schedule (CPM) Const Activity Schedule & Procedure Mock-Up Schedule & Procedure Generate and coordinate phasing sched w/ Owner Short-Interval Schedules  F. SUBCONTRACTOR SELECTION / PURCHASING Set Prequalification Criteria <i>including local provisions</i> Recommend Subcontractor Selection Methods Develop Subcontractor Interest Prepare Bidding Schedules Issue Plans, Specifications & Addenda Receive Bids Analyze Bids Recommend Award Determine Local Manpower Availability Prepare Subcontracts & Supplier Contracts  G. CONTRACT DOCUMENT COORDINATION Constructability Review & Recommendations Review For Inclusion of All Work Review For Adequately Phased Construction Identify Long-Lead Items	x x x x x x x x x x x x x x x x x x x		x x x x x x	\$0		x x x x x x x x x x x x x x x x x x x		x x x x x x x x x x x x x x x x x x x	Design team review then owner review
1 2 3 4 5 6 7 8 9 10 1 2 3 4 5 6 7 8 9 10 1 2 3 4 5 6 7 8 9 10 11 2 3 4 5 6 7 8 9 10 10 11 2 3 4 5 6 7 8 9 10 10 11 2 3 4 5 6 7 8 9 10 10 11 10 10 10 10 10 10 10	Team Queries  E. PROJECT SCHEDULING Generate Design Schedule of Events Master Schedule of Events including Owner items Preconstruction Activity Schedule (Bar Chart) Construction Activity Schedule (PM) Const Activity Schedule w/ Milestones (CPM Updates) Shop Drawing & Submittal Schedule / Procedure Mock-Up Schedule & Procedure Generate and coordinate phasing sched w/ Owner Short-Interval Schedules  F. SUBCONTRACTOR SELECTION / PURCHASING Set Prequalification Criteria <i>including local provisions</i> Recommend Subcontractor Selection Methods Develop Subcontractor Interest Prepare Bidding Schedules Issue Plans, Specifications & Addenda Receive Bids Analyze Bids Recommend Award Determine Local Manpower Availability Prepare Subcontracts & Supplier Contracts  G. CONTRACT DOCUMENT COORDINATION Constructability Review & Recommendations Review For Inclusion of All Work Review For Adequately Phased Construction Identify Long-Lead Items Identify Commodity Shortages	x x x x x x x x x x x x x x x x x x x		x x x x x x	\$0		X X X X X X X X X X X X X X X X X X X		x x x x x x x x x x x x x x x x x x x	Design team review then owner review
1         2           3         4           5         6           7         8           9         10           1         2           3         4           5         6           7         8           9         10           1         2           3         4           5         6           7         8           9         10           11         2           3         4           5         6	Team Queries  E. PROJECT SCHEDULING Generate Design Schedule of Events Master Schedule of Events including Owner items Preconstruction Activity Schedule (Bar Chart) Construction Activity Schedule (PM) Const Activity Schedule (VM) Const Activity Schedule (PN) Const Activity Schedule & Procedure Generate and coordinate phasing sched w/ Owner Short-Interval Schedules  F. SUBCONTRACTOR SELECTION / PURCHASING Set Prequalification Criteria <i>including local provisions</i> Recommend Subcontractor Selection Methods Develop Subcontractor Interest Prepare Bidding Schedules Issue Plans, Specifications & Addenda Receive Bids Analyze Bids Recommend Award Determine Local Manpower Availability Prepare Subcontracts & Supplier Contracts  G. CONTRACT DOCUMENT COORDINATION Constructability Review & Recommendations Review For Inclusion of All Work Review For Adequately Phased Construction Identify Long-Lead Items Identify Commodity Shortages Review and Coordinate Installation of Owner Supplied	x x x x x x x x x x x x x x x x x x x			\$0		x x x x x x x x x x x x x x x x x x x		x x x x x x x x x x x x x x x x x x x	Design team review then owner review
1         2           3         4           5         6           7         8           9         10           1         2           3         4           5         6           7         8           9         10           1         2           3         4           5         6           7         8           9         10           11         1           2         3           4         5           6         6	Team Queries  E. PROJECT SCHEDULING Generate Design Schedule of Events Master Schedule of Events including Owner items Preconstruction Activity Schedule (Bar Chart) Construction Activity Schedule (PM) Const Activity Schedule w/ Milestones (CPM Updates) Shop Drawing & Submittal Schedule / Procedure Mock-Up Schedule & Procedure Generate and coordinate phasing sched w/ Owner Short-Interval Schedules  F. SUBCONTRACTOR SELECTION / PURCHASING Set Prequalification Criteria <i>including local provisions</i> Recommend Subcontractor Selection Methods Develop Subcontractor Interest Prepare Bidding Schedules Issue Plans, Specifications & Addenda Receive Bids Analyze Bids Recommend Award Determine Local Manpower Availability Prepare Subcontracts & Supplier Contracts  G. CONTRACT DOCUMENT COORDINATION Constructability Review & Recommendations Review For Inclusion of All Work Review For Adequately Phased Construction Identify Long-Lead Items Identify Commodity Shortages	x x x x x x x x x x x x x x x x x x x		x x x x x x	\$0		X X X X X X X X X X X X X X X X X X X		x x x x x x x x x x x x x x x x x x x	Design team review then owner review

	H. ARCHITECT STAFF				\$0				
1	Principal		v	-	¢0	 -	~		
	Project Manager		X X				X X		
	Project Architect		X				X		
	Drafter		X				X		
	Administrative / Clerical		x				x		
5	Autimistrative / Ciencal		^				^		
	I. GENERAL CONTRACTOR STAFF	I	I	I	\$0		I		
1	Corporate Executives		х	· · · ·	ΨU				
	Principal In Charge		x						
	Project Executive		X						
	Operations Manager		x						
	Construction Manager		x						
	Project Manager		х						
	Project Engineer		х						
	Mechanical & Electrical Coordinator		х						
	Safety Manager / Field Audit / Training		х						
	Human Resources		х						
11	Secretarial		х						
12	Project Estimating		х						
13	Project Accounting		х						
	Project Scheduling		х						
	Project Purchasing		х						
	Project Superintendent(s)			х					
	Assistant Superintendent(s) (as required)			х					
	Field Engineer(s) (as required)			х					
	Mechanical & Electrical Coordinator(s) (as required)			х					
20	Quality Control Engineer (As Required)			Х					
	Project Assistant / Clerk / Typist (As Required)			х					
22	Safety Engineer (As Required)			х					
	Field Accounting (as required)			х					
24	Registered Surveyor (As Required)			Х					
									n/a
	J. QUALITY CONTROL / WARRANTY		-	-	\$0	 -			-
1	Develop & Submit Construction Safety Plan	х				х			
	Testing & Inspection (Construction Materials)							х	
3	Soils Investigations / Geotechnical Reports							х	Owner to provide initial report
3 4	Soils Investigations / Geotechnical Reports Environmental Surveys							X X	Owner to provide initial report
3 4 5	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis							X X X	Owner to provide initial report
3 4 5 6	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document							X X X X	Owner to provide initial report
3 4 5 6 7	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs			x		x	x	x x x x x	
3 4 5 6 7 8	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports			х		х	х	X X X X	Owner to provide initial report
3 4 5 6 7 8 9	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination							x x x x x	Including sub-consultants/engineers
3 4 5 6 7 8 9	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports			X X		X X	х	x x x x x	Including sub-consultants/engineers
3 4 5 6 7 8 9 10	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing			x x x		x x x	х	x x x x x	Including sub-consultants/engineers
3 4 5 6 7 8 9 10 11	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training			x x x x		x x x x	X X	x x x x x	Including sub-consultants/engineers
3 4 5 6 7 8 9 10 11 12	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals			x x x x x x		x x x	X X X	X X X X X	Including sub-consultants/engineers
3 4 5 6 7 8 9 10 11 12 13	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals			x x x x		x x x x	X X	X X X X X X	Including sub-consultants/engineers Documents to be reviewed and approved by engineers
3 4 5 6 7 8 9 10 11 12 13 14	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist			x x x x x x		X X X X X	X X X X X	x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers
3 4 5 6 7 8 9 10 11 12 13 14	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items			x x x x x x x x		x x x x x x	X X X	X X X X X	Including sub-consultants/engineers Documents to be reviewed and approved by engineers
3 4 5 6 7 8 9 10 11 12 13 14 15	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel)			x x x x x x		X X X X X	X X X X X	x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers
3 4 5 6 7 8 9 10 11 12 13 14 15 16	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track			x x x x x x x x		x x x x x x	X X X X X	x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner
3 4 5 6 7 8 9 10 11 12 13 14 15 16	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel)			x x x x x x x x		x x x x x x	X X X X X	x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
3 4 5 6 7 8 9 10 11 12 13 14 15 16	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track items through completion			x x x x x x x x		x x x x x x x	x x x x x	x x x x x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
3     4       5     6       7     8       9     10       11     12       13     14       15     16	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track items through completion <b>K. TEMPORARY FACILITIES</b>			x x x x x x x x x	\$0	x x x x x x x	x x x x x	x x x x x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
3     4       5     6       7     8       9     10       11     12       13     14       15     16       1     1	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track items through completion <b>K. TEMPORARY FACILITIES</b> Temporary Field Office Facility			x x x x x x x x x x x	\$0	x x x x x x x x x	x x x x x	x x x x x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
3     4       5     6       7     8       9     10       11     12       13     14       15     16       1     2	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track items through completion <b>K. TEMPORARY FACILITIES</b> Temporary Field Office Facility Field Office Furniture & Equipment			x x x x x x x x x x x x x	\$0	x x x x x x x x x x x x	x x x x x	x x x x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
3     4       5     6       7     8       9     10       11     12       13     14       15     16       1     1       2     3	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track items through completion <b>K. TEMPORARY FACILITIES</b> Temporary Field Office Facility Field Office Furniture & Equipment Field Office Copier(s)			x x x x x x x x x x x x x x x x x x	\$0	x x x x x x x x x x x x x x	x x x x x	x x x x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
3       4         5       6         7       8         9       10         11       12         13       14         15       16         1       2         3       4	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track items through completion <b>K. TEMPORARY FACILITIES</b> Temporary Field Office Facility Field Office Furniture & Equipment Field Office Copier(s) Field Office Fax Machine(s)			x x x x x x x x x x x x x x x x x x x	\$0	x x x x x x x x x x x x x x x x	x x x x x	x x x x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
3     4       5     6       7     8       9     10       11     12       13     14       15     16       1     2       3     4       5	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track items through completion <b>K. TEMPORARY FACILITIES</b> Temporary Field Office Facility Field Office Foreir(s) Field Office Copier(s) Field Office Computer(s) & Software			x x x x x x x x x x x x x x x x x x	\$0	x x x x x x x x x x x x x x x x	x x x x x	x x x x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
3     4       5     6       7     8       9     10       11     12       13     14       15     16       1     2       3     4       5     6	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track items through completion K. TEMPORARY FACILITIES Temporary Field Office Facility Field Office Furniture & Equipment Field Office Furniture & Equipment Field Office Copier(s) Field Office Computer(s) & Software Field Office Supplies			x x x x x x x x x x x x x x x x x x x	\$0	x x x x x x x x x x x x x x x x x x	x x x x x	x x x x x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
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$\begin{array}{c} 3\\ 4\\ 5\\ 6\\ 7\\ 8\\ 9\\ 10\\ 11\\ 12\\ 13\\ 14\\ 15\\ 16\\ 1\\ 2\\ 3\\ 4\\ 5\\ 6\\ 7\\ 8\\ 9\\ 10\\ 11\\ 12\\ 13\\ 14\\ 14\\ 14\\ 14\\ 14\\ 14\\ 14\\ 14\\ 14\\ 14$	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track items through completion <b>K. TEMPORARY FACILITIES</b> Temporary Field Office Facility Field Office Furniture & Equipment Field Office Copier(s) Field Office Computer(s) & Software Field Office Supplies GC's Storage Trailers / Sheds Field Office Equipment Maintenance & Repairs Architect / Engineer Temporary Office Project Sign Directional / Warning Signs Bulletin Boards Potable Drinking Water / Ice / Cups Temporary Toilets / Sanitary Sewer			X X X X X X X X X X X X X X X X X X X	\$0	x x x x x x x x x x x x x x x x x x x	x x x x x	x x x x x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
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$\begin{array}{c} 3\\ 4\\ 5\\ 6\\ 7\\ 8\\ 9\\ 10\\ 11\\ 12\\ 13\\ 14\\ 15\\ 16\\ 1\\ 2\\ 3\\ 4\\ 5\\ 6\\ 7\\ 8\\ 9\\ 10\\ 11\\ 12\\ 13\\ 14\\ 15\\ 16\\ 1\\ 15\\ 16\\ 1\\ 15\\ 16\\ 1\\ 1\\ 15\\ 16\\ 1\\ 1\\ 1\\ 1\\ 1\\ 1\\ 1\\ 1\\ 1\\ 1\\ 1\\ 1\\ 1\\$	Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track items through completion <b>K. TEMPORARY FACILITIES</b> Temporary Field Office Facility Field Office Furniture & Equipment Field Office Copier(s) Field Office Computer(s) & Software Field Office Supplies GC's Storage Trailers / Sheds Field Office Equipment Maintenance & Repairs Architect / Engineer Temporary Office Project Sign Directional / Warning Signs Bulletin Boards Potable Drinking Water / Ice / Cups Temporary Toilets / Sanitary Sewer			X X X X X X X X X X X X X X X X X X X	\$0	x x x x x x x x x x x x x x x x x x x	x x x x x	x x x x x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to

								1	
	Safety Equipment			Х		х			
	First Aid Station & Supplies			Х		х			
	Handrails / Toe Boards / Opening Protection			х		х			
21	Safety Nets			х		х			
22	Temporary Stairs			х		х			
	Fire Extinguishers			х		x			
	Flagman / Traffic Control			x		x			
	Job Hauling Charges			x		x			
20	Site Security			х		х			
									Į
	L. TEMPORARY UTILITIES				\$0	-	-		
	Temp Telephone Install Equipment & Monthly Fee			Х		Х			
2	Telephone Expense (Long Distance Charges)			х		х			
3	Telephone Expense (Internet Charges)			Х		х			
	Cellular Phone Charges			х		х			
	2-Way Radio Equipment			X		x			
	Temporary Electrical Service / Distribution			x		X			
	Temporary Electrical Wiring & Lighting			x		x			
	Light bulbs & Temp Electrical Maintenance			х		х			
	Electrical Power Consumption Expense		$ \downarrow \downarrow$	х		х			
	Temporary Water Service / Distribution			Х		х			
11	Temporary Water Consumption Expense			х		x			
12	Temporary Gas Service / Distribution			х		х			
	Temporary Gas Service Consumption Expense	-		х		х			
	Temporary Field Office Heating Energy Cost			X	1	x		1	1
	Temporary Heating Service (Permanent System)			x		x			
	Permanent Heat System Filter Replacement		+	x		x		-	
	Maintenance Cost (Permanent Heat System)								
17	Maintenance Cost (Permanent Heat System)			х		х	_		
									Į
	M. CLEAN-UP				\$0		-		a
1	Daily Clean-Up			Х		Х			
2	Final Clean-Up			х		х			
3	Final Glass Cleaning			Х		х			
4	Debris Hauling/Removal			х		х			
	Trash Chutes			X		X			
	Trash Dumpsters			x		X			
	Dump Permits & Fees			×		x			
	Dust Control			х		х			
9	Street Cleaning			х		х	_		
	N. WEATHER PROTECTION				\$0				
1	Remove Snow & Ice			х		х			
2	Temporary Enclosures (Buildings)			Х		х			
3	Temporary Weather Protection for Sub Trades			Х		х			
	O. ON-SITE EQUIPMENT / HOISTING				\$0				
	Automobile(s) & Fuel		<u>г г</u>	v	<b>\$</b> 0	x	1	<u> </u>	
	Hoisting Equipment & Fuel		<u>├</u> ──┤	X X	<u>├</u>				
			+		<u>├</u> ────	X			1
	Material/Personnel Hoist(s)		$\vdash$	х		x			
4	Crane & Hoist Operator(s)			х		x			
	Small Tools (GC's Only)			х		х			
	Rental Equipment			х		x			
7	Fuel for Rental Equipment			х		х			
								ſ	
						l	1		1
	P. LEED CERTIFICATION		·		\$0				
	MR2.1 Const Waste Management, Salvage or Recycle 50%				ψυ	-	1	1	project is not LEED but consideration for
' '	IVITAL I OUTIST WASTE MAILAYETTETT, SAIVAYE UL RECYCLE 50%			~			1		sustainable practices are being incorporated
			+	х		х			p wong nooiporatou
2	MR2.2 Const Waste Management, Salvage Additional 25%								
				х		x			
	MR5.1 Local/Regional Materials, 20% Manufactured Locally								N/A
4	MR5.2 Local/Regional Materials, 10% Harvested Locally								N/A
	IAQ3.1 Construction IAQ Management Plan, Const								N/A
	IAQ4.1 Low-Emitting Materials, Adhesives & Sealants					1	1		N/A
	IAQ4.2 Low-Emitting Materials, Paints						1		N/A
							+		N/A
					<u>├</u>		+		N/A
8	IAQ4.3 Low-Emitting Materials, Carpet				1			1	
8									
8 9	IAQ4.3 Low-Emitting Materials, Carpet IAQ4.4 Low-Emitting Materials, Composite Wood								
89	IAQ4.3 Low-Emitting Materials, Carpet IAQ4.4 Low-Emitting Materials, Composite Wood Q. DOCUMENT REPRODUCTION / PRINTING				\$3,000				
8 9 1	IAQ4.3 Low-Emitting Materials, Carpet IAQ4.4 Low-Emitting Materials, Composite Wood Q. DOCUMENT REPRODUCTION / PRINTING Schematic Drawings & Specifications	X			Included in 11,13, 15, 16 and 24		x		
8 9 1 2	IAQ4.3 Low-Emitting Materials, Carpet IAQ4.4 Low-Emitting Materials, Composite Wood Q. DOCUMENT REPRODUCTION / PRINTING Schematic Drawings & Specifications Design Document Drawings & Specifications	X X			Included in 11,13, 15, 16 and 24 Included in 11,13, 15, 16 and 24		X X		
8 9 1 2 3	IAQ4.3 Low-Emitting Materials, Carpet IAQ4.4 Low-Emitting Materials, Composite Wood Q. DOCUMENT REPRODUCTION / PRINTING Schematic Drawings & Specifications Design Document Drawings & Specifications Construction Drawings & Specifications				Included in 11,13, 15, 16 and 24				
8 9 1 2 3	IAQ4.3 Low-Emitting Materials, Carpet IAQ4.4 Low-Emitting Materials, Composite Wood Q. DOCUMENT REPRODUCTION / PRINTING Schematic Drawings & Specifications Design Document Drawings & Specifications	х			Included in 11,13, 15, 16 and 24 Included in 11,13, 15, 16 and 24		X X		

			· · · ·		· · · · ·			1
	Bidding Instructions		Х		X			
6	Postage & Express Delivery Costs			NTE \$1,500	x			
	Subcontract & Supplier Contract Agreement Forms		х		x			
	Shop Drawing Reproduction		х		x			digital
9	As-Built Documents (Mark-ups & Recording)		х	\$3,000	х	Х		
	R. INSURANCE & BONDS			\$0				
1	Design professional liability insurance	x		Included		x	1	
	Builder's Risk Insurance	^	x		x			
	Builder's Risk Deductable		X		×			
	Special Insurance - O & E	х	x	Included	^	x		
	General Liability Insurance	^	X	Included	x			
	Umbrella Liability Insurance		X	Included	X			
	Excess Liability Insurance		x		X			
	Completed Products Insurance		x		x			
	Professional Liability Insurance		x		x			
	Workman's Compensation Insurance (GC's Only)						-	
	FICA / Medicare Insurance (GC's Only)		x		x	х	-	
			x			_	-	
	Federal Unemployment Insurance (GC's Only)	+	x		X		+	
	State Unemployment Insurance (GC's Only)		x		X	_		
_	Payment & Performance Bond		X		X	_		
15	Subcontractor & Supplier Bonds		x		х	_		
		1		L			1	I
	S. PERMITS & FEES	1		\$0		_	1	
	Foundation Permit				<b> </b>	_		N/A
	Superstructure Permit				<b> </b>			N/A
	Building Permit (General)				<b> </b>	_	х	
	Mechanical Building Permit		Х		X			
	Electrical Building Permit	1	х		x	_	1	
	Plan Check Fees						Х	
	Street Use Permit							N/A
	Curb & Gutter Permit							N/A
	Sidewalk Permit							N/A
	Street / Curb Design Charge							N/A
11	Sign Permits							N/A
12	Site Drainage (Erosion Control) Permit		х		х			
13	Electrical Primary Construction Fee							N/A
14	Water Service Construction Fee							N/A
15	Gas Service Construction Fee							N/A
16	Water Tap (Inspection) Fee							N/A
17	Sanitary Tap (Inspection) Fee							N/A
18	Storm Tap (Inspection) Fee						Х	
	Special Tap Fees							N/A
20	Contractor's Licenses		х		х			
	Zoning Fees							N/A
	Construction Equipment Licenses							N/A
	Construction Equipment Permits							N/A
<u> </u>								
	T. OTHER COSTS		· · · · ·	\$0				
	Sales & Use Taxes (As Required)	1			I		1	Owner is a tax exempt entity? however it is the
								responsibility of the CM to confer with governing entities to determine the actual tax liability for the project as such taxes need to be part of the construction budget.
2	Davis Bacon/Prevailing wages	1			<u>├</u>		1	N/A
	Creation of Owner Moving Transition Manual, RFP and	+			<u>├</u>	+	1	
	management						x	
1	Owner Moving Costs	+			╞───╂──	+	x	
	Video record with proper sound system Owner Training		x		x	_	<b>^</b>	
F_	Table robord with proper sound system Owner Training	+	^		<u> </u>	_	-	
	U. ADDITIONAL ITEMS	1		\$0	I	-	1	ł
1	Photorealistic Renders			\$1,800 Per Render		x		
	(enter additional items as necessary)					х	1	
	(enter additional items as necessary)					х	1	
	(enter additional items as necessary)					X	1	
	(enter additional items as necessary)					X	1	
	(enter additional items as necessary)					X		
	(enter additional items as necessary)					X	-	
	(enter additional items as necessary)	-				X	1	1
8							+	
						X		
9	(enter additional items as necessary)					x		
9						x		

# AIA Document B133 - 2019

Standard Form of Agreement Between Owner and Architect,

Construction Manager as Constructor Edition

AGREEMENT made as of the « 15th » day of « April » in the year « 2024 » (In words, indicate day, month and year.)

**BETWEEN** the Architect's client identified as the Owner: (Name, legal status, address, and other information)

« High Plains Library District » « » « Dr. Matt Hortt » « 2650 W 29th St » « Greeley, CO 80631 » «970-506-8563» «»

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

« VFLA Architecture + Interiors» « » « 419 Canyon Ave #200 » « Fort Collins, CO 80521» « » « »

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

« Farr Regional Library Refresh» « 1939 61st Ave, Greeley, CO 80634» «see attached RFP for scope »

The Construction Manager (if known): (Name, legal status, address, and other information)

« PCL »« » « 2000 S Colorado Blvd, Ste 2-500 » « Denver, CO 80222 » « »

The Owner and Architect 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.

This document is intended to be used in conjunction with AIA Documents A201-2017™, General Conditions of the Contract for Construction; 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; and A134-2019™ 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 without a Guaranteed Maximum Price. AIA Document A201™-2017 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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- SUPPLEMENTAL AND ADDITIONAL SERVICES 4
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- 7 COPYRIGHTS AND LICENSES
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## 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:

(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 A – Design RFP for initial program information. »

# § 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.)

# « Farr Regional Library, 1939 61st Ave, Greeley, CO 80634 »

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1: (Provide total and, if known, a line item breakdown.)

# « Farr Regional Library \$425,000 »

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

Design phase milestone dates, if any: .1

# « Construction documents by September 2024 »

.2 Construction commencement date:

## « October-November 2024 »

.3 Substantial Completion date or dates:

« January 2025 »

.4 Other milestone dates:

« »

**§ 1.1.5** The Owner intends to retain a Construction Manager pursuant to the following agreement: (*Indicate agreement type.*)

- [ **«X** »] 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.
- [ « »] AIA Document A134–2019, 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 without a Guaranteed Maximum Price.

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

(List number and type of bid/procurement packages.)

« None anticipated at this time »

§ 1.1.7 The Owner's anticipated Sustainable Objective for the Project: (*Identify and describe the Owner's Sustainable Objective for the Project, if any.*)

«The project is to meet current energy codes at a minimum with sustainability principles applied to where best value can be determined. The project is not pursuing certification of any type. »

**§ 1.1.7.1** If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E234<sup>TM</sup>–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 Architect 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.

**§ 1.1.8** The Owner identifies the following representative in accordance with Section 5.4: (*List name, address, and other contact information.*)

```
« « High Plains Library District » « »
« Dr. Matt Hortt »
«2650 W 29<sup>th</sup> St »
«Greeley, CO 80631 »
«970-506-8563 »
mhortt@highplains.us »
« »
« »
```

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

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

## « Wember, Inc. »

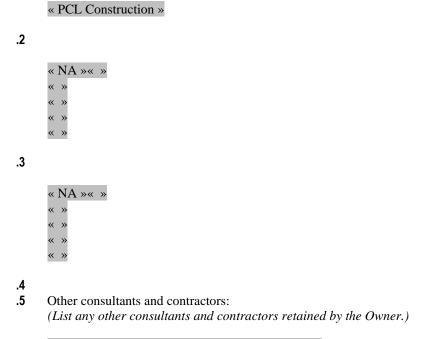
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« Brooke Kardos » « 7350 East Progress Place STE 100 » « Greenwood Village Colorado 80111-2126 » « T: 720-708-7022» « E: PM Email bkardos@wemberinc.com»

§ 1.1.10 The Owner shall retain the following consultants and contractors: (List name, legal status, address, and other contact information.)

> .1 Construction Manager:

> > (The Construction Manager is identified on the cover page. If a Construction Manager has not been retained as of the date of this Agreement, state the anticipated date of retention. If the Architect is to assist the Owner in selecting the Construction Manager, complete Section 4.1.1.1)



« Sturgeon Electric for data and an AV company. »

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4: (List name, address, and other contact information.)

```
« VFLA Architecture + Interiors »
« 419 Canyon Ave #200 »
« Fort Collins, CO 80521 »
« »
« »
« »
```

§ 1.1.12 The Architect shall retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2: (List name, legal status, address, and other contact information.)

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Mechanical and Plumbing Engineer:

```
« TBD »« »
« »
« »
```

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	« » « »
.2	Electrical Engineer :
	« TBD »« »
	« »
	« »
	« »
	« »
.3	:
	« TBD »« »
	« »
	« »
	« »
	« »

§ 1.1.12.2 Consultants retained under Supplemental Services:

§ 1.1.13 Other Initial Information on which the Agreement is based:

## « See EXHIBIT A - RFP dated 3/4/2024 & Addendum 01 dated 3/18/24 »

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation as an approved additional service. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

# ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall provide its services in conjunction with the services of a Construction Manager as described in the agreement identified in Section 1.1.5. The Architect shall not be responsible for actions taken by the Construction Manager.

§ 2.4 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

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# § 2.6 Insurance.

- § 2.6.1 Workers' Compensation insurance as required by the Labor Code of the State of Colorado and Employers Liability Insurance. Minimum Employer's Liability Limits include FIVE HUNDRED THOUSAND DOLLARS (\$500,000) for disease policy limit, disease of each employee, and each accident AND Employer's Liability Limits include FIVE HUNDRED THOUSAND DOLLARS (\$500,000) aggregate. The workers compensation liability insurance policies required by this Agreement shall contain a waiver of subrogation against the Owner and Wember Inc..
- § 2.6.2 Commercial General Liability insurance with a minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION DOLLARS (\$2,000,000) aggregate. The policy shall include the Owner, its officers and its employees and Wember Inc. and its officers and employees, as additional insureds, with primary and non-contributory coverage as respects Owner, its officers and its employees, and shall contain a severability of interests provision. The commercial general liability insurance policies required by this Agreement shall contain a waiver of subrogation against the Owner and Wember Inc.. The Architect shall maintain this coverage in effect during the term of this Agreement and for eight (8) years after the Date of substantial completion of the Project.
- § 2.6.3 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) per person in any one occurrence. The policy shall include the Owner, its officers, and its employees, and Wember Inc. and its officers and employees as additional insureds, with primary coverage and non-contributory with respect to owners, officers, and employees, and shall contain a severability of interests provision. The Automobile liability insurance policies required by this Agreement shall contain a waiver of subrogation against the Owner.
- § 2.6.4 Umbrella/Excess Liability insurance with a minimum limit of TWO MILLION DOLLARS (\$2,000,000) for bodily injury and property damage in any one occurrence. The policy shall include the Owner, its officers and employees and Wember, Inc., and its officers and employees as additional insureds shall include waiver of subrogation provisions and include primary and non-contributory provisions and a severability of interests clause. The Umbrella/Excess Liability insurance shall be excess insurance with respect to the minimum General Liability, Automobile Liability and Employers Liability portion of Workers Compensation.
- § 2.6.4.1 The Parties acknowledge and agree that, pursuant to 2.6.7, below, subcontractor Integrated Mechanical Engeering and Ripley Design are subconsultants whose work is of a relatively small scope. The requirements of 2.6.4, above shall not apply to Integrated Mechanical Engineering. The requirements of 2.6.4 shall be modified to ONE MILLION DOLLARS (\$1,000,000) for Ripley Design solely.
- § 2.6.5 Professional Liability coverage with a minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each claim and TWO MILLION DOLLARS (\$2,000,000) aggregate. Professional liability insurance is required for consultant subcontractors only if such subcontractor is providing architectural, engineering, or other professional services subject to state licensure. If the required minimum Professional Liability coverage is written on a CLAIMS MADE form, Architect shall maintain the required minimum Professional Liability coverage for a period of eight (8) years after the date of substantial completion or provide satisfactory evidence to Owner of the purchase of adequate tail coverage for the complete eight (8) year post-substantial completion period. The retroactive date on any such claims made policy shall not be later than the execution date of this agreement.

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- § 2.6.6 A certificate of insurance, acceptable to the Owner, with copies of additional insured endorsements shall be provided by the Architect's/Consultant or it's insurance broker/agent(s), and by any subcontractor or the subcontractor's broker/agents providing services through Architect, as evidence that policies providing the required minimum coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the Owner before the commencement of any services under the Agreement. Renewal certificates shall be provided promptly upon renewal of each respective policy. The insurer shall give the Owner notification of any termination by a refusal to renew the policy or of any material change in coverage of the policy in the manner provided by law, or, if none, at least thirty (30) days prior to such termination or change. The Architect shall provide written documentation identifying the Owner, Wember, Inc. and Architect as an additional insured and certified complete copies of all required policies and endorsements if so requested.
- § 2.6.7 The Architect agrees to require its subconsultants to comply with the insurance provisions required of the Architect pursuant to this Agreement; provided, however, the Architect and the Owner may mutually agree to modify these requirements for subconsultants whose work is of a relatively small scope. The Architect agrees that it will contractually obligate its subconsultants to promptly advise the Architect of any changes or lapses of the requisite insurance coverages and the Architect agrees to promptly advise the Owner of any such notices that the Architect receives from its subconsultants. The Architect assumes all responsibility for monitoring subconsultant contracts and insurance certificates for compliance with the insurance and other provisions of this Agreement until final completion of the Project including any Warranty periods.
- § 2.6.8 Failure to obtain and maintain the required insurance shall constitute a material breach of the Agreement and the Architect will be liable for any and all costs, liabilities, damages and penalties (including attorney fees, court costs and settlement expenses) resulting to the Owner and Wember, Inc. from such breach. Failure of the Architect to provide insurance as required or failure of the Owner to notify the Architect of any breach by the Architect of the requirements shall not be deemed to be a waiver by the Owner of any of the terms and conditions. The obligation to procure and maintain insurance required is a separate responsibility of the Architect and independent of the duty to furnish a copy or certificate of such insurance policies.

The Architect and it's consultants shall maintain the insurance until termination of this Agreement or until all required minimum insurance coverages and limits stated in this Agreement through completion of the Project and any applicable statutes of limitation or statutes of repose.

§ 2.6.9 Additional Insured Obligations. Except for Workers Compensation and to the fullest extent permitted by law, the Architect shall cause the Primary and Excess or Umbrella polices for Commercial General Liability, and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's and Wember, Inc.'s insurance policies and shall apply to both ongoing and completed operations.

§ 2.6.10 The Architect shall provide certificates of insurance acceptable to the Owner, including specific additional insured policy endorsements to the Owner that evidence compliance with the requirements in this Section 2.6.

## SCOPE OF ARCHITECT'S BASIC SERVICES ARTICLE 3

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend and document Project meetings with meeting minutes, communicate with members of the Project team, and provide written reports to the Owner and their representative.

§ 3.1.2 The Architect shall coordinate its services with sub consultants and those services provided by the Owner, the Construction Manager, and the Owner's consultants. The 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 Owner, the Construction Manager, and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

**§ 3.1.3** As soon as practicable after the date of this Agreement, the Architect shall submit, for the Construction Manager's review and the Owner's approval, a schedule for the performance of the Architect's services. The schedule shall include design phase milestone dates, as well as the anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the Construction Manager's review, for the performance of the Construction Manager's Preconstruction Phase services, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

**§ 3.1.4** The Architect shall submit information to the Construction Manager and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

**§ 3.1.5** The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's written acceptance of non-conforming work, made or given without the Architect's written approval.

**§ 3.1.6** The Architect shall, in coordination with the Construction Manager, contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

**§ 3.1.7** The Architect shall assist the Owner and Construction Manager in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

**§ 3.1.8** Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposalthe Architect shall consider the Construction Manager's requests for substitutions and, upon written request of the Construction Manager, provide clarification or interpretations pertaining to the Drawings, Specifications, and other documents submitted by the Architect. The Architect and Construction Manager shall include the Owner in communications related to substitution requests, clarifications, and interpretations.

**§ 3.1.9** In performing the services hereunder, the Architect shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Colorado. The Architect shall also comply with all applicable ordinances, regulations, and resolutions of the City and other governmental authorities having jurisdiction over the project.

§ 3.2 Review of the Construction Manager's Guaranteed Maximum Price Proposal or Control Estimate § 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare, for review by the Owner and Architect, and for the Owner's acceptance or approval, a Guaranteed Maximum Price proposal. The Architect shall assist the Owner in reviewing the Construction Manager's proposal. The Architect's review is not for the purpose of discovering errors, omissions, or inconsistencies; for the assumption of any responsibility for the Construction Manager's proposed means, methods, sequences, techniques, or procedures; or for the verification of any estimates of cost or estimated cost proposals. In the event that the Architect discovers any inconsistencies or inaccuracies in the information presented, the Architect shall promptly notify the Owner and Construction Manager.

**§ 3.2.2** Upon authorization by the Owner, and subject to Section 4.2.1.14, the Architect shall update the Drawings, Specifications, and other documents to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment.

# § 3.3 Schematic Design Phase Services

**§ 3.3.1** The Architect shall review the program, and other information furnished by the Owner and Construction Manager, and shall review laws, codes, and regulations applicable to the Architect's services, and shall prepare designs and documents accordingly.

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§ 3.3.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.3.3 The Architect shall present its preliminary evaluation to the Owner and Construction Manager and shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.3.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, to the Owner and Construction Manager, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.3.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for Construction Manager's review and the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.3.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.

§ 3.3.5.2 The Architect shall consider with the Owner and the Construction Manager the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.3.6 The Architect shall submit the Schematic Design Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Schematic Design Documents.

§ 3.3.7 Upon receipt of the Construction Manager's review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, identify agreed upon adjustments to the Project's size, quality, or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.8 In the further development of the Drawings and Specifications during this and subsequent phases of design, the Architect shall be entitled to rely on the accuracy of the estimates of the Cost of the Work, which are to be provided by the Construction Manager under the Construction Manager's agreement with the Owner.

# § 3.4 Design Development Phase Services

§ 3.4.1 Based on the Owner's written approval of the Schematic Design Documents, and on the Owner's written authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Construction Manager's review and the Owner's approval. The Design Development Documents shall be based upon information provided, and estimates prepared by, the Construction Manager and shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

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§ 3.4.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Design Development Documents.

§ 3.4.3 Upon receipt and review of the Construction Manager's information and estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

# § 3.5 Construction Documents Phase Services

§ 3.5.1 Based on the written Owner's approval of the Design Development Documents, and on the Owner's written authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Construction Manager's review and the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Construction Manager will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.5.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.5.3 During the development of the Construction Documents, if requested by the Owner, the Architect shall develop (1) the Conditions of the Contract for Construction (General, Supplementary and other Conditions) and (2) a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include sample forms.

§ 3.5.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Construction Manager. The Architect shall meet with the Construction Manager to review the Construction Documents.

§ 3.5.5 Upon receipt of the Construction Manager's information and estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7, and request the Owner's written approval of the Construction Documents.

§ 3.5.6 The Architect shall review and evaluate the updated estimate of the Cost of the Work prepared by the Construction Manager and provide its assessment of the Cost of the Work to the Owner.

# § 3.6 Construction Phase Services

# § 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager as set forth below and in AIA Document A201<sup>TM</sup>-2017, General Conditions of the Contract for Construction. If the Owner and Construction Manager modify AIA Document A201-2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 3.6.1.2 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or by a written agreement between the Owner and Construction Manager which sets forth a description of the Work to be performed by the Construction Manager prior to such acceptance or approval. Subject to Section 4.2, and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.3 The Architect shall advise and consult with the Owner and Construction Manager during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance

with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, and those of its consultants but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

# § 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction (1) to become generally familiar with the progress and quality of the portion of the Work completed (2) 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 shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Construction Manager, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and shall advise the Owner and Construction Manager in writing of such non-conformance. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, 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 Construction Manager, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Contract Documents.

# § 3.6.3 Certificates for Payment to Construction Manager

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager's 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 Construction Manager is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall 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 Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

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# § 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule 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.

**§ 3.6.4.2** The Architect shall review and approve, or take other appropriate action upon, the Construction Manager'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. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's initial response to such requests shall be made in writing within ten business (10) days of receipt.

**§ 3.6.4.3** If the Contract Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Construction Manager's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

**§ 3.6.4.4** Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within five (5) business days of receipt . If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Contract Documents. Architect acknowledges that the team, including the Architect, will work through an online project management system for this project. The system is anticipated to be provided by the Owner's Representative; Owner Insite.

# § 3.6.5 Changes in the Work

**§ 3.6.5.1** 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. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

# § 3.6.6 Project Completion

- § 3.6.6.1 The Architect shall:
  - .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
  - .2 issue Certificates of Substantial Completion;
  - .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Construction Manager; and
  - .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to (1) check conformance of the Work with the requirements of the Contract Documents and (2) Architect and their consultants shall complete a final inspection log and generate a "Punch List" that will be included in the letter of substantial completion. These issues will be tracked using collaborative software to closure by the Architect and issued to the Construction Manager; and (3). verify the accuracy and completeness of the Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

## SUPPLEMENTAL AND ADDITIONAL SERVICES ARTICLE 4

## § 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

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Supplemental Services	Responsibility	
	(Architect, Owner, or not provided) Owner	
§ 4.1.1.1 Assistance with Selection of Construction Manager		
§ 4.1.1.2 Programming	Architect to finalize	
§ 4.1.1.3 Multiple Preliminary Designs	Architect	
§ 4.1.1.4 Measured drawings	Architect	
§ 4.1.1.5 Existing facilities surveys	Not applicable	
§ 4.1.1.6 Site evaluation and planning	Architect	
§ 4.1.1.7 Building Information Model management responsibilities	Architect	
§ 4.1.1.8 Development of Building Information Models for post construction use	Not provided	
§ 4.1.1.9 Civil engineering	Not provided	
§ 4.1.1.10 Landscape design	Not provided	
§ 4.1.1.11 Architectural interior design	Architect	
§ 4.1.1.12 Value analysis	Not Provided	
§ 4.1.1.13 Cost estimating	Construction Manager	
§ 4.1.1.14 On-site project representation	Not Provided	
§ 4.1.1.15 Conformed documents for construction	Architect	
§ 4.1.1.16 As-designed record drawings	Architect	
§ 4.1.1.17 As-constructed record drawings	Construction Manager – Design Team Reviewed	
§ 4.1.1.18 Post-occupancy evaluation	Architect – 11 Month Warranty Walk	
§ 4.1.1.19 Facility support services	Not Provided	
§ 4.1.1.20 Tenant-related services	Not Provided	
§ 4.1.1.21 Coordination of the Owner's consultants	Owner	
§ 4.1.1.22 Telecommunications/data design	Owner	
§ 4.1.1.23 Security evaluation and planning (B206-2007)	Not Provided	
§ 4.1.1.24 Commissioning (B211-2007)	Not Provided	
§ 4.1.1.25 Sustainable Project Services pursuant to Section 4.1.3	Not Provided	
§ 4.1.1.26 Historic preservation	Not Applicable	
§ 4.1.1.27 Furniture, furnishings, and equipment design (B253 <sup>™</sup> – 2007)	Architect	
§ 4.1.1.28 Other services provided by specialty Consultants	Not Provided	
§ 4.1.1.29 Other Supplemental Services	Not Provided	
§ 4.1.1.28 Graphics and Wayfinding	Architect	
§ 4.1.1.29 Acoustical Engineering	Not Provided	
§ 4.1.1.30 Envelope Consultant	Not Provided	

# § 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

«4.1.2.2 As part of Basic Services, Architect shall conduct an inspection of the Project eleven (11) months after Substantial Completion for the purpose of notifying the Contract of any warranty problems observed or noted by the Owner before expiration of the one (1) year warranty.

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# **4.1.2.3**. Architect to provide low voltage cabling specifications, infrastructure, and coordination with Owner's Consultants

4.1.1.2.4. Architect to provide FF&E services from Design through install punch list coordination.»

**§ 4.1.2.5** A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

## $\ll \! N / A \ \gg$

# § 4.2 Architect's Additional Services

The Architect may provide Additional Services. Additional Services will be requested by the Owner and confirmed in writing. Should the Owner request services that the Architect believes to be outside the scope of Basic or Supplemental Services, the Architect shall, before performing those services, inform the Owner in writing of the Architect's belief that the services requested are Additional Services, and shall provide an estimate in writing to the Owner of the probable total of the Additional Service Fees to be incurred in performing the services requested.

**§ 4.2.1** Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or recommendations given by the Construction Manager or the Owner, approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or bid packages in addition to those listed in Section 1.1.6 that necessitate major revisions in the Instruments of Service, except where necessitated by the errors or omissions of the Architect;
- .2 The project budget must be adhered to through all phases and no additional services will be granted for cost overruns related to escalation or not meeting the project budget including revisions to the design to meet the budget. The Architect shall notify Owner and Wember in writing when 80% of CMAR contract value has been reached.
- .3 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .4 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .5 Services necessitated by decisions of the Owner or Construction Manager not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors but only if the failure or delay continues after the Architect provides seven (7) days advance written notice of the need for prompt action;
- .9 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto and except where the proceeding involves issues concerning problems (actual or alleged) caused by errors or omissions of the Architect;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect;
- .12 Services necessitated by replacement of the Construction Manager or conversion of the Construction Manager as constructor project delivery method to an alternative project delivery method;
- .13 Services necessitated by the Owner's delay in engaging the Construction Manager;
- .14 Making revisions to the Drawings, Specifications, and other documents resulting from agreed-upon substitutions through Design Development; architect is to be compensated for substitutions included in the Guaranteed Maximum Price Amendment.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect may provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination.

- .1
- .2 Responding to the Construction Manager's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager-prepared coordination drawings, or prior Project correspondence or documentation; As a course of business, the Architect is to first reject requests for information not prepared in accordance with the Contract Documents;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of the Construction Manager's proposals and supporting data, or the preparation or revision of Instruments of Service, if not related to errors, omissions, inconsistent or ambiguities in the Contract Documents;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or
- .5

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- «Two » («2») reviews of each Shop Drawing, Product Data item, sample and similar submittals of .1 the Construction Manager
- .2 « Weekly » ( « » ) visits to the site by the Architect during construction, alternating weeks meeting will be virtual. Site visits are to be documented by a field report outlining project progress and quality issues at a minimum.
- .3 « Three » ( «3 » ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 «Two » ( «2 » ) inspections for any portion of the Work to determine final completion
- .5

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within «thirty » («30 ») months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## **OWNER'S RESPONSIBILITIES** ARTICLE 5

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall retain a Construction Manager to provide services, duties, and responsibilities as described in the agreement selected in Section 1.1.5.

§ 5.3 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect and Construction Manager. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Construction Manager to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys to describe 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.

§ 5.6 The Owner 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.

§ 5.7 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.8 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234<sup>TM</sup>–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 5.9 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, and the Owner's Concurrence, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.10 Upon the Architect's request and the Owner's concurrence, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.11 Upon the Architect's request and the Owner's concurrence, 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.

§ 5.12 The Owner shall provide prompt written notice to the Architect and Construction Manager if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service, provided nothing in this agreement shall be construed so as to require the Owner to determine the adequacy, accuracy, or sufficiency of the design, the Construction Documents, or the Architect's Services.

Failure of the Owner to provide notice to the Architect shall not excuse the Architect from its obligations under this Agreement, nor shall it amount to a waiver of any claims against the Architect for any errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.13 The Owner shall include the Architect in all communications with the Construction Manager 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 Construction Manager that may affect the

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Architect's services or professional responsibilities . Communications by and with the Architect's consultants shall be through the Architect.

§ 5.14 The Owner shall coordinate the Architect's duties and responsibilities set forth in the Agreement between the Owner and the Construction Manager with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager, including the General Conditions of the Contract for Construction.

**§ 5.15** The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

# ARTICLE 6 COST OF THE WORK

**§ 6.1** For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Manager's general conditions costs, overhead, and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the compensation of the Construction Manager for Preconstruction Phase services; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

**§ 6.2** The Owner's budget for the Cost of the Work is provided in the Initial Information, and shall be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

**§ 6.3** The Owner shall require the Construction Manager to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Construction Manager prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Construction Manager's inaccuracies or incompleteness in preparing cost estimates, or due to market conditions the Architect could not reasonably anticipate. The Architect may review the Construction Manager's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

**§ 6.3.1** 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 Architect and the Construction Manager shall work together to reconcile the cost estimates.

**§ 6.4** If, prior to the conclusion of the Design Development Phase, the Construction Manager's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Construction Manager, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

**§ 6.5** If the Construction Manager's estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner may:

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 terminate in accordance with Section 9.5;
- .3 in consultation with the Architect and Construction Manager, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .4 implement any other mutually acceptable alternative.

**§ 6.6** If the Owner chooses to proceed under Section 6.5.3, the Architect, without additional compensation, shall incorporate the revisions in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's revisions in the Construction Documents Phase shall be the limit of the Architect's responsibility under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by the Construction Manager's subsequent cost estimates, the Guaranteed Maximum Price proposal, that exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

# ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the rights of the Owner.

§ 7.2 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 shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due, pursuant to Article 9 and Article 11. This license shall survive any termination of this Agreement, including a termination for cause or for convenience. This license shall also apply notwithstanding any dispute between the Architect and the Owner, including disputes regarding payment of sums due, The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. The Owner shall also have the right to deliver copies of the Instruments of Service to any governmental authority and to Owner's successors with respect to the Project. Deliverables will be furnished electronically, via e-mail or file-transfer website, in PDF and Revit format, at the owner's request.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, , related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect, except that the Owner may, without prior written consent by Architect, assign its license to any related entity, its construction lender for the Project, if any or subsequent owner of the property where the Project is located.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

§ 7.6 If this Contract is terminated for cause or convenience after payment to the Architect of amounts due under this Contract, the Architect shall promptly deliver to the Owner a complete set of prints and electronic copies of the Instruments of Service, as completed through the date of termination.

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§ 7.7 Upon final completion of construction and before final payment, the Architect shall review on behalf of the Owner a revised set of prints and electronic copies of the drawings and specifications showing "as-built" conditions, including Change Orders and other modifications prepared by the Construction Manager.

§ 7.8 Any set of electronic copies of drawings or specifications the Architect is required to deliver pursuant to this Contract shall be in a format acceptable to Owner including but not limited to Revit, AutoCAD and pdf complete files.

§ 7.9 The Architect's promotional and professional materials shall not include the Owner's confidential or proprietary information.

§ 7.10 The Owner may use the Instruments of Service (including, without limitation, Instruments of Service prepared by the Architect and the Architect's consultants), for planning or renovations of and additions to the Project, and the Owner may permit qualified professionals to reproduce all or portions of the Instruments of Service (including the design embodied in those Instruments of Service) for incorporation into instruments of service to be prepared by such other qualified professionals for planning or renovations of or additions to the Project or other projects for the Owner if those professionals assume all responsibility for the resulting instruments of service.

§7.11 Deliverables will be furnished electronically, via e-mail or file-transfer website, in PDF or JPG and AutoCAD format, at the conclusion or termination..

#### **ARTICLE 8 CLAIMS AND DISPUTES**

## § 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager, contractors, consultants, agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, caused by the negligent acts or omissions of the Architect, its employees and its consultants in the performance of professional services under this Agreement. The Architect's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Architect's duty to indemnify the Owner under this Section 8.1.3 shall be limited to the available proceeds of the insurance coverage required by this Agreement.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

## § 8.2 Mediation

§ 8.2.1 Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution. 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.

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§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation.

§ 8.2.3 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.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(*Check the appropriate box.*)

[ « »] Arbitration pursuant to Section 8.3 of this Agreement

[ **«X** » ] Litigation in a court of competent jurisdiction

[« »] Other: (Specify)

«»

If the Owner and Architect 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, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 The provisions of this Article 8 shall survive the termination of this Agreement.

#### **TERMINATION OR SUSPENSION** ARTICLE 9

§ 9.1 If the Owner fails to make undisputed payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all undisputed sums due prior to suspension and any reasonable out of pocket expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for direct and demonstrable expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for completed services performed prior to termination, Reimbursable Expenses incurred prior to termination.

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#### ARTICLE 10 **MISCELLANEOUS PROVISIONS**

§ 10.1 This Agreement shall be deemed to have been made in, and construed in accordance with the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, County of Weld, State of Colorado.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, except as modified in this Agreement. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect. It is the intent of the parties that there are no intended thirdparty beneficiaries to this Agreement.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. Should the Architect become aware of the presence of hazardous materials or toxic substances on the Project site, it shall immediately report that presence to the Owner in writing.

§ 10.7 With the Owner's written approval, which shall not unreasonably be withheld, the Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. In no case shall, the Architect's materials include the Owner's confidential or proprietary information. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement 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 Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

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§ 10.10 Key Notices under this Contract are notices regarding any Contract default, contractual dispute, or termination of the Contract. 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 a hard copy of the communication by the means described in subsection (a)(ii) or (a)(iii) above. All other 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:**

« High Plains Library District » « » « Dr. Matt Hortt » «2650 W 29th St » «Greeley, CO 80631 » «970-506-8563

Architect: «VFLA Architecture + Interiors» « 419 Canvon Ave #200 » « Fort Collins, CO 80521 »

All Key Notices to the Owner shall include a reference to the Contract including the Architect's name and the date of the Contract. (b) 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.

**§ 10.12** Appropriation As a public entity, The Owner is dependent upon an annual appropriation by its Board of Trustees for funding of operating costs for each year. In the event funding is not made available by Owner's Board of Trustees, Owner shall have the right to cancel this Agreement and will notify Architect in writing within ten (10) days subsequent to such decision by the Board of Trustees. In the event of such cancellation by Owner, Architect will be paid for the reasonable value of the services rendered to the date of cancellation, not to exceed the total amount set forth in this Agreement. Upon such payment, all obligations of Architect and Owner under this Agreement will cease and terminate and the Owner shall be released from all further liability under this Agreement. The right granted to Owner by this provision may only be exercised for the express reason stated above.

§ 10.13 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 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as a stipulated sum as follows:

.1 Stipulated Sum (Insert amount)

« \$30,500.00 »

.2 Other – Printing, Insurance & Additional Items (Describe the method of compensation)

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## \$1,500.00 Reimbursables – NTE \$2000.00

§ 11.2 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows: (*Insert amount of, or basis for, compensation.*)

#### « As negotiated and approved in writing »

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus « five » percent ( «5 » %), or as follows: (*Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.*)

« Additional services shall exclude markup »

**§ 11.5** When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	« »	percent (	« »	%)
Design Development Phase	« »	percent (	« »	%)
<b>Construction Documents Phase</b>	« »	percent (	« »	%)
Construction Phase	« »	percent (	« »	%)
Total Basic Compensation	one hundred	percent (	100	%)

The Owner acknowledges that with an accelerated Project delivery, multiple bid package process, or Construction Manager as constructor project delivery method, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

**§ 11.6** When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

**§ 11.6.1** When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

**§ 11.7** The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. (*If applicable, attach an exhibit of hourly billing rates or insert them below.*)

« Rates are for reference as project is lump sum »

Employee or Category

Rate (\$0.00)

#### § 11.8 Compensation for Reimbursable Expenses

**§ 11.8.1** Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets dedicated to the sole use of the Project;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;

- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on reimbursable expenses;
- .10 Site office expenses approved in writing by the Owner;

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus «zero » percent ( « 0 » %) of the expenses incurred.

## § 11.9 Not Used

#### § 11.10 Payments to the Architect

#### § 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of «zero » (\$ «0 » ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of (x = 0) (\$ (0) ) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

#### § 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid « Thirty Five » ( «35 » ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. (Insert rate of monthly or annual interest agreed upon.)

« 1.5 » % «over prime per annum »

§ 11.10.2.2 The Owner may withhold payments from the Architect as a setoff for damage or costs resulting from the Architect's negligence. Additionally, the Owner may withhold payments from the Architect if the Contractor claims entitlement to a change order for negligent deficiencies in the Instruments of Service, or for architect's failure to comply with terms and conditions of this agreement in its entirety. If the Owner exercises its right to reasonably withhold all or part of a payment from the Architect as a setoff, then the Owner shall provide timely written notice to the Architect of the reason for the withholding. The Owner's failure to exercise its option to withhold payment under this provision shall not constitute a waiver of any of the Owner's rights under this Agreement, nor shall it constitute a waiver of any default. The Architect's failure to exercise its option to suspend services under this provision shall not constitute a waiver of any of the Architect's rights under this Agreement, nor shall it constitute a waiver of any default. Upon the Owner's exercise of its right to withhold payment under this provision. the Architect may initiate the claims procedures in accordance with Section 8 of this Agreement.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

#### SPECIAL TERMS AND CONDITIONS ARTICLE 12

Special terms and conditions that modify this Agreement are as follows: (Include other terms and conditions applicable to this Agreement.)

#### « »

#### § 12.1 MANDATORY IMMIGRATION PROVISIONS

§ 12.1.1 Consultant acknowledges that, prior to executing the Agreement, Consultant has certified that it does not knowingly employ or contract with an illegal alien to perform work under the Agreement and that the Consultant has

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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.

§ 12.1.2 Consultant 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 Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

§ 12.1.3 The Consultant 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 Consultant uses the Department Program for the employment verification described herein, the Consultant shall comply with the requirements mandated by § 8-17.5-102(5)(c), C.R.S. including: i. The Consultant shall comply with the provisions of § 8-17.5-102(5)(c), C.R.S.; and ii. Consultant shall notify the Owner of its determination to participate in the Department Program, and iii. The Consultant must, within twenty days after hiring an employee who is newly hired to perform work under the Agreement, affirm that the Consultant 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 Consultant must provide a written, notarized copy of the affirmation of compliance with § 8-17.5-102(5)(c), C.R.S. to the Owner.

# § 12.1.4 Consultant 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 Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

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

The Consultant shall comply with the provisions of § 8-17.5-102(5)(c), C.R.S.; and ii. Consultant shall notify the Owner of its determination to participate in the Department Program, and iii. The Consultant must, within twenty days after hiring an employee who is newly hired to perform work under the Agreement, affirm that the Consultant 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 Consultant r must provide a written, notarized copy of the affirmation of compliance with § 8-17.5-102(5)(c), C.R.S. to the Owner.

#### SCOPE OF THE AGREEMENT ARTICLE 13

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

**§ 13.2** This Agreement is comprised of the following documents identified below:

- .1 AIA Document B133<sup>TM</sup>–2019, Standard Form Agreement Between Owner and Architect, Construction Manager as Constructor Edition
- .2 A201–2017<sup>™</sup>, General Conditions of the Contract
- .3 Exhibit A – Design RFP dated 3/4/24, Addendum 01 dated 3/18/24, and VFLA Proposal dated 3/21/2024
- .4 Other documents:

(List other documents, if any, forming part of the Agreement.)

« »

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

**OWNER** (Signature)

« Dr. Matthew Hortt, Executive Director »« »

(Printed name and title)

**ARCHITECT** (Signature)

« Aspen Zabel, Interiors Department Director »« » (Printed name, title, and license number, if required)

# AIA<sup>°</sup> Document A201<sup>°</sup> - 2017

# General Conditions of the Contract for Construction

#### for the following PROJECT:

(Name and location or address)

#### « Farr Regional Library Refresh»

«1939 61st Ave, Greeley, CO 80634 »

#### THE OWNER:

« »

(Name, legal status and address)

```
« High Plains Library District » « »
« Dr. Matt Hortt »
« 2650 W 29<sup>th</sup> St »
« Greeley, CO 80631 »
« 970-506-8563 »
« »
```

# THE ARCHITECT:

(Name, legal status and address)

```
« VFLA Architecture + Interiors»« »
« 419 Canyon Ave #200 »
« Fort Collins, CO 80521 »« »
« »
```

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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 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.

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**§ 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, Subsubcontractors, 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<sup>TM</sup>–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<sup>TM</sup>–2013, Building Information Modeling and Digital Data Exhibit, and the requisite

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# 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 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.

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**§ 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 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 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.

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# § 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

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## § 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, 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

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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 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 survive the against that 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 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.

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# § 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 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.

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- .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.

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**§ 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 be ar 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

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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 reperform 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,

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**§ 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 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.

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**§ 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.

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# § 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 to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed 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 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

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§ 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.

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§ 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 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

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## § 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.

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**§ 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

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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 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 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

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**§ 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

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#### § 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

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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. <u>It shall be an affirmative obligation of Contractor to provide written</u> <u>notice to the Owner within two (2) days of the cancellation of or material change to any of the policies required</u> <u>herein and failure to do so shall constitute a material breach of the Contract</u>.

**§ 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, subsubcontractors, 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.

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**§ 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.

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## § 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.** 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.

**§ 12.2.3** 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.

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## § 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 hat 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.

AIA Document A201<sup>®</sup> - 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. The "American Institute of Architects," "AIA," the AIA Logo, "A201," and "AIA Contract Documents" are registered trademarks and may not be used without permission. This draft was produced by AIA software at 17:40:26 ET on 04/21/2021 under Order No.1419844500 which expires on 04/21/2022, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents<sup>®</sup> Terms of Service. To report copyright violations, e-mail copyright@ia.org. User Notes: (1400460634) **§ 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

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**§ 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 fullfill 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 mater;
- .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

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**§ 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

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## § 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 Contactor 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 weatherdependent 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 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

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**§ 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.

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# REQUEST FOR PROPOSAL (RFP) DESIGN SERVICES



## March 4, 2024

Carbon Valley Regional Library 7 Park Avenue Firestone, CO 80504

> Farr Regional Library 1939 61<sup>st</sup> Avenue Greeley, CO 80634

Prepared by: Brooke Kardos

Wember 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
- 1.17 SIGNING OF AGREEMENT
- 1.18 INDEMNIFICATION

## 2.0 PROPOSAL FORM PROFESSIONAL SERVICES

## 3.0 SCHEDULE OF PERSONNEL BILLING RATES

- 4.0 EXHIBITS
  - 4.1 Master Scope of Services Matrix
  - **4.2** Sample Architect Agreement

#### **GENERAL INFORMATION**

#### 1.1. INTRODUCTION AND DESCRIPTION

This Request for Proposal ("RFP") is issued to provide the selection process for Architectural design and Engineering Professional Services for the project named above. 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 design criteria. The finalists will also be requested to participate in an interview. At that stage of the selection process, respondents will be asked to include a fee proposal for the work as outlined in this RFP.

#### PROJECT BACKGROUND

Farr Regional Library is located 1939 61<sup>st</sup> 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.

#### 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 makerspace within the existing building.

#### **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, 3<sup>rd</sup> 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	
Permitting/ GMP	
Construction	

04/2024-08/2024 09/2024-09/2024 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 SCOPE OF SERVICES

The Design Consultant selected will provide project programming, prepare design schedule, prepare design and construction documents, work with the selected General Contractor thru pre-construction services for constructability and material selection and assist in administering construction, based on the following outline of services, as required. This outline is provided to assist proposers with submissions and presentations during the selection process and, will constitute a part of the design services contract as an attachment as well as the proposer's response to this RFP. The Client reserves the right to, at any time during this process, add, delete, or otherwise modify this outline scope as its best interests may appear.

The Client envisions retaining a General Contractor under a Construction Manager at Risk (CM@R) arrangement, with procurement occurring during the early design phase, and will look to the Design Team for assistance.

## A. Services:

Full professional design services are required with all related engineering disciplines, including but not limited to the following:

- 1. Programming
- 2. Architecture
- 3. Interior Design
- 4. High performance coordination and submittals
- 5. Structural Engineering
- 6. Mechanical and Plumbing Engineering
- 7. Electrical Engineering/Lighting Design
- 8. Acoustical Engineering
- 9. FF&E (including specifications, bidding, installation, and punch lists)
- 10. Signage/Way-finding Design
- 11. Tele/Data, IT, Security, and Audio/Visual Systems Coordination
- 12. Design Scheduling

## **B.** Coordination:

Coordination meetings with the Client, other Client consultants (including technology consultant) and user groups shall be a continuing work item for the selected Design Consultant from the 'Notice to Proceed' through warranty phase. In particular, the Design Consultant shall comply with all provisions of the Local Building Code and all other related codes, State requirements, Client standards, City Ordinances and regulations, as well as any covenants applicable to the property. <u>Also, to note is that the project will be managed collaboratively through the Owner's Representatives online project management system (Owner InSite) including but not limited to, Budgets, Issues, RFI's, ASI's, Shop Drawings, Site Photos, Field Reports, Meetings, document control, etc.</u>

#### C. Project Programming:

Upon Client acceptance of the Design & Approval Schedule, the Design Consultant shall proceed with the Project Programming phase. The Design Consultant shall work closely with the Client, and others as required by Client to define the scope based on the funded project construction budget.

## D. Schematic Design:

Upon Client acceptance and approval of the Program Verification, the Design Consultant shall proceed with the Schematic Design phase. The Schematic Design shall be in the form of drawings and ancillary documents and shall provide sufficient detail to show base building modifications, site modifications, division of spaces and preliminary estimates of construction costs.

Specifically, the Schematic Design will address:

- Interior design features, materials
- Base building modifications, entries, exterior modification detailing
- Site modifications
- Identification and resolution of signage and lighting needs and issues
- Schematic construction cost estimate
- Graphic documentation

#### E. Design Development:

The Design Consultant, upon Client approval of the Schematic Design, shall prepare Design Development drawings and ancillary documents as required by Client, based on the approved Schematic Design. Drawings and documents shall outline structural, acoustical, interior design, mechanical and electrical systems; shall outline all required building systems, include detailed coordination and evaluation of design impacts on O & M with Client personnel, building plans and elevations. Additionally, outline specifications, finish schedules, shall be provided. Drawings and documents shall be presented by the Design Consultant to governing jurisdictions for approval. At the 90% completion point of the Design Development phase, the Design Consultant in conjunction

with the Client shall confirm that the cost estimate does not exceed the project budget, including adequate contingency.

#### F. Construction Documents:

The Design Consultant shall, upon Client approval of the Design Development Documents, shall prepare final construction drawings, specifications, and other documents, including Client furnished documents, required to bid and construct the project in its entirety. Architect shall include in specifications a log of items required to be submitted as part of the specifications.

#### G. Bidding:

The Design Consultant shall, work with the Client to issue construction bid documents and addendums as required, respond to contractors bid questions, and review contractor submittals in conjunction with the Client.

#### H. Plan Review and Permits:

At various review and approval stages or phases of the design effort, the Design Consultant shall deliver to Client copies (and an electronic PDF) of all documentation that is needed to complete the plan review and/or approval as applicable. Following written approval of the construction documents by the Client, the Design Consultant shall submit stamped plans for permit and other governing approvals. Following the plan review process, the Design Consultant shall incorporate any required changes/comments into the Construction Documents.

## I. Construction Administration:

The Design Consultant shall provide weekly construction observation reports during the course of the Construction Phase, shall review and comment on all submittals, assist/respond to contractor request for information (RFI's), prepare design ASI's as required for proper direction for construction, review change order for accuracy and pricing (in conjunction with their consultants), attend weekly construction meetings, and perform other services as required by the Client to complete the Project. Design Consultant shall prepare, monitor, and follow through on completion of outstanding items (punch list). Architect to be present at 11 month warranty walk-throughs. Design Team to also include updating as-built drawings (in digital format).

#### J. Review and Coordination Meetings:

Sub-consultants shall be represented at all review meetings, meetings with the Building Inspection Division, the Fire Department and other municipal agencies, as required or as applicable. Coordination meetings will be led by the design team including working with utility companies, City agencies, and user groups. Internal teams include but not limited to working with vendors related to coordinating IT requirements, mechanical systems and FF&E.

## K. Building Commissioning:

The Client may retain the services of a Building Commissioning Agent during the design and construction phase. If the Client elects to execute such an option, the Design Consultant shall cooperate with the Commissioning Agent in all matters relating to the design including a peer review of all items related to building commissioning.

L. Please refer to "Master Scope of Services 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 is provided for reference and scope clarification only (fees are not due with this submission, but will be required during the interviews, if your team reaches that stage of the selection process).

## 1.4 CONTACTS

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

**Owner's Representative** 

Mr. Dan Spykstra, Owner's Representative Wember, Inc. 2580 E. Harmony Rd #201 Fort Collins, CO 80111 Phone: (720) 382-3795 Email: dspykstra@wemberinc.com

## (Owner/Client)

Dr. Matt Hortt, Executive Director High Plains Library District 2650 W 29<sup>th</sup> Street Greeley, Colorado 80631

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

## 1.5 SCHEDULE OF EVENTS

The anticipated schedule below outlines milestones for the project:

DATE	TIME	EVENT
March 4, 2024		Advertise and Issue RFP
March 8, 2024	11:00 AM @	Non-mandatory site visit:
	Carbon Valley;	11:00 – Carbon Valley Regional Library, 7 Park Ave, Firestone,
	1:00 PM @ Farr	1:00 – Farr Regional Library, 1939 61 <sup>st</sup> 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
March 28, 2024		Notification of short-listed candidates (anticipated)
April 5, 2024	TBD	Interviews of short-listed firms (anticipated)
April 9, 2024		Preferred Design Team announced
April 2024		Finalize contract negotiations (Anticipated)
April 2024		Commence project design (Anticipated)

## 1.6 **PROPOSAL INSTRUCTIONS**

- A. Pages in the proposal shall be typed with the maximum number of pages of proposal information to be limited to 30 pages (including proposal forms) numbered in sequential order.
- B. Submit proposal by the date and time aforementioned to the Owner's Representative. It is the Proposing Firms responsibility to confirm receipt by the deadline established.
- C. <u>Submit a single electronic PDF (no larger than 8MB) file including all Proposing response</u> <u>documents</u>; email to the Owner's Representatives Dan Spykstra, <u>dspykstra@wemberinc.com</u> &

Brooke Kardos, <u>bkardos@wemberinc.com</u>. Oral, telephonic, or faxed proposals are invalid and will be considered as non-responsive as outlined.

- D. No Proposing Firm may submit more than one submission. 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.

## 1.7 PROPOSAL REQUIREMENTS

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

## Part 1 – Cover Letter

a. Brief cover letter expressing interest. Identify years in business in the cover letter.

## Part 2 – Project Experience

- a. Present at least three similar projects completed in the last five years similar in size and complexity. Provide portfolio sheets including:
  - 1) Project location
  - 2) Project size in square feet
  - 3) Project completed construction value
  - 4) Project construction start and completion date
  - 5) Method of construction delivery
  - 6) Project Description
  - 7) Staff directly involved with the project.
  - 8) Owner, Contractor, and Architect contact information, email and telephone

## Part 3 – Project Team & Staff

- a. Provide an overview of your proposed team and how their experience benefits the proposed projects. (Key team members proposed should remain a part of the team assigned unless written approval from the Client is given to allow a change).
- b. Organization Chart; Provide an organization chart graphically indicating how your firm would staff and structure the proposed team. Clearly identify the main point of contact for all or each of the projects.
- c. Provide a matrix that indicates staff commitment by % by phase including SD, DD, CD and CA.
- d. Qualifications Matrix: Provide a matrix identifying the five similar projects identified under project experience along and the proposed team members. Identify the team members that actively worked on the similar project. Also include relevant qualifications on the matrix such as license in architecture, LEED, PMP Certification, etc.
- e. Resumes of team members including consultants.
  - 1) Identify their role on the project
    - 2) Identify team member credentials
    - 1.1.1.e.2.1. Identify relevant credentials such as Licensed Architect etc.
    - 3) Identify professional affiliations

## Part 4 – Qualifications Q&A

- a. Submit one or two pages with images that depict your firms and project architect's/lead designer's capabilities.
- b. Describe what makes your team different; explain how that difference adds value to the project.
- c. The Owner desires a highly collaborative process and although the agreement will not be an Integrated Project Delivery (IPD) or multi-party agreement we anticipate high levels of

collaboration to successfully deliver the project. Describe what elements of Integrated Project Delivery you would prefer to see in order to streamline the process for all team members. Include examples of implementation the design team/engineers have recently experienced.

- d. Describe your teams experience with fast-paced projects. Describe three lessons learned / concepts that should be considered in this project.
- e. Explain what you believe is the best benefit and biggest challenge of CM@R partner from the architect's perspective.
- f. How do you propose to integrate operations and maintenance considerations and stakeholder input into the design process?
- g. The Owner is considering design assist on the major trades including MEP and Structural to increase coordination and meet the proposed schedule. Describe the MEP and Structural Engineers experience with this approach, identify any lessons learned that would improve the process on this project.

## Part 5 - Fee Proposal

Please refer to "Master Scope of Services 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 is provided for reference and scope clarification only (fees are <u>not</u> due with this current submission, but will be required to be submitted at the time of the interviews, if your team reaches that stage of the selection process). Submit/note any conditions, clarifications, or exclusions concerning Scope of Services.

Shortlisted Candidates shall prepare a detailed fee proposal as outlined herein. The fee proposal is to be submitted in a sealed envelope prior to the start of their interview. Failure to provide a fee proposal which addresses each of the items listed below may result in disqualification from the RFQ/P process.

Insurance certificates naming the Client and Wember Inc. as additional insured will be required prior to work commencing, but not required as part of this submittal.

#### 1.8 QUESTIONS, INQUIRIES, AND AMENDMENTS REGARDING THIS RFP

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

#### 1.9 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 bid. 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.

#### 1.10 EVALUATION CRITERIA

The Client Selection Committee will review all proposals and select a Proposing Firm whose proposal is deemed most suitable for the Client. Criteria used to evaluate proposals are listed below:

- A. Qualifications Proposal Phase of Selection (total points available = 100):
  - 1. Qualifications and experience of the teams, as indicated by prior successful completion of similar projects. <u>25 points</u>
  - 2. Qualifications and experience of the key individuals, (including sub-consultants) who will be assigned to this project, as indicated by prior involvement in similar projects. <u>30 points</u>
  - 3. Proposed approach to completion of the scope of work and understanding of the project and project issues. <u>30 points</u>
  - 4. References <u>15 points</u>
- B. Interview & Fee Proposal Phase of Selection:
  - Those respondents deemed best qualified will be invited to participate in an interview with the Selection Committee. An interview invitation will be sent out to the three (3) Candidates with the highest RFP submittal scores (from the above Qualifications Proposal Phase) on the date noted in the schedule of events. The invitation will explain the interview requirements and provide the time and location. The purpose of the interview is to ensure a full understanding of the RFP responses, and to introduce key members of the Design Team.
  - 2. Master Scope of Services Matrix (including fees) of the interviewed firms will be evaluated and rated in terms of responsiveness and value. If the apparent winner's fee exceeds the Owners budget and if subsequent negotiations with the apparent winner are unsuccessful, the Owner reserves the right to negotiate with the next highest-scoring Candidate.

## 1.11 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 Firm, 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.

#### 1.12 ACCEPTANCE OF PROPOSAL

The successful Proposing Firm(s) will be notified in writing of the acceptance of its proposal. Upon receipt of this written notification, the successful Proposing Firm shall, within ten (10) calendar days, or such other time agreed between the parties, execute a *Professional Services Agreement* in a form approved by the Client. If the Agreement is not executed and returned to the Client within ten (10) calendar days or such other time agreed between the parties, the Client may, at its sole discretion:

- A. Treat that failure as a breach constituting a rescission of the Client's written acceptance of Proposing Firm's proposal; and
- B. Accept any other proposal; or
- C. Again call for Requests for Proposals

## 1.13 MODIFICATION AND WITHDRAWAL OF PROPOSALS

- A. Proposals may be modified or withdrawn by an appropriate document duly executed (in a manner that a proposal must be executed) and delivered to the place where proposals are to be submitted at any time prior to the opening of proposals.
- B. Proposals may also be modified or withdrawn in person by the Proposing Firm or an authorized representative provided he can prove his identity and authority.
- C. Withdrawn Proposals may be resubmitted up to the time designated for the receipt of Proposals provided that they are then fully in conformance with these Instructions to Proposing Firm's.
- D. If, within twenty-four hours after Proposals are opened, any Proposing Firm files a duly signed, written notice with 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 Proposing Firm may withdraw its proposal. Thereafter, that Proposing Firm will be disqualified.

## 1.14 PROPOSALS TO REMAIN OPEN SUBJECT TO ACCEPTANCE

All Proposals shall remain open for forty-five (45) days after the day of the Proposal opening.

#### 1.15 INSURANCE

Design Consultant shall carry insurance of the type and in the amounts as described. Proof of such insurance coverage shall be presented to the Client prior to Notice to Proceed. Nothing herein shall be deemed a waiver of immunity under §24-10-101 et seq., C.R.S.

- A. Workers' compensation insurance in accordance with applicable law.
- B. Comprehensive commercial general liability insurance in the amount of \$2,000,000.00 combined single limit bodily injury and property damage, each occurrence; \$2,000,000.00 general aggregate.
- C. Automobile liability insurance in the amount of \$1,000,000.00 combined single limit bodily injury and property damage, each accident.
- D. Errors and Omissions (E&O) Insurance Design Consultants shall maintain limits of \$2,000,000 for each claim, and \$2,000,000 aggregate limit for all claims.

#### 1.16 COST OF PROPOSALS

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

#### 1.17 SIGNING OF AGREEMENT

When the Client gives a Notice of Award to the Successful Proposing Firm, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within ten (10) days after the Proposing Firm's receipt of the Notice of Award, the Proposing Firm shall sign and have notarized the required number of counterparts of the Agreement and attached documents and return them to the Client along with the required Bonds, insurance certificates and power of attorney authorizations. <u>PLEASE NOTE</u>: a sample agreement has been included identifying terms and conditions of the project (Exhibit 4.2). The Client reserves the right to refine the detail shown in the agreement.

#### 1.18 INDEMNIFICATION

The Design Consultant shall indemnify, defend and hold harmless the Client, its members, directors, officials and employees from and against any and all claims, demands, suits, actions judgments, losses, damages, injuries, penalties, costs, expenses (including attorney's fees) and liabilities to the extent they are alleged to arise from the intentional misconduct or negligent acts or omissions of the Design Consultant or Design Consultant's sub-contractors and/or employees. The obligations of this indemnification shall survive termination of the Agreement.

#### 2.0 **PROPOSAL FORM FOR PROFESSIONAL SERVICES**

(Please use additional sheets as necessary.)

СС	OMPANY NAME:	
СС	OMPANY ADDRESS:	
PH	IONE:	FAX:
СС	ONTACT PERSON NAME:	
СС	ONTACT PERSON PHONE:	
СС	ONTACT PERSON EMAIL:	
1.		attached to this RFP has been reviewed and is agreed to as show ents to the "Agreement"(YES/NO) Please list them if yes.
2.	Acknowledgment that the submitting agent r RFP(YES/NO)	neets or exceeds insurance requirements as outlined in the
3.	connection with any other person or person	bulates that this proposal is made in good faith, without collusion is bidding for the same Work, and that it is made subject to all the posal and associated documents, all of which have been examine
4.	The submission of the proposal constitutes a for a period of forty-five days.	an agreement, and shall not be withdrawn after the proposal openir
5.	Acknowledgment that the submitting a Colorado(YES/NO)	agent carries (or will carry) a license in Weld Count
6.	The Proposer hereby acknowledges receipt	of addenda numbers through
7.	List of construction items that will be self-pe	rformed.
	A	1
	В	J
	С	К
	D	L
	E	M
	F	N
	G	0
	Н	P

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

\* \* \* End of Proposal Form \* \* \*

## 3.0 SCHEDULE OF PERSONNEL BILLING RATES

RESPONDENT:

PERSONNEL CLASSIFICATION	BILLING RATE PER HOUR
Principal	
Associate Principal	\$
Owner	\$
Project Architect	\$
Architect	\$
Intern Architect	\$
Senior Engineer	\$
Engineer	\$
Engineer In Training	\$
Urban Designer	
Senior CAD Operator	
CAD Operator	
Licensed Surveyor	
Other:	\$
Other:	
Other:	\$

\_\_\_\_



## Addendum 01

Project Name: Wember Project Number: Issue Date: Purpose: Carbon Valley & Farr Refresh 2018.35 March 18, 2024 RFP Addendum 01

Question #1	What site modifications are being considered? (Section D)
Carbon Valley may look into ADA accommodations from their existing patio to the existing ampitheater.	

Question #2	What modifications are being made to base building components, entries and exterior details? (Section D)
Carbon Valley would like input on adding a Holds window to their existing drive-up book-drop & look at adding handicapped parking closer to the main entrance of the building. Farr Regional Library does not have any exterior work planned.	

Question #3	What changes to lighting are being considered? (Section D)
Both locations m	nay upgrade their lighting to LED bulbs, no change to fixtures.

Question #4	Will the Design Consultant be responsible for cost estimating or validation only of GC's estimates? (Section D)
The Design Consultant will validate the GC estimate.	

Question #5	What level of LEED certification is the Owner trying to achieve?
None	

Question #6	Does the proposal form for professional services and the schedule of personnel billing rates need to be included in the thirty (30) page RFP response? I see that the thirty (30) pages does include proposal forms but we would like to confirm this includes both, as fees are not a part of this phase of RFP response
Yes, billing rates should be included in the 30 pages.	

Question #7	Will the book-drop drive-thru be included in this phase of work for the Carbon Valley Regional Library?
Yes	

Question #8	Are the exterior improvements regarding the path to an outdoor area, EV stations, and handicap spot relocation, for Carbon Valley, included in this scope of work? We understand this may require a Landscape Architect on the team, please confirm if you'd like the design team to carry this in potential of these.
Yes	

<b>Question #9</b> The work discussed in the RFP and during the site-walk is unlikely to require a structural	Question #9	The work discussed in the RFP and during the site-walk is unlikely to require a structural engineer, can Wember confirm if they would like the design team to carry one for this proposal, or address that work on an as-needed basis? Please confirm.

Structural engineer is not necessary.

Question #10	Does High Plains have a standard facility requirement for furniture manufacturers?
No	

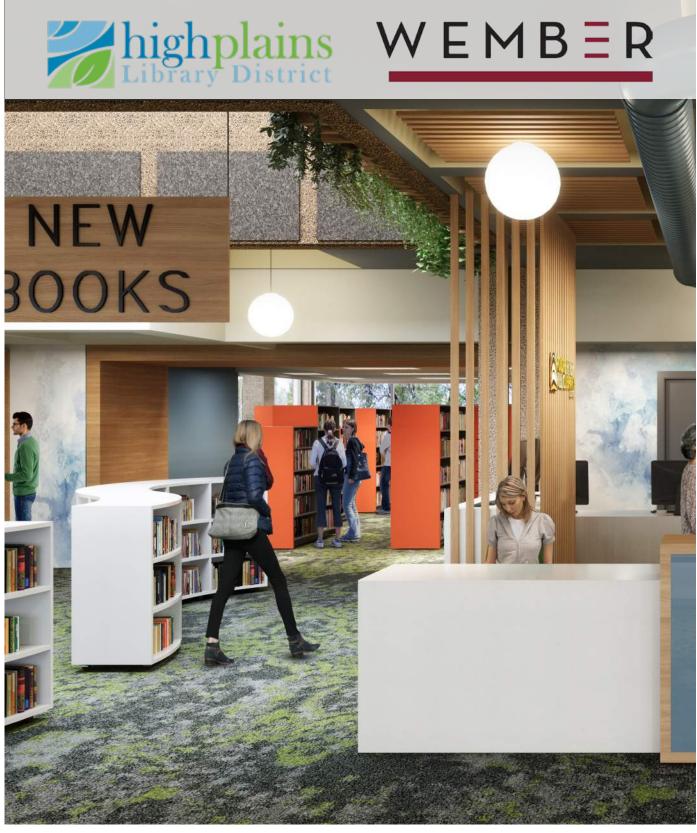
Question #11	Does any scope need to be included for wayfinding or interior signage?

If a Makers Space is added to Carbon Valley then wayfinding signage may need to be required.

Question #12	Will the furniture package selected by the design team be sent out for bid?
Yes	

Question #13	Has a CM@R partner been selected for these projects?
No. CMAR RFP schedule is same as design RFP.	

# **HIGH PLAINS LIBRARY DISTRICT** Carbon Valley Regional Library + Farr Regional Library







March 19, 2024

Mr. Dan Spykstra & Brooke Kardos Owner's Representative Wember, Inc. 2580 E. Harmony Rd #201 Fort Collins, CO 80111

RE: Carbon Valley Regional Library – Firestone, CO Farr Regional Library – Greeley, CO

Dear Mr. Spykstra & Mrs. Kardos,

I am writing to express VFLA Architecture + Interiors' keen interest in providing design services for the renovation projects at the Carbon Valley Regional Library in Firestone, Colorado, and the Farr Regional Library in Greeley, Colorado. With our extensive experience in interior renovations and commitment to delivering innovative design solutions within budgetary constraints, we are excited about the opportunity to contribute to the transformation of these esteemed community libraries.

We firmly believe in approaching every project through a spirit of partnership. With a remarkable 80% rate of return clients, we understand the value of building lasting relationships grounded in open communication, mutual trust, and successful project delivery. Our goal is not to merely complete projects but to cultivate enduring partnerships that transcend individual endeavors. By prioritizing collaboration and understanding our clients' unique vision and needs, we ensure that each project is a reflection of shared goals and aspirations.

At VFLA, we understand the importance of revitalizing public spaces to meet the evolving needs of our communities. Our approach to design emphasizes not only aesthetics but also functionality and cost-effectiveness. We believe in creating environments that foster engagement, inspiration, accessibility, and safety for all patrons. The development of legacy buildings, such as these, are successful when meeting the needs of the users and of the local communities in which they are built. As a fully capable and collaborative team working in the Northern Colorado region, we continue to provide an efficient approach to working with local municipalities that we have a vast understanding of and completing projects successfully.

With a successful presence spanning 37 years, VFLA Architecture + Interiors has established a legacy of excellence in architecture and interior design services. Our portfolio encompasses a diverse range of projects, and we are well-versed in all phases of coordination, from project programming and schematic design to construction administration and project hand-off. Our thorough approach to each phase, combined with our attention to detail, enables us to create spaces that are not only aesthetically pleasing but also functionally efficient.

Our team is comprised of dedicated professionals who are passionate about their craft and possess meticulous attention to detail. We thrive on organization and adhere to strict schedules to ensure timely project delivery without compromising quality. With every project we undertake, we strive to exceed client expectations and leave a lasting impact through thoughtful design solutions. Should we be selected for this project, we assure you that our team will dedicate the appropriate time and resources for a successful project from start to finish.

Thank you for considering VFLA for these exciting opportunities. We look forward to the possibility of working together and contributing to the success of these important community projects.

Thank you for your time,

Aspen Zabel Interior Department Director aspen@VFLA.com

PART 1 - Cover Letter

PART 2 - Project Experience

PART 3 - Project Team & Staff

PART 4 - Qualifications Q&A

# BUILD AMAZING THINGS

<<u>EXII</u>

# PART2 Project Experience



# **OLD TOWN LIBRARY CONCEPTUAL DESIGN RENOVATION**



LOCATION Fort Collins, Colorado BUILDING TYPE Conceptual Renovation SIZE 6.000 square feet renovation COMPLETION DATE TBD COMPLETION COST TBD

**KEY FEATURES** 

- Welcoming lobby
- Site line for safety & security
- Coworking space
- Flexible activity space
- Flexible book storage
- Entry into kids area
- Improved wayfinding •

#### REFERENCE

Eileen McCluskey Poudre Libraries - Owner/Rep EMcCluskey@poudrelibraries.org

Aspen Zabel Designer aspen@vfla.com

**KEY STAFF MEMBERS** Aspen Zabel

Old Town Library, conveniently located in downtown Fort Collins, has been a staple of the community for many years. It is used by so many and therefore, in 2019 the library board made the decision to begin the renovation process. VFLA was brought on board to help the team generate These images are currently being conceptual ideas that will then be taken to the board for approval. From the beginning, the staff of OTL gave three main goals for their project; to create a welcoming lobby with improved wavfinding, allow the staff to have better site lines for safety and security, and create spaces that cater to many different users. As well as these main goals, the library manager wanted to give the kids area a separate

PROJECT RELEVANCE Library Space Renovation

Safety & Security Makers Space

"secrete portal". In the end, VFLA and OTL team members were able to achieve conceptual plans that would meet all of these goals.

The images seen on these sheets are taken from our 3D computer program. turned into photo realistic renders, that the staff will be able to present to the board and the Fort Collins community. We are hopeful that these conceptual ideas are approved and we can soon begin the design development and construction document phases of this project.

# THE GROUP REAL ESTATE SUCCESS CENTER



LOCATION Timnath, CO **BUILDING TYPE** Commercial Tenant Finish SIZE 3.000 square feet CONSTRUCTION DATES Sept 201 - April 2019 DELIVERY METHOD Bid/GMP

CONSTRUCTION COST \$7.1 M CONTRACTOR Elder Construction

#### REFERENCE

Brandon Wells Owner - The Group bwells@thegroupinc.com 970.221.0700

Rvan Brunk Elder Construction ryan.brunk@elderconstructioninc.com 970.833.5302

Rebecca Olsen VFLA architecture + Interiors rebecca@vfla.com 970.498.2970

#### **KEY STAFF MEMBERS**

Rebecca Olsen, VFLA Aspen Zabel, VFLA

For just over 40 years, The Group Real Estate has been the preeminent force in the northern Colorado real estate marked. In line with their 40th anniversary, they wanted to explore a new concept for their real estate offices, which came to fruition in this space. In keeping with their core values of relationships, lifelong learning, and community, this space was designed to incorporate those values into a concrete vision. This represents a new model for their offices, of smaller, localized spaces that can be utilized as needed and are convenient to showings. How this is seen in the new office includes the following: • In-house training with the latest in

technology Variety of options for meetings (soft seating, conference spaces, open coffee bar concept, and even a living room area), creating as much comfort in the process for their clients as possible.

#### **KEY CONSULTANTS**

Integrated Mechanical APS. Inc.

• Full-glass walls of the offices create an open, inviting atmosphere

· Office concept of this space as a 'touch down' office close to homes, convenient for their clients and full of comforts for their realtors. The offices are checked out on an as-needed basis so meetings can be convenient for all.

Finishes and design were integral to this concept in providing a sense of warmth and openness. This includes a vaulted wood ceiling, subtle forms of branding, a variety of lighting, a fireplace for the living room area, details such as tile accents and the custom booth design, and even upgraded restrooms to add to the overall feel of the space as something more approachable than a typical office. This all works together to blend the difference between corporate and residential, a comfortable space that has the capabilities of the office, while feeling much like home.

PROJECT RELEVANCE Interior Renovation Interior Design & Space Planning

# **CENTENNIAL LENDING HEADQUARTERS**





**LOCATION** Firestone, CO **BUILDING TYPE** New Build SIZE 18.536 square feet **CONSTRUCTION DATES Sept 2019 -**June 2020 DELIVERY METHOD: Design, Bid, Build

CONSTRUCTION COST \$5.6 Million **CONTRACTOR Elder Construction** 

#### REFERENCE

Jeff Davis Sr Vice President Centennial Lending 720-494-2745 jeff.davis@centennial-lending.com

Sean Windsor **Elder Construction** sean.windsor@elderconstructioninc.com

Andy Goldman VFLA Architecture + Interiors andv@vfla.com 970-498-2971

**KEY STAFF MEMBERS** Andy Goldman, VFLA Aspen Zabel, VFLA

During the design of the new Centennial Lending headquarters. VFLA Interior's team purposefully crafted the user experience through-out every space within this 18,500 sf building. A combination of neutral colors and rich textures create a sophisticated and timeless palette that honors the Colorado landscape. Large exterior A large break room space was windows were introduced in all areas to increase access to the sprawling

mountain views. In their new office, Centennial Lending create an elevated, approachable welcomes guests with a large twostory entry housing a 14' custom light fixture and an abundance of natural light that floods the space and carries throughout the 2-story building. To achieve the push and pull of natural light, VFLA introduced

sliding glass doors and large interior windows behind the reception desk.

**KEY CONSULTANTS Raker Rhodes** 

A small conference room overlooks the double height entry with frameless glass allowing natural light to travel up and in to the second floor. Across from the small conference room, sits a large executive conference room with beautiful views of longs peak.

provided for employee use which includes two communal islands with waterfall edges. Full height custom casework and thoughtful finishes space for employees to escape and unwind. This space also features high ceilings with a custom wood plank finish, full height exterior windows, and large sliding glass doors with direct patio access.

PROJECT RELEVANCE

Training/Flex Space Safety & Security Space Planning Furniture Selection

# NUMERICA **OFFICE + WAREHOUSE**



LOCATION Fort Collins, CO **BUILDING TYPE** Commercial SIZE 28,196 square feet **CONSTRUCTION DATES July 2021 -**March 2022 DELIVERY METHOD: Design, Bid, Build

CONSTRUCTION COST \$3 M **CONTRACTOR Elder Construction** 

#### REFERENCE

Jeff Poore Numerica Corporation 970-207-2200 jeff.poore@numerica.us

Rvan Brunk Elder Construction ryan.brunk@elderconstructioninc.com 970.833.5302

Aspen Zabel VFLA Architecture + Interiors aspen@vfla.com 970.498.2971

# **KEY STAFF MEMBERS**

Andv Goldman, VFLA Aspen Zabel, VFLA

During the design renovation of the The VFLA team also included open Numerica Corporation office and warehouse, VFLA Interior's team purposefully crafted the space to accommodate our client's expanding teams. The entire building was designed with future proofing in mind for continual growth.

**KEY CONSULTANTS** Integrated Mechanical

The VFLA team designed an updated façade to add a welcoming entry appearance to the building. The interior fixtures and overall design of the space boast a mountain modern aesthetic, particularly the luxury conference rooms and break room. The larger conference room includes a high-end storage and catering bar and a full wall of back painted glass acting as a functioning white board.

offices with sound control for employees. The break room space was provided for employees with the ability to host full staff meetings and events, including a large communal island with waterfall edges and booths for hoteling stations.

The 19,258 square foot warehouse portion of this project was designed to handle an expanded lab, prototyping facility and the complete assembly, calibration and test infrastructure for our client's optical and RF sensor product lines

During the design phase of this project, Numerica's President, Jeff Poore, said "We are looking forward to our vision becoming a reality very soon."

#### PROJECT RELEVANCE

Interior Renovation Furniture Selection & Procurement Coordination Flexible Spaces Interior Design & Space Planning

# PART 3 Project Team & Staff



# FIRM OVERVIEW

VFLA Architecture + Interiors VFLA.com

PRIMARY CONTACT Aspen Zabel Interior Department Director 970.224.1191 main 970.498.2962 direct aspen@vfla.com

OFFICE LOCATION 419 Canyon Ave Suite 200 Fort Collins, CO 80521

# FOUNDED 1986 BY FRANK VAUGHT + JOE FRYE

# **OUR PHILOSOPHY**

To build a vibrant place for people to grow and thrive. Enhance the ideas of the community through collaborative design and leadership.

## AREAS OF PRACTICE

Corporate + Commercial Civic + Municipal Lab + Research Higher Education Medical Offices Warehouse + Industrial Retail + Dining Multi-Family + Mixed-Use Prototypical/Branded Designs Historic Renovation Hospitality Aviation

### DISCIPLINES

Architecture Interior Design Planning + Strategies Graphic Design







Award-winning sustainable design is merely the starting point for the range of services available to clients. As a full-capacity architecture firm, we listen to our clients and bring our diverse experience and creative problem solving skills to bear on every project.

The evolution of our name from Vaught Frye Architects in 1986 to VFLA today demonstrates the firm's commitment to bringing a multi-generational approach to projects – combining knowledgeable experience with forward-thinking innovation. Our founding partners, Frank Vaught and Joe Frye, have mentored today's partners and project managers - including our Principals Chris Aronson and Jeff Fleischer - to expand on their philosophy of client-centered service.

With our office in Fort Collins, VFLA's influence can be seen throughout Northern Colorado and Southern Wyoming – from the Underwriters' Laboratories in Laramie to the Old Town Office Building in Fort Collins, from an addition to Alder Hall on the CSU campus to multiple renovations and new construction for Aims Community College, from the Fort Collins Chamber of Commerce to the Windsor Town Hall. For projects ranging from single-family residential to healthcare complexes, we offer a complete array of architectural design, interior design, land planning, graphic design and construction phase services.

# a. & b. ORGANIZATION CHART

The hand selected key team members are beyond ready to deliver exceptional Architecture, Interior De-sign and Engineering services to Wember, High Plains and the community. With combined years of experi-ence spanning diverse project sectors, these experts bring of wealth of expertise and insight to the table.







Aspen Zabel Interior Dept. Director



Rebecca Olsen Sr. Interior Designer & Project Manager

Mechanical & Electrical Engineer





**High Plains Library District + Wember** 

## **VFLA Inc.**

Architectural / Interior Design / Space Planning FORT COLLINS, CO



Andy Goldman Licensed Architect and Sr. Quality Control



Annie Milsten Interior Designer

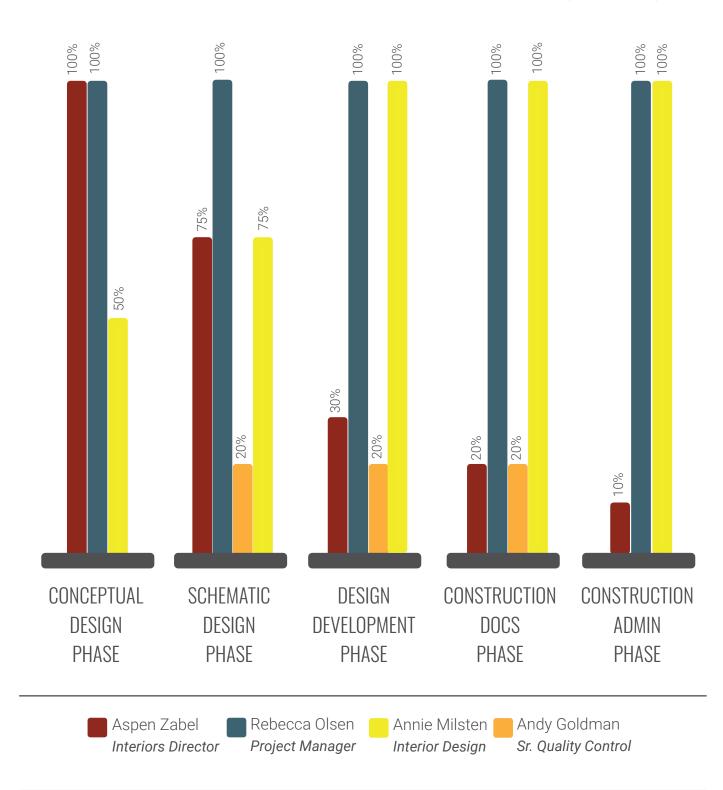
Landscape Architecture

Furniture Consult & Expert



# С. STAFF COMMITMENT

The graphic indicated denotes a time commitment based on a percentage within each designated project phase for key staff.



# d. QUALIFICATION MATRIX

PROJECT NAME	VFLA ARCHITEC + INTERIORS
FORT COLLINS LIBRARY CONCEPTUAL DESIGN	Aspen Zabel, NCIDQ
CENTENNIAL LENDING	Andy Goldman, AIA, LEED AP BD+C, USGB Aspen Zabel, NCIDQ
DENROSE	Andy Goldman, AIA, LEED AP BD+C, USGBO Aspen Zabel, NCIDQ
THE GROUP	Rebecca Olsen LEED AP Aspen Zabel, NCIDQ

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с	Integrated Mechanical P.E.
	Integrated Mechanical P.E.

# ASPEN ZABEL, NCIDQ

## Interiors Department Director



#### **EDUCATION** Bachelor of Science in Interior Architecture and Design, Colorado State University

CERTIFICATION NCIDQ

#### **PROFESSIONAL AFFILIATIONS IIDA** International Interior Design

Ms. Aspen Zabel graduated from CSU with a BS in Interior Architecture & Design and has since been working in the industry on varying types of projects including; higher education, medical, workspace, commercial office and hospitality. She is a strong visionary team member and helps to see that a projects cohesive design is carried through from start to finish. Aspen believes that a successful project must encompass more than just architecture & design but should be thought through to every detail. With an immense passion for design, she is continuously thinking about her clients daily experience in their space. Her strengths include design cohesiveness, innovation, and attention to detail.

### **RELEVANT EXPERIENCE**

Poudre River Public Library Conceptual Design | Fort Collins, CO Centennial Lending Office Building | Firestone, CO Warehouse Twenty One Headquarters | Cheyenne, WY 4450 Denrose Office + Warehouse | Fort Collins, CO The Group Office | Timnath, CO The Group Tenant Finish - South Office | Fort Collins, CO Northeastern Junior College Applied Tech Campus | Sterling, CO Northeastern Junior College Area Vocation Building - Welding | Sterling, CO AIMS Community College General Campus Signage Design | Greeley, CO University of Wyoming - President's Office Renovation | Laramie, WY CPP Wind Headquarters | Windsor, CO Cheyenne Frontier Days Headquarters | Cheyenne, WY UW Co-Working Space | Laramie, WY

# ANDY GOLDMAN, LEED AP BD+C

Sr. Quality Control Manager



**EDUCATION** Master of Architecture, Montana State University

Bachelor of Architecture, Montana State University

#### REGISTRATIONS

Architect: Colorado, California LEED AP BD+C

#### **PROFESSIONAL AFFILIATIONS** USGBC

Andy joined the VFLA team in 2014 and brings more than 20 years of expérience in architecture from firms in Arizona, Colorado and California. He has vast knowledge of all facets of architecture. Having worked on a broad range of project types through all phases he brings a professional skill set including project and staff management, effective communication, client relations, and mentoring. Andy also has experience with grant applications and funding, as well as coordinating efforts to improve building energy efficiency. Andy's well-rounded experience and expertise paired with his ability to facilitate clear and effective communication make Andy a valuable member of the VFLA team.

#### **RELEVANT EXPERIENCE**

Warehouse Twenty One Headquarters | Cheyenne, WY Centennial Lending Headquarters | Firestone, CO 4450 Denrose Office + Warehouse | Fort Collins, CO Northeastern Junior College Applied Tech Campus | Sterling, CO Aims Automotive & Technology - Fort Collins, CO CSU National Resources Research Center Building B - Fort Collins, CO Colorado State University 222 Laurel Street Addition - Fort Collins, CO Weld County RE3J District Administration Building - Keensburg, CO West Grand School District Renovation - Kremmling, CO Underwriters Laboratory Building | Laramie, WY Loveland Water Reclamation Facility | Loveland, CO Loveland Water Treatment Plant | Loveland, CO 2948 Ginnala Drive Water Testing | Loveland, CO XOG Headquarters + Warehouse | Windsor, CO City of Laramie Speculative Office Building - Laramie, WY Sterling High School Remodel - Sterling, CO Eaton Schools QC Reviews | Eaton, CO

# REBECCA OLSEN, LEED AP ID+C Senior Interior Designer



### **EDUCATION**

Bachelor of Science in Interior Design Colorado State University

#### REGISTRATIONS

LEED AP ID+C IIDA

Ms. Rebecca Olsen attended Colorado State University where she achieved a Bachelor of Science Degree from the CIDA-accredited Interior Design program. With 22 years of experience, Rebecca has experience in a multitude of project types. She focuses on blending the line between architecture and interior design. She is an expert in LEED sustainable interiors, and has won several awards throughout her professional career, including ASID awards and several awards for historic preservation.

### **RELEVANT EXPERIENCE**

Erie Dance Studio | Erie, CO

# ANNIE MILSTEN

Interior Designer

**EDUCATION** 

State University

Summa Cum Laude



Bachelor of Science in Interior

Architecture and Design - Minor in

Construction Management, Colorado

Mrs. Annie Milsten graduated from Colorado State University with her second bachelor's degree in Interior Architecture and Design and a minor Construction Management. Before returning to school, she was a project manager at a local creative digital marketing studio, her time spent at this company inspired her to return to school to pursue her own passion of design. Client interaction and finding the best design solution for a project are the most rewarding aspects of design for Annie and she enjoys learning all that she can about the technical building components of a project.

# **RELEVANT EXPERIENCE**

Boys & Girls Club Teen Center | Loveland, CO Visit Fort Collins | Fort Collins, CO Northern CO Regional Airport FNL Terminal Building | Loveland, CO Awakened School | Loveland, CO Bricks & Minifigs | Louisville, CO Sit & Stay Dog Bar | Fort Collins, CO

Bachelor of Science in Equine Science - Minor in Business Administration Colorado State University



Colorado Dermatology | Loveland, CO Family Holistic Dentistry | Boulder, CO First National Bank | Erie, CO First National Bank | Loveland, CO First National Bank Oak Remodel | Loveland, CO Northern Colorado Veterinary Clinic | Fort Collins, CO Palmer Properties | Fort Collins, CO Richter Orthodontics | Greeley, CO Ridgeview Classical Schools | Fort Collins, CO Rocky Mountain Family Vision | Fort Collins, CO The Group Success Center | Loveland, CO Rainbow Restaurant | Fort Collins, CO Ginger and Baker Arboretum | Fort Collins, CO



# CHRIS ARONSON

## Principal in Charge



#### **EDUCATION**

Bachelor of Architecture. University of Southern California Magna Cum Laude

#### REGISTRATIONS

Licensed Architect in Colorado, Wvoming, Nebraska, Arizona, Texas, Kansas USGBC, LEED AP

#### **PROFESSIONAL AFFILIATIONS**

American Institute of Architects Fort Collins DD, Chair NCARB



Chris Aronson is a licensed architect and Principal at VFLA. He believes that great design exists to elevate the human experience. He brings a unique background to the firm as a Colorado native with a Los Angeles architectural schooling. Chris believes each project needs to be grounded in a sense of place to its site. Chris' enthusiasm is contagious and his desire to provide high quality service to our clients makes him a key leader of our firm.

#### **RELEVANT EXPERIENCE**

4450 Denrose Office + Warehouse | Fort Collins, CO The Group Office | Timnath, CO Warehouse Twenty One Headquarters | Cheyenne, WY Loveland Airport | Loveland, CO Northern Colorado Regional Airport Terminal | Loveland, CO Blue Ocean Corporate Aircraft Hangar | Loveland, CO Raindance Clubhouse and Pool House | Windsor, CO Windsor Mill Adaptive Reuse | Windsor, CO Ginger Baker Adaptive Reuse | Fort Collins, CO Union Restaurant and Bar | Fort Collins, CO Associates in Family Medicine | Windsor, CO Aronson Family Dental | Fort Collins, CO Richter Orthodontics | Greeley, CO Lee Periodontics | Fort Collins, CO Agfinity Headquarters | Loveland, CO Loveland Water and Waste Water Treatment | Loveland, CO



Ms. Klara Rossouw has been part of the Ripley Design team for over eight vears. She has experience at all different levels of the design process from schematic design, to the entitlement of difficult projects, and the detailed construction documentation of final designs. Her passions are sustainable design, and creating spaces that foster community and sense of place.

#### NOTABLE EXPERIENCE POUDRE RIVER LIBRARY FORT COLLINS, CO

Klara was the designer and project manager for the entryway and arrival area renovations for the downtown Fort Collins Library. Scope included introducing a native plant palette, activating the outdoor space with instruments, and various seating areas. A small memorial was part of the design commemorating a renowned City Planner for the City of Fort Collins.

#### SHERIDAN LIBRARY (ARAPAHOE LIBRARY DISTRICT) DENVER, CO

Klara was the designer and manager for the construction phase services for the recent renovations on the Sheridan Library campus. Scope include outdoor movie lawns, a discovery play area, and the introduction of new trees and a native, lowmaintenance plant palette.

#### ADMINISTRATIVE BUILDING (ARAPAHOE LIBRARY DISTRICT) DENVER, CO

As lead landscape architect and project manager, Klara is leading a site wide renovation effort to activate and update the facility. Klara the project team lead the Arapahoe Library District Board of Directors to award additional scope to the outdoor areas. A large emphasis is put on sustainability, education, and outdoor comfort and choice.

# **THOMAS SEGELHORST,** PE, LEED AP<sup>®</sup>

**Professional Engineer & Founder** 



# terminology

#### **RELEVANT EXPERIENCE**

BS Mechanical Engineering, Colorado State University

#### REGISTRATION

**EDUCATION** 

Professional Engineer: CO, WY US Green Building Council LEED AP

#### **PROFESSIONAL AFFILIATIONS**

ASHRAE ASME NCEES

Fort Collins Main Library | Fort Collins, CO Creede K-12 School | Creede, CO Clayton Academy | Fort Collins, CO Mountain View Community Church | Fort Collins, CO AIMS-Community College P.E.R.C. | Greeley, CO AIMS Community College Automotive & Technology | Windsor, CO AIMS Community College Ft. Lupton Welding | Ft. Lupton, CO CSURF Research Building | Fort Collins, CO Highlands Industrial Park | Loveland, CO

#### **JANELL LOPEZ** Account Manager - Furniture Expert



**CONTACT** 

jlopez@becktoi.com

(970)893-1293

Janell will act as the primary liaison during the duration of this project, from initial meeting through final project closeout. Starting her career in design, she has in-depth knowledge and understanding of the design and specification process, as well as product offerings. Janell leverages this knowledge and experience to create one of a kind, customer focused solutions. She takes a proactive problem-solving approach to her client's needs, always striving to exceed customer expectations. Janell holds a BFA in Interior Design and has been with Beck Total Office Interiors 7 years.

# **RELEVANT EXPERIENCE** WyoTech – Laramie, WY Welcome Center + Admissions, 2023 break room, storage, modular glass walls

Carbon County – Rawlins, WY courtrooms.

Northeastern Junior College – Sterling, CO Pete's Retreat/ Student Lounge, 2023 lounge, collaborative spaces, dining, outdoor



# ROSSOUW

#### Senior Project Manager

#### **EDUCATION**

Bachelor of Science in Zoology Mars Hill University, NC

Masters of Landscape Architecture, Colorado State University, CO



30 years Mechanical Engineering Design 12 years Professional Mechanical Estimator 12 years Professional Mechanical Contracting Quality designs intended for years of minimal maintenance Projects completed on time, every time Small remodels through new large developments Fully versed in Architectural, Civil, Structural, and Electrical drawings and

Fluent in current installation techniques, codes, materials, and methods



Lounge, reception, system workstations, private offices, training,

COUNTY BUILDING + COURTHOUSE, 2021 - 2023 Library, common spaces, lounge, system workstations, private offices, conference/ meeting spaces, storage, sheriff's dept,

# PART 4 Qualifications Q+A

**ESCICIL** 

NEC CIT

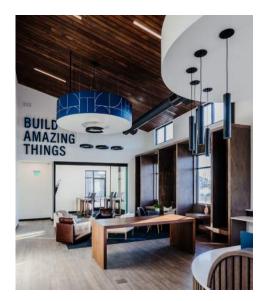
BAKER



2.

























# Qualifications Q+A

# B.

Your project is what makes the difference. Your site, team, and project goals inform our design team and inform us along our design journey. We take tremendous pride in being active listeners, idea generators, and are total design nerds. What we do is not for the faint of heart. It takes serious passion for design, attention to detail, budgets and schedules. Our staff live, work, and play in Northern Colorado. Our pride for our work can be felt by the people that experience our finished product, but just as important, we create raving fans along the way with our clients. Over 80% of our work is repeat clients or by referrals. We would not have those types of referral rates if we didn't perform for our clients.

# C.

Integrated Project Delivery is a beautiful process...when it works. It is meant to be more efficient, but if not used properly, it can make the process longer and more painful. For it to be successful, trust and patience in the process must be maintained. The owner can see large construction cost savings, large reduction in construction waste, reduction in long term maintenance costs, and overall better energy efficiency with the building. The key principles of IDP are:

- 1. Mutual Respect and Trust
- 2. Collaborative Innovation and Decision Making
- 3. Early Involvement of Key Participants
- 4. Early Goal Definition
- 5. Intensified Planning
- 6. Open Communication Culture

We have successfully used the IDP method on the following projects.

- 1. Loveland Corporate Hangar and Office Building
- 2. Warehouse 21 Marketing and Warehouse Facility
- 3. Blue Federal Credit Union Branches (all over Norther Colorado and Wyoming)
- 4. McWhinney Multifamily Projects

# D

VFLA Architecture + Interiors brings forth an impressive track record in managing and executing fast-paced projects with remarkable success. The cornerstone of our approach lies in the depth of our staff's project experience and our ability to be proactive from the start of the project. The three main lessons learned are the following:

- 1. Define the client's goals from the very beginning. Some client's find this tedious or boring, but this is the recipe for the team's decision making abilities when questions arise.
- 2. Define critical path milestones. Projects take a lot of people and coordination. If the team is not synchronized on the schedule, then people will be frustrated and the project will not be successful.
- 3. Define what success looks like. The only way to be able to measure if the project was "a success" at
- the end, is by defining it at the beginning.

Fast-paced doesn't mean frantic, it means efficient.

# E.

CMAR can be a successful project delivery method. We enjoy the collaboration and insight a contractor can bring to the project. They need to be the proper fit, and when then are, the best benefit to the client and building can be additional value for the same or lower price. Schedule and overall price can be benefits as well, however, the best benefit is client specific and the VFLA team will assist the client in defining their goals to understand what the "best benefit" means to them.

The biggest challenge to the CM@R process is selecting the CM@R early in the process when the project is in it's infancy. The CM@R selection needs to be properly run so that the client has the best fit for their project.

# F.

Like we have stated before, get stakeholder feedback and set goals. We need to understand if the district has design and maintenance standards. We would love to have a user group meeting with the maintenance team and understand buildings from their perspective. We are great a listening and incorporating feedback from user groups and stakeholders and making sure all team members, including engineer consultants, are in on this knowledge. Coordination is key.

# G.

Design assist is a great method for HVAC systems, especially in today's dynamic world. Our engineering team is a collaborative group who values the subcontractors feedback on costs, performance, and lead times. The supply chain and ever changing costs are seen first hand by subcontractors and we need their input to properly deliver a project in today's economic environment.

# OUR APPROAG









# 1. DISCOVERY

The discovery phase includes the project start-up and programming exploration. We get to know all players of the team and figure out what is more important to the client. We establish goals and set priorities. Micro-sketches are often used to work through different initial design options.

# **2.** DESIGN

The design phase is when we finalize the schematic concept and head full force into design development. We start working through coordination items with our consultants and bring the 3D model to life.

# **3.** DELIVER

The deliver phase includes our final construction document set. This is the last deliverable before construction begins and includes all coordination items between key players. We strive to put together a solid CD set so we have minimal surprises and questions during construction.

#### 2.0 PROPOSAL FORM FOR PROFESSIONAL SERVICES

(Please use additional sheets as necessary.)

FAX:

**COMPANY NAME:** VFLA Architecture + Interiors

COMPANY ADDRESS: 419 Canyon Ave, Suite 200, Fort Collins, CO 80521

**PHONE**: 970-498-2962

CONTACT PERSON NAME: Aspen Zabel

CONTACT PERSON PHONE: 970-498-2962

#### CONTACT PERSON EMAIL: aspen@vfla.com

- 1. I Acknowledge that the "Sample Agreement" attached to this RFP has been reviewed and is agreed to as shown. <u>yes</u> (YES/NO). Do you request amendments to the "Agreement" <u>yes</u> (YES/NO) Please list them if yes.
- 2. Acknowledgment that the submitting agent meets or exceeds insurance requirements as outlined in the RFP. <u>yes</u> (YES/NO)
- 3. 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. <u>yes</u> (YES/NO)
- 4. The submission of the proposal constitutes an agreement, and shall not be withdrawn after the proposal opening for a period of forty-five days.
- 5. Acknowledgment that the submitting agent carries (or will carry) a license in Weld County, Colorado <u>yes (YES/NO)</u>
- 6. The Proposer hereby acknowledges receipt of addenda numbers \_\_\_\_\_01 through \_\_\_\_\_01
- 7. List of construction items that will be self-performed.

A	1	
В	J	
C	К	
D	L	
E	M	
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Signature:

\_\_\_\_\_Date: 03/19/2024

# **3.0 SCHEDULE OF PERSONNEL BILLING RATES**



TITLE

Principal Architect Associate Principal Principal Interior Designer Senior Project Architect **Project Architect** Project Manager Designer III Designer II Designer I Senior Quality Control Manager Director of Interior Design Senior Interior Designer Interior Designer II Interior Design I Intern Administrative

DIPLOY CONSIGNATION

## TITLE

Principal IV Principal III Principal II Principal I Senior Project Manager IV Senior Project Manager III Senior Project Manager II Senior Project Manager I Project Manager IV Project Manager III Project Manager II Project Manager I Project Designer IV Project Designer III Project Designer II Project Designer I Intern Administrative



TITLE

Partner Professional Engineer Design Engineer Draft/Office

\* \* \* End of Proposal Form \* \* \*

RATE
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\$125
\$120
\$105
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3	Design Services			\$	30,500.00	7.18%				s listed under Part B, Sub-parts A; lue is for reference only
5	Printing, Insurance, Additional Items			\$	1,500.00	0.35%				s listed under Part B, Sub-parts Q, R, & U; lue is for reference only
17	Other Items	1								
	See Assumptions/Exclusions Reimbursables - NTE \$2,000.00									
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I	Design Charlette	х			Included in line item 11	and 24		x		moving through Design Development
	A/V, Telephone, Paging Design	х								Locations and Infrastructure by Desgn Team
3 4	IT/Data, Network, Cable Design Programming	X								Locations and Infrastructure by Desgn Team A simple and concise Programming process to
		х			Included in line item 11	and 24		х		confirm/update District Program
5 6	Storm Water Management Plan Drainage Plan: Submittals to agencies as required	X								l
0 7	Utility Coordination	X X								
8	Coordination with Fire Department	х			Design-Build			х		
9	Site Evaluation and Planning	X			N/A Decise Decid			X		
	Flow Tests with Fire Department Architectural Design	X X			Design-Build \$4,000			X X		
	Civil Engineer Design	X			Excluded			x		
	Landscape Architect/Irrigation Design	х			Excluded			х		
	Structutal Engineer Design Mechanical Engineer Design	X X			Excluded. NIS Design-Build			X X		
	Electrical Engineer Design	x			Design-Build			x		
17	Lighting Engineer Design	х			Excluded			х		
	Plumbing Engineer Design	X			Dosign Build					l
	Fire Suppression Design 3D-Renderings and Animations	X			Design-Build	04		X		As requried to communicate design, not for
	Acoustical Consultant	x	<b> </b>	<b> </b>	Included in line 11 and	24		x	<b> </b>	marketing
	Cost Estimating Consultant	X	<u> </u>	<u> </u>	Evoluded		<u> </u>			Design Team provide estimate validation of
		Х			Excluded	ļ	х	<u> </u>	<b> </b>	General Contractor estimates
	Furniture Design Consultant (B253 <sup>™</sup> -2007) Interior Design (B252 <sup>™</sup> -2007)	X			Included in furniture cc \$26,500			X		
	Interior Design (B252 <sup></sup> -2007) Signage Design	X						X		Code Signage, Building Signage, and interior
		х			Included in line 11 and	24	1	x		graphics

	Specifications Consultant	Х			N/A - Specification on d	rawing		Х		
	Traffic Consultant	Х								
	Coordination with Owner's Consultants	х								
29	Prepare and Present at Public Sessions and Board				Included in line 11 and 2	4				
	Meetings	х			included in line 11 and 2	.4		х		
30	Commisioning (B211 <sup>™</sup> -2007)								х	
31	LEED Certification (B214 <sup>TM</sup> -2007)	х			N/A - Can be added as a	dditional	fee			
	LEED Energy Modeling	X			N/A - Can be added as a					
	LEED Registration and Documentation	X			N/A - Can be added as a					
	Facility Support Services (B210 <sup>TM</sup> -2007)	~				aantionial				Not anticipated
	Security Evaluation and Planning (B206 <sup>TM</sup> -2007)	х			Can be added as additio	nal fee				
	PV Panel Design	x			Can be added as additio					
	Lightning Protection Design									As requried by code, Design Team to analyze as
01		Х			Can be added as additio	nal fee		Х		part of proposal
38	Fast-track Design Services									N/A
39	Historic Preservation (B205 <sup>™</sup> -2007)									N/A
40	Surveys (Flown, ALTA, TOPO)								v	Design Team and Owner to determine survey
									х	scope and data requirements
	Code Analysis	Х			Included in line 11			Х		
	Zoning Analysis	Х			Excluded			Х		Design to meet current zoning guidelines
	Steel Stud Framing Design and Engineering	Х					х			
	Prepare and Issue Meeting Minutes	Х			Included in line 11 and 2	24		Х		for Design Meetings
45	Prepare documents for power application with electrical	v			Design-Build			v		By Architect and electrical consultant
L	utility and submit key information as required.	х			Design-Build			х		
46	Prepare bid packages for phasing of construction	х			N/A - Can be added as a	dditional	fee	Х		
47	Generate bid alternates	Х			N/A - Can be added as a	dditional	fee	Х		
48	Prepare Comcheck submittal as required	х								
	Rezoning process									TBD - site specific
	Prepare a submittal log for the contractor to follow based				Contractor Dravid La L					
	on specifications	х			Contractor Provided			х		
51	Documentation of owner existing Furniture Fixtures and									
	Equipment								х	
52	Assist in grant writing by providing key information to									Minimal anticipated. Assume assisting in filling out
0-	Owner									data in required Owner forms.
53	Submit applications as required for Town Planning or									
00	Zoning Approval Processes	х			Excluded			х		
54	Prepare bid packages, chair pre-bid meeting, log results	х			Included in line 11 and 2	94		х		
	Prepare response to bidders questions, issue addendums	~						^		
55	r repare response to bidders questions, issue addendums	х			Included in line 11 and 2	24		х		
56	Construction: Observation and Field Reports	х			Included in line 11 and 2	04		х		
	Construction: Review material inspection reports and	~						^		
57	advise if corrections are required	х			Included in line 11 and 2	24		х		
58	Construction: Review and make recommendations related									
50	to shop drawings	х			Included in line 11 and 2	24		х		
50	Close Out: Project Record Documents: Generate As-Builts									
	in paper format including ASI, RFI's and install locations.			v	Included in line 11 and 2	A	v	v		
	in paper format including ASI, KFTS and install locations.			Х	included in line 11 and 2	.4	х	х		
60	Close Out: Project Record Documents: Review contractors									
60					In clouded in time 44 and 6					
1	posted sets during and after construction completion			Х	Included in line 11 and 2	4		х		
	Class Out Design Design Constants		$\vdash$							
	Close Out: Project Record Documents: Generate As-Builts			х	Included in line 11 and 2	4		х		
	in Revit or Autocad format and PDF		$\vdash$							
62	Close Out: Prepare letter of substantial completion			х	Included in line 11 and 2	24		х		
<u> </u>			$\vdash$	- •		-		~		
63	Close Out: Assist Owner on resolution of warranty items			x	Included in line 11 and 2	4	х	х		
				^		••	^	~		
64	Close Out: Attend 11 month walk throughs of facility			x	Included in line 11 and 2	04	х	х	х	
				^			^	^	^	
	B. Procurement				\$0					
	A/V, Telephone, Paging Design	Х							Х	
	IT/Data, Network, Cable Design	Х							Х	
3	Programming Consultant	Х								
4	Landscape Architect/Irrigation Design	Х						х		
5	Architectural Firm	х						х		
-	Civil Engineer	X						X		
	Structutal Engineer	X						X		
	Mechanical Engineer	x						X		
	Electrical Engineer	x			<u> </u>			X		
	Lighting Engineer/Designer	 X	$\vdash$					×		
	Plumbing Engineer	x X	$\vdash$					X		
	Acoustical Consultant	^	$\vdash$					^		
	Cost Estimating Consultant	х								
		~	I I							

			-	-						
14	Furniture Design Consultant	Х						х		
15	Interior Design Consultant	Х						Х		
	Signage Design Consultant	х						Х		
	Specifications Consultant	X						X		
	Traffic Consultant							^		N/A
		Х								
	Commisioning Consultant	Х							Х	
	LEED Consultant	Х						Х		Sustainability and energy efficient
	Security Consultant	Х							Х	
22	PV Panel Consultant	Х							Х	
	Historic Preservation Consultant									N/A
	Environmental Surveys (Phase I and Phase II)	х							х	
	Surveys (Flown, ALTA, TOPO)	x							X	
										Soils Report
	Testing & Inspection (Soils)	Х							Х	-
	Testing & Inspection (Construction Materials)	Х							Х	Testing during construction
28	Code Consultant							х		
29	Moving Consultant	Х							Х	
30	Hazmat Analysis	Х							Х	
	Building Demolition Crew									n/a
•.										
	C. PRE-CONSTRUCTION				\$0					
4				1	<b>\$</b> 0	1				
	Review Design Concepts	Х					Х	Х	Х	
	Develop Bid Packages for sub contractors	Х				ļ	Х	Х		
	Material Selection and Availability Recommendations	Х					Х	Х		
4	Building Systems Recommendations	Х					Х	Х		
	Coordinate Owner-Supplied Equipment	х						х	х	
	Life Cycle Costing Analysis	X					х	X	-	
	Equipment Selection and Availability Review	x					x	x		
								^		
	Subcontractor Availability Review	X					X			
9	Construction Logistical & Execution Plan	Х					Х			
	D. PROJECT COST CONTROL				\$0					
1	Master Budget; Generate and update	Х							Х	
	Recommend approval of Contractor Invoices	х						Х	Х	
	Manage cost of Alternates (trend log)	X					х	X	~	
	Schematic Design Cost Estimate and Review									
	0	Х					х	Х		
	Design Development Cost Estimate and Review	Х					Х	Х		
	Construction Document Estimate and Review	Х					Х	Х		
7	Guaranteed Maximum Price Cost Estimate	Х					х			
8	Construction Cash Flow Projections (Monthly)	Х					х	х		
9	Review estimates for accuracy and value engineering ideas	Х					х	Х	Х	
	Verify Correctness of Quantities & Prices of Change									Design Team to be first review
		Х						Х	Х	
11	Continuous Project Cost Input and Response to Design									
	Team Queries	Х					х		Х	
	E. PROJECT SCHEDULING			•	\$0					
1	Generate Design Schedule of Events	х						х		
	Master Schedule of Events including Owner items	x						~	х	
									X	
	Preconstruction Activity Schedule (Bar Chart)	Х					Х	Х		
	Construction Activity Schedule (CPM)	Х		Х			Х			
	Const Activity Schedule w/ Milestones (CPM Updates)			Х			Х			
	Shop Drawing & Submittal Schedule / Procedure			Х			Х	Х		Design team review then owner review
	Mock-Up Schedule & Procedure			Х			х	Х		
	Generate and coordinate phasing sched w/ Owner			X			X		х	
	Short-Interval Schedules			X			x			
									v	
10	Occupancy Schedules			Х			Х		Х	
	F. SUBCONTRACTOR SELECTION / PURCHASING			-	\$0		_			
1	Set Prequalification Criteria including local provisions	х					Х	Х	Х	
	Recommend Subcontractor Selection Methods	х					х	Х	Х	
	Recommend Subcontractor Award Methods	х					х		х	
	Develop Subcontractor Interest	x					x		x	
	Prepare Bidding Schedules	x					×		~	
	Issue Plans, Specifications & Addenda	Х					х			
	Receive Bids	Х					Х			
	Analyze Bids	Х					Х	Х	Х	
9	Recommend Award	х					Х	Х	Х	
	Determine Local Manpower Availability	х					х			
	Prepare Subcontracts & Supplier Contracts	X					X			
		~					~			
11				L	\$0					
	G. CONTRACT DOCUMENT COORDINATION		1	1	ψu	1	· · · · ·	· · · ·		
1	Constructability Review & Recommendations	Х			<b>~</b> ~~		Х		Х	
1	Constructability Review & Recommendations Review For Inclusion of All Work	X X			ţ,		X X	x	Х	
1	Constructability Review & Recommendations		E		ΨŪ			X X	X X	

4	Identific Long Lond Home							I		
	Identify Long-Lead Items	X					X			
	Identify Commodity Shortages Review and Coordinate Installation of Owner Supplied	Х					х			
0	Fixed Equip			x			x	x	x	
							^	^	^	
	H. ARCHITECT STAFF				\$0					
1	Principal		х					x		
	Project Manager		х					х		
	Project Architect		х					х		
	Drafter		Х					Х		
5	Administrative / Clerical		х					х		
	I. GENERAL CONTRACTOR STAFF		1		\$0	-		r		
	Corporate Executives		X							
	Principal In Charge Project Executive		X							
	Operations Manager		X X							
	Construction Manager		x							
	Project Manager		x							
	Project Engineer		х							
	Mechanical & Electrical Coordinator		х							
	Safety Manager / Field Audit / Training		х							
	Human Resources		х							
	Secretarial		х			ļ				
	Project Estimating		X							
	Project Accounting		X					<b> </b>		
	Project Scheduling Project Purchasing		X							
	Project Purchasing Project Superintendent(s)		х	х						
	Assistant Superintendent(s) (as required)			x						
18	Field Engineer(s) (as required)			x						
19	Mechanical & Electrical Coordinator(s) (as required)			X						
	Quality Control Engineer (As Required)			х						
21	Project Assistant / Clerk / Typist (As Required)			Х						
	Safety Engineer (As Required)			х						
	Field Accounting (as required)			Х						
24	Registered Surveyor (As Required)			Х						- 1-
										n/a
					ድብ					
1	J. QUALITY CONTROL / WARRANTY				\$0		v	r –		
	Develop & Submit Construction Safety Plan	х	-		\$0		x	_	x	
2	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials)	X			\$0 		X		X X	Owner to provide initial report
2 3	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports	X			\$0 		X		X X X	Owner to provide initial report
2 3 4	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials)	X			\$0 		X		х	Owner to provide initial report
2 3 4 5 6	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document	X			\$0 		X		x x	Owner to provide initial report
2 3 4 5 6 7	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs	X			\$0 		x		X X X	
2 3 4 5 6 7 8	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports	X			\$0 		x	х	X X X X	Owner to provide initial report
2 3 4 5 6 7 8 9	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination	X			\$0				X X X X X	Including sub-consultants/engineers
2 3 4 5 6 7 8 9	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports	X		X X	\$0		X X X X	х	X X X X X	Including sub-consultants/engineers Documents to be reviewed and approved by
2 3 4 5 6 7 8 9 10	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing			Х	\$0		x	х	X X X X X	Including sub-consultants/engineers
2 3 4 5 6 7 8 9 10 11	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination	×		x x x	\$0		x x x x x	х	X X X X X	Including sub-consultants/engineers Documents to be reviewed and approved by
2 3 4 5 6 7 8 9 10 11 12	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training	X		x x x x	\$0		x x x x x x	X X	X X X X X	Including sub-consultants/engineers Documents to be reviewed and approved by
2 3 4 5 6 7 8 9 10 11 12 13	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals	X		x x x x x x	\$0		x x x x x x	x x	X X X X X	Including sub-consultants/engineers Documents to be reviewed and approved by engineers
2 3 4 5 6 7 8 9 10 11 12 13 14	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items	X		x x x x x x	\$0		x x x x x x	x x	X X X X X	Including sub-consultants/engineers Documents to be reviewed and approved by engineers
2 3 4 5 6 7 8 9 10 11 12 13 14 15	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel)	×		x x x x x x x			x x x x x x x	X X X X X	x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track	X		x x x x x x x x			x x x x x x x x x	X X X X X	x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel)	X		x x x x x x x x x			x x x x x x x x x	x x x x x	x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track	X		x x x x x x x x			x x x x x x x x x	X X X X X	x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track	X		x x x x x x x x x	\$0		x x x x x x x x x	x x x x x	x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track items through completion <b>K. TEMPORARY FACILITIES</b>	X		x x x x x x x x x	\$0		x x x x x x x x x	x x x x x	x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track items through completion	X		x x x x x x x x x			x x x x x x x x x	x x x x x	x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track items through completion K. TEMPORARY FACILITIES L. TEMPORARY UTILITIES	X		x x x x x x x x x	\$0 \$0		x x x x x x x x x	x x x x x	x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track items through completion <b>K. TEMPORARY FACILITIES</b>	x		x x x x x x x x x	\$0		x x x x x x x x x	x x x x x	x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track items through completion <b>K. TEMPORARY FACILITIES</b> <b>L. TEMPORARY UTILITIES</b>	X		x x x x x x x x x	\$0 \$0 \$0 \$0		x x x x x x x x x	x x x x x	x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track items through completion K. TEMPORARY FACILITIES L. TEMPORARY UTILITIES	X		x x x x x x x x x	\$0 \$0		x x x x x x x x x	x x x x x	x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track items through completion K. TEMPORARY FACILITIES M. CLEAN-UP N. WEATHER PROTECTION	x		x x x x x x x x x	\$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0		x x x x x x x x x	x x x x x	x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Develop & Submit Construction Safety Plan Testing & Inspection (Construction Materials) Soils Investigations / Geotechnical Reports Environmental Surveys HAZMAT Analysis Environmental Cleanup Coordination / Govt Document Project Progress Photographs Field Reports Warranty Inspections Coordination Air & Water Balancing Operator On-Site Training Prepare Operation and Maintenance Manuals Review Operation and Maintenance Manuals Attend 11 and 23 month walk throughs of facility and assist on closing out warranty items Drug Testing & Screening (Field Personnel) Attend punch list walk throughs, prepare punch list, track items through completion <b>K. TEMPORARY FACILITIES</b> <b>L. TEMPORARY UTILITIES</b>			x x x x x x x x x	\$0 \$0 \$0 \$0		x x x x x x x x x	x x x x x	x x x x x x x x	Including sub-consultants/engineers Documents to be reviewed and approved by engineers Architect review prior to Owner Contractor led. Use unified form or software to
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2	Design Document Drawings & Specifications			Included above				
		X		Included above		X		
-	Construction Drawings & Specifications	х				Х		
	Subcontractor / Supplier Prequalification Forms		X		Х			
	Bidding Instructions		Х		 х			
	Postage & Express Delivery Costs		Х	NTE \$500	 х	Х		
	Subcontract & Supplier Contract Agreement Forms		Х		х		12 - 14 - 1	
	Shop Drawing Reproduction		Х	N/A	Х	Х	digital	
9	As-Built Documents (Mark-ups & Recording)		Х	\$1,500	Х	Х		
	R. INSURANCE & BONDS			\$0				
1	Design professional liability insurance	х		Included		Х		
2	Builder's Risk Insurance		Х		Х			
3	Builder's Risk Deductable		Х		х			
4	Special Insurance - O & E	Х	Х	Included		Х		
5	General Liability Insurance		Х	Included	х	Х		
6	Umbrella Liability Insurance		х		х			
	Excess Liability Insurance		х		х			
8	Completed Products Insurance		Х		х			
	Professional Liability Insurance		х		х	Х		
	Workman's Compensation Insurance (GC's Only)		х		х	Х		
	FICA / Medicare Insurance (GC's Only)		х		х			
	Federal Unemployment Insurance (GC's Only)		х		х			
	State Unemployment Insurance (GC's Only)		х		х			
	Payment & Performance Bond		х		х			
	Subcontractor & Supplier Bonds		х		х			
	S. PERMITS & FEES			\$0				
	T. OTHER COSTS			<u> </u>				
	U. ADDITIONAL ITEMS			- \$0	_			
1	Photorealistic Renders			\$1,800 Per Render	<b>—</b>	х		
	(enter additional items as necessary)			, ,		x		
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# HIGH PLAINS LIBRARY DISTRICT BOARD OF TRUSTEES COMMUNICATION

Meeting date: June 17, 2024

Type of item: Action

Subject: Annual Comprehensive Financial Report

Presented by: Natalie Wertz, HPLD Finance Manager, and Alanna Moses, CPA of Anderson & Whitney

Recommendation: Staff recommends the Board accept the ACFR as presented

## Background

As required by state statute, the audit for 2023 has been completed and the annual comprehensive financial report (ACFR) is ready for presentation to the board.

Alanna Moses, CPA of Anderson & Whitney, PC, will present the results of the audit and the audited financial statements.

The High Plains Library District General Fund reports a fund balance of \$81,916,095 at December 31, 2023. The increase in General Fund Balance for 2023 was \$17,303,804.

The annual comprehensive financial report will be posted on the High Plains Library District website (<u>www.mylibrary.us</u>). The annual comprehensive financial report will also be filed with the state and submitted to the GFOA for the certificate of achievement for excellence in financial reporting. The Finance Committee has reviewed the annual comprehensive financial report.

## Recommendation

The recommendation of the Finance Committee is that the Board accept the ACFR as presented.

# HIGH PLAINS LIBRARY DISTRICT BOARD OF TRUSTEES COMMUNICATION

Meeting date: June 17, 2024

Type of item: Action

Subject: Board Recruitment

Presented by: Dr. Matthew Hortt, Executive Director

Recommendation: Staff recommends the Board approve the release of the recruitment materials

## Background

Each of the towns and cities of Ault, Eaton, Evans, Greeley, and Hudson, as well as the Board of County Commissioners, may appoint one (1) representative to a nominating committee to select seven (7) library board members. The City of Fort Lupton and Weld County School District RE-8 are deemed to be an establishing body for purposes of removal and ratification of library district trustees; but combined shall send only one (1) representative to the HPLD trustee selection committee.

## Considerations

- Trustees Heberlee and Nuñez' terms end on December 31st, 2024
- The District needs to recruit to fill vacancies for the Region 1 Position (Erie, Frederick, Firestone) and for the Region 5 Position (Ault, Eaton, Pierce, Nunn)
- Staff have prepared and updated:
  - Board Recruitment Timeline
  - Letter to the Establishing Bodies
  - Notice Seeking Board Applications
  - Trustee Application
- Deadlines for applications and the interview date may be adjusted by the Board
- Per the Board bylaws, the Vice-Chair of the Board of Trustees chairs the Selection Committee
- Trustee Lemos-Garcia is the second Member of the Selection Committee due to her service on the Governance Committee

## Recommendation

Staff recommends the Board approve the release of the recruitment materials



# HPLD 2024 Board Trustees Recruitment Timeline

Monday, June 17	Present recruiting timeline and materials to the Board to approve
Tuesday, June 18	Send letter to the Establishing Bodies (E.B.) and post notice on MyLibrary.us
Friday, September 13	Establishing Bodies' Representatives names and contact info are due
Friday, September 20	Applications are due and recruitment closes
Week of Sept. 23 – 27	Staff and Governance Committee narrow down the eligible candidates and Kim creates the interview schedule
Week of Sept. 30 – Oct. 4	Applicants are notified, and copies of candidate applications are sent to the E.B. Representatives electronically
Week of October 7 – 11	Print packets, get snacks, and prepare for interviews.
Friday, October 25	Interviews are held in LINC Board Room and Upstairs Classroom



Administration • 2650 W. 29th Street • Greeley, CO 80631

June 18, 2024

Chair Kevin Ross Weld County Board of Commissioners PO Box 758 Greeley, CO 80632

Dear Commissioner Ross:

The High Plains Library District is seeking nominations to fill two vacancies on its Board of Trustees. The terms for Mary Heberlee (representing Region 5) and Teresa Nuñez (Region 1) are set to expire on December 31, 2024. Notice of the vacancies has been placed in newspapers, libraries, and on the HPLD website, <u>https://www.mylibrary.us/board/</u>.

The regions to be represented are:

The Board of Trustees consists of seven (7) members, all of whom must reside within the boundaries of the District's legal service area. The areas needing representation are:

- Region 1: Erie, Frederick, Firestone
- Region 5: Ault, Eaton, Pierce, Nunn

## Where your help is needed.

Our request to you is to appoint one (1) member of your governing body to serve on a committee to interview and select the new Board members. We request that you contact Kim Parker, HPLD Executive Assistant, at 970-506-8569 or <u>kparker@highplains.us</u> with the *name* and *email* address of your representative by Friday, September 13, 2024.

Copies of candidate applications will be sent electronically to your representative during the week of September 30, 2024.

We then need your representative to attend a meeting set for Friday, October 25, 2024, 1:00 to 5:00pm to interview eligible candidates. This meeting will be held at LINC – Library Innovation Center  $2^{nd}$  floor meeting room, 501 8<sup>th</sup> Ave, Greeley.

Carbon Valley Regional Library • Centennial Park Library • Eaton Public Library • Erie Community Library Farr Regional Library • Fort Lupton Public & School Library • Glenn A. Jones, M.D. Memorial Library Hudson Public Library • Kersey Library • Lincoln Park Library • Northern Plains Public Library • Outreach Platteville Public Library • Riverside Library & Cultural Center 1-888-861-READ (7323) • www.MyLibrary.us



Administration • 2650 W. 29th Street • Greeley, CO 80631

Page 2

Vice-Chair Joyce Smock, representing Region 6, will chair the committee.

### **Background on process**

Each of the towns and cities of Ault, Eaton, Evans, Greeley, and Hudson, as well as the Board of County Commissioners, may appoint one (1) representative to a nominating committee to select seven (7) library board members. The City of Fort Lupton and Weld County School District RE-8 are deemed to be an establishing body for purposes of removal and ratification of library district trustees; but *combined* shall send only one (1) representative to the HPLD trustee selection committee.

Attached you will find a copy of the application form to be completed by potential candidates. In addition to applications received through public notices, you may offer nominations as well. As you consider your nomination, please consider these points for appointment to the High Plains Library District Board of Trustees.

- The Board currently meets at least one Monday a month, in the evenings.
- Though attendance at board meetings is a first concern, a trustee must also assume a sense of personal involvement and be willing to give extra time and effort to special library projects and committee meetings. For instance, two Trustees are required to serve on the HPLD Foundation Board of Directors.
- A dedication to cooperate in providing quality library service throughout the district is imperative.

Executive Director Dr. Matthew Hortt, 970-506-8563, will be glad to answer any questions you or the candidates might have concerning service on the Board.

We look forward to your assistance in filling this position.

Sincerely, HIGH PLAINS LIBRARY DISTRICT BOARD OF TRUSTEES

Carbon Valley Regional Library • Centennial Park Library • Eaton Public Library • Erie Community Library Farr Regional Library • Fort Lupton Public & School Library • Glenn A. Jones, M.D. Memorial Library Hudson Public Library • Kersey Library • Lincoln Park Library • Northern Plains Public Library • Outreach Platteville Public Library • Riverside Library & Cultural Center 1-888-861-READ (7323) • www.MyLibrary.us

# NOTICE

# The High Plains Library District Board is seeking candidates to fill two vacancies on its Board of Trustees.

The Board of Trustees consists of seven (7) members, all of whom must reside within the boundaries of the District's legal service area. The areas needing representation are:

- Region 1: Erie, Frederick, Firestone
- Region 5: Ault, Eaton, Pierce, Nunn

Both terms run from January 1, 2025 through December 31, 2028.

Interested applicants can find an application link at <u>www.mylibrary.us/board</u>

Application deadline is September 20, 2024 at 5:00pm.

Trustee Interviews will be held October 25, 2024 from 1:00-5:00pm.

For more information, contact James Melena at

jmelena@highplains.us or 970-506-8559





You will find the High Plains Library District Board of Trustees Application Form, below. The District is seeking interested applicants to fill two vacancies on its Board. The open positions are for the following regions, and applicants must reside within the regions.

- Region 1: Erie, Frederick, Firestone
- Region 5: Ault, Eaton, Pierce, Nunn

Please consider these points for appointment to the High Plains Library District Board of Trustees.

- The term will run from January 1, 2025 to December 31, 2028, and the Board currently meets at least one Monday a month, in the evenings.
- Though attendance at board meetings is a first concern, a trustee must also assume a sense of personal involvement and be willing to give extra time and effort to special library projects and committee meetings.
- In addition, two Trustees may be required to serve on the HPLD Friends & Foundation Board of Directors. As per the Foundation bylaws, a minimum of two (2) shall be current Members of the High Plains Library District Board of Trustees and the remaining Directors shall be appointed from the Community at large.
- A dedication to cooperate in providing quality library service throughout the district is imperative.

High Plains Library District Board Appointments

Administration & Support Office

2650 W 29th Street, Greeley, CO 80631

Applications are due September 20, 2024 at 5 p.m.

Interviews will take place on October 18, 2024 from 1-5 p.m.

Date/Time

Jun 11, 2024

# 

Name

First Name	Last Name

Home Address

Address Line 1

Address Line 2

	\$	
City	State	ZIP Code

**Business Address** 

Address Line 1

Address Line 2

	\$	
City	State	ZIP Code

Phone

Email

School District

Civic/Professional Affiliations, Offices, Activities

Please indicate if you hold or have held an elected or appointed public office and when. Include any appointments to any councils or commissions.

Profession, Occupation/Employer, Titles - Copy

If more than one, please list all and indicate which is primary.

Education

- O 12 years or less
- O 12-16 years
- Over 16 years

**Highest Degree** 

Degree, Year, Institution

Please confirm you are applying for the following:

O Region 1: Erie, Frederick, Firestone

O Region 5: Ault, Eaton, Pierce, Nunn

It is required that you reside within the region you are applying for.

State the qualities you feel you could bring to the Library Board

Please use the space below for additional comments, length of residency in Weld County, particular activities or background relevant to appointment, etc.

Are you a member of another library board? If so, which one?

Please list two references

Please include either a phone number or email for each reference

# HIGH PLAINS LIBRARY DISTRICT BOARD OF TRUSTEES COMMUNICATION

Meeting date: May 20th, 2024

Type of item: Action

Subject: Friends of Raymer MOU

Presented by: Dr. Matthew Hortt, HPLD Executive Director

Recommendation: Staff recommend the Board approve the proposed MOU and direct the Executive Director to sign the MOU

# Background

The Friends of Raymer have been working on converting a Mercantile Building in New Raymer into a Local History Center. This has been an ongoing project since 2021, when the District was first approached about the project. Initial discussion on this project included the library working with the Friends of Raymer to include a Public Computing Center (PCC) in the Local History Center. The PCC would be very similar to the one which we installed in the Briggsdale Community Library.

In April staff were contacted by the Friends of Raymer regarding the project. The Friends of Raymer are near completion of the project. During the April 2024 HPLD Board Meeting, the Trustees approved a Library Support Fund for the Raymer Project and directed Staff to negotiate an MOU. Staff have been working with the Friends of Raymer and our legal counsel on the MOU. The agreement is based on the existing MOU with the Briggsdale Community Library and includes verbiage on the Library Support Fund.

# Considerations

- Legal Counsel has reviewed the MOU
- Utility work onsite will still need to be completed prior to the facility be able to support technology

# Staff Recommendation

Staff recommend the Board approve the proposed MOU and direct the Executive Director to sign the MOU

## MEMORANDUM OF UNDERSTANDING CONCERNING LIBRARY SERVICES AT THE HIGH PLAINS LIBRARY AT FRIENDS OF RAYMER MUSEUM AND RESOURCE CENTER

This Memorandum of Understanding ("MOU") Concerning Library Services at the High Plains Library at the Friends of Raymer (CO) Museum and Resource Center is entered into by and between the High Plains Library District, a library district formed under the provisions of the Colorado Library Law, CRS §24-90-101 et seq. (the "District"), and the Friends of Raymer Inc. ("FOR"), located in New Raymer, Colorado.

## RECITALS

**WHEREAS**, the Board of Trustees of the District is vested with the authority of administering the affairs of the District; and

**WHEREAS**, the District desires to support an equal level of access to library services for all District residents; and

WHEREAS, New Raymer, Colorado is included within the District; and

**WHEREAS**, FOR and the District desire to offer certain library services at the Museum and Resource Center (the "MARC") located at 319 Center Avenue within New Raymer, Colorado.

**WHEREAS**, FOR and the District are authorized to enter into memoranda of understanding and wish to set forth their agreements concerning services at the MARC;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the District and FOR agree as follows.

## AGREEMENT

1. Recitals. The foregoing Recitals are incorporated herein by reference.

**2. Purpose.** The purpose of this MOU is to set forth the rights, obligations and responsibilities of the District and FOR concerning library services at the MARC.

**3. Term.** Unless otherwise terminated as hereinafter provided, this MOU shall be effective beginning July 1, 2024, until June 30<sup>th</sup>. 2025, and it is renewable annually, upon review of all parties, in order to assure that services are continuing to meet public needs.

- 4. Obligations of the District. The District shall have the following obligations:
  - **a.** To assume costs and expenses to provide computers, Internet connectivity, peripherals, furniture, and support equipment for use at the MARC by persons receiving library services to include:
    - **i.** 2 PCs
    - ii. Wireless Internet Access for public inside and outside of the building. People parked in front of the library will be able to access wireless when sitting in their vehicles.
    - iii. 1 tabletop copier/fax/printer/scanner
    - iv. 1 PC reservation system
    - v. 1 Mobile Collaboration/Visualization station (ie. MondoPad)
    - vi. Filtering software
    - vii. Dedicated broadband connection
    - viii. Dedicated Electrical wiring and cabling
  - **b.** To provide Information Technology staff to troubleshoot computer and network operations.
  - **c.** To provide property insurance for District-owned equipment and furniture.
  - **d.** As staffing allows, to provide FOR services such as computer classes, restocking pre-made library cards, delivery & pick-up services for materials, and summer reading programming;
  - e. To assist FOR volunteers with issuing District library cards to allow access to virtual library services, troubleshooting equipment, and to monitor the condition of District equipment
  - **f.** To provide "library support funding" in total of \$1,200 annually. Funds are provided to support the MAR as a value for the use of space in the MAR

- 5. **Obligations of FOR**. FOR shall have the following obligations:
  - **a.** To assume responsibility for costs or expenses related to maintaining space for library services, including planning and implementation to create and maintain a comfortable and safe facility for the public to use;
  - **b.** To prepare and provide space for the MARC's equipment, furniture, and services,
  - **c.** To determine the location and assist in the installation of equipment and furnishings;
  - d. To include MARC furniture during custodial services and facilities maintenance;
  - e. To provide security inside and around the building;
  - f. To pay for utilities and to provide property insurance for the building; and
  - g. To assist with promoting library services through FOR communication channels.
- 6. Computer Use. All users of library services at the MARC shall be required to hold a District library card and to comply with all District rules for computer use. Access on District equipment shall be through a filtered network.
- 7. Relationship of the Parties. Nothing herein shall create or be construed as creating a partnership, joint venture or agency relationship between the parties and no party shall have the authority to bind the other in any respect. The District shall be the employer of all persons providing services under paragraph 4 of this MOU, the FOR shall be the employer/volunteer manager of all persons providing services under paragraph 6 of this MOU. Each party shall, for its employees/volunteers, have the sole responsibility for paying salary, including benefits, and shall maintain such general liability, workers' compensation and unemployment insurance coverage as are required by the State of Colorado.
- 8. Property. All equipment and other property provided by the District shall remain the property of the District. The District shall provide insurance on such property, and the FOR shall provide property and liability insurance for the MARC. Each party shall provide to the other an annual Certificate of insurance, naming the other party as an additional insured. If the District, as an additionally insured party, is directly connected to an increase of the insurance cost; the District shall reimburse FOR for the increased costs for up to 25% above the insurance rate calculated for FOR without the District as an additionally insured party.
- **9.** Needs Assessment. At least annually, the parties will assess the management of and the continuing need for the services provided under this MOU, using the measures described in Exhibit A, which is attached hereto and is incorporated herein by reference.

**10. Termination.** Each of the parties may terminate this MOU by providing thirty (30) days written notice to the other parties.

## 11. Miscellaneous Provisions.

a. *Notice.* Any notice required or permitted by this MOU shall be in writing and either delivered or served upon the other party or mailed to the other party, postage prepaid, certified receipt requested, to the respective addresses as set forth below. Any such notice so deposited in the mail shall be deemed received within two (2) days after deposit. Either party may change her/its address by giving notice of the change in accordance with this paragraph.

If to the Friends of Raymer:

Friends of Raymer, Inc. Attn: Trina Kauk, President Preferred Address 25265 County Road T.5 Brush, CO 80723

If to the District:

High Plains Library District Attn: Dr. Matthew Hortt, Executive Director 2650 W. 29th St. Greeley, CO 80631

- **b.** Entire Agreement; Amendment; Binding Effect. This MOU contains the entire understanding of the parties. It may not be changed without an agreement in writing signed by both parties. This MOU is binding upon and inures to the benefit of the parties, their successors, assigns and representatives.
- c. Severability. If any provision of this MOU is found by a court of competent jurisdiction to be illegal or unenforceable for any reason, such clause or provision shall be modified to the extent necessary to make this MOU legal and enforceable. If it cannot be so modified, such clause or provision shall be severed from the remainder of the MOU to allow the remainder of the MOU to remain in full force and effect.

- **d. Waiver**. Failure to insist upon strict compliance with any of the terms, covenants or conditions shall not be deemed a waiver thereof, nor shall any waiver or relinquishment of any right or power hereunder at any one or more times be deemed a waiver of such right or power at any other time.
- e. Appropriations. No provision of this MOU shall be construed or interpreted: i) to directly or indirectly obligate either party to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal years 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; iii) as a donation or grant by either party to, or in aid of, any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.
- **f. Compliance with Applicable Laws.** At all times during the term of this MOU, the parties shall strictly adhere to and comply with all applicable federal and state laws, orders and regulations as they currently exist or may hereafter be amended, including but not limited to all applicable laws and regulations respecting discrimination.
- **g. Governmental Immunity; Limitation of Liability.** Each party to this MOU shall be responsible for its own negligence and that of its directors, officers, employees, agents, and representatives. Notwithstanding any other provision of this MOU to the contrary, no term or condition hereof shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., as now existing or hereafter amended. The provisions of this IGA shall be controlled, limited and otherwise modified to limit the liability of the parties hereto to the above cited law.
- Legal Authority. Each party hereto warrants that it has the legal authority to enter into this MOU and that it has taken all actions required by its procedures, by-laws and/or applicable law to exercise that authority and to lawfully authorize its undersigned signatory to execute this MOU.

**i. No Third Party-Beneficiaries.** This Agreement shall not confer any rights or remedies upon any person other than FOR and the District and their respected successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed on the date set forth below.

DATE

## HIGH PLAINS LIBRARY DISTRICT

By:\_\_

Mary Heberlee, President, Board of Trustees

FRIENDS OF RAYMER, INC.

By:\_

Trina Kauk, Board President

# HIGH PLAINS LIBRARY DISTRICT BOARD OF TRUSTEES COMMUNICATION

Meeting date: June 17, 2024

Type of item: Action

Subject: Policies Updates

Presented by: Dr. Matthew Hortt, Executive Director

Recommendation: Staff recommend that the Board consider and approve the Updated Policies

## Background

This is an updating of some of our existing policies, as well as the creation of two new policies (Reconsideration of Library Resources Policy and Archival Collection Policy).

The former was necessitated by the passing of new legislation (SB24-216) and has far-reaching impact as it affects library resources, programs, and the use of the facility. The Archival Collection Policy will help us move forward with managing our archival collections.

Staff has removed quite a number of procedural elements from the policies as those elements change rapidly, requiring Board of Trustee approval to update the policy. These elements remain available to patrons on HPLD's website, and to staff in the Procedures Manual.

Depending on the policy, these have been reviewed by the PSS group, Public Services Managers, Attorney, Governance Subcommittee, and Executive Director.

## **Considerations**

#### **Reconsideration of Library Resources Policy**

This is a new policy required due to the passing of SB24-216 – Standards for Decisions Regarding Library Resources. It lays out the basis and foundational documents related to the selection, retention, display, and use of HPLD's library resources and explains how a resident of HPLD's service area may request the reconsideration of any library resource.

#### **Programs Policy**

This is an update to the current policy. The new wording changes the Reconsideration wording to be consistent with the rest of our policies, as a result of SB24-216 – Standards for Decisions Regarding Library Resources – referring to the newly created Reconsideration of Library Resources Policy. The rest of the policy, last revised in 2023, remains in effect.

#### **Scope of Collection Policy**

This is an update to the current policy. The new wording clarifies the definition of what constitutes a "special collection" within the District, expands the description of existing special collections to include mention of selection criteria and other relevant policies, and adds a description of the new archival collections. In addition, as a result of SB24-216 – Standards for Decisions Regarding Library Resources – a paragraph was added, referring to the newly created Reconsideration of Library Resources Policy. The rest of the policy, last revised in 2021, remains in effect.

#### **Archival Collection Policy**

This is a new policy arising from HPLD's adoption of the State Archives' Special Districts Records Management Manual in 2019 and the subsequent Retention Policy added in 2021. The Retention Policy mandates the use of the Manual to determine which institutional records to retain for how long. Schedule 9 of the Manual concerns <u>Historical Records</u> and stipulates the permanent retention of specific types of historical records. Creating an archive and an archival collection policy provides a way to acquire, accession, deaccession and make accessible the historical materials in the institutional collection. The acquisition of the *Greeley Tribune* collection further necessitates the adoption of a policy to professionally manage these important collections that differ significantly in scope and nature from usual public library collections. In addition, as a result of SB24-216 – Standards for Decisions Regarding Library Resources – a paragraph was added, referring to the newly created Reconsideration of Library Resources Policy.

#### **Artwork Policy**

This is an update to the current policy. The new wording eliminates procedural information, such as: which branches have art display walls; information about the Art Exhibit Application; and information about artists selling their artwork, all of which will be moved to the Procedure Manual and is included in the Art Exhibit Application. In addition, as a result of SB24-216 – Standards for Decisions Regarding Library Resources – a paragraph was added, referring to the newly created Reconsideration of Library Resources Policy. The rest of the policy, last revised in 2020, remains in effect.

#### **Meeting Rooms Policy**

This is an update to the current policy, which has been renamed "Meeting Spaces Policy" to include study rooms and conference rooms. The following sections have been removed from the policy and moved to the Terms and Conditions on HPLD's Meeting Spaces webpage: Financial Considerations, How to Make Reservations, Frequency of Use, Room Maintenance and Supplies, Courtesies to Staff and Patrons. Information that was duplicated in other policies, such as "All libraries are smoke and vaping free zones.", was also removed, as was the section on Online Meetings as we have discontinued this service, given the easy access to Zoom, etc. In addition, a paragraph stating that the District does not operate or manage youth-related activities when a third-party reserves a meeting space was added on recommendation of the State Library's attorney, in light of SB21-088, the Child Sexual Abuse Accountability Act. The rest of the policy, last revised in 2021, remains in effect.

#### **Specialty Checkout Policy**

This is an update to the current policy. The new wording clarifies why items are added to the collection while removing the list of specific items included, as that changes year-to-year. As a result of SB24-216 – Standards for Decisions Regarding Library Resources – a paragraph was added, referring to the newly created Reconsideration of Library Resources Policy. The procedural aspects of who may borrow specialty checkout items and the terms of agreement were removed and can be found under the Specialty Checkout page on the HPLD website. The rest of the policy, last revised in 2021, remains in effect.

#### **Circulation Policy**

This is an update to the current policy. The procedural aspects of how long items may be borrowed for and the list of acceptable forms of primary and secondary photo identification were removed and can be found under the Library Card and Account page on the HPLD website. A link to that website is included in the policy. The rest of the policy, last revised in 2021, remains in effect.

## **Fines and Fees Policy**

This is an update to the current policy. The amounts for each fine and fee were removed and can be found under the Library Card and Account page on the HPLD website. A link to that webpage is included in the policy. The rest of the policy, last revised in 2020, remains in effect.

## Recommendation

Staff recommend that the Board consider and approve the updated policies

## **Reconsideration of Library Resources Policy**

The staff of the High Plains Library District is highly trained and educated and intentionally and thoughtfully select library resources to meet the diverse needs of the communities we serve. The High Plains Library District actively supports and adheres to the American Library Association's *Library Bill of Rights* and abides by the laws of the State of Colorado and the U.S. Constitution concerning intellectual freedom.

The Reconsideration of Library Resources Policy contains standards that identify the priorities and mission of public libraries. The District's Reconsideration of Library Resources Policy is to comply with C.R.S. §24-90-122, as enacted in 2024.

#### Colorado Public Libraries standards for acquisition-retention-display-utilizationreconsideration of library resources-use of library facilities.

The District is governed in this policy by Colorado Revised Statute 24-90-122, Library Law -

(1) Definition. As used in this section, unless the context otherwise requires:

(a) "Library Resource" means material, both print and non-print, found in a Public Library that supports curricular or personal information needs. Print items include books, magazines, newspapers, pamphlets, microfiche, or microfilm. Non-print items include films, disc records, filmstrips, slides, prints, audiotapes, videotapes, compact discs, computer software, library programs, and exhibits...

(2) Standards. In addition to the powers and duties specified in Section 24-90-209, A Board of Trustees of a Public Library shall establish written policies for the acquisition, retention, display, and use of Library Resources and for the use of a Public Library Facility. In addition, The Board of Trustees of a Public Library that reconsiders Library Resources as specified in subsection (3) of this section shall establish a written policy for the reconsideration of a Library Resource. The Board of Trustees shall establish policies as required by this subsection (2) that, at a minimum, comply with the following standards:

(a) A Public Library serves as a center for voluntary inquiry and the dissemination of information and ideas;

(b) The public has the right to access a range of social, political, aesthetic, moral, and other ideas and experiences through a Public Library;

(c) Each Library Resource is provided for the interest, information and enlightenment of the community and should present diverse points of view in the collection as a whole;

(d) A Public Library shall not exclude a Library Resource because of the ethnic origin, ethnic background, or gender identity of those contributing to the creation of the Library Resource or because of the topic addressed by the Library Resource or the opinions expressed in the Library Resource;

(e) A Public Library shall not proscribe or prohibit the circulation or procurement of a Library Resource because of partisan or doctrinal disapproval of the Library Resource;

(f) It is the responsibility of a Public Library to challenge censorship in the fulfillment of its responsibility to provide information and enlightenment;

(g) A Public Library shall consider the perspectives of marginalized groups, including those identified in section 22-1-104 (1)(a);

(h) For a Public Library that provides facilities to the public, the Library shall make the facilities available on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use, and

(i) A Public Library shall prohibit discrimination based on age, background, political or religious views, origin, disability, race, color, sex, sexual orientation, gender identity, gender expression, marital status, national origin, or ancestry in the selection, retention, display, use or reconsideration of Library Resources and public meeting spaces.

(3) Reconsideration of library resources. (a) (I) Except as otherwise provided in subsection (3)(a)(II) of this section, a Public Library may remove a Library Resource from its permanent collection only if the Library Resource has been reviewed in accordance with an established policy for the reconsideration of Library Resources that complies with the requirements of subsection (2) of this section. A Public Library that has not established a policy for reconsideration of Library Resource or that does not comply with the requirements of subsection (2) of this section may not remove a Library Resource from its permanent collection. (II) The provisions of subsection (3)(a)(I) of this section do not apply to routine collection maintenance and deaccession in accordance with a Public Library's established collection development and maintenance policy. (b) The Board of Trustees of the Public Library that has established a policy for reconsideration of Library Resources that complies with the requirements of subsection (2) of this section and that reconsiders library resources in accordance with the requirements of subsection (2) of this section and that reconsiders library resources in accordance with that policy shall make its reconsideration policy available to the public on its website.

(c) To make a request for reconsideration of a Library Resource, the individual making the request must reside in the legal service area of the library in which the request is made. (d) A Public Library shall not reconsider the same Library Resource more than once every two years; except that a Public Library's established policy for the reconsideration of a Library Resource may specify a period longer than two years during which the Public Library will not reconsider the same Library Resource. (e) (I) Once a final determination has been made for the Library Resource that is the subject of a request for reconsideration, the Board of Trustees shall make the determination and how it comports with the provisions of subsection (2) of this section available to the public. (II) A Public Library shall not remove, discontinue or restrict a Library Resource as the result of a request for the reconsideration until the determination regarding the Library Resource has been made available to the public pursuant to subsection (3)(e)(I) of this section. (f) A written request for reconsideration of a Library Resource is not a library user record as described in section 24-90-119 (1). A written request for reconsideration of a Library Resource is an open record under the "Colorado Open Records Act", Part 2 of Article 72 of this title 24...

## Scope of the statute

Section 1(a) defines Library Resource as material, both print and non-print, found in a public library that supports curricular or personal information needs. This includes books, magazines, newspapers, pamphlets, microfiche, microfilm, films, disc records, filmstrips, slides, prints, audiotapes, videotapes, compact discs, computer software, library programs and exhibits. Section 2 of the statute provides standards for reconsideration review of the use and availability of Library Resources. Section 3 of the statute allows for the District to implement a Library Resources Reconsideration Policy that complies with the standards in Section 2. A decision to

remove or otherwise limit access to a Library Resource must consider the standards in C.R.S. §24-90-122(2).

## Availability to the Public

The Library Resource Reconsideration Policy will be available to the public on the District's website. Once a final determination has been made for a Library Resource that is the subject of a request for reconsideration, the Board of Trustees shall make the determination and how it comports with the provisions of C.R.S. §24-90-122(2) available to the public.

## Removal, Discontinuance or Restriction of a Library Resource

Only after a Final Decision has been made for a Library Resource to be removed, discontinued or restricted and such decision has been made available to the public, may such removal, discontinuance or restriction occur.

#### **Process for Reconsideration of Library Resources**

- 1. Per statute, an individual making a request for reconsideration must reside in the legal service area for the library in which the request is made.
- 2. Following established procedures, staff will listen to the patron's objections and respond courteously.
- 3. If the explanation of the selection policies does not satisfy the patron, s/he will be given the Request for Reconsideration form to complete and return to the library.
- 4. The form should be forwarded to the Collection Resources Manager for review.
- 5. The Collection Resources Manager will gather reviews and other pertinent information and will forward the reconsideration form, reviews, and a copy of the material under reconsideration to the Executive Director.
- 6. The Executive Director will review the challenge and respond to the patron in writing.
- 7. If the patron is not yet satisfied with the Executive Director's response, within 14 days of receipt of the response, s/he may contest the response and request that the Library Board of Trustees review the challenge and take appropriate action. The Executive Director's response is final if not contested in a timely manner.
- 8. The Library Board may elect to appoint a Reconsideration Subcommittee to review materials requested for reconsideration and make a recommendation to the Board.
- 9. The Library Board will make a decision. The Library Board's decision is final.
- 10. Prior to a final decision by the Board or a decision by the Executive Director that is not timely contested, the Library Resource may not be removed, discontinued, or restricted.
- 11. The District shall not reconsider the same library resource more than once every three years.
- 12. Per statute, a written request for reconsideration of a Library Resource is not a Library User Record, but an open record under the Colorado Open Records Act.

District interpretation of the statute is that a patron may grant permission to others to access the user's account. This permission (1) may be written by the patron at the time of registration for a library card, or (2) verbal consent given by the patron to staff at the time of registration or subsequently.

#### **Related Documents**

Websites: D:\dist\text\216\_enr.txt (colorado.gov)

#### Other policies:

Open Records Requests Privacy of User Records Service Areas Service Areas Outside of the District Scope of Collection policy Criteria for Collection policy Artwork policy Meeting rooms policy Posting and distribution policy Soliciting, free speech and fundraising activities policy Programs policy Archival Collection policy Specialty Checkout policy

#### Procedures:

Reconsideration of Library Resources Procedure

#### **Document Review Dates: Reconsideration of Library Resources Policy**

Effective date: 6/17/24 Revision date: Reviewed by: Executive Director, Legal Counsel

## **Programs policy**

High Plains Library District programs are grounded in the District's mission and vision: Mission: "Helping build community"

Vision: "High Plains Library District gives access to answers for every question."

## Authority

The High Plains Library District Board of Trustees and Executive Director establish the policies that govern the District. The Executive Director has ultimate responsibility for program offerings, operating within established policies. The Executive Director delegates the design, development and delivery of programs to the staff, who operate within the essential principles, criteria and objectives outlined in this policy.

## Scope of programs

A program is defined as an activity or event in a group setting intended to meet needs or interests of a target audience and build relationships between participants and the library.

Each program has a targeted audience that is generally age-related – children, teens and adults. Programs may also be multigenerational. Programs include lectures, discussion groups, computer classes, book clubs, community forums, visual and performance art, storytimes, interactive demonstrations, continuing education or major community-wide events.

The public can also provide their own programs, provided the program complies with the District Meeting Rooms policy. The District does not promote these private programs.

## **Essential principles**

• Programs are intended to reinforce the District's mission in "helping build community", to contribute to the District vision to "give access to answers for every question" and to meet strategic plan objectives such as skill-building.

• As expressed in the District Meeting Rooms policy, all library-sponsored activities are free and open to the public. Library programs are sometimes targeted toward age-specific audiences.

• Programs should promote the library's collection and resources and should consist of the same breadth and depth of topics, stories and perspectives that are offered in the collection.

• Program topics should reflect community interests and should not be intended to persuade participants to a particular point of view.

• As with other District services, minors' access to programs is the responsibility of their parents or legal guardian.

• The District reserves the right to not schedule a program and/or cancel a scheduled program. Programs may also be cancelled due to weather, low registration or absence of the presenter.

• Programs may require advanced registration to ensure that adequate supplies and resources are available.

• Views expressed by a program presenter or participant do not constitute District endorsement. This also applies to online programs.

• No right of privacy exists relating to your passive or active participation in a public meeting.

• The District, in its collections, meeting rooms and programs, supports the American Library Association's Library Bill of Rights, Freedom to Read Statement and Freedom to View Statement.

• In order to make the most efficient and effective use of financial and staff resources, programs will be planned for the upcoming year.

• Programming procedures are separate and apart from this policy.

#### Criteria

Among the criteria considered when making decisions about a specific program will be the following:

- Degree of alignment with District mission, vision and strategic plan
- Community needs and interests
- Cost and budget
- Service area demographics
- Provides a forum for sharing of different perspectives
- Offers training and assistance with new technologies
- Fosters a love for reading and learning
- Fosters community awareness
- Safety and security of customers and staff
- Accuracy and timeliness of topic
- Supplementing or extending information found in library collections
- Promoting the library and encouraging use of its resources
- Presentation quality
- Presenter background and qualifications in content area
- Historical, cultural or educational significance
- Age appropriateness of content
- Availability of program space
- Availability elsewhere
- Programming is to be non-partisan and inclusive of a full variety of community perspectives
- When practicable, the Harwood model is to be used to ensure that programming decisions are driven by community input and needs
- Input from the Public Library Association regarding best practices to be considered
- Inclusive and diverse programming is encouraged

The District does not provide:

• Programs of a purely commercial nature or those designed for the solicitation of business for third parties

• Programs that specifically support or oppose any political party, candidate or ballot measure

• Programs that support or oppose a specific religion. Programs may address religious themes to educate or inform, but will not promote or proselytize a particular religious conviction.

#### Objectives

Each program will have a written plan that clearly defines goals, intended audiences, objectives and outcomes.

Library programs will be designed and delivered to provide learning experiences that meet at least one of the following outcomes:

- Participant gains awareness of the library's resources and services
- Participant gains new knowledge
- Participant develops a skill
- Participant gains exposure to new ideas and/or diverse perspectives

## Presenters

Library programs may be developed and presented by staff, or by hired program professionals. Generally, programs for children and teens are developed by staff; programs for adults generally use hired program professionals.

The District draws upon other community resources in developing programs and actively partners with other community agencies, organizations, educational and cultural institutions, or individuals to develop and present public programs.

Program professionals can submit requests to the District. These are considered using the criteria described in this policy.

In accordance with the Meeting Rooms policy, a library-sponsored event may collect funds to cover the cost of materials use, especially when the materials are given to a participant for their use.

The District may approve the sale of materials by a program professional as part of a librarypresented program. This is in accordance with the Soliciting, Free Speech and Fundraising Activities policy exception concerning organizations with which we partner.

## Controversy

In pursuit of the District mission and vision ("Helping build community" and "High Plains Library District gives access to answers for every question"), it is inevitable that some topics may be controversial or that a given program may offend some patrons. The District follows these principles:

- Programs are selected in accordance with the criteria and objectives listed above.
- On controversial topics, the District aims to present programs that encourage or assist community dialogue by including a variety of perspectives, or acknowledging other perspectives.
- While controversy is not avoided, the District does not present programs that are intentionally inflammatory or polarizing in the community.
- Responsibility for the exposure of minors to library programs rests with their parents or legal guardians.

## Reconsideration

Individuals who reside within the legal boundaries of the High Plains Library District may express concerns about library materials, programs, displays, and exhibits by submitting a Request for Reconsideration Form in accordance with our Reconsideration of Library Resources Policy.

## Accessibility

Pursuant to the Americans with Disabilities Act, accommodations for persons with disabilities will be made in accordance with applicable federal, state and local laws, policies, guidelines, directives and procedures.

#### **Related documents**

Websites:

American Library Association Library Bill of Rights American Library Association Freedom to Read Statement American Library Association Freedom to View Statement MyLibrary.us – Program Signup

*Other policies:* 

Meeting Rooms policy Soliciting, Free Speech and Fundraising Activities policy Sponsorship policy Service Delivery

#### Procedures:

Programs procedure Program Reconsideration procedure Programs Review procedure High Plains Library District Programming Manual Meeting Room procedures

Policy History	Programs           New. Sections titled "Programming Policy" and "Programming Guideline." The policy outlines program priorities and the guideline describes how programming priorities are set.	
2010 – Feb 15		
2012 – Feb 12	Revision. Amended the Guideline to include additional criteria for program proposals and added a statement to include provision of interpreter services.	
2014 – Mar 17	Revision. Amended Policy. Previous policy focused on literacy. New policy emphasizes programs will fulfill civic role and positioning library as a cultural center and community gathering place.	
2015 – Apr 24	Revision. Deleted Guideline. Policy rewritten to emphasize patron experiences and library as center for growth and development of new ideas.	
2021 – Nov 15	Revision. Expanded significantly to include essential principles, criteria, objectives, authority, reconsideration and accessibility.	
2023 – Sep 18	Proposed additional language	
Reviewed by	Executive Director & Legal Counsel	

## Scope of Collection policy

Collection development at the High Plains Library District is founded on the principles of intellectual freedom and equal access for all.

To meet the needs of the library's diverse community, the library strives to provide a collection that balances viewpoints across a broad spectrum of opinion and subject matter in formats suitable to a variety of learning and recreational interests and skills.

The three basic supporting documents used to achieve these principles are the American Library Association's *Freedom to Read Statement*, the *Freedom to View Statement*, and the *Library Bill of Rights*.

## **Physical collection**

The District selects and supports access to materials and resources on all subjects that meet, as closely as possible, the needs, interests, and abilities of all persons in the community the library serves.

Using selection practices that are flexible and responsive to the changing needs of the community, the library builds and maintains collections for the general public, while recognizing the needs of special population groups in the community. The collection provides an assortment of new and popular materials while retaining depth through a balanced variety of subjects in formats suitable to a variety of learning and recreational interests and skills.

Materials are purchased in the most appropriate and available format. Examples of the varieties of physical formats collected include books, magazines, and newspapers in print, and audiovisual materials such as DVDs, Blu-rays, books on CD, and music CDs.

The District regards its physical collection as one shared or "floating" collection that is distributed among the branch locations. When a circulating item is returned to one branch it is shelved at the library where it is returned. Mobile Services collections are housed separately from the general collection and are not shared among branches.

## **Online collection**

The online collection, like the physical collection, reflects diverse viewpoints and needs of the community. Electronic formats selected include databases, e-books, e-audiobooks, e-magazines, and both downloadable and streaming video and music. Duplication of titles among different online delivery formats is minimized.

## **Special collections**

"Special Collections" at High Plains Library District are defined as materials of any format dedicated to narrowly-defined subject areas. These collections do not float and are housed separately from the general floating collection. They may consist of circulating materials, non-circulating materials, or both.

The District maintains circulating Local History collections at multiple locations, in order to provide easy access to students, researchers, and history lovers. These collections consist of adult nonfiction titles highlighting the histories of our Colorado area and local communities; titles may be duplicated in the regular floating collection. Selections are made in accordance with the general selection criteria listed in the Criteria for Collection policy. Additional criteria which may be considered when adding items to this collection include geographic relevance and diversity of viewpoints regarding historically underrepresented and marginalized groups in Colorado history.

Genealogical materials include family histories, genealogies of local families, local newspapers, and cemetery records. The majority of these materials do not circulate and are housed in the Genealogy Collection located in Greeley, Colorado. Selections and collection maintenance decisions are made according to the criteria listed in the Genealogy Collection policy.

Archival collections include the High Plains Library District Institutional Collection and the Greeley Tribune collection, comprising administrative and historical records of the District and its antecedents and archives of the Greeley Tribune newspaper. These materials do not circulate and are housed in the Archival Collection in Greeley, Colorado. The collection is managed according to the criteria listed in the Archival Collection policy.

Contemporary Weld County stories are captured in digital audio format via Weldcast. Access to these stories is available through the District website.

## Reconsideration

Individuals who reside within the legal boundaries of the High Plains Library District may express concerns about library materials, programs, displays, and exhibits by submitting a Request for Reconsideration Form in accordance with our Reconsideration of Library Resources Policy.

## **Cooperative networks**

The District participates in cooperative interlibrary loan networks, including the Prospector system of libraries in Colorado and Wyoming and WorldCat, the nationwide OCLC network. This expands the range of materials available to District users beyond what can be provided in any local collection while minimizing the purchase of materials expected to be infrequently used or of a low level of demand.

## **Related documents**

Websites:

American Library Association Freedom to Read Statement American Library Association Freedom to View Statement American Library Association Library Bill of Rights

Other policies:

Interlibrary Loan policy Specialty Checkout policy Criteria for Collection policy Copyright policy Genealogy Collection policy Archival Collection policy Self-published Works policy Donations policy Circulation policy Reconsideration of Library Resources Policy

Procedures:

Collection Development procedure Copyright procedure Donation procedure Reconsideration of Library Resources procedure

Policy History Scope of Collection		
1991 – July	Earliest known version. Titled "Materials Selection." Includes sections on Objectives, Responsibility for Selection General Criteria for Selection, Freedom of Selection, Challenged Materials, Gifts and Special Collections, Dispos of books and non-print materials (weeding).	
2004 – Apr	Retitled "Collection Development Policy." Includes most of what is in 1991 version, but has added section on "Weld Library District Donation Policy" and includes gifts of money and volunteering.	
2007 – Feb 19	Revision. Includes many of same titles as in earlier versions, but significantly expanded narrative and topics. Sections on "Disposal of Materials" and "Challenged Materials" moved to Collection Development policy "Retention" and "Reconsideration" respectively. A "Reconsideration Form" is in the appendix to Policy Manual.	
2009 – Feb	Revision. The 2007 version is shortened. Has been broken out into "Collection Development Policy", "Collection Development Guideline" and "Collection Development Procedure."	
2012 – Feb 12	The "Collection Development Procedure" is moved to Procedures Manual.	
2013 – Feb 18	Added "Collection Development Statement" and "Collection Selection FAQ."	
2014 – Mar 17	Added wording to the "Collection Selection FAQ": works created by local author or musician are given special consideration.	
2015 – Apr 24	Collection Selection FAQs amended: District does not accept replacement editions in place of lost or damaged items.	
2018 – Aug 20	Major revision. Retains some of former policy, but most of entire section is added or rewritten. Eliminated the "Collection Development Policy", "Collection Development Guideline", "Collection Selection FAQ" and added sections on Online Collection, Special Collections, Cooperative Networks, Guidelines for Authors.	
2021 – Nov 15	Redesign of this section to align with the style of the rest of the manual. Broken out into separate policies for Scope of Collection, Criteria for Collection, Copyright, Genealogy Collection, and Self-published Works.	
2024 – Apr 12	Revision. Updated wording in Special Collections section and added reference to Archival Collection policy.	
Reviewed by	Executive Director, Collection Resources Manager	

## Archival Collection policy

The purpose of the High Plains Library District Archive is to organize, protect, preserve, and provide access to historical materials primarily pertaining to the District for present and future generations. The District's archive consists largely of two non-circulating collections: the Institutional Collection and the Greeley Tribune Collection. The acquisition of local history primary source materials unrelated to these collections is not a focus of the District at this time.

The Institutional Collection contains administrative and historical records in multiple formats such as documents, photographs, maps, audiovisual materials, oral history interviews, scrapbooks, ephemera, books, pamphlets, architectural drawings, periodicals, digital files, and artwork. Materials are added to the archive according to guidelines established by the Colorado State Archives' Special Districts Records Management Manual and recommendations developed by District staff to reflect our individual needs. Procedures for organizing, maintaining, and utilizing the Institutional Collection follow standard archival practices such as those set forth by the Society of American Archivists.

The Greeley Tribune Collection also contains multiple formats including bound newspaper volumes; loose, unbound newspapers; newspaper clippings; books; architectural drawings; and a photo archive consisting of negatives, printed photographs, and digital photograph files.

## Donations

Gifts and donations are important supplements to the archival collections. The library will accept gifts of materials relating to the history of High Plains Library District and its antecedents and materials related to the *Greeley Tribune*. We will only accept items in good condition.

## **Collection maintenance**

Decisions concerning the removal of materials from the archive are made by professional staff and are based on the following criteria:

- Materials do not meet the archive collection policy selection criteria
- Legal restrictions, possession of valid title and the donor's intent
- Storage capacity of the archive
- Pattern of use
- Materials are damaged or deteriorated to a degree to be unusable and/or a threat to other items in the archive
- Subject cannot be placed in any identifiable historical context or is determined to have minimal research value
- Materials are duplicated in another collection or are held by another public institution

The District also promotes access to archival materials through partnerships with local and county museums as well as historical and genealogical societies. Contemporary Weld County stories are captured in digital audio format via Weldcast. Access to these stories is available through the District website.

## Reconsideration

Individuals who reside within the legal boundaries of the High Plains Library District may express concerns about library materials, programs, displays, and exhibits by submitting a Request for Reconsideration Form in accordance with our Reconsideration of Library Resources Policy.

## **Related documents**

#### Websites:

<u>Colorado State Archives – Special Districts Records Management Manual</u> <u>Society of American Archivists</u>

## Other policies:

Scope of Collection policy Criteria for Collection policy Copyright policy Donations policy Reconsideration of Library Materials policy

#### Procedures:

Collection Development procedure Copyright procedure Donation procedure Reconsideration of Library Materials procedure

Policy History	ry Archival Collection	
2024 – April	pril New. Written because there are aspects of the archival collection not applicable to other parts of collection	
Reviewed by	Executive Director, Collection Resources Manager	

## Artwork policy

The High Plains Library District aims to build facilities which are aesthetically pleasing. The District also supports and encourages local artists. Accordingly, the District accepts donations and loans and makes purchases of artwork.

In addition, the District may permit local artists to sell artwork in the library.

For other types of donations, see the District's Donations policy.

#### Definition

Art is defined in state law <u>C.R.S. §24-48.5-312 – Art in Public Places Program</u> as "original creations of visual art including, but not limited to: sculpture; painting (whether portable or fixed, as in the case of murals); mosaics; photographs; crafts made from clay, fiber and textiles, wood, glass, metal, plastics, or any other material, or any combination thereof; calligraphy; mixed media composed of any combination of forms or media; unique architectural stylings or embellishments, including architectural crafts; environmental landscaping; and restoration or renovation of existing works of art of historical significance."

#### Art donations and purchases

- Artwork is selected based on alignment with the District's mission, décor, and availability of display space as determined by the Executive Director.
- Donated and purchased artwork will be formally added to the District's holdings of owned art.
- Donated and purchased artwork will not necessarily be displayed in the same location on a permanent basis.
- Donated and purchased artwork will be covered by the District's insurance.
- Items may be removed from the library location based on condition and whether the item fits with the library environment.
- An Art Accession form must be completed by the donor/seller.

## Art loans

- Artwork is accepted for a set period of time as determined by the Library Manager or designee.
- Loaned artwork will not be added to the District's holdings of art.
- Loaned artwork may be transferred to another location but is typically only in one location.

• Items with a value that is less than \$25,000 that are damaged or stolen while on display will be covered by the District's insurance. If the item is valued higher than \$25,000, the owner of the artwork is strongly encouraged to purchase additional insurance at their own expense. The District is not responsible for any damage done during transport, delivery, or placement.

#### Reconsideration

Individuals who reside within the legal boundaries of the High Plains Library District may express concerns about library materials, programs, displays, and exhibits by submitting a

Request for Reconsideration Form in accordance with our Reconsideration of Library Resources Policy.

#### **Related documents**

Websites: <u>C.R.S. §24-48.5-312 – Art in Public Places Program</u> <u>Art Exhibit Application</u> <u>D:\dist\text\216\_enr.txt (colorado.gov)</u>

Other policies:

Donations policy High Plains Library District Foundation policy Meeting Rooms policy Reconsideration of Library Resources policy Sponsorship policy *Procedures:* Artwork procedure Donation procedure Art Accession form Art Deaccession/Transfer form Reconsideration of Library Resources procedure Sponsorship procedure

#### Forms:

Reconsideration of Library Resources form

Policy History	Artwork		
1991 – July	Titled "Display and Exhibits Policy and Guideline." Earliest known version.		
2002 – Nov	Titled "Display and Exhibits Policy and Guideline." Added paragraphs to indicate District not responsible		
	for damage and doesn't insure items. Requires lender to sign agreement.		
2009 – Feb	Titled "Display and Exhibits Policy and Guideline." Added language and separated into "Display and		
	Exhibits Policy", "Display and Exhibits Guideline", "Display and Exhibits Procedure."		
2009 – Feb	New section titled "Artwork." Includes Art accession and deaccession procedure.		
2011 – Mar 21 Titled "Display and Exhibits Policy and Guideline". Separates Art acquisition and deace			
practices from Display practices. All references to loans were moved to "Displays and Exhibit			
	Ability to sell art if accompanied by donation to Foundation added.		
2012 – Feb 12	"Displays and Exhibits Procedure" moved to Procedure Manual.		
2015 – Apr 24	Titled "Display and Exhibits Policy and Guideline."		
2015 – Apr 24	"Art Exhibit application" form included on the MyLibrary website, with links from policy manual (in		
	sections on "Art Guideline", "Displays and Exhibits Policy and Guideline", "Gifts and Donations")		
2020 – Dec 7	Titled "Display and Exhibits Policy and Guideline." This was absorbed into Artwork policy.		
2020 – Dec 7	Titled "Artwork policy." Content is the same, but the Art Policy and Guideline, Displays and Exhibits		
	Policy and Guideline are all combined under "Artwork Policy."		
Reviewed by	Associate Director of Public Services		

## **Meeting Spaces policy**

#### Colorado Public Libraries standard for acquisition-retention-display-utilizationreconsideration of library resources-use of library facilities.

The District is governed in this policy by Colorado Revised Statute 24-90-122, Library Law -

(2) Standards.

(h) For a Public Library that provides facilities to the public, the Library shall make the facilities available on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use, and

(i) A Public Library shall prohibit discrimination based on age, background, political or religious views, origin, disability, race, color, sex, sexual orientation, gender identity, gender expression, marital status, national origin, or ancestry in the selection, retention, display, use or reconsideration of Library Resources and public meeting spaces.

## Purpose of meeting spaces

There are two primary purposes for the meeting spaces of the library:

- 1. To provide space for library-sponsored activities of interest to the public.
- 2. As a support of the First Amendment "right of the people to peaceably assemble", a community meeting place for the presentation, discussion, and exchange of information on a wide variety of ideas. Toward this end, the District rooms are intended to be used without cost.

## Library-sponsored activities

Library-sponsored activities have priority over meetings booked by the public. It is rare, but it may be necessary to revoke a reservation when the room is needed for library purposes.

## **Open meetings**

All library-sponsored activities are free and open to the public. On occasion, a library-sponsored event may collect funds to cover the cost of materials used, especially when the materials are given to a patron for their use. Library programs are sometimes targeted toward age-appropriate or other specific audiences, such as storytimes.

There is no such requirement for meetings initiated by the public. A meeting can be restricted to select individuals.

#### **Financial considerations**

There is no fee to use the rooms. There are some finance-related issues to be aware of when reserving and using the rooms (see <u>https://www.mylibrary.us/meet/</u>)

#### Permitted and non-permitted uses

Meeting rooms are available for booking by the general public during normal library hours provided they are not scheduled for library events.

Alcohol use is not permitted. Alcohol may on occasion be allowed at events when expressly preapproved by the Executive Director or the Board of Trustees. See also Alcohol at Events policy.

A meeting organizer may charge a fee to attend their event. Soliciting or peddling to participants is allowed in the meeting rooms, but not outside the meeting rooms.

Signing of petitions is permitted within meeting room spaces but not outside the meeting rooms. It is also permitted outside of the library, provided it does not impede use of the library. See also the Soliciting, Free Speech and Fundraising Activities policy.

A sign on the door or wall outside the meeting room, indicating the name of the meeting, is allowed; however, directional signs about the event elsewhere within the library, are not.

Interfering with the ability of patrons and staff to use the library is prohibited. This would include, for example, approaching patrons to persuade them to come to a meeting or having a sandwich board advertising the event outside the meeting room.

The library reserves the right to cancel or refuse use of the rooms at any time.

The District does not operate or manage Youth Related or other Activities on its premises when a third-party reserves and uses the library or library space for its own activity. The District does not sponsor, endorse, operate or manage events and activities promoted or engaged in by those who reserve and utilize library spaces and the sponsoring entity is responsible for all supervisions, operations and management of such events.

#### **Non-residents**

Individuals who do not reside within the High Plains Library District boundaries can reserve and use District meeting spaces.

#### Minors

An adult (age 18 and over) must be present while the meeting room is in use.

There is no age restriction on who may reserve a meeting space.

Study rooms are available to all ages.

#### **Related documents**

Websites:

https://www.mylibrary.us/meet/

#### Other policies:

Alcohol at Events policy Soliciting, Free Speech and Fundraising Activities policy Photography and Video Recording policy

## Procedures:

Meeting Room procedures Alcohol at Events procedure Weather Closures procedure Soliciting, Free Speech and Fundraising Activities procedure Photography and Video Recording procedure

Policy History Meeting Rooms			
1994 – Mar 28	New. Appears as an addendum to policy manual.		
2007 – Feb 19	Similar to 1994 version, but with additions pertaining to use of the Nomad system, changes to damage deposits		
2009 – Feb	Major revision. Broken out into "Meeting Rooms Policy", "Meeting Rooms Guideline", "Meeting Rooms Procedure", "Meeting Room Rules".		
2011 – Mar 21	In Guideline, made separate document about security deposits and statement about fees from some meeting rooms. Added time limit for how long room is guaranteed. Adjusted for variations in DSS facility. Provided information about using library study rooms.		
2012 – Feb 12	Revision. "Meeting Rooms Procedure" moved to Procedure Manual. Also added a rule about what library will provide and what supplies need to be provided by patron		
2014 – Mar 17	Revision. Clarified when alcoholic beverages permitted; clarified that adult presence is required in meeting rooms.		
2018 – Oct 15	Major revision. Rearranged the information; added opening statement about purpose of meeting rooms; clarified some points in the policy.		
2020 – May 18	Revision. Reviewed to align with policies on alcohol and solicitation, first amendment rights and fund-raising; allows reservations regardless of fines; adds vaping as prohibited activity; clarifies conditions for soliciting, free speech, fundraising; disallows early room setups; clarifies reservations without a library card; requires that an adult (age 18 and up) to be present at meetings.		
2021 – July 19	The following paragraph was removed: <i>The District will deny use to groups that, in the judgment of the District representative, have as their purpose to advance any doctrine or theory subversive to the Constitution; laws of the United States, or State of Colorado; or that advocate social or political change by force or violence.</i> It was removed on advice of legal counsel that case law would not support this restriction.		
2021 – Dec 13	A sentence was added to clarify that when a patron checks in to use a meeting room, they need to present their library card. If they don't have it, they must present a photo ID. If they have neither, the patron must be able to establish that they have a valid account.		
Reviewed by	Associate Director of Public Services		

## Specialty Checkout policy

In addition to items typically found in a library collection, the District has a service for lending equipment and specialty items. This service is different in these characteristics:

- Expensive equipment
- Limited supply
- Calendar-based a patron reserves the item for specific dates.
- Restricted as to who can check out these materials.
- Late fines are assessed on these items.

## Members and branches

Specialty checkout items are available in selected District branches and member libraries. This means that access is broadly spread throughout the District's geographic areas.

#### Items included

The District regularly evaluates the types of items in the Specialty checkout collection. Items are added to meet community needs and priority is placed on materials that increase access to technology and internet.

The District offers Experience Passes that allow users access to non-profit and government cultural centers and museums free of charge. We do not partner with for profit businesses for Experience Passes.

#### Reconsideration

Individuals who reside within the legal boundaries of the High Plains Library District may express concerns about library materials, programs, displays, and exhibits by submitting a Request for Reconsideration Form in accordance with our Reconsideration of Library Resources Policy.

## Who can borrow?

The requirements for patrons checking out Specialty checkout items are more stringent. See <u>https://www.mylibrary.us/specialtycheckouts/</u> for terms of use. This service is necessarily more restrictive than other items in the library collection as the items are expensive and there is a limited supply. In addition, the system is calendar-based.

#### **Related documents**

Websites: <u>Mylibrary.us – Specialty Checkouts</u> <u>Specialty Checkouts Quick Guide</u>

Other policies:

Fines and Fees policy Circulation policy Reconsideration of Library Resources Service Areas Outside of the District Service Delivery

Procedures:

Fines and Fees procedures HPLD Sierra Service Desk Circulation Guide Infested Materials Reconsideration of Library Resources Suspension Guidelines Weather Closures procedure

Policy History	Specialty Checkout	
2021 – Nov 15	New. Describes who can use the service, what the service includes, terms of agreement, and the reasons for restrictions.	
Reviewed by	ved by Collection Resources Manager, Associate Director of Public Services	

## **Circulation policy**

The High Plains Library District derives much of its revenue from property taxes paid by residents of the District. Accordingly, all resources are for their benefit. The District does provide resources to non-residents on a more limited basis. There is no charge for lost cards.

## Types of library cards

The High Plains Library District provides library cards with varying levels of access.

- *Resident*: full access to all resources issued to (1) residents of the District; (2) individuals who own or lease business space within District boundaries; (3) non-residents of the District who teach at a school district inside District boundaries; excludes academic instructors.
- *CLC (Colorado Libraries Collaborate):* limited access to resources to non-residents who pay taxes for Colorado library services.
- *Limited:* limited access to resources to residents who do not have necessary identification to receive a resident or CLC card. These patrons may be upgraded when they are able to provide identification.
- *E-access (Electronic Access):* limited to computer use and downloadable materials only. Identification is not required. Minors must be accompanied by a parent when obtaining any card.
- *Organization card:* issued to organizations willing to assume financial responsibility for their staff to obtain library materials for use in their organization.

## Lending periods and material limits

Patrons can check out circulating materials for specific periods of time. Most materials may be checked out for three weeks, but certain materials have a shorter checkout time. Detailed information on lending periods and material limits can be found at <a href="https://www.mylibrary.us/card/">https://www.mylibrary.us/card/</a>

## Registering for a library card

Residents and non-residents can obtain a library card at any District location. Photo identification with correct address is required. If the photo identification does not include the correct address, a second form of identification with the correct address is required. A physical address is needed to meet Fair Debt Collection Practices Act secure communication needs. See <a href="https://www.mylibrary.us/card">https://www.mylibrary.us/card</a> for acceptable forms of identification.

For minors (under age 18) the parent or guardian must complete and sign an application form on behalf of the minor. The parent/guardian and the minor must be present when the card is issued, except when working with an institution, such as schools.

#### **Related documents**

#### Websites:

<u>MyLibrary.us – Types of Cards</u> <u>MyLibrary.us – Borrowing Terms & Limits</u> <u>MyLibrary.us – Acceptable Forms of ID</u> <u>MyLibrary.us – Renewals</u> <u>MyLibrary.us – Holds</u> Fair Debt Collection Practices Act

#### *Other policies:*

Service Areas Outside of the District Fines and Fees policy

#### Procedures:

HPLD Sierra Service Desk Circulation Guide Fines and Fees procedures

Policy History Circulation			
1991 – July	Earliest known version. There is a section titled "Loan Policies."		
2002 – Nov	New. Circulation Policies includes: Patron registration, Verification, Unverified users, Juvenile cards, College students, Teacher status, Temporary status, Homebound, Nonresident status, Organization cards, Borrowing privileges, Limits on checkouts, Reserves/Holds, Library card unavailable, Renewals.		
2007 – Feb 19	Removed sections on Teacher and Nonresident status. Added section on Interlibrary Loan.		
2009 – Feb	Major revision. Divided into sections on "Circulation Policy", "Circulation Guideline", "Borrowing Procedure", "Circulation Procedure" and "Interlibrary Loan Procedure." Most of the information in previous policies has been moved to the procedure sections.		
2012 – Feb 12	"Borrowing Procedure", "Circulation Procedure", "Interlibrary Loan Procedure" moved to Procedures Manual.		
2015 – Apr 24	Circulation Guideline revised to clarify that parents must sign application form and parent and child must be physically present when card is issued for minors under age 16.		
2020 – Nov 16	Board amended the definition of minor to age 18. Accordingly, the guideline was corrected to indicate that parent or guardian must be present for anyone under that age.		
2021 – July 19	Circulation Policy and Circulation Guideline combined. Also updated and expanded policy to include information on types of library cards, borrowing terms and item limits, registering for a library card, and acceptable forms of identification.		
2021 – Sept 20	Board reviewed whether to require photo ID for limited card. They made no change to the policy		
2021 – Dec 13	The statement that a physical address is required to comply with the Fair Debt Collection Practices Act was moved from the Identity Theft policy to Circulation Policy.		
Reviewed by	Associate Director of Public Services		

## Fines and Fees policy

The High Plains Library District does not charge *fines* for overdue materials (with the two exceptions below). A *fine* is a penalty. A *fee* is the purchase cost for an item.

All fines and fees are set by the High Plains Library District Board and are reviewed and adjusted at the request of staff. See fine and fee amounts at: <u>https://www.mylibrary.us/card/</u>

## Fines

- Specialty Checkout items
- Interlibrary Loan items

## Fees

- Lost items
- Damaged items
- Materials Recovery
- Open records requests
- Printing and Copying
  - Each library card receives an allotment of free printing credits each month
  - Additional credits above the allotment can be purchased. Library staff reserves the right to limit the amount of credits above the monthly allotment.
  - For more information on printing and copying see <u>https://www.mylibrary.us/print/</u>
  - Interlibrary Loan photocopies: No charge up to 50 pages

## Notes:

There is no charge for faxed or "scan to email" items.

## **Related documents**

Websites:

<u>MyLibrary.us – Fines and Fees</u> <u>MyLibrary.us – Printing and Copying</u> <u>MyLibrary.us – Replacement Cards</u>

Other policies:

**Open Records Requests** 

Procedures:

HPLD Sierra Service Desk Circulation Guide Fines and Fees procedures Open Records Requests procedure

Policy History	Fines and Fees	
2002 – Nov	Earliest known version. Includes fines for overdues, and fees for extra services, damages and lost items.	

2007 – Feb 19	Includes list of fees, meeting room charges	
2009 – Feb	Fines and fees no longer appears in Policy Manual. It is an independent document.	
2011 – Mar 21	ines and fees list is separate from Policy Manual, but approved by Board.	
2012 – Feb 12	ines and fees list is separate from Policy Manual, but approved by Board.	
2015 – Apr 24	Jpdated list Fines and fees list is separate from Policy Manual, but approved by Board.	
2018 – Oct 15	Fines and fees policy is added back into Policy Manual. Policy clarifies that there are no overdue fines, but there is a replacement fee if items are kept longer than 42 days.	
2020 – May 18	Revision. Clarifies distinction between fines and fees; adds that all fines and fees require Board approval; updates printing and copying practices; allows patrons to purchase extra credits; allows staff to limit excessive printing or copying; eliminates fee for replacement library cards	
Reviewed by	Executive Director, Board of Trustees, Patron Experience Specialist	



# **BOARD OF TRUSTEES**

**DRAFT** - Regular Session Agenda

Monday, July 15, 2024 5:00 p.m. Erie Community Library 400 Powers St, Erie, CO 80516

This is also streamed virtually by GoToMeeting.

#### The meeting can be viewed from your computer, tablet, or smartphone.

<u>https://www.mylibrary.us/hpldboardmeetings</u>. To view the Board meeting online, use this link and select the date of the meeting you want to join. If you have public comments, you may submit questions at the time of signing up for the meeting. All participants will be muted.

New to GoToMeeting? Get the app now and be ready when your first meeting starts: <u>https://global.gotomeeting.com/install/399313765</u>

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: <u>https://hpld.formstack.com/forms/board\_questions</u>

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 Approval of Consent Agenda
  - a. June 17, 2024 Regular Session and Executive Session Meeting Minutes
- 1.4 The Good We Do
- 1.5 Public Comment

## 2.0 ITEMS FOR INFORMATION/ACTION

- 2.1 Construction Updates (Information) Dr. Matthew Hortt, HPLD Executive Director
- 2.2 HPLD Vision and Values (Information) Dr. Matthew Hortt, HPLD Executive Director
- 2.3 Salary Survey Recommendations (Action) Dr. Matthew Hortt, HPLD Executive Director

#### **3.0 DIRECTORS REPORT**

- 3.1 Review Draft Agenda Dr. Matthew Hortt, HPLD Executive Director
   a. August 19, 2024 RS
- 3.2 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:

August 19, 2024 at 5:00p.m.: HPLD Board of Directors Meeting - Regular Session LINC Library Innovation Center, 501 8<sup>th</sup> Avenue, Greeley, CO 80631

## Associate Director of Public Services

## What's Happened in the last 30 days?

- Updated the Security Camera procedures.
- Visited Grover to see how construction is proceeding.
- Kick-off meeting for Carbon Valley and Farr Library refreshes
- Visited the "ghost library" (Jeffco's Express Library) to see how a non-staffed library works.
- Attended a demo for BurlingtonEnglish, to see if it would be a good replacement for EnGen.
- Attended a children's museum conference to learn about how best to keep our children's innovation space exciting to kids and in good repair.
- Attended the Hope Springs ribbon-cutting and co-hosted a booth (with James)

## What's Coming Up in the next 30 days?

- Rewriting several policies to comply with SB24-216 Reconsideration of Library Resources
- The Public Services Managers' team will be presenting the new Person-In-Charge [PIC] training to the PSS team and inviting their input before rolling it out to all PICs.

## **Carbon Valley Operations**

## What's Happened in the last 30 days?

- The Summer Reading Adventure began on May 20, and as of May 31, Carbon Valley Regional Library has 983 people registered.
- Librarian, Diana Grover partnered with Intercabmio to give a tour of the library and services to ESL students on May 23.
- Librarian, Lisa Varra attended the Mead Friendly Fork Lunch on May 30. This recurring event is sponsored by the Weld County Area Agency on Aging.
- Librarians, Amanda Pittman, Bridget Parker, and Chloe Stevens visited several schools in the Frederick, Firestone, and Mead communities to promote the summer reading program.

## What's Coming Up in the next 30 days?

- The Centennial Area Health Education Center's Be Mindful mental health exhibit will be on display at the Carbon Valley Regional Library between June 4-June 20.
- Librarian, Marie Kaufman and Library Manager, Melanie Goldman, will host a booth at the Carbon Valley Resource Fair on Saturday, June 8.

## **Erie Branch Operations**

## What's Happened in the last 30 days?

• During the month of May, we watched caterpillars become chrysalises and eventually butterflies. On May 23, 140 kids joined us for stories and watched the butterflies be released into the wild.

- Summer reading has begun! As of May 30, 587(!) people have signed up to participate and earn prizes through reading and activities.
- As of May 30, we have 55 registrations for the Kids Juried Art Show that will be on display beginning in September.

## What's Coming Up in the next 30 days?

- The first of our Beginner Hatha Yoga for Adults and Teens series starts on June 3 at 11am.
- Our summer reading programs in June include: a foam party, Cryptozoology for kids, Opposite Olympics, and more! Check out our summer reading calendar for more information.

## **LINC Operations**

## What's Happened in the last 30 days?

- 4-H Youth Biz Academy for Young Entrepreneurs Market Day was held at LINC on May 4th with more than 80 people attending to support the young entrepreneurs.
- LINC's One-year Anniversary Celebration was Saturday, May 11 from 10am to 3pm with over 800 people attending.
- LINC Library Manager Melissa Beavers and HPLD Associate Director Marjorie Elwood attended the American Children's Museum Conference Interactivity 2024: Flourish! in Madison, WI, May 15-17. This conference was incredibly beneficial with new information, resources, and contacts being attained.
- LINC hosted the Maker Interest Group Workshop on May 20. Nearly 90, makers and library professionals from all over Colorado were impressed by LINC and enjoyed the workshop.
- LINC staff participated in Spring History Fest at Centennial Village from May 6th-10th, 2024. Schools from District 6 and all-over northern Colorado register ahead of time for the event. The primary audience is 3rd and 4th graders, whose social studies curriculum focuses on Colorado and Greeley history.
- The All-Aboard Ticket to Exploration launched in May. This program encourages folks to pick up a free Ticket to Exploration at the LINC Library, then get the ticket punched and use that ticket to get free admission to the Colorado Model Railroad Museum, Greeley History Museum and Centennial Village Museum. Each of the four stops will punch tickets, and when kids collect all four punches on their ticket, they can pick up a Ticket to Exploration bag with fun prizes at your last stop.
- In the first week SRA registration, LINC registered 150 SRA readers—that's half of our total registrations for summer 2023!

## What's Coming Up in the next 30 days?

- Two D6 Interns will start work in June at LINC and will complete 150 hours each during the summer.
- LINC will partner with D6 Nutrition Services to provide free sack lunches for kids ages 1-18 every Thursday from 6/6 to 7/25.

## **Riverside Operational Work**

## What's Happened in the last 30 days?

- Working with the City of Evans the following
  - Parking lot reseal and paving
  - Replacement of south entry landscaping
  - o Replacement of bollards on south driveway
- ReadCon committee is contacting potential local Authors for ReadCon 2025 scheduled for Friday, April 11, 2025

## What's Coming Up in the next 30 days?

- Sub librarian interviews
- PIC training with PSS group

## **Collections Operational Work**

## What's Happened in the last 30 days?

- Submitted holdings for diversity audit of print materials in English, to follow up on the audit done in 2021.
- Formed task force to evaluate Collection Maintenance processes.

## What's Coming Up in the next 30 days?

- Finalize State Grant spending.
- Submit periodical renewals for July.
- Finalize ordering for Grover Opening Day collection.
- Post results for diversity audit of print materials in English

## **Facilities Operational Work**

## What's Happened in the last 30 days?

- Completed work orders.
- Completed storm damage assessments.
- Attended construction meetings and EC meetings incl subcontractor meetings.
- Completed replacements of 4 HVAC units at DSS incl PM's.
- Completed MOVE vehicle inspections/maintenance.
- Installed Backflow at kersey library.
- Completed roof inspections for all locations.
- Repaired stucco damage at LINC.
- Completed LINC warranty walk through work orders.
- Scheduled security camara installations at LINC.
- Completed cleaning incl carpet and window cleaning schedules.
- Completed landscaping maintenance all locations.
- Purchased 2 additional storage containers and had them delivered to DSS.
- Completed maintenance and registration for facilities truck.

## What's Coming Up in the next 30 days?

- Complete ongoing work orders incl warranty work orders for LINC.
- Complete MOVE vehicle inspections, maintenance and record keeping.
- Complete storm damage repairs.
- Attend construction meetings and quarterly safety meetings.
- Attend EC meetings.
- Schedule door power shade installation and install soft floor tiles at LINC.
- Schedule tree removal at LINC.

## **Finance Operational Work**

## What's Happened in the last 30 days?

- Finishing up 2023 audits
- CPE continuing professional education.
- GFOA WPFN mentoring program.
- Prepare 2025 budget worksheets.
- UNC Legislative Wrap Up.
- Work on SOPs.

## What's Coming Up in the next 30 days?

- CPE continuing professional education.
- GFOA WPFN mentoring program.
- 2025 budget planning.
- Weld County Lunch & Learn on property tax legislation and valuations.
- Work on SOPs.

## Friends & Foundation Operational Work

## What's Happened in the last 30 days?

- HPLD F&F Work Session and Regular Session 5/6
  - Review F&F strategic planning
  - Passed revised Bylaws
- Interviews for Volunteer Services Coordinator position
- Innovation Luncheon solicitation materials and marketing materials work
- Continued funding project and volunteer program work

## What's Coming Up in the next 30 days?

- Onboard Volunteer Services Coordinator.
- Launch Innovation Luncheon individual ticket and sponsor solicitations.
- Niamh Mercer and Christina Hardman will attend the International Public Library Fundraising Conference in Washington DC 6/9-6/11.
- Lauren Vanderlinden will attend the Colorado Nonprofit Association-Connecting Colorado Conference in Loveland on 6/26.
- Continued funding project and volunteer program work.

## Human Resources Operational Work

## What's Happened in the last 30 days?

- Total Employees- 300\*
- Open Positions 4
- Job Applications Received 78
- New Hires 8
- Resignations 3
- Training Requests 24 \*ADP Employee Count report produced at time of submitting the Board report.

## What's Coming Up in the next 30 days?

- Continued ADP/EN integration
- Dept. succession plan implementation

## Information Technology & Innovation Operational Work

## What's Happened in the last 30 days?

- Copier refresh Farr, Erie, DSS
- HB21-1110 drafted and submitted to coordinator
- Ft Lupton live on Spaces (deferred to June 3)
- EC Community Spaces finalize access based on direction.
- Next phase refresh planning
- Eaton remodel support
- Vending unit support and test (connectivity components in)
- Strategic plan support
- Markups Administration remodel
- Markups Mead
- schedule\setup work for Grover to get underway

## What's Coming Up in the next 30 days?

- Project Support
  - Eaton remodel (continued)
  - Construction projects (next round markups, etc...)
  - Vending unit pending arrival will be providing needed configuration, connectivity and process capture/support
  - Accessibility support of any needed changes per original draft
  - Grover internet service installation, equipment prep. Finalize needed tech configuration for unstaffed access.
- Smart Badge deployment
- Testing technologies video access reader, security guard communication option, photo printing, account aging
- Digital display expansion (add Farr, CVR and working with CRM share training)
- Organizational dashboard refinement
- Budget planning underway
- Automated daily work reports to remaining locations
- Final prep for onboarding support changes
- Full client update planning for deployment starting Q4 (OS upgrade, etc...)

## **Community Engagement & Strategies Operational Work**

## What's Happened in the last 30 days?

- Utah Library Association/Mountain Plains Library Association Conference: On May 10th, Elena Rosenfeld co-presented on the value of partnerships with other organizations along with Aims Community College's Carol Satersmoen and University of Northern Colorado's Annie Epperson. In addition to presenting, she attended a number of sessions and is sharing ideas gathered.
- One session focused on preparing pre-packaged "programs on demand" so that patrons can enjoy a programming experience on their own schedule while another highlighted best practices to make data more accessible to those with dyslexia and color-blindness.
- Colorado Legislation: The end of the legislative session resulted in a number of bills of interest being signed by the Governor. A number of workforce development funding bills were approved along with bills focused on accessibility, and access to information.

## What's Coming Up in the next 30 days?

- Accessibility of Online Content: Elena will be working with CRM and IT to insure that HPLD meets the requirements of Colorado HB21-1110 which directs agencies to insure that online content is accessible to staff and patrons with disabilities.
- Kraemer Copyright Conference: The annual Kraemer Copyright Conference, held in Colorado Springs will be focused on the challenges of Artificial Intelligence (AI) and how these conversations impact library services. The Conference will also cover best practices for considering Fair Use, balancing access to respecting traditional cultures, and educating users about best practices.
- Weld County Early Childhood Council: The Council's Executive Committee will be developing an updated strategic plan for the council. Elena Rosenfeld will be serving on the steering committee for this work. The Council is working with a company that understands Colorado's early childhood protocols and the diversity of needs in Weld County.

## **SERVICES**

## Service – Materials Sharing

## What's Happened in the last 30 days?

- No meeting this month
- What's Coming Up in the next 30 days?
- Looking at drive-up holds pick-up service and how to make it easy for patrons when they are placing a hold.

## Service – Meeting Rooms

## What's Happened in the last 30 days?

- Discussed possible measures that can be used to evaluate meeting space technology usage.
- Provided updates to meeting room procedure changes.

## What's Coming Up in the next 30 days?

• Review meeting room standards edits.

## **Service – Personalized Services**

## What's Happened in the last 30 days?

- Door count is up 33% from this time last year.
- Drive up window usage is up 21% from this time last year!
- BAL Form Updated in both English and Spanish sent to CRM.
- TLC members working on updating assigned portions of the TLC manual.

## What's Coming Up in the next 30 days?

- Personalized service meeting
- TLC meeting

## Service - Programming

## What's Happened in the last 30 days?

Date	Program	Location	Attendance
5/4/2024	Butterfly Release	LINC Library	280
5/4/2024	Launch into Literacy! Early Literacy Fair: Space	Centennial Park Library	175
5/23/2024	Let's Go Camping!	Erie Community Library	140
5/7/2024	Family Fun Saturday - Mini Golf at the Library!	Erie Community Library	114
5/21/2024	Playdough Playdate	LINC Library Innovation Center	80
5/25/2024	Music and Movement @ LINC	LINC Library Innovation Center	75
5/6/2024	Celebrate Your Stuffy!	LINC Library Innovation Center	70
5/2/2024	Relax & Craft	LINC Library Innovation Center	60
5/14/2024	Great Goats	LINC Library Innovation Center	56
5/20/2024	May the 4th: Star Wars Day @ LINC	Riverside Library and Cultural Center	56
5/8/2024	May the 4th: Star Wars Day @ Centennial Park Library	Riverside Library and Cultural Center	50