

CITY OF RENO  
PUBLIC WORKS DEPARTMENT

**PROPOSAL, CONTRACTS AND  
SPECIAL PROVISIONS  
FOR**

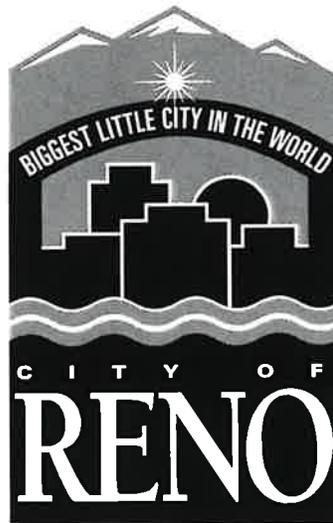
**NEIL ROAD FACILITY REMODEL AND  
EXPANSION PROJECT**

**CONTRACT NO. L200036-22301**

**PWP WA-2024-502**

**THIS IS A FEDERALLY FUNDED PROJECT**

NOT REPRODUCIBLE



*Kamrun Ahmadi* 9/4/24  
FRONT END DOCS ONLY

**Director of Public Works**  
Kerrie Koski, P.E.

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SECTION 010 – NOTICE TO CONTRACTORS

**Proposals Requested  
By  
CITY OF RENO – PUBLIC WORKS DEPARTMENT**

**NEIL ROAD FACILITY REMODEL AND EXPANSION PROJECT  
CONTRACT NUMBER L200036-22301  
PWP WA-2024-502**

**THIS IS A FEDERALLY FUNDED PROJECT**

Proposals via PlanetBids will be received by the City of Reno until 2:00 P.M. Local Time on Tuesday, October 1, 2024, for Contract Number L200036-22301.

Said Proposal shall include all labor, tools, implements, machinery, materials, and any incidentals necessary to complete the work in the manner and time prescribed, and in strict conformity with the Contract Documents to the satisfaction of the City Engineer. In general, the major work items include:

A 4,000 square foot expansion of the medical facility at 3915 Neil Road and a remodel of the approximately 5,200 square foot existing building. Other improvements include landscaping, access ramps, lighting, and other miscellaneous work as outlined in contract documents.

Minority and Women Business Enterprises will be afforded full opportunity to submit bids in response to this notice, and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award of any contract entered into pursuant to this advertisement. The City of Reno affirms its interest in and encourages the different contracting communities to actively pursue participation and utilization of Minority and Women Business Enterprises on City projects.

The proposed contract is under and subject to Executive Order 11246 of September 24, 1965, and to the Equal Employment Opportunity and Labor Standard Provisions. Minimum Wage rates have been determined by the Labor Commissioner of the State of Nevada and are set forth in the contract documents. In no case shall the wage rates be less than prescribed therein. In the even there is a difference between the minimum wage rates as predetermined by the Secretary of Labor and the prevailing wage rates as determined by the State Labor Commissioner for similar classifications of labor, the contractor or and his subcontractor shall not pay less than the wage rate which is the higher of the two. ~~Additionally, if a classification that is being used does not appear in the Davis Bacon Wage decision, a Request for Classification will be required and will be forwarded to the U.S. Department of Labor for approval.~~

The bidder must supply all the information required by the bid documents and specifications and complete all forms in the Proposal, including, but not limited to the ~~Section 3 Clause~~, Suspension and Disbarment Certificate, Prime Contractors Agreement of Compliance, and Bidders Statement of Previous Contracts Subject to EEO Clause. The E.E.O, requirements, labor provisions, and wage rates are included in the specifications and bid documents.

The Bidders attention is directed to Nevada Revised Statutes 338.01165 setting forth the requirements for the use of apprentices on public works which requires a contractor or subcontractor to comply with certain requirements relating to the use of apprentices on public works.

A mandatory pre-bid site walk will be held on THURSDAY, SEPTEMBER 19<sup>th</sup>, 2024 at 12:00 PM. Bidders are required to meet at 3915 Neil Rd, Reno, NV 89502.

Digital copies of the plans, specifications and related documents are available through PlanetBids (Invitation #CP-2024-24) for downloading from the City of Reno's website <http://reno.gov/business/bids-rfps>. Only those bidders who have registered as a vendor and are included in and appear on the prospective bidders list may submit a bid.

The contact person for this project is Kamrun Ahmadi, Associate Civil Engineer, with the City of Reno, and may be reached at 775-229-1165, [ahmadik@reno.gov](mailto:ahmadik@reno.gov).

Adv. Reno Gazette-Journal – September 4<sup>th</sup>, September 11<sup>th</sup>, and September 18<sup>th</sup>, 2024  
1 Proof

SECTION 015 – INSTRUCTIONS TO BIDDERS

**NEIL ROAD FACILITY REMODEL AND EXPANSION PROJECT  
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The contact person for this project is Kamrun Ahmadi, Associate Civil Engineer, with the City of Reno, and may be reached at 775-229-1165, ahmadik@reno.gov.

The City reserves the right to reject any or all Proposals.

The attention of Bidders is directed to the State Contractor's License Law (NRS Provision 624.700 as amended to date).

A certified check, cashier's check, bid bond or cash, in the amount of five percent (5%) of the total bid must accompany each Proposal, as a guarantee that if awarded the Contract, the Bidder will execute the Contract, give the two (2) bonds required, and present evidence of the required liability insurance and being licensed under the provisions Chapter 4.04 of the Reno Municipal Code. Said check shall be made payable to the City of Reno, and said bond shall be executed by an approved surety, if used. The provision of any such bond, check, or cash is conditioned to the effect that should the Bidder to whom the Contract is awarded fail to enter into the Contract in accordance with the Proposal, give the two (2) bonds required by said Contract, present sufficient evidence of required liability insurance and being licensed under the provisions of Chapter 4.04 of the Reno Municipal Code within ten (10) calendar days after notice of such award, the surety company shall forthwith pay the City of Reno the sum set forth in the bid bond, and the City shall be entitled to deposit the cash or check as liquidated damages.

The Bidder's attention is especially directed to NRS 338.125, NRS 338.130 and NRS 613.250.

Contractors who appear on the Nevada State Office of the Labor Commissioner's Disqualified Contractor list or the Federal Government General Services Administration (GSA) System for Award Management (SAM) with an exclusion will not be eligible for award of the contract.

Bidders shall hold a valid State of Nevada Contractor's License of a class corresponding to the work to be performed at the time the Proposal is submitted to the City of Reno. Failure to possess the appropriate Contractor's license at the time the Proposal is submitted will result in the Proposal being rejected.

The successful Bidder must possess a valid City of Reno Business License prior to the award of any Contract. RMC 4.04.020 applies to subcontractors as to Business License requirements.

NRS 338.072 provides that any subcontractor of the successful bidder who is awarded the contract must also hold a state business license issued pursuant to Chapter 76 of the Nevada Revised Statutes.

Bidders are advised that they must have in place a drug and alcohol policy applicable to workers who will be employed on this project. The policy must be an approved Federal drug and alcohol policy/program which provides, at a minimum, that the use of alcohol, and use, possession, transfer, sale of illegal drugs, narcotics, or other unlawful substances is prohibited while working on any site in connection with work performed under this contract and assurances that the contractors' subcontractors are required to cooperate with the contractor's policy. Each contractor shall demonstrate compliance by submitting with its bid the certification form found within this document under penalty of perjury that the policy is in place, that it will be actively enforced and that workers who will be employed on the project will be subject to this policy.

The successful Bidder shall furnish to the City of Reno, the appropriate insurance certificates and bonds as outlined hereinafter, prior to execution of the Contract as set forth in Article 11 - Insurance. Bidders must execute the Acknowledgement of Insurance Requirements. Bidders are to submit any requests for information as to insurance requirements prior to submitting a bid.

If the Unit Bid Item prices and/or schedule of values of a prospective bidder's bid are determined by the City to be unbalanced, either in excess or below the reasonable cost analysis values, the Bid may be rejected. A bid may be rejected if the City of Reno determines that the lack of balance poses an unacceptable risk to the City of Reno.

The minimum wages to be paid for labor shall not be less than the prevailing wages scale for Washoe County as determined by the Labor Commissioner of the State of Nevada or Federal Davis Bacon rates, whichever is higher. The provisions of NRS 338.020 through NRS 338.090 shall apply.

The Bidders attention is directed to Nevada Revised Statutes 338.01165 setting forth the requirements for the use of apprentices on public works which requires a contractor or subcontractor to comply with certain requirements relating to the use of apprentices on public works.

A person who bids on this contract may file a notice of protest regarding the awarding of the contract in accordance with NRS 338.142. The protestant must comply with all requirements set forth in NRS 338.142. Further, the protestant will be required, at the time of filing the protest, to post a bond or submit other security, in a form approved by the City and in the amount as set forth in NRS 338.142(3). The protest must be directed to the attention of the Director of Public Works and must be delivered to the Clerk's Office, One East First Street, Second Floor, Reno, Nevada 89501.

A bidder may submit to the City of Reno requests for approved equals or clarifications on items that have been included in the specifications or on an addendum to the specifications. Any such request must be received, in writing, not less than seven (7) calendar days before the date of the scheduled bid opening. Any request for substitution must be submitted with technical data, test results, or other information as evidence that the substitute offered is equal to or better than what is specified.



Catie Harrison, P.E.  
Engineering Manager

**SECTION 030 – PRINCIPAL CONTRACTOR**

Principals:

Name: David J Knaub / Title: President  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The following principal(s) is/are authorized to enter into contract

For: K7 Construction, Inc.  
(General Contractor Company Name)  
David J Knaub  
\_\_\_\_\_  
\_\_\_\_\_

Principals not listed above:

Name: n/a / Title: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CHECK ONE:**  CORPORATION  PARTNERSHIP  INDIVIDUAL-OWNED

I, David J Knaub, certify that the above list includes all owner and financial partners of the above-mentioned company-corporate structure to the best of my knowledge.

David J Knaub  
Contractor's Signature

10-1-2024  
Date

**TOTAL VALUE OF THE WORK TO BE COMPLETED BY THE PRIME CONTRACTOR**  
\$ 110,000.00

**MUST BE 2.5% OR GREATER OF THE TOTAL BASE BID WITHOUT FORCE ACCOUNT.**

## **CONTRACT**

### **NEIL ROAD FACILITY REMODEL AND EXPANSION PROJECT CONTRACT NUMBER L200036-22301 PWP WA-2024-502 THIS IS A FEDERALLY FUNDED PROJECT**

#### **ARTICLE 1 THE WORK OF THIS AGREEMENT AND PARTIES TO THE AGREEMENT**

This Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024, in Reno, Nevada, by and between the City of Reno, hereinafter called the Owner, and \_\_\_\_\_.

Witnesseth, that the Contractor agrees with the Owner, for the consideration and Agreements hereinafter mentioned and contained to be made and performed by the Owner, and under the conditions expressed in two (2) bonds bearing even date with these presents, approved by the City Attorney, that he, the Contractor, shall and will at his own proper cost and expense, do all the work and furnish all the materials and any incidentals, necessary for the substantial construction and completion of the aforementioned project, to the satisfaction of the Owner.

The Contractor shall promptly commence and diligently prosecute the Work that is the subject of this Agreement and achieve Substantial Completion of the entire Work not later than 375 working days from the written Notice to Proceed.

The Owner is:           City of Reno  
                                  P.O. Box 1900  
                                  Reno, NV 89505

The Architect is:       Tectonics Design Group  
                                  730 Sandhill Rd, Suite 250  
                                  Reno, NV 89521

#### **ARTICLE 2 THE CONTRACT DOCUMENTS**

Work shall be completed in strict conformity, in every part and particular, with the Contract Documents, which consist of this Agreement, Conditions of the Contract (General Conditions and Supplementary Conditions), Special Provisions for Site Work, Project Manual, Drawings, Specifications, and Addenda issued prior to execution of this Agreement and written modifications issued after execution of this Agreement and are as fully part of the Contract as if attached to this Agreement or repeated herein.

#### **ARTICLE 3 CONTRACT SUM**

The Contractor hereby further agrees to receive and accept the Contract Sum of \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_), as full compensation for furnishing all materials and labor, and the doing of all work, to the satisfaction of the Owner, and in the manner and under the conditions specified in the Contract Documents.

The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner: \_\_\_\_\_.

The Owner hereby promises and agrees with the Contractor, to employ, and does hereby employ, the Contractor to provide the materials and to complete all the work according to the terms and conditions of the Contract Documents and hereby contracts to pay the said Contractor at the time, in the manner, and upon the conditions set forth in the Contract Documents, and the said parties themselves, their heirs, executors, administrators, successors, and assigns, do hereby agree to the full performance of the covenants herein contained.

The Contractor further agrees that no monies payable under this contract shall be assigned by power of attorney, or otherwise, except upon written consent of the Owner.

#### **ARTICLE 4 PROGRESS PAYMENTS**

Based upon Application for Payment including all supporting documentation submitted by the Contractor to the Construction Manager, and upon Project Application and Certificates for Payment issued by the Construction Manager and Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract Documents. For each progress payment, five percent (5%) will be held until fifty percent (50%) of the work has been performed. This amount will be held until one hundred percent (100%) completion and final acceptance of the project. Except for cause, in accordance with NRS 338.525, no retention will be held from subsequent payments.

#### **ARTICLE 5 FINAL PAYMENT**

As soon as practical, following the completion of the work, the Contractor shall make request by letter to the Owner for a final inspection and acceptance of the work; if, in the Owners opinion, all provisions of the Specifications and Agreement have been satisfied, and Owner will cause a Notice of Completion to be sent to the Contractor, Worker's Compensation Agency and the State. At the expiration of thirty (30) days following sending of the Notice of Completion, final payment shall be made as follows:

After deducting all previous payments from the total value of the work, the remaining balance shall be paid. Upon demand by the Owner, Contractor shall submit evidence satisfactorily to the Owner that all payrolls, materials, bills and other indebtedness relating to the work performed have been paid before final payment is made. Final payment is further subject to the Owner's prior receipt from the Contractor of all as-built drawings, certifications, maintenance manuals, operating instructions, written guarantees, warranties and bonds relating to the Work, and assignment of all guarantees and warranties from contractors, vendors, suppliers or manufacturers.

The said Contractor hereby further agrees that the payment of the final amount due under this Agreement shall release the Owner from any and all claims or liability on account of work performed

under this contract, other than such claims, if any, as may be specifically excepted by the Contractor in writing at the time final payment is made.

## **ARTICLE 6 PREVAILING WAGES**

In the event this Contract is One Hundred Thousand Dollars (\$100,000) or more, the project is subject to prevailing wage rates in accordance with Nevada Revised Statutes Chapter 338. Contractor shall comply with NRS 338.020 through 338.090 and the Acknowledgment and Stipulation of Bidder Regarding Penalties for Noncompliance with all prevailing wage requirements set forth in Nevada State Law. The prevailing wage rates for Washoe County, as established by the Nevada State Labor Commission, shall be paid for all classifications of labor. The Contractor is responsible for verifying and adhering to all prevailing wage rates. Pursuant to NRS 338.030 (9), the prevailing rates of wages are the rates in effect at the time of the opening of bids and will be paid as provided by NRS and will be included in the conformed contract documents.

This Project is under and subject to Executive Order 11246 of September 24, 1965, and to the Equal Employment Opportunity and Labor Standard Provisions. Minimum Wage rates have been determined by the Labor Commissioner of the State of Nevada and are set forth in the contract documents. In no case shall the wage rates be less than prescribed therein. In the event there is a difference between the minimum wage rates as predetermined by the Secretary of Labor and the prevailing wages rates as determined by the State Labor Commissioner for similar classifications of labor, the contractor or and his subcontractor shall not pay less than the wage rate which is the higher of the two. ~~Additionally, if a classification that is being used does not appear in the Davis Bacon Wage decision, a Request for Classification will be required and will be forwarded to the U.S. Department of Labor for approval.~~

## **ARTICLE 7 WARRANTY**

The Contractor further agrees that he shall promptly repair, replace, restore, or rebuild, as the Owner may determine, any finished work in which defects of materials or workmanship may appear or to which damage may occur, because of such defects, for a minimum period of one-year after substantial completion and as stated in the contract documents.

## **ARTICLE 8 CONFLICTS AND HIERARCHY**

It is further expressly agreed, by and between the parties hereto, that should there be any conflict between the Contract Documents and the bid or proposal of said Contractor, the Contract Documents shall control and nothing herein shall be considered an acceptance of the said terms of said proposal conflicting therewith. Furthermore, the components of the Contract Documents shall be assigned the following hierarchy, with the items listed in order of decreasing control as follows:

- Executed Change Orders
- Addenda
- Owner - Contractor Agreement
- Special Provisions
- Supplementary Conditions
- General Conditions
- Special Conditions for Sitework
- Division I of the Specifications

- Drawings and Divisions 2-16 of the Specifications.

In the event of a conflict between the Specifications and the Drawings, the more restrictive shall prevail.

In witness whereof, the parties to these presents have hereunto set their hands and seals the year and date first above written:

ATTEST:

City of Reno, Nevada

\_\_\_\_\_  
City Clerk, City of Reno

\_\_\_\_\_  
Hillary L. Schieve, Mayor

I hereby certify that I have examined the written contract and find the same to be in accordance with the Reno Municipal Code.

By: \_\_\_\_\_  
(Deputy City Attorney)

**CONTRACTOR'S ACKNOWLEDGEMENT**

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

\_\_\_\_\_  
(Principal Signature)

\_\_\_\_\_  
(Principal Printed Name)

**CONTRACTOR'S NOTARY:**

State of \_\_\_\_\_ County of \_\_\_\_\_

\_\_\_\_\_  
(Name of party signing this affidavit & Proposal Form)

known to me to be the \_\_\_\_\_ of  
(Title)

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

acknowledged to me that he executed the above instrument.

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
(Stamp/Seal)



# AIA<sup>®</sup> Document A201<sup>™</sup> – 2017

## General Conditions of the Contract for Construction

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

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

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

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

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

#### **§ 1.1.1 The Contract Documents**

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

#### **§ 1.1.2 The Contract**

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

#### **§ 1.1.3 The Work**

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

#### **§ 1.1.4 The Project**

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

#### **§ 1.1.5 The Drawings**

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

#### **§ 1.1.6 The Specifications**

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

#### **§ 1.1.7 Instruments of Service**

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

#### **§ 1.1.8 Initial Decision Maker**

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

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

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

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

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

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

### **§ 1.3 Capitalization**

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

### **§ 1.4 Interpretation**

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

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

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

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

### **§ 1.6 Notice**

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

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

### **§ 1.7 Digital Data Use and Transmission**

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

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

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

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

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

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

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

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

#### § 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in

such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

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

### **§ 3.3 Supervision and Construction Procedures**

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

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

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

### **§ 3.4 Labor and Materials**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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

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

### **§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or

equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

### § 3.6 Taxes

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

### § 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

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

### § 3.7.4 Concealed or Unknown Conditions

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

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

### § 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

### § 3.9 Superintendent

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

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

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

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

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

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

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

### § 3.11 Documents and Samples at the Site

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **§ 3.13 Use of Site**

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

### **§ 3.14 Cutting and Patching**

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

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

### **§ 3.15 Cleaning Up**

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

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

### **§ 3.16 Access to Work**

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

### **§ 3.17 Royalties, Patents and Copyrights**

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

### **§ 3.18 Indemnification**

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

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

compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

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

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

### **§ 4.2 Administration of the Contract**

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

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

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

### **§ 4.2.4 Communications**

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

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

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

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of

other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

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

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

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

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

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

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 Definitions**

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

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

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

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

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

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

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

### **§ 5.3 Subcontractual Relations**

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

### **§ 5.4 Contingent Assignment of Subcontracts**

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

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

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

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

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

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

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

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

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

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

## **§ 6.2 Mutual Responsibility**

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

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

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

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

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

## **§ 6.3 Owner’s Right to Clean Up**

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

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 General**

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

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

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

## § 7.2 Change Orders

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

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

## § 7.3 Construction Change Directives

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

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

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

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

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

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

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

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

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

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

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

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

#### § 7.4 Minor Changes in the Work

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

### ARTICLE 8 TIME

#### § 8.1 Definitions

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

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

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

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

#### § 8.2 Progress and Completion

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

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

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

#### § 8.3 Delays and Extensions of Time

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

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

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

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

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

### § 9.2 Schedule of Values

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

### § 9.3 Applications for Payment

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

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

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

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

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

### § 9.4 Certificates for Payment

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

(3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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

### **§ 9.5 Decisions to Withhold Certification**

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

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

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

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

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

### **§ 9.6 Progress Payments**

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

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

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

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

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

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

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

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

#### § 9.7 Failure of Payment

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

#### § 9.8 Substantial Completion

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

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

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

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

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

### **§ 9.9 Partial Occupancy or Use**

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

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

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

### **§ 9.10 Final Completion and Final Payment**

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

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

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

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

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

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

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

### **§ 10.1 Safety Precautions and Programs**

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

### **§ 10.2 Safety of Persons and Property**

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

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

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

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

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

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

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

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

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

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

**§ 10.3 Hazardous Materials and Substances**

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

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

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

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

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

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

## **§ 10.4 Emergencies**

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

## **ARTICLE 11 INSURANCE AND BONDS**

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

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

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

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

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

### **§ 11.2 Owner's Insurance**

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

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

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

an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### **§ 11.3 Waivers of Subrogation**

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

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

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

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

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

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

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

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 Uncovering of Work**

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

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract

Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

## **§ 12.2 Correction of Work**

### **§ 12.2.1 Before Substantial Completion**

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

### **§ 12.2.2 After Substantial Completion**

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

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

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

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

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

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

## **§ 12.3 Acceptance of Nonconforming Work**

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

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 Governing Law**

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

### **§ 13.2 Successors and Assigns**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in

Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

### **§ 13.3 Rights and Remedies**

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

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

### **§ 13.4 Tests and Inspections**

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

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

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

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

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

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

### **§ 13.5 Interest**

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

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 Termination by the Contractor**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

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

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

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

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

#### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

#### § 14.3 Suspension by the Owner for Convenience

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

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

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

#### **§ 14.4 Termination by the Owner for Convenience**

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

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

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

**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

### **ARTICLE 15 CLAIMS AND DISPUTES**

#### **§ 15.1 Claims**

##### **§ 15.1.1 Definition**

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

##### **§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

##### **§ 15.1.3 Notice of Claims**

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

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

##### **§ 15.1.4 Continuing Contract Performance**

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

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

### § 15.1.5 Claims for Additional Cost

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

### § 15.1.6 Claims for Additional Time

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

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

### § 15.1.7 Waiver of Claims for Consequential Damages

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

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

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

### § 15.2 Initial Decision

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

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

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

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

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

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

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

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

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### **§ 15.3 Mediation**

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

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

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

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

### **§ 15.4 Arbitration**

**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand

for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

**§ 15.4.4 Consolidation or Joinder**

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

## SECTION 00800 – SUPPLEMENTAL CONDITIONS

### PART I - GENERAL

#### 1.1 DESCRIPTION

A. General Conditions: The General Conditions of the Contract for Construction, AIA Document A201™, 2017 Edition, Articles 1 through 15 inclusive, is a part of the Contract Documents, and herein referred to as the “General Conditions.”

B. Supplementary Conditions: The Supplementary Conditions modify, change, delete from or add to the General Conditions. Where any Article, Paragraph, Subparagraph or Clause is modified, changed, deleted from or added to, the unaltered provisions of that article, paragraph, subparagraph or clause shall remain in effect.

C. General Phasing: The work below must take place in the order identified.

- The approximately 4,000 square foot expansion shall be completed.
- The Contractor shall allow CHA staff to furnish and move to punch listed rooms and areas prior to issuance of COC. Community Health Alliance operations and staff shall move to the new area within one week of final punch list completion.
- The Contractor may then begin demo and remodel of the approximately 5,200 square feet of existing space.
- **Refer to Plan Sheet A1.0 for additional phasing requirements.**

D. The Work identified in this contract may not interfere or interrupt with the adjacent facilities, including but not limited to the Senior Center, RPD Sub Station, and Boys & Girls Club. If operations of those facilities is impacted the Contractor must stop work (at their own expense and counting against the Working Days) and coordinate with the City.

#### 1.2 SUPPLEMENTS

A. The following Article, Paragraph, Subparagraph and Clause numbering of Supplements is consistent with the General Conditions document modified. The name and decimal designation for the provisions in the document are as follows: An Article has one numeral, i.e., “1 “, a Paragraph contains two numerals and one decimal, i.e., “1.1”; a Subparagraph contains three numerals and two decimals, i.e., “1.1.1,” a Clause contains four numerals and three decimals, i.e., “1.1.1.1.”

## ARTICLE 1 - GENERAL PROVISIONS

### 1.1 BASIC DEFINITIONS

Add to Subparagraph 1.1.1 before the word “Drawings” in the first sentence:

, Special Provisions for Site Work, the Project Manual,

1.1.1. Add to Subparagraph 1.1.1 at the end of Subparagraph 1.1.1 the following sentence:

The Contract Documents executed in accordance with Subparagraph 1.2.1 shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations involving computers.

Add to Paragraph 1.1 new Subparagraphs 1.1.9 through 1.1.22 as follows:

1.1.9 The term “product” shall mean and includes materials, systems, and equipment.

1.1.10 Whenever the terms “approved,” “directed”, “selected”, “required”, “submitted”, or similar words and phrases are used in the Contract Documents it shall be assumed that the word “Architect follows the verb as the object of the clause, such as “ approved by the Architect”, and “ submitted to the Architect”, the Architect being the Architect of record..

1.1.11 The term “furnish” shall mean to furnish products and supervision.

1.1.12 The term “install” shall mean to supply labor and supervision to erect, install and correct.

1.1.13 The term “provide” shall mean collectively furnish and install as defined above.

1.1.14 The term “exposed” shall mean exposed-to-view when the project is substantially complete.

1.1.15 The term “concealed” shall mean not exposed-to-view when the project is substantially complete.

1.1.16 The terms “acceptable”, “equal to”, “or approved equal”, ~and other qualifying words shall imply evaluation and judgment by the Architect, and mean as accepted to or approved by the Architect as being of equivalent quality, utility, and appearance.

1.1.17 Singular words in the Contract Documents shall be considered plural where required by the subject under discussion.

1.1.18 The term “similar” shall mean and be interpreted in its general sense and not as meaning identical, and all details shall be suited to the location and to the connection with other parts of the work.

1.1.19 The term “coordinate” shall mean to satisfactorily combine the work of all trades for a complete and operating system.

1.1.20 The terms “knowledge,” “recognize,” and “discover,” and their respective derivatives, and similar terms in the Contract documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize) and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents.

1.1.21 The term “reasonably inferable,” “reasonably inferable,” and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor

exercising the care, skill and diligence required of the Contractor by the Contract Documents.

1.1.22 The term "NRS" means Nevada Revised Statutes.

## 1.2 CORRELATION AND INTENT OF CONTRACT DOCUMENTS

1.2.3: Add to Subparagraph 1.2.3 at the end of Subparagraph 1.2.3 the following:

All work shown on the Plans and Specifications and any work within the scope described in the Contract Documents which is reasonably inferable from or is the logical extension of the Contract Documents for completion of the Project shall be considered as a part of the Work, and shall be executed by the Contractor and the Subcontractors in the same manner and with the same character of material as other portions of the Work without extra compensation to be paid by Owner. It is acknowledged and understood that as of the date of the Bid or the execution of the Contract, the Plans and Specifications may not be complete in every detail, but Contractor warrants and represents that such Plans and Specifications define scope and intent of the Work, taken as a whole, and are sufficiently detailed to establish the Contract Price.

1.2.3.1: Add to Subparagraph 1.2.3 new Clause 1.2.3.1 as follows:

1.2.3.1 In the event of conflicts or discrepancies among the Contract Document, interpretations will be based on the following priorities.

.1 Among the Contract Documents the Architect will provide interpretations per the following order of priorities:

- Executed Change Orders
- Addenda
- Owner - Contractor Agreement
- Special Provisions
- Supplementary Conditions
- General Conditions
- Division I of the Specifications
- Drawings and Divisions 2-16 of the Specifications.

In the event of a conflict between the Specifications and the Drawings, the more restrictive shall prevail.

.2 Between Drawings and Specifications, quality shall be governed by the Project Manual and quantity shall be governed by the Drawings.

.3 Within the Drawings, the indication requiring the larger quantity shall govern; between Drawings of different scales, the larger scale drawing shall take precedence, figures shall take precedence over scale dimensions; descriptive notes shall take precedence over scale dimensions; descriptive notes shall take precedence over general notes.

.4 Within the Specifications, higher quality requirements shall govern.

1.2.4: Add new Subparagraph 1.2.4 to Paragraph 1.2 the following:

Titles to Divisions, Sections, Articles, Paragraphs of the Specifications are introduced merely for convenience and reference only.

1.2.5: Add new Subparagraph 1.2.5 and new Subparagraph 1.2.6 to Paragraph 1.2:

1.2.5 If the Contract Documents are not complete as to any minor detail or a required construction system or with regard to the number of combining or installing parts, materials or equipment, but there exists an accepted trade standard for good and workmanlike construction, such detail shall be deemed to be an implied requirement of the Contract Documents in accordance with such standard. The term "minor detail" herein includes the concept of substantially equal components, both where the price of each such component is small even though the aggregate cost or importance may be substantial, and also where a single component is incidental to the work even though its cost or importance may be substantial.

1.2.6 All work and material necessary for full and faithfully performance of the Work in accordance with the Intent of the Contract Documents shall be indicated on Shop Drawings and provided by the Contractor to the same extent as if both indicated and specified.

#### 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

1.5.1 Add to Subparagraph 1.5.1 the following: The Contract Documents executed in accordance with Subparagraph 1.2.1 shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations involving computers.

1.5.2 Delete reference to Paragraph 1.7.

1.7 Delete Paragraph 1.7 from Article 1.

1.9 Add new Paragraph 1.9 FAIR EMPLOYMENT PRACTICES/LABOR DISCRIMINATION to Article 1 the following:

Attention is directed to the following portion of NRS Provision 338.125. Contracts negotiated between Contractors and the State, or any of its political subdivisions, shall contain the following contractual provisions:

*"In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin sex, sexual orientation, gender identity or expression, or age. Such Contract shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment*

*advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship."*

*"The Contractor further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials."*

Any violation of such provision by a Contractor shall constitute a material breach of contract. As used in this article, sexual orientation means having or being perceived as having an orientation for heterosexuality, homosexuality or bi-sexuality sexuality and gender identity or expression means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth. Race includes traits associated with race, including, without limitation, hair texture and protective hairstyles.

1.10 Add new Paragraph 1.10 PREFERENTIAL EMPLOYMENT to Article 1 the following:

Pursuant to NRS 338.130, in all cases where persons are employed in the construction of public works, preference must be given, the qualifications of the applicants being equal, first to persons who have been honorably discharged from the Army, Navy, Air Force, Marine Corps or Coast Guard of the United States, a reserve component thereof or the National Guard; and are citizens of the State of Nevada, and second to other citizens of the State of Nevada. If the contractor engaged on the public work is not in compliance with the provisions of this subsection, the contract is void, and any failure or refusal to comply with any of the provisions of this section renders any such contract void.

1.11 Add new Paragraph 1.11 STATE OF NEVADA BUSINESS LICENSE to Article 1 the following:

NRS 338.072 provides that any subcontractor of the successful bidder who is awarded the contract must also hold a state business license issued pursuant to Chapter 76 of the Nevada Revised Statutes. RMC 4.04.020 applies to subcontractors as to Business License requirements.

1.12 Add new Paragraph 1.12 REMEDY AND DAMAGES AVAILABLE TO THE CITY WHICH RESULT FROM CONTRACTOR'S REQUEST TO BE RELEASED FROM PERFORMANCE OF CONTRACT PRIOR TO ISSUANCE OF NOTICE-TO-PROCEED to Article 1 the following:

If a Contractor requests to be released from performance of the Contract prior to issuance of the Notice-to-Proceed, and it is determined by the City that it is in the City's best interest to release the Contractor from performance of the Contract, the Contractor shall pay to the City any and all expenses incurred by the City as a result of the City releasing the Contractor from performance.

1.13 Add new Paragraph 1.13 APPRENTICES

Contractor is to comply with Nevada Revised Statutes 338.01165 setting forth the requirements for the use of apprentices on public works which requires a contractor or

subcontractor to comply with certain requirements relating to the use of apprentices on public works.

## **ARTICLE 2 - OWNER**

2.1.2 Delete from Paragraph 2.1 Subparagraph 2.1.2

2.2 Delete Paragraph 2.2 from Article 2

2.3 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.3.1 Add the following to the end of Subparagraph 2.3.1

unless otherwise stated in the Contract Documents.

2.3.2 Delete Subparagraph 2.3.2 from Paragraph 2.3

2.3.3 Delete Subparagraph 2.3.3 from Paragraph 2.3

2.3.4 Delete Subparagraph 2.3.4 from Paragraph 2.3

2.3.5 Delete Subparagraph 2.3.5 from Paragraph 2.3

2.3.6 Delete Subparagraph 2.3.6 from Paragraph 2.3

2.3.7 Add new Subparagraph 2.3.7 the following:

The Contractor will be responsible for reproducing all drawings and manuals required by the Contractor, subcontractors and suppliers.

2.3.8 Add new Subparagraph 2.3.8 the following:

The Owner will procure and bear costs of structural tests and special inspections as required by the applicable building code unless otherwise stated in the Contract Documents.

## **ARTICLE 3 – CONTRACTOR**

~~3.1.4 Add the following Subparagraph: Pursuant to Chapter 338 of the Nevada Revised Statutes 338.0117 and 338.147, to qualify to receive a preference in bidding a contractor must submit within 2 hours after the completion of the opening of the bids, a signed affidavit which certifies that for the duration of the project the following will be:~~

~~At least 50 percent of all workers employed on the public work, including, without limitation, any employees of the contractor, applicant or design-build team and of any subcontractor engaged on the public work, collectively and not on any specific day, will~~

~~hold a valid driver's license or identification card issued by the Department of Motor Vehicles of the State of Nevada.~~

~~All vehicles used primarily for the public work will be:~~

~~(1) Registered and partially apportioned to Nevada pursuant to the International Registration Plan, as adopted by the Department of Motor Vehicles pursuant to NRS 706.826; or~~

~~(2) Registered in this State.~~

~~The contractor and any subcontractor engaged on the public work will maintain and make available for inspection within this State his or her records concerning payroll relating to the public work.~~

~~A failure to comply with any requirement of NRS 338.0117 entitles the public body to a penalty pursuant to Subsections 5 and 6 of NRS 338.0117.~~

### 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.2: Add to Subparagraph 3.2.2, new Clauses 3.2.2.1 and 3.2.2.2, inclusive, as follows:

3.2.2.1 The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Owner, or Architect.. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions and locations, and shall be responsible for the accuracy of such dimensions and determination of all existing conditions that may affect the work. In all cases of interconnection of its Work with existing or other work, Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, locations, or dimensions shall be promptly rectified by the Contractor without any additional cost to the Owner.

3.2.2.2 Before ordering any materials or doing any Work, the Contractor and each Subcontractor shall verify measurements at the Project site and shall be responsible for correctness of such measurements. No extra charges or compensation will be allowed on account of differences between actual measurements and the dimensions indicated on the Drawings, Any differences which may be found shall be submitted to the Construction Manager and Architect for resolution before proceeding with the Work. If a minor change in the Work is found necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure to the Construction Manager for the approval by the Architect before making the change.

3.2.5: Add to Paragraph 3.2 new Subparagraphs 3.2.5 and 3.2.6, inclusive as follows:

3.2.5 Except as to any reported errors, inconsistencies or omissions, and to concealed or unknown conditions defined in Subparagraph 3.7.4 by executing the Agreement, the Contractor represents the following:

The Work required by Bidding Documents, including, without limitation, all construction details, construction means, methods, procedures, and techniques necessary to perform the Work, use of materials, selection of equipment and requirements of product manufacturers are consistent with: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to Work; and (3) requirements of any warranties applicable to the Work.

3.2.6 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for information, where such information was avoidable to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation.

### 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1.1 Add to Subparagraph 3.3.1, new Clause 3.3.1.1 as follows:

3.3.1.1 The Contractor shall review specified construction or installation procedures (including those recommended by manufacturer); and shall advise the Architect (a) if the specified procedure(s) deviates from good construction practice; (b) if following the procedure(s) will affect any warranties, including the Contractor's general warranty; or (c) of objections the Contractor may have to the procedure(s); and shall propose alternative procedure(s) which the Contractor will warrant.

3.3.4 Add to Paragraph 3.3 new Subparagraph 3.3.4 as follows:

3.3.4 Workmanship shall be of the highest quality, and shall be performed by experienced mechanics skilled in the applicable trade. Work shall be installed rigidly, true, level, plumb, straight, and in alignment, fastened or anchored securely and durably, and executed in accordance with manufacturer's recommendations and printed instructions. Fasteners, anchors, and attachments shall be concealed where possible. Abutting components shall have parallel faces. Joint widths shall be parallel and as small as possible unless otherwise indicated.

### 3.4 LABOR AND MATERIALS

3.4.1 Add to Subparagraph 3.4.1 at the end of 3.4.1 the following:

Increases in cost of material or equipment, either specified or approved substitutions, occurring subsequent to execution of the Contract between the Owner and the Contractor, shall be included in the Contractor's original Contract sum and not subject to Change Order.

3.4. Add to Paragraph 3.4 new Subparagraphs 3.4.4, 3.4.5, 3.4.6 and 3.4.7 inclusive, as follows:

3.4.4 The Contractor will be expected to purchase critical materials at the time the Contract is awarded so that delays and substitutions will not be necessary when the time comes to incorporate these materials into the Work. Critical materials are to be stored on the property in protective sheds or in a warehouse approved by the Owner, in the Owner's name, if the Contractor is to be reimbursed for their purchase. Storage charges shall be included in the Contract Sum.

3.4.5 After the Contract has been executed, the Owner and the Architect will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in the General Requirements (Division 1 of the Specifications).

3.4.6 By making requests for substitutions based on Subparagraph 3.4.3 above, the Contractor:

.1 Represents that the Contractor has investigated the proposed substitute product and determined that the proposed substitute product is equal or superior in all respects to the specified product;

.2 Represents that the Contractor will provide the same warranty for the substitute product that the Contractor would for the specified product;

.3 Certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent;

.4 Will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects and;

.5 Accepts responsibility and liability for substitute product.

3.4.7 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed substitutions and to make agreed-upon changes in the Drawings and Specifications made necessary by the Owner's acceptance of such substitutions.

### 3.5 WARRANTY

3.5.1 Add to Paragraph 3.5 new Subparagraph 3.5.1 as follows:

3.5.1 The Contractor agrees to assign to the Owner at the time of Substantial completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such a manner so as to preserve any and all such manufacturer's warranties.

### 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

3.7.1 Delete Subparagraph 3.7.1 in its entirety and add new Subparagraph 3.7.1 as follows:

3.7.1 The Contractor shall secure and pay for all other permits and governmental fees, licenses and inspections necessary for proper execution of and completion of the Contract which are legally required when bids are received or negotiations concluded.

### 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.4 Add to Paragraph 3.10, new Subparagraph 3.10.4 as follows

3.10.4 Refer to Division 1 Section Construction Progress Documentation for additional provisions. The Contractor's Construction Progress Schedule shall be updated monthly as a prerequisite for payment.

### 3.12 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.12.5: In the first sentence of Subparagraph 3.12.5, after the words "The Contractor shall review for compliance with the Contract Documents, approve", insert the following:

"by signing,"

3.12.11 Add to Paragraph 3.12, new Subparagraph 3.12.11 as follows:

3.12.11 The Owner shall pay fees for public or private water, gas, electrical, and other utility extensions at the site unless otherwise stated in the Contract Documents. The Contractor shall secure and arrange for all necessary utility connections unless otherwise stated in the contract documents.

### 3.18 INDEMNIFICATION

3.18.1 Delete Subparagraph 3.18.1 in its entirety, and add new Subparagraph 3.18.1 as follows:

3.18.1 To the fullest extent permitted by laws and regulations the Contractor shall assume the defense of, indemnify and hold harmless the City and its Officers, Employees, Consultants, and Community Health Alliance from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property on account of the operations of the said Contractor; any act or omission of contractor arising from the work performed; or on account of or in consequence of any neglect in safeguarding the work; or the use of unacceptable materials in constructing the work; or because of any claims or amount recovered under the "Workman's Compensation Act", or any other law, ordinance, order, or decree. The money due the said Contractor under and by virtue of this Contract as may be considered necessary by the Engineer for such purpose, may be retained for use of City or in case no money is due, his surety may be held until such suit or suits, action or actions, claim or claims for the injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the Engineer;

except that money due the Contractor will not be withheld when the Contractor produces satisfactory evidence that he is adequately protected by public liability and property damage insurance.

Reimbursement to the Contractor by the City in whole or in part for costs of protecting traffic shall not serve to relieve the Contractor of their responsibility as set forth in the Standard Specifications and these Special Provisions.

The Contractor guarantees the payment of all just claims for materials, supplies, and labor, and all other just claims against their or any Subcontractor, in connection with this Contract.

## **ARTICLE 5 - SUBCONTRACTORS**

### **5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF WORK**

Delete Paragraph 5.2 in its entirety and replace with the following:

Contractor shall comply with NRS 338.141.

### **5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTORS**

Delete Section 5.4.3 in its entirety.

## **ARTICLE 7 - CHANGES IN THE WORK**

### **7.2 CHANGE ORDERS**

7.2.2: Add new Subparagraph 7.2.2 as follows.

7.2.2 Methods used in determining adjustments to the Contract Sum shall be limited to the following:

- .1 Direct cost breakdown as provided in Subparagraph 7.3.4;
- .2 Unit prices stated in the Contract Documents or as subsequently agreed upon;  
or
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

7.2.3: Add to Paragraph 7.2 new Subparagraphs 7.2.3, 7.2.4, and 7.2.5, inclusive, as follows:

7.2.3 The Contractor will be permitted to include an allowance for overhead and profit due to increased cost brought on by additional work. The Contractor's overhead shall be limited to the costs as indicated in Subparagraph 7.3.4. Overhead and profit shall be deducted from any portion of the work that is deleted. In the case of a change

involving both credits and extras, overhead and profit shall be applied accordingly to the net amount. The combined overhead and profit included in the total cost to the Owner for a change to the Work shall be based on the following schedule:

.1 For the Contractor, for Work performed by the Contractor's own forces, overhead and profit shall not exceed 10 percent of the cost to do the Work.

.2 For the Contractor, for Work performed by its Subcontractors forces overhead and profit shall not exceed 5 percent of the Subcontractor's cost.

.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-Subcontractors own forces, overhead and profit shall not exceed 10 percent of the Subcontractor's costs.

.4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractor(s), 5 percent of the amount due the Sub-subcontractor.

7.2.4 In order to facilitate checking of quotations for extras or credits, all proposals for change orders, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor materials and Subcontracts Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$1,000 be approved without such itemization.

7.2.5 Agreements on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change, any impact such change may have on the unchanged Work, and any and all adjustments to the Contract Sum and the construction schedule. In the event a Change Order increases the Contract Sum, Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.

### 7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.4.5 Delete in its entirety.

## ARTICLE 8 – TIME

8.1.2 Add clause 8.1.2.1 as follows: Contractor shall return a signed contract with all bonds and insurance within 10 business days after Notice of Award.

8.1.3 Add clause 8.1.3.1 as follows: Substantial Completion shall be no later than 375 working days from the Notice to Proceed.

8.1.4 Replace "Calendar" with "Working"

Add clause 8.1.4.1 as follows: Contract time shall be 375 working days.

### 8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1.1 Add to Subparagraph 8.3.1 new Clause 8.3.1.1 as follows:

8.3.1.1 Adjustments in the Contract Time will not be permitted for (1) any delay which could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor; (2) any delay in the prosecution of parts of the Work, which may in itself be avoidable but which does not necessarily prevent or delay the prosecution of other parts of the Work, or the Substantial Completion of the Work of this contract within the time specified; (3) any reasonable delay resulting from time required by the Owner for review of plans submitted by the Contractor and for making surveys, measurements, and inspections; and (4) any reasonable delay arising from an interruption in the prosecution of the work on account of the reasonable interference from other contractors employed by the Owner that does not prevent the Substantial Completion of the Work of this contract within the specified time.

### 8.4 LIQUIDATED DAMAGES/FAILURE TO COMPLETE WORK ON TIME

Time is of the essence of this contract, and in the event the construction of the work is not completed within the time herein specified, it is agreed that from the compensation otherwise to be paid to the contractor, the City may retain the sum of two Thousand Dollars (\$2,000) per day for each contract calendar day thereafter, that the work remains uncompleted and not accepted. This sum is not a penalty, being the stipulated damage City will have sustained in the event of failure by the Contractor to complete the work within the contract time. Liquidated damages shall be cumulative for each portion of the work for which the specified construction completion time(s) is not met by the Contractor.

### 8.5 HOLIDAYS

No contract work shall be performed on the following legal holidays recognized by the City unless approved by the Engineer:

- New Year's Day (January 1)
- Martin Luther King Day (3rd Monday in January)
- President's Day (3rd Monday in February)
- Memorial Day (Last Monday in May)
- Juneteenth (June 19)
- Independence Day (July 4)
- Labor Day (1st Monday in September)
- Nevada Day (Last Friday in October)
- Veteran's Day (November 11)
- Thanksgiving Day (4th Thursday in November)
- Day after Thanksgiving Day (4th Friday in November)
- Christmas Day (December 25)
- Other days declared by the President of the United States, Governor of Nevada

## ARTICLE 9 - PAYMENTS AND COMPLETION

### 9.3 APPLICATIONS FOR PAYMENT

9.3.1: Add to Subparagraph 9.3.1 at the end of Subparagraph 9.3.1 the following sentence:

The form of Application for Payment, duly notarized, shall be a current authorized edition of AIA Document

G702 Application and Certification for Payment supported by a current authorized edition of AIA Document

G703 Continuation Sheet.

The Contractor's attention is directed to NRS Chapter 338, as it relates to Public Works Projects, and specifically changes in the requirements for submission of certified payrolls, and payment of prevailing wages. The Contractor shall make arrangements for submittals at the Pre-Construction Meeting.

The Contractor shall report in writing to the City the name and address of each Subcontractor whom they will engage for work on this project within five (5) calendar days after award of Contract.

The Contractor shall report in writing to the State of Nevada Labor Commissioner the name and address of each Subcontractor whom they engage for work on this project within ten (10) calendar days after the Subcontractor (or Subcontractors) have commenced work on the project. The Contractor shall submit a copy of this information to the City within the same timeframes.

The Contractor shall submit certified payrolls to the City for all individuals working on this project on a weekly basis. The Contractor and all subcontractors are required to submit certified payroll electronically through the City's LCPTracker program. Progress payments to the Contractor will not be accepted for review unless certified payroll submittals are current.

9.3.2: Add to Subparagraph 9.3.2, at the end of 9.3.2, the following:

Such payment by the Owner for materials and equipment stored on or off the site shall not relieve the Contractor of his responsibility to incorporate said materials and equipment into the Work and for their protection from damage, theft, or destruction until their incorporation into the Work.

9.3.2.1: Add to Subparagraph 9.3.2 new Clause as follows:

9.3.2.1 Contractor shall store materials and equipment in an insured local warehouse satisfactory to the Owner Contractor shall submit a bill of sale for stored materials with the Application for Payment

9.3.4: Add to Paragraph 9.3 new Subparagraph 9.3.4 as follows:

9.3.4 For each progress payment, five percent (5%) will be held until fifty percent (50%) of the work has been performed. This amount will be held until one hundred percent (100%) completion and final acceptance of the project.

Except for cause, in accordance with NRS 338.525, no retention will be held from subsequent payments.

Payment will only be made for items of work complete, in place, verified and accepted with the area fully restored and cleaned.

#### 9.4 CERTIFICATES FOR PAYMENT

Delete reference to Subparagraph 9.5.1 in Subparagraphs 9.4.1(2) and 9.4.1(3).

9.5 DECISIONS TO WITHOLD CERTIFICATION - Delete in its entirety.

9.6 PROGRESS PAYMENTS - Delete in its entirety.

9.7 FAILURE OF PAYMENT – Delete in its entirety.

#### 9.8 SUBSTANTIAL COMPLETION

9.8.4 Delete Subparagraph 9.8.4 in its entirety and add new Subparagraph as follows:

A Certificate of Substantial Completion will not be issued until the Architect has determined that the Work is sufficiently complete, in compliance with all local codes, in compliance with the requirements of the Contract, and ready for its intended use and occupancy by the Owner. It is understood that the Substantial Completion of the Work represents that the only items of work remaining to be completed are of minor nature such as touch-up, adjustments, corrections, and omissions to be remedied as may appear on the final list reviewed during the Architect's observation.

9.8.5: Delete Subparagraph 9.8.5 in its entirety and add new Subparagraph 9.8.5 as follows:

Upon Substantial Completion of the Work or designated portion thereof, and upon application by the Contractor and certification by the Architect, the Owner shall make payment sufficient to increase the total payments to 100% of the Contract Sum, less such amounts as the Architect, shall determine for incomplete Work and unsettled claims.

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

#### 10.1 SAFETY PRECAUTIONS AND PROGRAMS

Add the following subsections 10.1.1, 10.1.2 and 10.1.3

10.1.1 This Section specifies procedures for complying with applicable laws and regulations related to worker safety and health. It is not the intent of the City to develop, manage, direct, and/or administer the safety and health programs of Contractors or in any way assume the responsibility for the safety and health of their employees. It is required that all Contractors adhere to applicable federal, state, and local safety and health standards.

The Contractor shall comply with the Federal Contract Work Hours and Safety Standards Act, as set forth in Title 29, CFR. Copies of the regulations may be obtained at [www.ecfr.gov](http://www.ecfr.gov).

The Contractor shall comply with the provisions of the State of Nevada Occupational Safety and Health Act and Federal Occupational Safety and Health Act, as amended.

The Contractor shall provide all safeguards, safety devices, and protective equipment and take any other needed actions, on their own responsibility, reasonably necessary to protect the life and the health of employees on the job, the safety of the public, and to protect property in connection with the performance of the work covered by this contract.

It is not the intent of the City to list and identify all applicable safety codes, standards, and/or regulations requiring compliance by the Contractor and their Subcontractor groups. Contractors and their Subcontractors shall be solely responsible for identifying and determining all safety codes, standards, and regulations which are applicable to the work.

The Contractor shall notify the Engineer immediately of all incidents involving personal injury and/or property damage. Provide a written report known as the Incident Report within 24 hours of any incident. Report for each incident occurrence shall include:

1. Description of event.
2. Names of personnel involved.
3. Description of injuries and treatment required (short term and long term).
4. Description of property damage.
5. Site visits and inspections of other agencies as a result of an incident. Include names of the persons, purpose of the visit, and any other pertinent information.

#### 10.1.2 DRUG/ALCOHOL PROGRAM REQUIREMENT

In order to be eligible to perform work on a City of Reno Public Works Construction Project, Contractors are to have in place a drug and alcohol policy applicable to workers who will be employed on such project. This requirement is a reasonable precaution to ensure a safe and drug-free environment on City of Reno Public Works Construction Projects.

The policy is to be an approved Federal drug and alcohol policy/program which provides, at a minimum, that the use of alcohol, and use, possession, transfer, or sale of illegal drugs, narcotics, or other unlawful substances is prohibited while working on

any site in connection with work performed under this Contract and assurance that the Contractors' Subcontractors are required to cooperate with the Contractor's policy.

The Contractor shall demonstrate compliance with this provision by submitting an affidavit of certification for drug and alcohol policy with their bid under penalty of perjury that the policy is in place, will be actively enforced and that workers who will be employed on the project will be subject to the policy.

The City of Reno may review the Contractor's record of its drug and alcohol policy at any time during the period following award of the bid up to and including completion of the project in order to determine whether the policy is in place.

Failure to maintain a policy may result in suspension of the Contract, pending proof of compliance by the Contractor, at no cost to the City of Reno.

The Contractor shall indemnify, defend and hold the City of Reno harmless against any and all claims, demands, suits or liabilities that may arise out of or in any way related to Contractor's application or non-application of their drug and alcohol policy.

#### 10.1.3 CONFINED SPACE ENTRY

The Contractor shall be required to comply with U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) regulations, as outlined in the 29 CFR Parts 1910; "Permit-Required Confined Spaces for General Industry; Final Rule". The Contractor shall submit, at the Pre-Construction Meeting, a written plan for confined space entry and written documentation that its employees have been trained in confined space entry procedures. The plan shall include emergency rescue operations. The documentation shall include the specific names of the trained employees and their training records. Failure to fully comply with this specification during construction may result in a work stoppage until corrective action has been taken. Any work stoppage shall be at the Contractors expense. Such suspension time shall count against the Contractor's total number of project calendar days under the Contract.

#### 10.2 SAFETY OF PERSONS AND PROPERTY

*Replace Subparagraph 10.2.4 as follows:*

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

#### 10.3 HAZARDOUS MATERIALS

Delete 10.3.3 in its entirety.

### **ARTICLE 11 - INSURANCE AND BONDS**

Replace Article 11 in its entirety with the information below:

Each insurance policy shall bear at least thirty (30) day written notice of cancellation to the certificate holder for any reason other than non-payment of premium which shall bear at least ten (10) day written notice of cancellation.

If the city is notified prior to completion of this contract, that any required insurance is or will be no longer in effect or is scheduled to be cancelled, the city will issue a notice that if insurance is not reinstated prior to expiration of the policy the work will be suspended. It will be the sole responsibility of the contractor to re-establish any and all insurances no longer in effect and provide a copy of current insurance to the engineer before contractor is allowed to continue work on the jobsite. The insurance must be the same coverage as the original insurance required by this contract. The contractor is not allowed to do any work until it receives a written notice from the city to resume work. The city will not bear any costs associated with the work stoppage due to the lapse in insurance, nor any costs associated with any mobilization or de-mobilization incurred by the contractor due to the insurance lapse. Working days will remain in effect during this time and will continue to count as if the contractor was still working.

If the insurance is not re-established prior to the cancellation date, the contractor will be considered in breach of contract and the contract will be terminated pursuant to Section 100.28.

## 11.1 LIABILITY INSURANCE

At all times during the agreement term, Contractor shall procure and maintain, at its sole expense, the following insurance coverage unless waived in writing:

**Commercial General Liability** at least as broad as Insurance Services Office Commercial General Liability Coverage "occurrence" form CG 00 01 04 13 or an equivalent form. The Comprehensive General Liability Coverage shall include, but is not limited to, liability coverage arising from premises, operations, independent contractors, products and completed operations, personal and advertising, injury, blanket contractual liability and broad form property damage.

The following coverage shall not be limited, by endorsement or otherwise:

1. Contractual liability coverage, including the definition of "Insured Contract" and the contractual liability exception to the employer's liability exclusion.
2. Completed operations coverage, including the subcontractor exception to the "damage to 'your work'" exclusion.
3. The provisions of Subparts (5) and (6) of the "damage to property" exclusion pertaining to "that particular part..." in ISO form CG 00 01 04 13.

If any underground work will be performed, the policy limits shall be no less than \$2,000,000 per occurrence, \$4,000,000 general aggregate and \$4,000,000 products-completed operations aggregate and shall be endorsed to include electronic data

liability coverage form CG 04 37 (or equivalent).

In addition, Explosion, Collapse, Pollution and Underground coverage must be reflected in the insurance certificates and shall be no less than \$2,000,000 per occurrence, \$4,000,000 general aggregate and \$4,000,000 products-completed operations aggregate.

The Contractor shall maintain limits of no less than \$2,000,000 per occurrence, \$4,000,000 general aggregate and \$4,000,000 products-completed operations aggregate, or the amounts customarily carried by the Contractor, whichever are greater. The general aggregate limit shall apply on a per project or location basis.

The policy shall include the City, including its elected officials, officers, employees, agents and volunteers and Community Health Alliance (CHA) as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor, products and completed operations of the Contractor and for premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the additional insureds.

**The Additional Insured Endorsements for General Liability shall be at least as broad as the unmodified ISO CG 20 10 04 13 and ISO CG 20 37 04 13 endorsements, or equivalent, including additional insured coverage for the Contractor's premises, operations products and completed operations exposures. The certificate shall confirm Excess Liability is following form.**

**The Contractor shall obtain and maintain Completed Operations Liability Insurance through the statute of repose after completion of the Project. The limit of Completed Operations Liability Insurance coverage shall be the same as the limit for General Liability.**

The Contractor's insurance coverage shall be considered primary insurance. Any insurance or self-insurance maintained by the City shall be excess of the Contractor's insurance and shall not contribute in any way.

The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any failure by the Contractor to comply with reporting provisions of the policies shall not affect its obligations to the additional insureds.

The Contractor shall furnish the City a policy or certificate of liability insurance issued by an authorized representative of the insurance carrier including policy forms and endorsements confirming the required coverage. The contract number and name of contract for this project shall be included on the certificate.

This contract includes work that may result in exposure to "hazardous material" as this term is defined by applicable law, including, but not limited to waste, asbestos, fungi, bacterial, and mold.

**Automobile Coverage** at least as broad as Insurance Services Office Business Auto Coverage form CA 00 01 10 13 or an equivalent form covering Automobile Liability Symbol 1 "Any Auto". In lieu of a separate Business Auto Liability Policy, the City may agree to accept Auto Liability covered in the General Liability Policy, if non owned and hired auto liability are included.

The Contractor shall maintain limits of no less than \$1,000,000 or the amount customarily carried by the contractor, whichever is greater, combined single limit per accident for bodily injury and property damage. No aggregate limit may apply.

The Contractor's policies shall be endorsed to provide a thirty (30) day written notice of cancellation to the certificate holder for any reason other than non-payment of premium which shall bear at least ten (10) day written notice of cancellation.

Certificate Holder: City of Reno  
P.O. Box 1900  
Reno, NV 89505

Acceptability of Insurers: Insurance is to be placed with an A.M. Best Company, Inc. rating level of **A-** or better, financial size category of **VIII** or better, or otherwise approved by the City in its sole discretion. City reserves the right to require that Contractor's insurer be a licensed and admitted insurer in the State of Nevada, or on the Insurance Commissioner's approved but not admitted lists.

The Contractor shall include all subcontractors as insureds under its policy or it shall require its subcontractors to maintain separate liability coverages and limits as set forth herein.

## 11.2 PROPERTY INSURANCE

The Contractor shall purchase and maintain property insurance upon the entire work at the site for the full cost of replacement at the time of loss. This insurance shall include the interests of the Owner, Tenant, the Contractor, Subcontractors, and Sub-subcontractors in the work. This insurance shall be written as a builder's risk, all-risk, or equivalent form to cover all risks of physical loss except those specifically excluded by the policy and shall insure at least against the perils of fire, theft, vandalism and malicious mischief, lightning, explosion, windstorm, and hail, smoke, aircraft and vehicles, riot and civil commotion, debris removal, flood, earthquake, earth movement, water damage, wind, testing, if applicable, collapse however caused, and damage resulting from defective design, workmanship or material.

This policy shall provide for a waiver of subrogation in favor of the City and Contractor.

The insurance shall remain in effect until final acceptance by the City.

Partial occupancy or use of any building shall not commence until the Contractor has secured the consent of the insurance company or companies providing the coverage required in this paragraph. Prior to commencement of the work, the Contractor shall provide certificates of insurance for the property policy or policies obtained in compliance with this section.

Acceptability of Insurers: Insurance is to be placed with an A.M. Best Company, Inc rating level of **A-** or better, financial size category **VIII** or better, or otherwise approved by the City in its sole discretion. City reserves the right to require that Contractor's insurer be a licensed and admitted insurer in the State of Nevada or on the Insurance Commissioner's approved but not admitted lists.

### 11.3 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE

The Contractor shall purchase and maintain Workers' Compensation and Employer's Liability insurance at least as broad as National Council on Compensation Insurance (NCCI) policy form WC 00 00 00 B 07 11, or equivalent, providing coverage meeting the requirements of the Workers' Compensation law of the State of Nevada.

The policy shall include an endorsement waiving the insurance company's rights of subrogation against the City. This endorsement shall be at least as broad as National Council on Compensation Insurance (NCCI) Waiver of Our Right to Recover from Others Endorsement form WC 00 03 13.

It is understood and agreed that there shall be no Worker's Compensation and Employer's Liability coverage provided for the Contractor or any subcontractor by the City. The Contractor, and any subcontractor(s), shall procure, pay for and maintain required coverage. The Contractor agrees, as a precondition to the performance of any work under this Contract and a precondition to any obligation of the City to make any payment under this Contract, to provide the City with certificates issued by an insurance company that shows compliance with this Contract and Nevada Revised Statutes (NRS) 616B.627 and 617.210, respectively. Should the Contractor be self-funded, the Contractor shall so notify the City in writing prior to the signing of a Contract. The City reserves the right to accept or reject a self-funded Contractor and to approve the amount of any self-insured retentions. The Contractor agrees that the City is entitled to obtain additional documentation, financial or otherwise, for review prior to entering into a Contract with the self-funded Contractor.

Upon completion of the project, the Contractor shall, if requested by the City, provide the City with a Final Certificate for itself and each subcontractor showing that the Contractor and each subcontractor had maintained the required insurance by paying all premiums due throughout the entire course of the project. If the Contractor or subcontractor is a sole proprietor, coverage for the sole proprietor must be purchased and evidence of coverage must appear on the Certificate of Insurance and Final Certificate.

Worker's Compensation and Employer's Liability: Workers' Compensation coverage shall be provided with statutory limits in the State of Nevada. Employer's Liability limits of \$1,000,000 each accident, \$1,000,000 each employee for disease and \$1,000,000 policy limit for disease.

If the Contractor fails to make payment for the workmen's compensation insurance, the City will immediately make payment and deduct the cost thereof from the payment then or thereafter due the Contractor.

#### 11.4 PERFORMANCE BOND AND PAYMENT BOND

11.4.1 The Contractor shall furnish a Performance Bond and Payment Bond meeting all statutory requirements of the State of Nevada, on the Forms as approved by the City of Reno to cover 100% of the Bid amount. Bonds may be obtained through the Contractor's usual source and cost thereof shall be included in the Base Bid.

11.4.1.1 The Contractor shall deliver the required bonds to the Owner not later than three days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.

11.4.2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

### ARTICLE 13 - MISCELLANEOUS PROVISIONS

#### 13.1 GOVERNING LAW

Delete 13.1 in its entirety and replace as follows: The Contract shall be governed by the laws of the State of Nevada.

13.1.1 Add to Paragraph 13.1 new Subparagraph 13.1.1 as follows:

Where referenced regulatory requirements or the Contract Documents and regulatory requirements are in conflict, Contractor shall comply with the one establishing the more stringent requirements.

#### 13.2 SUCCESSORS AND ASSIGNS

13.2.1 Delete Subparagraph 13.2.1 in its entirety and replace with the following:

The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents.

13.2.2 Delete Subparagraph 13.2.2 in its entirety

13.5 Delete Paragraph 13.5 in its entirety and replace with the following:

Payments due and unpaid under the Contract Documents shall bear interest according to the NRS.

## **ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT**

### **14.1 TERMINATION BY THE CONTRACTOR**

14.1.1 Delete Subparagraph 14.1.1, and associated Subparagraphs 14.1.1.1 through 14.1.1.4, and add new Subparagraph 14.1.

14.1.1 The Contractor may terminate the Contract for cause if the Owner materially breaches the Contract by:

- .1 refusing, failing or being unable to make prompt payment to the Contractor without just cause;
- .2 disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over any Projects;
- .3 refusing, failing or being unable to substantially perform in accordance with the terms of the Contract or any other agreement between the Owner and the Contractor.

*Replace Subparagraphs 14.1.2 and 14.1.3 as follows:*

14.1.2 Upon the occurrence of any of the events described in subparagraph 14.1.1, the Contractor may give notice to the Owner setting forth the nature of the default and requesting cure within seven (7) calendar days from the date of notice. If the Owner fails to cure the default within seven (7) calendar days, the Contractor, without prejudice to any right or remedies, may give notice to the Owner of immediate termination.

14.1.3 If the Contract is terminated by the Contractor pursuant to Paragraph 14.1, the Owner shall pay to the Contractor specified amounts due for work actually performed prior to the effective termination date and reasonable costs associated with termination. The Owner may agree to additional compensation, if any, due the Contractor. Absent agreement on the additional amount due the Contractor, the Owner shall pay the Contractor:

- .1 reasonable costs incurred in preparing to perform the terminated portion of its scope of the work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the Contractor would not have profited or would have sustained a loss if its scope of the work had been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rates of loss, if any; and,
- .2 reasonable cost of settling and paying claims arising out of the termination of

subcontracts or supplier orders. These costs shall not include amounts paid in accordance with other provisions hereof.

14.1.4 Delete Subparagraph 14.1.4 in its entirety.

14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive from the Owner on the same basis provided in Subparagraph 14.1.1

## **ARTICLE 15 - CLAIMS AND DISPUTES**

### 15.1.2 TIME LIMIT ON CLAIMS

15.1.2 Replace Subparagraph 15.1.2 with the following language:

Statutory limitation periods will be as defined in the NRS.

### 15.1.5 CLAIMS FOR ADDITIONAL TIME

Replace 15.1.5.1 with the following:

15.1.5.1 Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work, and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim. The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due to the fault of the Contractor.

Delete 15.1.6 in its entirety.

## 15.2 INITIAL DECISION

15.2.1 Delete reference to Paragraph 11.5

## 15.3 MEDIATION

Delete Section 15.3 in its entirety and replace with the following:

Claims, disputes, or other matter 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 15.1.6, unless otherwise settled, shall be subject to mediation as a condition precedent to judicial action. Unless the parties mutually agree otherwise, mediation will be in accordance with the Construction Industry Mediation Procedures of the American Arbitration Association currently in effect. The American Arbitration Association will not be used to

administer or facilitate the process or the selection of the mediators. Instead, the parties will attempt to mutually agree to the appointment of one mediator. If the parties cannot agree to one mediator, each party shall select one mediator and the two mediators will appoint a third mediator. The parties agree to split the mediator(s) fees and expenses. Each party shall bear their own attorney's fees and other costs incurred for the mediation.

#### 15.4 ARBITRATION

Delete Section 15.4 in its entirety. Add the following:

If the City is the prevailing party in litigation, unless otherwise agreed to in writing, it shall be entitled to an award of reasonable attorney's fees and costs. NRS 338.640(1) applies when appropriate.

##### 15.4.4 CONSOLIDATION OR JOINDER

Delete Section 15.4.4. in its entirety.

### **ARTICLE 16 - INSPECTION AND AUDIT OF RECORDS**

Add Article 16.1 Inspection and Audit of Records as follows:

#### 16.1 INSPECTION AND AUDIT OF RECORDS

16.1 Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), papers, including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the Owner or nay of its authorized representatives. Such records shall include, but not limited to, those records necessary to evaluate and verity direct and indirect costs (including overhead allocations) as they may apply to costs associated with the Contract. Contractor will cooperate fully and will cause all of Contractor's subcontractors to cooperate fully in furnishing or in making available to Owner from time to time all such information, material and data whenever requested. All subcontracts shall reflect requirements of this Paragraph. If an audit inspection or examination in accordance with this section discloses overcharges of any nature by the Contractor to the Owner in excess of on-half of one percent (0.5%) of the total contract fillings, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of the Owner's finding to Contractor. All books, records, and statements relevant to this Contract must be retained a minimum of three years. The retention period runs from the date of payment for the relevant goods or services by the Owner, of from the date of termination of the Contract, whichever is later.

END OF SECTION