

ADDENDUM #01

April 7, 2026

Project: REQUEST FOR QUALIFICATION (RFQ) - CONSTRUCTION MANAGER AT RISK (CMR)
GASSEN FAMILY FIELDHOUSE
UNIVERSITY OF SOUTH DAKOTA
VERMILLION, SOUTH DAKOTA
OSE# R0626—12X

Submittal Due: April 17, 2026
4:00 PM CT

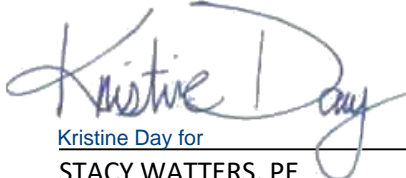
At: Office of the State Engineer
Attn: Sara Norstrom
1501 S. Highline Avenue, Suite 4A
Sioux Falls, South Dakota 57110

Owner: State of South Dakota, Board of Regents

Scope of this Addendum:

See attached CMR contract templates to be included with the CMR RFQ solicitation documents.

- Item No. 1 A133-2019 – Template (Standard)
- Item No. 2 A201-2017 (Standard)
- Item No. 3 A133-2019 – Exhibit A (GMP Amendment)
- Item No. 4 Exhibits B-I to A133-2019 Template (Standard)



Kristine Day for

STACY WATTERS, PE
State Engineer
Office of the State Engineer

DRAFT AIA® Document A133® – 2019

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

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

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

«State of South Dakota»

« »
« »
« »
« »

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

« »
« »
« »
« »

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

« »
« »
« »
« »

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

« »
« »
« »
« »

The Owner and Construction Manager agree as follows.

The Owner and the Construction Manager recognize and agree the Construction Manager's performance of the Work for the Construction Phase is contingent upon the satisfaction of the following events ("Construction Conditions"): (i) the Owner's approval of the Guaranteed Maximum Price consisting of the Cost of the Work and Construction Manager's Fee; (ii) the Owner's decision, in its sole discretion, to proceed with the Work; (iii) the securing of legislative approval for the funding required in an amount necessary to fund the design and construction of the Project; and (iv) the issuance to the Construction Manager by the Owner of a Notice to Proceed with the Work.

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

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

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

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

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
8	DISCOUNTS, REBATES, AND REFUNDS
9	SUBCONTRACTS AND OTHER AGREEMENTS
10	ACCOUNTING RECORDS
11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12	DISPUTE RESOLUTION
13	TERMINATION OR SUSPENSION
14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT
EXHIBIT A	GUARANTEED MAXIMUM PRICE AMENDMENT
EXHIBIT B	OWNER'S BUDGET
EXHIBIT C	PROJECT SCHEDULE
EXHIBIT D	STAFFING PLAN
EXHIBIT E	EQUIPMENT RENTAL RATES
EXHIBIT F	CONSTRUCTION MANAGER'S INSURANCE
EXHIBIT G	INTENTIONALLY OMITTED
EXHIBIT H	BUILDER'S RISK INSURANCE
EXHIBIT I	DATA PROTECTION AND CYBER SECURITY REQUIREMENTS

ARTICLE 1 INITIAL INFORMATION

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

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

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

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

« »

§ 1.1.2 The Project's physical characteristics:

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

« See Section 1.1»

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

«The Owner's preliminary budget is set forth in Exhibit B – Budget. The Owner's final budget for the Project will be determined when the Guaranteed Maximum Price is approved by the Owner. Exhibit B – Budget will be updated when the Guaranteed Maximum Price is approved by the Owner.»

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

- .1 Design phase milestone dates, if any:
«To be set forth in Exhibit C – Project Schedule, which Exhibit will be updated by the agreement of the Owner, the Architect, and the Construction Manager, and in Exhibit A – Guaranteed Maximum Price Amendment.»
- .2 Construction commencement date:
«To be set forth in Exhibit C – Project Schedule, which Exhibit will be updated by the agreement of the Owner, the Architect, and the Construction Manager, and in Exhibit A – Guaranteed Maximum Price Amendment.»
- .3 Substantial Completion date or dates:
«To be set forth in Exhibit C – Project Schedule, which Exhibit will be updated by the agreement of the Owner, the Architect, and the Construction Manager, and in Exhibit A – Guaranteed Maximum Price Amendment.»
- .4 Other milestone dates:
«To be set forth in Exhibit C – Project Schedule, which Exhibit will be updated by the agreement of the Owner, the Architect, and the Construction Manager, and in Exhibit A – Guaranteed Maximum Price Amendment.»

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

«Not Applicable»

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

«The latest version of the Green Building Initiative (GBI) Green Globes with a two-globes rating. If the Owner determines two globes are not appropriate for the Project, the Owner will during the process for approving the Schematic Design Documents notify the Construction Manager in writing. Any waiver must be granted by the State Engineer.»

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

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

« »

§ 1.1.8 The Owner identifies the following Owner's representatives in accordance with Section 4.2:
(List name, address, and other contact information.)

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

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

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

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

«See Exhibit D – Staffing Plan.»

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

«See Sections 3.1.11, 3.2.3.16 and 7.2.6 of this Agreement.»

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

<< >>

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project Schedule, as set forth in Exhibit C – Project Schedule and Exhibit A – Guaranteed Maximum Price Amendment, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's Budget, as set forth in Exhibit B - Budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party. Nor shall the Construction Manager change the persons filling the positions as specifically identified in Exhibit D – Staffing Plan without the Owner's prior written consent.

§ 1.4 Superintendent: The Construction Manager shall employ a competent superintendent and necessary assistants all of whom are acceptable to the Owner and who shall be in attendance at the Project site during the progress of the Work. The Superintendent shall represent the Construction Manager and all communications given to the Superintendent shall be as binding as if given to the Construction Manager. Important communications shall be confirmed in writing. Other communications shall be confirmed on written request in each case. The Superintendent shall not be changed without the Owner's consent.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

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

Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

§ 3.1.2 The Owner will develop a Conceptual Program for the Project. The Construction Manager shall provide a preliminary evaluation of the Owner's Conceptual Program, Project Schedule and the Owner's Budget requirements, each in terms of the other.

§ 3.1.3 Consultation

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

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

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

§ 3.1.4 Project Schedule

§ 3.1.4.1 When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update Exhibit C - Project Schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project Schedule relating to the performance of the Architect's services. The Project Schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project Schedule shall include the following: submission of the Guaranteed Maximum Price proposal at such time as is set forth in Section 3.1.10.2.7; the dates of Substantial Completion and Final Completion by phases and for the entire Project; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner. Exhibit C – Project Schedule will be periodically updated and utilized to identify major milestones for the Owner, the Architect, and the Construction Manager. The Construction Manager agrees and acknowledges the Project Schedule will include allowances for periods of time required for the Owner's and the Architect's review of design elements and estimates of the Cost of the Work, for the performance of similar activities by the Owner's and the Architect's consultants, and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.4.2 The Construction Manager must keep the Owner fully apprised of all updates and reviews of the Project Schedule, and there will be no change to or deviation from the Project Schedule that would extend Substantial Completion of the phases or of the Project without the Owner's prior written consent, except for circumstances beyond the control of the Construction Manager, and then only to the extent expressly provided for in this Agreement or the other Contract Documents. While the Construction Manager will not be liable for any failure of the Architect or the Owner's Separate Contractors to perform their work or services in conformance with the Project Schedule, if the Construction Manager observes or suspects any of those parties have or may deviate from the Project Schedule, the Construction Manager must promptly advise the Owner, the Architect, and the involved party and must also indicate what action the Construction Manager recommends to avoid, correct, or minimize such deviation. The Construction Manager will: (i) assist the Owner and the Architect in working with various governing authorities as requested; and (ii) work with the Owner and Architect to develop a project communication system that is effective for the participants and meets the Project Schedule requirements for the Project.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.5.1 As typical with complex projects of similar scope, multiple bid packages for portions of the Work ("Bid Packages") and phased construction may be utilized. The use of multiple Bid Packages and phased construction does not constitute for this Project what is commonly known in the industry as a fast-track schedule. The number of Bid Packages will be determined by the mutual agreement of the Construction Manager, the Owner, and the Architect. The parties agree (subject to the Owner's right to terminate) to promptly meet and use their best efforts to reach mutual agreement regarding the Project Schedule, including the sequence, content, and order of Bid Packages.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems. The preliminary cost estimate will include costs in addition to the Cost of the Work to allow for a proper understanding of the Owner's total Project cost and the Owner's Budget implications.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals as set forth in this

Section 3.1.6, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project Budget and make recommendations for corrective action.

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

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

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

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval. The approved staffing plan for Preconstruction Phase services will be set forth in Exhibit D – Staffing Plan.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities for the Sustainable Objective(s) to the same extent as all other Preconstruction Phase responsibilities defined herein.

§ 3.1.10.1 The Owner's Budget for the entire Project will be further developed by the Owner, in consultation with the Architect and the Construction Manager during the Preconstruction Phase and will be set forth in Exhibit B - Budget. The Owner's Budget to include architecture services, engineering services, the Cost of the Work, the Construction Manager's Fee, the Construction Manager's contingency, and the Owner's contingency, which is separate and distinct from the Construction Manager's contingency and not available for the Construction Manager's use, and other costs of the Project will be updated from time to time by the Owner in consultation with the Architect and the Construction Manager, with all revisions to be set forth in Exhibit B – Budget. The Owner, the Architect and the Construction Manager will mutually agree upon the Guaranteed Maximum Price as set forth in Section 3.1.10.2.7, which amount will be incorporated into the Owner's Budget and set forth in Exhibit B – Budget. The Budget will periodically be reviewed and modified in consultation with the Construction Manager and the Architect. The Construction Manager must, over the course of the Pre-Construction and Construction Phases, update and provide greater detail with respect to the Owner's Budget, including developing specific estimates of and cost allocations for the individual Bid Packages and other Work items, consistent with the overall cost limitations set forth in Exhibit B - Budget.

§ 3.1.10.2 The Construction Manager will be expected to actively participate in all design meetings, tours of comparable buildings and constructability reviews, periodically provide cost estimates during the design process, and ultimately develop a Guaranteed Maximum Price. More specifically, the Construction Manager will provide the following cost management services:

§ 3.1.10.2.1 Assist the Owner and the Architect to keep the Project within the fixed Owner's Budget.

§ 3.1.10.2.2 Provide recommendations to the Architect and the Owner regarding materials, building components and systems, and evaluate building systems, components, and materials for long-term performance, life cycle cost analysis and economy.

§ 3.1.10.2.3 Provide cost control resources for the Owner and Architect during the Schematic Design, Design Development, and Construction Document Phases, that include reviewing and monitoring the development and preparation of documents to assist Owner in maintaining the Cost of the Work within the Budget parameters. Construction Manager will notify the Architect and the Owner of potential cost issues during the development of the Drawings and Specifications that may have an impact on the Cost of the Work. The Construction Manager will work collaboratively with the Owner and the Architect to develop alternatives to keep the cost estimates within the Owner's Budget.

§ 3.1.10.2.4 Provide formal review, comments, and cost estimates on the Schematic Design Documents as set forth below. Following these reviews, the Construction Manager will prepare estimates of the Cost of the Work to confirm the Schematic Design Documents and the Owner's Budget are in alignment. The estimates of the Cost of the Work will include a Construction Manager contingency based on the estimated Cost of the Work, as approved by the Owner. In addition, the Construction Manager will provide value analysis/engineering ideas in conjunction with preparation of the estimate of the Cost of the Work under the Schematic Design Documents set forth below. The Construction Manager will provide the above-described services upon the completion of the following stages of completion of the Schematic Design Documents:

§ 3.1.10.2.4.1 [redacted] % completion of the Schematic Design Documents. (Insert NA, if not applicable); and/or

§ 3.1.10.2.4.2 [redacted] % completion of the Schematic Design Documents.

§ 3.1.10.2.5 Provide formal review, comments, and cost estimates on the Design Development Documents as set forth below. Following these reviews, the Construction Manager will prepare estimates of the Cost of the Work to confirm the Design Development Documents and the Owner's Budget are in alignment. The estimate of the Cost of the Work will include a Construction Manager contingency based on the estimated Cost of the Work, as approved by the Owner. In addition, the Construction Manager will provide value analysis/engineering ideas in conjunction with preparation of the estimate of the Cost of the Work under the Design Development Documents set forth below. The Construction Manager will provide the above-described services upon the completion of the following stages of completion of the Design Development Documents:

§ 3.1.10.2.5.1 [redacted] % completion of the Design Development Documents. (Insert NA, if not applicable); and/or

§ 3.1.10.2.5.2 [redacted] % completion of the Design Development Documents.

§ 3.1.10.2.6 Provide formal review, comments, and cost estimates on the Construction Documents as set forth below. Following these reviews, the Construction Manager will prepare estimates of the Cost of the Work to confirm the Construction Documents and the Owner's Budget are in alignment. The estimate of the Cost of the Work will include a Construction Manager contingency based on the estimated Cost of the Work, as approved by the Owner. In addition, the Construction Manager will provide value analysis/engineering ideas in conjunction with preparation of the estimate of the Cost of the Work under the Construction Documents set forth below. The Construction Manager will provide the above-described services upon the completion of the following stages of completion of the Construction Documents:

§ 3.1.10.2.6.1 [redacted] % completion of the Construction Documents. (Insert NA, if not applicable); and/or

§ 3.1.10.2.6.2 [redacted] % completion of the Construction Documents.

§ 3.1.10.2.7 Provide a Guaranteed Maximum Price to include the Construction Manager's Fee and a Construction Manager contingency based on the Cost of the Work, as approved by the Owner. The Guaranteed Maximum Price will be determined upon the completion of the following Design Documents:

§ 3.1.10.2.7.1 [redacted] % completion of the **Construction** Documents.

§ 3.1.10.2.7.2 [redacted] At a stage of completion of the Design Documents, as mutually agreed upon by the Owner and the Construction Manager at some time to be determined during the process of developing the Design Documents. **(Check if Applicable)**.

§ 3.1.10.2.8 Anticipate multiple Bid Packages will be developed. The Construction Manager will develop a strategy for issuing Bid Packages that facilitate the completion of those packages. The purpose of the strategy is to utilize the bid package strategy to gain the most advantageous issuing of the Contract Documents to minimize the construction duration while allowing the Bid Packages to be completed efficiently.

§ 3.1.10.2.9 Construction Manager shall consider, with the Architect and the Owner, the early selection of the mechanical, electrical, plumbing, security, and other critical Subcontractors to provide to the Architect design assist services. These Subcontractors will provide preconstruction support services during the Preconstruction Phase in addition to the Construction Manager's services. Any compensation to be paid to the Subcontractors for design assist

services will be the Construction Manager's responsibility and will be included in the Construction Manager's pre-construction fee as set forth in Section 5.1.1. If the Project does not proceed or if they are not selected to participate in the Construction Phase, these Subcontractors will not be entitled to any additional compensation.

§ 3.1.10.2.10 The Construction Manager will provide to the Architect its updated cost estimates for its review and comment and to the Owner for its approval. The Construction Manager must periodically review and analyze the updated cost estimates to determine whether they are consistent with the Owner's Budget, Project Schedule, and Conceptual Program. Although the Construction Manager does not guarantee the Owner's Budget or any cost estimates provided by it prior to the fixing of the Guaranteed Maximum Price, the Construction Manager must manage the Project consistent with the Owner's Budget, refine building cost estimates and cash flow projections, and analyze the Work and Construction Manager's services provided to keep all parties involved with the Project apprised of the budgetary constraints and their compliance with the Owner's Budget. When necessary to maintain compliance with the Owner's Budget and as set forth in this Agreement, the Construction Manager must, and without increase to the Construction Manager's compensation, provide value engineering services, recommend possible bid alternates, identify and evaluate post-award options, and otherwise identify possible cost savings options for the Owner's and the Architect's review and approval.

§ 3.1.10.2.11 If, during the course of the Project, the Construction Manager discovers or has reason to believe there has been or may be a deviation from the Design Documents, Owner's Budget, or Project Schedule, or if in the Construction Manager's opinion it is in the Owner's best interest to revise the Design Documents, Owner's Budget, or Project Schedule, the Construction Manager must advise the Owner and the Architect, and must: (i) endeavor to re-establish conformance with the Design Documents, Owner's Budget, and Project Schedule, including providing further services (but only those services as set forth in Article 3 of this Agreement) by the Construction Manager without additional cost to the Owner if such deviation is caused by or the result of an error or omission of the Construction Manager or its Subcontractors; (ii) advise and direct any Subcontractors who have deviated from the Design Documents, Owner's Budget or Project Schedule without the Owner's approval to take such action at their own expense as is required to re-establish compliance with the Project parameters and, should they fail to do so, advise the Owner and the Architect of the remedial actions to be taken against the person or entity responsible for such deviation; (iii) consult with the Owner, the Architect and their respective consultants involved with the Project to identify and recommend, as necessary, other options available to avoid or minimize any adverse impact to the Design Documents, Owner's Budget, and Project Schedule and implement such options as approved by the Owner and the Architect; and (iv) advise the Owner and the Architect when the Construction Manager believes revisions to the Design Documents, Owner's Budget, and Project Schedule are necessary, or are in the best interest of the Project and the Owner, including: the facts and circumstances on which the Construction Manager's belief is based; a description of the revisions being recommended; and identification of other available options to avoid or minimize the impact of such revisions. Thereafter, in conjunction with the Architect and others involved with the Project, the Construction Manager must implement such revisions to the extent approved by the Owner and the Architect.

§ 3.1.10.2.12 The Construction Manager shall coordinate Owner-purchased and/or third party provided equipment with construction of the Project including, but not limited to, coordination of mechanical and electrical needs with respect to the location and installation of the equipment and the timing of the delivery of the equipment. The Construction Manager shall include deliveries of equipment in the Project Schedule and will coordinate the Work to accommodate such deliveries.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 The Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if Bid Packages are issued during the Preconstruction Phase.

§ 3.1.11.4 The Construction Manager will work with the Owner and the Architect to interview and select mechanical, electrical, security equipment, plumbing, and other critical Subcontractors through a process the Construction Manager, the Architect, and the Owner mutually deem appropriate utilizing a competitive process based on the principles of "Best Value" as agreed to by the Owner. These Subcontractors will provide pre-construction estimates of the Cost of the Work and design assist services during the design phases in addition to the Construction Manager's services. The Subcontractors utilized to provide pre-construction estimates of the Cost of the Work and design assist services may

submit bids for the appropriate trade packages with other Subcontractors during the bidding phase. Any costs associated with the pre-construction services may be included as a part of their bid. If the Project does not proceed, or if these Subcontractors are not selected by the Construction Manager and approved by the Owner to perform the Work, these Subcontractors will not be entitled to any compensation for their pre-construction services, unless the compensation was included in the Construction Manager's Pre-Construction Phase services under Section 5.5.1.

§ 3.1.11.5 The Construction Manager will complete a quality/coordination/constructability review of each Bid Package prior to issuing the Bid Package to Subcontractors.

§ 3.1.11.6 In accordance with Article 9, the Construction Manager will assist the Owner in managing the bidding process, evaluate proposals, and interview Subcontractors along with the Architect and the Owner. The Construction Manager, the Architect, and the Owner will utilize, by mutual agreement, any of the following methods for awarding contracts to Subcontractors for portions of the Work: competitive bid; best value; and negotiated terms. For those subcontracts to be awarded on a competitive bid or best value basis, the Construction Manager will use its best efforts to obtain a minimum of three (3) competitive bids for each sub-trade category, unless otherwise authorized by the Owner, and will interview, at a minimum, two (2) bidders with the Architect and the Owner. The Construction Manager will provide to the Owner a written award recommendation.

§ 3.1.11.7 All Subcontractors shall be reputable, qualified firms with an established record of successful performance in their respective trades. Prior to the Construction Manager selecting Subcontractors to submit bids or proposals for various portions of the Work, the Construction Manager must disclose to the Architect and to the Owner the identity of the Subcontractors who will be invited to submit bids or proposals. The Architect and the Owner will reply to the Construction Manager, stating whether the Owner rejects any proposed Subcontractor on the list. The Construction Manager may not request proposals from, or contract with, any proposed Subcontractor the Owner has for reasonable cause rejected. By accepting prospective Subcontractors pursuant to this Section 3.1.11.7, Owner does not acquire any responsibility for the selection of such Subcontractor or its qualifications.

§ 3.1.11.8 After the Construction Manager and the Owner have agreed upon an acceptable list of prospective Subcontractors' subcontracts for bids and proposals must be awarded in accordance with any requirements of the State of South Dakota for government projects applicable to the Owner, including the requirements of Section 1.5.6 of the A201-2017.

§ 3.1.11.9 Prior to Owner's approval of the Guaranteed Maximum Price, the Construction Manager will meet with and disclose to the Architect and the Owner the bids and proposals for each trade which constitutes a portion of the Work. The Subcontractors and the Subcontractors' bids and proposals are subject to the Architect's and the Owner's approvals.

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities. The Construction Manager hereby represents and warrants it has not been prohibited from receiving federal, state, or local funds for the Project, if applicable to the Project.

§ 3.1.14 Other Preconstruction Services

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

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

«The Construction Manager will provide and host a shared project management system jointly accessible and useable by the Project Team comprised of the representatives and consultants of the Construction Manager, the Architect, and the Owner»

§ 3.1.14.1 The Owner may request the Construction Manager complete certain construction activities, such as installing a site fence to secure the Project site, site utilities and grading, or providing engineered fill during the Preconstruction Phase. The Owner may request the Construction Manager pre-order long lead time materials and equipment. The Work to be performed by the Construction Manager, the materials and equipment to be pre-ordered, and the Cost of the Work for the foregoing, will be identified by the Construction Manager and approved by the Owner and the Architect, and set forth in a limited notice to proceed.

§ 3.1.14.2 Professional Services

The Construction Manager 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 Construction Manager needs to provide such services to carry out the Construction Manager's responsibility for construction means, methods, techniques, sequences and procedures. The Construction Manager shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Construction Manager by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Construction Manager shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such design professional. Shop Drawings and other submittals related to the Work designed or certified by such design 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, accuracy, and completeness of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Construction Manager all performance and design criteria that such services must satisfy. Pursuant to Section 3.12.10.1 of the A201-2017, the Architect will review, 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. The Construction Manager shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 Upon completion of the Design Documents referenced in Section 3.1.10.2.7, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. The Construction Manager's Fee will be fixed at the time the Guaranteed Maximum Price is fixed, except as it may be revised pursuant to the provisions of Section 6.1.3.

§ 3.2.1.1 Upon completion of the Design Documents, referenced in Section 3.1.10.2.7, the Architect will submit to the Owner and the Construction Manager the Drawings and Specifications for the Guaranteed Maximum Price proposal. The proposal will include the Design Documents referenced in Section 3.1.10.2.7. The Construction Manager must meet with the Owner and the Architect to review the Design Documents referenced in Section 3.1.10.2.7.

§ 3.2.1.2 Upon receipt of the Construction Manager's Guaranteed Maximum Price proposal, the Architect will make its recommendations to the Owner and request the Owner's approval the Design Documents referenced in Section 3.1.10.2.7 and the Guaranteed Maximum Price. If revisions to the Guaranteed Maximum Price proposal are required to comply with the Owner's Budget, the Construction Manager must make the required revisions without additional fee or expense to the Owner until the Guaranteed Maximum Price complies with the Owner's Budget. The Owner may at any time elect to reject the Guaranteed Maximum Price proposal, as presented or later modified, and terminate the Agreement for convenience.

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

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated dates of Substantial Completion by phases upon which the proposed Guaranteed Maximum Price is based and an updated critical path Project Schedule, including a schedule for decisions or other actions by the Owner and Architect and a schedule of the Construction Documents updates, if any, upon which the dates of Substantial Completion by phase are based;
- .5 A date by which the Owner must accept the Guaranteed Maximum Price;
- .6 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work in a form acceptable to the Owner organized by Construction Specifications Institute ("CSI") trade categories or systems, and the Construction Manager's Fee, Cost of the Work, a not to exceed amount for the General Requirements (supported by a cost breakdown to be attached to the Exhibit A – Guaranteed Maximum Price Amendment) and a not to exceed amount for the General Conditions (supported by cost breakdown to be attached to the Exhibit A – Guaranteed Maximum Price Amendment when finalized, approved, and signed by the Parties) shall appear as separate line items;
- .7 A statement indicating which portions of the Project are to be commissioned, if any;
- .8 A list of subcontracts that are fixed bid;
- .9 A list of subcontracts that are Cost of the Work (time, materials, overhead, and profit) bid;
- .10 The amount of the Construction Manager's Contingency, as allowed and limited under Section 3.2.4.
- .11 A list of wage rates for Construction Manager's management, engineers, laborers, trades that are not fixed bid subcontractors, and all others performing the Work;
- .12 A list of allowances (if any) with supporting estimates and a written narrative;
- .13 Alternates approved by the Owner, including proposed adjustments in the Guaranteed Maximum Price and Project Schedule if the Owner elects to accept the alternate;
- .14 A list of Unit Prices and assumptions about anticipated quantities;
- .15 A list of long-lead-time items of materials and equipment that need to be ordered;
- .16 A description and not-to-exceed pricing of any Work to be self-performed by Construction Manager along with the competitive bids (best efforts to obtain 3 bids) obtained from third-party trade contractors demonstrating that the pricing submitted by Construction Manager for each proposed self-performed scope of Work is equal to or lower than such competitive bids and meets all State law requirements;
- .17 All sales, consumer, use, excise, and similar taxes as set forth in Section 2.2.9; and
- .18 Any adjustments that need to be made to the Owner's Budget, as previously approved and set forth in Exhibit B – Budget.

The Architect will meet with the Owner and the Construction Manager to review the Guaranteed Maximum Price proposal.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Construction Manager's Guaranteed Maximum Price proposal must be based upon the Construction Manager's most current cost estimate.

§ 3.2.4.1 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager must include the Construction Manager's contingency for the Construction Manager's use to cover those costs considered reimbursable as the Cost of the Work. The Construction Manager will provide to the Architect and the Owner weekly reports and requests for use of the contingency, including the reasons for use of the Construction Manager's contingency. The Construction Manager will only be entitled to payment from the contingency once approved by the Owner in writing.

§ 3.2.4.2 Before the Construction Manager will be allowed by the Owner to utilize a portion of the Construction Manager's contingency, the Construction Manager's request must meet the following criteria:

- .1 The costs must qualify as Costs of the Work under Article 7, exclusive of the General Conditions except when specifically agreed to by the parties in writing;
- .2 The costs must not otherwise be the basis for a Change Order;
- .3 The costs must be reasonable and actually incurred for the Project;
- .4 The costs must not otherwise be reimbursed to or recovered by the Construction Manager;
- .5 The costs must not otherwise be recovered from an insurance company, surety company, Subcontractor, Subsubcontractor, supplier, or any other person;
- .6 The Construction Manager must not have failed to notify timely an insurance company, surety company, Subcontractor, Subsubcontractor, supplier, or any other person such that recovery of funds was adversely impacted;
- .7 The costs must not have been incurred due to the negligence or intentional misconduct of the Construction Manager or its Subcontractors, Subsubcontractors, suppliers, or any other person for whom the Construction Manager is responsible; and
- .8 The costs must arise from causes which are outside of the Construction Manager's reasonable control.

§ 3.2.4.3 The Owner and the Construction Manager acknowledge the cost estimating process is not exact. Therefore, the Construction Manager's contingency is included for the following occurrences:

- .1 Quantity and price inaccuracies which were included in the Guaranteed Maximum Prices;
- .2 Unfavorable bidding by Subcontractors, Subsubcontractors, and suppliers as compared to Cost of the Work estimates included in the Guaranteed Maximum Price due to market conditions, price increases, lack of competition, and other variables;
- .3 Default in payment or performance by a Subcontractor or supplier not reimbursed by a payment or performance bond;
- .4 Costs of corrective Work not due to the negligence or intentional misconduct of the Construction Manager or its Subcontractors, Subsubcontractors, suppliers, or any other person for whom the Construction Manager is responsible;
- .5 Unforeseen soil conditions which impact the Cost of the Work, unless Construction Manager is entitled to an equitable adjustment in the Guaranteed Maximum Price pursuant to Section 3.7.5 of the A201-2017;
- .6 Unforeseen and unseasonal weather conditions which impact the cost of the General Requirements, which use of the contingency will be subject to the terms of Section 3.2.4.4; and
- .7 Other conditions which result in an increase in the Cost of the Work without increasing the Guaranteed Maximum Price.

§ 3.2.4.4 The Construction Manager and the Owner recognize unseasonal weather may occur at any time during the year, they must plan for such weather conditions to occur during the Construction Phase, and the Project Schedule will be agreed upon such that unseasonable days will be built into the Project Schedule. The Construction Manager will be entitled to utilize the Construction Manager's contingency for unseasonal weather delays for those days in excess of the number of unseasonal days identified in the following table on a cumulative basis during the Construction Phase, subject to the Construction Manager's establishment the unseasonal weather adversely impacted the ability to perform the Work on said excess days:

Average Days of Unseasonable Weather/Month	
Month	
January	23 (+ 1 for grading or foundation work)
February	21
March	12 (+ 1 for grading or foundation work)
April	4 (+ 2 for grading or foundation work)
May	5 (+ 1 for grading or foundation work)
June	6 (+ 2 for grading or foundation work)
July	5 (+ 2 for grading or foundation work)
August	4 (+ 2 for grading or foundation work)
September	4 (+ 1 for grading or foundation work)
October	3 (+ 1 for grading or foundation work)
November	11 (+ 1 for grading or foundation work)

The intent of the foregoing chart is Construction Manager will not be entitled to claim an extension based upon weather delay until the stated time. For instance, Construction Manager will not be entitled to claim an extension based upon weather delay in the month of January until there is experienced a 24th bad weather day (25th bad weather day if the work is grading or foundation work).

§ 3.2.4.5 The Owner, in consultation with the Architect, will have the right to request the Construction Manager consider a reduction in the contingency amount at any time. The Owner and the Construction Manager each agree to negotiate in good faith to reach agreement on the amount of each reduction.

§ 3.2.4.6 The Guaranteed Maximum Price is to be an adequate representation of the cost to complete the Work as described or reasonably inferred from the Design Documents referenced within this Agreement. The Construction Manager acknowledges not all the Design Documents may be completed and approved by the Owner when the Owner requests portions of the Work be bid and materials and equipment be ordered with the costs therefore being fixed as portions of the Guaranteed Maximum Price. Thus, the Construction Manager and the Owner will consider the status of the foregoing process when determining the amount of the Construction Manager's contingency in the Guaranteed Maximum Price.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Exhibit A - Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Exhibit A - Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. In addition, the Owner and the Construction Manager will revise, as necessary, and sign an updated Exhibit B – Budget and an updated Exhibit C – Project Schedule, as necessary to conform to the Exhibit A – Guaranteed Maximum Price Amendment.

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

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

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

§ 3.2.10 The Cost of the Work reimbursable to the Construction Manager will be limited only by the Guaranteed Maximum Price in the aggregate and not by estimates for the various categories or line items of Work comprising the Guaranteed Maximum Price, subject to the requirement that the General Conditions, the General Requirements, and any portion of the trade Work the Construction Manager self-performs are fixed amounts and not subject to the provisions of this Section 3.2.10.

§ 3.2.11 Any changes to the scope of the Work as measured from the written statement of the basis of the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price proposal submitted pursuant to § 3.2.3, as accepted by the Owner and set forth in the Exhibit A – Guaranteed Maximum Price Amendment, will be cause for adjustment in the Guaranteed Maximum Price, the date of Substantial Completion, and the date of Final Completion, as applicable. The

Construction Manager acknowledges and agrees upon approval and acceptance of the Guaranteed Maximum Price by the Owner, the Construction Manager will guarantee the Contract Sum will not exceed the Guaranteed Maximum Price for the agreed-upon scope of Work set forth in the Contract Documents, except as expressly provided herein. If the Contract Sum exceeds the Guaranteed Maximum Price for any reason, except as otherwise provided in this Agreement, the Construction Manager will be responsible for amounts in excess thereof required to complete such Work.

§ 3.2.12 The Construction Manager's services will be coordinated and provided in conjunction with the services of the Architect as set forth in its agreement with the Owner.

§ 3.2.13 The Construction Manager will be an independent contractor in terms of its performance of services and the completion of the Work required by the Contract, with neither the power nor the authority to bind or create liability for the Owner by the Construction Manager's intentional or negligent acts, errors, and omissions.

§ 3.2.14 Time is of the essence in the performance of the Construction Manager's services and the completion of the Work, the Architect's services, and the Owner's responsibilities for the Project. The deadlines required for performance among the Construction Manager, the Architect, and the Owner will be mutually agreed upon by the parties and will be included in the Exhibit C – Project Schedule and in the Exhibit A – Guaranteed Maximum Price Amendment.

§ 3.3 Construction Phase

§ 3.3.1 General

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

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Exhibit A - Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Exhibit A - Guaranteed Maximum Price Amendment. The Work the Owner may request be commenced prior to the execution of the Exhibit A - Guaranteed Maximum Price Amendment could include, but not be limited to, the following: Project site grading, Project site and infrastructure and related utilities. The Owner may also request the Construction Manager pre-order long lead time materials and equipment, all of which will be confirmed in Exhibit A – Guaranteed Maximum Price Amendment to be updated from time-to-time.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct weekly meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall issue to the Owner and the Architect weekly safety reports attesting to conditions on the Project site, injuries and accidents having occurred, and safety actions taken to rectify the safety issues. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect, as soon as is reasonably possible following the meeting, but in all circumstances within 48 hours of the meeting, unless otherwise agreed by the Owner.

§ 3.3.2.2 Within the Exhibit A - Guaranteed Maximum Price Amendment, the Construction Manager shall include a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner and the Architect, including the Construction Manager's contingency status, subcontract and materials buy-out status versus Guaranteed Maximum Price schedule of values, list of identified and potential issues affecting construction progress or having the potential to result in a cost or Project Schedule Claim, action item list and responsibility for resolution for action items affecting the Work or its progress, and Project Schedule versus actual progress analysis including detailed action plans to correct any negative Project Schedule deviations.

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Six Week Look Ahead Schedule

The Construction Manager shall prepare and review weekly with the Owner and the Architect a six-week look ahead schedule identifying the scheduling of portions of the Work, delays in the Project Schedule that will be addressed for makeup during the six-week period and identifying elements of the Project which need to be adjusted to maintain the Project Schedule.

§ 3.3.2.6 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above. The Construction Manager will revise and refine the initially approved Owner's Budget, incorporate approved changes as they occur, and develop cash flow reports and forecasts as the Owner may require. The Construction Manager will also identify variances between actual and budgeted or estimated costs and advise the Owner and the Architect whenever the projected cost exceeds the amount budgeted or estimated. The Construction Manager may reallocate estimated costs among trade categories, except such costs cannot be reallocated among self-performed Work, the General Conditions, the General Requirements, and other items which by their nature are fixed costs, and the Construction Manager's Fee. The Construction Manager's cost management responsibilities during the Construction Phase will include the following:

§ 3.3.2.6.1 Implementing effective cost management controls and tracking procedures to provide the Owner with the opportunity to make decisions as required to keep the Cost of the Work and the Construction Manager's Fee within the Owner's Budget.

§ 3.3.2.6.2 Implementing and maintaining cost control methods with an "open book" sharing of cost information.

§ 3.3.2.6.3 Informing the Owner of pending cost issues within five (5) business days of identifying potential issues.

§ 3.3.2.6.4 Implementing and maintaining a current log of pending cost issues impacting the final cost of the Project and reviewing with the Owner and the Architect the log to be contained in each monthly report described in Section 3.3.2.3.

§ 3.3.2.6.5 Providing drawdown and cash flow projections for the Project for the Construction Phase and update the projections as necessary.

§ 3.3.2.6.6 Working with the Owner and the Architect to develop and implement for the Project a Change Order and Construction Change Directive management process.

§ 3.3.2.6.7 During the Construction Phase, providing the following weekly meeting and scheduling services:

§ 3.3.2.6.7.1 Conduct weekly job site meetings that include appropriate Subcontractors, the Owner's representatives, and the Architect's representative to review open issues, schedule Work, and resolve pending or upcoming issues. The Construction Manager will prepare a written agenda in advance of each meeting. The Construction Manager will maintain a list of action items with identification of the responsible party and the due date for each item. The Construction Manager will distribute written meeting minutes and action items lists within 48 hours of each meeting.

§ 3.3.2.6.7.2 Provide regular monitoring of the actual progress versus the scheduled progress, identify any variances and prepare a written action plan along with an updated schedule to maintain the Owner's Project Schedule.

§ 3.3.2.6.7.3 Determine the adequacy of the Construction Manager's and the Subcontractors' personnel and equipment and the availability of materials and supplies to meet the Project Schedule. The Construction Manager will report the status of these items no less than weekly in regular coordination meetings.

§ 3.3.2.6.7.4 Coordinate the construction of the Project with the Owner-purchased and/or third party provided furniture, fixtures, and equipment.

§ 3.3.2.6.7.5 Distribute written meeting minutes and action items lists within 48 hours of each meeting.

§ 3.3.2.6.8 During the Construction Phase, provide weekly progress reports that will contain the following:

§ 3.3.2.6.8.1 A listing of actual costs for completed Work and estimates for uncompleted Work;

§ 3.3.2.6.8.2 Identification of variances between actual and budgeted or estimated costs;

§ 3.3.2.6.8.3 Progress photos (after construction commences);

§ 3.3.2.6.8.4 An executive summary;

§ 3.3.2.6.8.5 A discussion of pending items and existing or anticipated problems;

§ 3.3.2.6.8.6 A status of Requests For Information (“RFIs”);

§ 3.3.2.6.8.7 A safety and accident report;

§ 3.3.2.6.8.8 Information on each Subcontractor and each Subcontractor’s Work as well as the entire Work, showing percentages of completion and the number and amounts of Change Orders and Construction Change Directives and relating such information to the Project Schedule and the Guaranteed Maximum Price;

§ 3.3.2.6.8.9 A list of any threatened claims and issues that, in the reasonable judgment of Construction Manager, may potentially become Claims;

§ 3.3.2.6.8.10 Status of the Construction Manager’s contingency;

§ 3.3.2.6.8.11 The status of the Construction Manager’s General Conditions;

§ 3.3.2.6.8.12 The status of the Construction Manager’s General Requirements; and

§ 3.3.2.6.8.13 Such other relevant information as may be reasonably required by the Owner or the Architect from time-to-time.

§ 3.3.2.6.9 The Construction Manager will keep the Owner informed on a timely basis of any event, circumstance, or issue that may be cause for a Cost of the Work or Project Schedule Claim from the Construction Manager or any Subcontractor or supplier under contract with the Construction Manager. Written notification to the Owner and the Architect of any potential Cost of the Work or Project Schedule Claim must be provided within ten (10) days of the Construction Manager’s first knowledge of any potential Claim. Failure to notify the Owner and the Architect within this ten (10) day period will be cause for the Owner to deny any such Claim. The Construction Manager will include this notice requirement in its agreements with all Subcontractors and suppliers. This requirement is in addition to the reporting requirements in § 3.3.2.3.

§ 3.3.2.6.10 If the Guaranteed Maximum Price includes allowances, the Construction Manager shall present any proposed allowance expenditure for the Owner’s review and acceptance. Unless otherwise provided in the Contract Documents:

§ 3.3.2.6.10.1 Allowances shall cover the cost to the Construction Manager of materials and equipment delivered at the Project site and all required taxes, less applicable trade discounts;

§ 3.3.2.6.10.2 The Construction Manager’s costs for unloading and handling at the Project site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not included in the allowances; and

§ 3.3.2.6.10.3 Whenever costs are more than or less than allowances, the Guaranteed Maximum Price will be adjusted, accordingly, by Change Order. The amount of the Change Order shall reflect (a) the difference between actual costs and the allowances under Section 3.3.2.6.10.1 above and (b) changes in the Construction Manager’s costs under Section 3.3.2.6.10.2 above.

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

§ 3.3.2.6.11 Any allowance existing at the time the Guaranteed Maximum Price is established will be converted to the Cost of the Work within the Guaranteed Maximum Price after the Work is awarded to the Construction Manager or a Subcontractor, or the materials or equipment have been awarded to a supplier after the respective bids therefore are approved in writing by the Owner. After all portions of the Work have been bid to the Construction Manager or a Subcontractor, or the materials or equipment have been awarded to the supplier, each as approved by the Owner in writing, the remaining allowances, if any, will be a Change Order reducing or increasing the Guaranteed Maximum Price. Any remaining allowance can only be combined into another allowance upon the Owner's written approval. The parties agree to use all reasonable efforts to attempt to minimize allowances included within the Guaranteed Maximum Price.

§ 3.3.2.7 Periodic Delivery of "As-Built" Documents Construction Manager will coordinate with the Architect and timely deliver to the Architect to allow to be delivered to Owner periodic updated "as-built" documents as provided in this Section 3.3.2.7.

For work performed in the first half of a calendar year (January to June), Construction Manager must provide to Owner updated "as-built" documents by December 31 of the same year.

For work performed in the second half of a calendar year Construction Manager must provide to Owner updated "as-built" documents by June 30 of the following year.

Pay applications from Construction Manager to Owner in December and June of each year must be accompanied by the updated "as-built" documents required by this Section 3.3.2.7.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements. The information will be used to develop the Conceptual Program as described in Section 3.1.2.

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

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

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other

improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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

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

§ 4.1.6 Based on SDCL §§ 5-14-32, 33, 34, 35, and 36, if this Project meets the requirements for High Performance Green Building the Construction Manager must support the efforts of achieving Green Building Initiative's certification of two Green Globes based on the foregoing statutory requirements.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. For purposes of this Agreement, whenever the Owner's decision, directive, approval or consent is required to be effective, such decision, directive, approval, or consent must be obtained in writing from the representative identified in Section 1.1.8, or such other representative as may be designated by the Owner from time-to-time.

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

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in the agreement between the Owner and the Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement.

A copy of the agreement between the Owner and the Architect will be provided to the Construction Manager for its information and review. If the Construction Manager determines the terms of the agreement between the Owner and the Architect are inconsistent with the terms of this Agreement, the Construction Manager must notify the Owner in writing of the inconsistent terms. If the Construction Manager gives notice of inconsistent terms, the Construction Manager, the Owner, and the Architect will attempt to come to mutual agreement regarding the resolution of the inconsistent terms of this Agreement and the agreement between the Owner and the Architect.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

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

« The Construction Manager shall be compensated in the amount of \$X,XXX,XX.XX for the cost of labor, burden, and applicable taxes through the completion of the Preconstruction Phase according to the timeframe set forth in Section 5.1.3. Payment will be made as follows:

100% Schematic Design Documents, deliverable approved	\$
100% Design Development Documents, deliverable approved	\$
100% Construction Documents, deliverable approved	\$
100% Construction Documents, deliverable approved	\$
Signing of Exhibit A-Guaranteed Maximum Price Amendment	\$

»

§ 5.1.2 If the compensation to be paid to the Construction Manager under Section 5.1.2 is based on hourly fees, or if additional services are required of the Construction Manager during the Pre-construction Phase, the hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth in Exhibit D – Staffing Plan.
(If applicable, attach an Exhibit of hourly billing rates or insert them below.)

« »

Individual or Position

Rate

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

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

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid «forty-five» («45») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

«4» % «compounded annually»

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

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

« A Fee equal to [TBD] of the Cost of the Work as stated in the Exhibit A – Guaranteed Maximum Price Amendment. This fee will be converted to a lump sum amount at the time of the Exhibit A – Guaranteed Maximum Price Amendment is to be signed by the parties. No fee will be calculated on the 2% Contractor's excise tax, and premiums for the Performance and Payment Bonds, Subcontractor Performance and Payment Bonds, Subcontractor Default Insurance, and the builder's risk insurance. The Construction Manager's coordination of work procured directly by the Owner through Separate Contractors and assigned to the Construction Manager will be subject to the Construction Manager's Fee. If the Construction Manager's services for Work procured and paid for directly by the Owner are only coordination services for the Owner-procured work and the Construction Manager's Work, the Owner and the Construction Manager will mutually agree upon the scope of the Construction Manager's additional services, the compensation amount, and the compensation basis for these services, if any, but said compensation will not exceed a fee equal to the percentage fee set forth above in this Section 6.1.2.»

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

«The Construction Manager shall not be entitled to any increase in the Construction Manager's Fee on Change Order or Construction Change Directive Work until the Guaranteed Maximum Price is increased by five percent (5%). The Construction Manager shall be entitled to the same fee identified in Section 6.1.2 on all Change Order and Construction

Change Directive Work that increases the Guaranteed Maximum Price in excess of 105% of the initial Guaranteed Maximum Price.»

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

« Under no circumstances will the compensation to Subcontractors in connection with Change Orders and Construction Change Directives be more than the Subcontractors' costs set forth in Section 7.1.10 and 7.1.11 of the A201-2017, plus no more than eight percent (8%) as full compensation to the Subcontractor for overhead and profit for self-performed Work and six percent (6%) for supervising Work of the Subcontractor's Sub-subcontractors.»

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed the Construction Manager's published Equipment Rental Rates attached to this Agreement as Exhibit E – Equipment Rental Rates or if a rate for Construction Manager-owned equipment is not listed in Exhibit E, such rate may not exceed eighty percent (80%) of the current addition of the AED Green Book rates, provided, however, the cumulative rental amount may not exceed the purchase price for the specific items. Rental rates for non-Construction Manager owned equipment shall be charged at actual cost.

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

«\$10,000.00 per day for failing to timely achieve Substantial Completion, and \$10,000.00 per day for failing to timely achieve Final Completion. The total amount of liquidated damages for which Construction Manager may be held liable under this Agreement shall not exceed 10% of the Construction Manager's Fee.»

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

« »

§ 6.2 Guaranteed Maximum Price

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

§ 6.2.1 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the date of Substantial Completion and the date of Final Completion shall be subject to adjustment as provided in the Contract Documents.

§ 6.2.2 The cost of the items, such as furniture, fixtures and equipment, purchased through the Construction Manager at the Owner's request will not be included in the Guaranteed Maximum Price. The costs for delivering, unloading, handling, storing, and installing items purchased through the Construction Manager, acting as the Owner's purchasing agent, will be included in the Guaranteed Maximum Price, and must be approved by the Owner in writing.

§ 6.2.3 Should the Contract Sum once the work is completed be less than the Guaranteed Maximum Price, one hundred percent (100%) of the savings will be returned to the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time and Contract Sum because of changes in the Work.

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

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

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

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

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

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

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

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

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

§ 7.1.4 The Construction Manager will prepare and submit to the Owner for approval at the time the Guaranteed Maximum Price is agreed upon that portion of the Guaranteed Maximum Price which will constitute the not to exceed Construction Manager’s General Conditions as a separate line item and an itemization to be attached to the Exhibit A – Guaranteed Maximum Price Amendment. The General Conditions are intended to cover the costs of managing the Project. The Construction Manager’s General Conditions will include: (i) the cost of the Construction Manager’s supervisory and administrative staff as set forth in Sections 7.2.2 and 7.2.2.1; (ii) the costs for the relocation and temporary living allowance for the Construction Manager’s personnel required for the Work as set forth in Section 7.6.10; (iii) the costs for the Construction Manager’s Technology and Field Administration charges as defined below. A Change Order or Construction Change Directive may include as a separate line item, if any, for the Construction Manager’s General Conditions, when the Construction Manager can establish an increase in the General Conditions. If the Construction Manager requests an increase in the General Conditions, the Construction Manager must provide a cost breakdown by line item and a justification for the increase in the line items identified. The amount agreed upon for the General Conditions may only be increased upon the Owner’s approval. The Technology and Field Administration items shall cover the following items:

- .1 Staff Computer(s) in jobsite trailer;
- .2 Document Management Software;
- .3 Staff cell phones;
- .4 Jobsite trailer internet (wired or wireless);
- .5 Construction Trailer Furnishings;
- .6 Staff Office Supplies & Office Equipment/Furniture;
- .7 Progress & Final Photos;
- .8 Postage/Delivery;
- .9 Water;
- .10 Blueprints, O&M’s, Printing and Reproductions;
- .11 Other equipment and materials utilized by the Construction Manager’s supervisory and administrative staff at the project site;
- .12 Per Diem – Field Staff;
- .13 Lodging – Field Staff;
- .14 Truck Expenses – Field Staff; and
- .15 Other items pre-approved by the Owner.

§ 7.1.5 The Construction Manager will prepare and submit to the Owner for approval at the time the Guaranteed Maximum Price is agreed upon that portion of the Guaranteed Maximum Price which will constitute the not to exceed Construction Manager's General Requirements as a separate line item and an itemization to be attached to Exhibit A – Guaranteed Maximum Price Amendment. The General Requirements are intended to cover the non-management indirect costs of constructing the Project. A Change Order and Construction Change Directive may include, as a separate line item, if any, for the Construction Manager's General Requirements, when the Construction Manager can establish an increase in the General Requirements. If the Construction Manager requests an increase in the General Requirements, the Construction Manager must provide a cost breakdown by line item and a justification for the increase in the line items identified. The amount agreed upon for the General Requirements may only be increased upon the Owner's approval. The following will be classified as General Requirements, some of which may be incorporated into the various subcontractor bid packages:

- .1 Jobsite Trailer;
- .2 Jobsite Trailer Temporary Power;
- .3 Jobsite Trailer – Set-Up and Tear-Down;
- .4 Cellular Phones for Contractor Onsite Staff;
- .5 Two-Way Radios (But not both cellular phones and two-way radios);
- .6 Jobsite Internet Service;
- .7 Copier and Printer;
- .8 Document Reproduction;
- .9 Progress Photos, if requested by owner;
- .10 Postage and Couriers;
- .11 Office Supplies;
- .12 Office Furniture;
- .13 Small Tools and Supplies;
- .14 Site Alarm Systems and Site Security, if requested by the owner;
- .15 Fire Protection;
- .16 Project Signs (directional, safety, etc.);
- .17 Traffic Control and Flagging;
- .18 Project protective equipment and trade safety labor;
- .19 Jobsite and Project Safety Requirements;
- .20 Temp Toilets;
- .21 Professional Survey**;
- .22 General Cleanup – Interim**;
- .23 General Cleanup – Final**;
- .24 Snow Removal;
- .25 Haul Debris Services and Dumpsters;
- .26 Minor Dewatering Labor;
- .27 Minor Dewatering Equipment;
- .28 Temporary Water;
- .29 Temporary Electrical^^;
- .30 Temporary HVAC (Allowance)^^;
- .31 Temporary Natural Gas (Allowance)^^;
- .32 Taps, Meters, and Fees;
- .33 Temporary Fencing and Gates;
- .34 Temporary Jobsite Barricades, Barriers, and Enclosures;
- .35 Temporary Parking Leases;
- .36 Floor and Finishing Protection;
- .37 Fire Extinguishers during construction;
- .38 Erosion Control;
- .39 Storm Water Prevention Plan;
- .40 Temporary Roads;
- .41 Maintain Temporary Roads and Streets;
- .42 Surveying**; and
- .43 Other items approved by the Owner.

** Denotes item to be bid out as separate package

^^ Denotes item which Owner may determine to make payment directly to the provider

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops, but only as included for self-performed Work approved by the Owner.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the Project site only when in a capacity that expeditiously, economically, effectively and efficiently benefits the Owner's interest in prosecution of the Work, but not the Construction Manager's interest in activities not benefitting the Owner's interests. Other personnel stationed offsite will be reimbursable only for the actual time spent directly performing services in an expeditious, economical, effective and efficient manner benefitting the Owner's interests in prosecution of the Work.

Vehicles - Reimbursement for vehicles for supervisory and administrative personnel shall be limited to the monthly/weekly rent identified on Exhibit D-Staffing Plan. No payment will be made for maintenance or repairs such as oil changes, tire changes, etc. No additional payment will be made for insurance premiums, accident deductibles, etc. The identified rent on Exhibit D-Staffing Plan shall be for the duration of the project.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

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

«See Exhibit D – Staffing Plan.»

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

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

§ 7.2.5 The rates set forth in Exhibit D – Staffing Plan and in Exhibit E – Equipment Rental Rates and shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.2.6 If the Construction Manager elects to bid the performance of any trade Work, that Work will be performed under a fixed price subcontract. If successful in securing said self-performed trade Work through the bidding and interview process conducted and supervised by the Owner and its designated representative, all skill, labor, material, direct and subcontracted costs, General Conditions and General Requirements costs and fees directly attributable to the prosecution of self-performed trade Work will be included in that subcontract fixed amount. No costs incurred for prosecution, supervision, and management of self-performed trade Work will accrue to or be reimbursed outside of the subcontract. Additionally, the subcontracted amount for the Construction Manager's self-performed trade Work will be a line-item guarantee in the Guaranteed Maximum Price schedule of values. No costs in excess of the subcontract fixed amount will be reimbursed through the Construction Manager's contingency fund described in Section 3.2.4.1 and set forth in the Exhibit A – Guaranteed Maximum Price Amendment, without the Owner's prior written approval.

Should the Construction Manager be awarded self-performed trade Work, and if requested by the Owner, the Construction Manager shall provide a detailed build-up of its bid for purposes of the Owner's evaluation of value engineering proposals and requests or for construction Change Orders or Construction Change Directives.

§ 7.3 Subcontract Costs

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

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

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

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work.

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

§ 7.5.1 Costs, without mark-up, of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work, but only to the extent included in the General Requirements set forth in the Exhibit A – Guaranteed Maximum Price Amendment. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value, without mark-up, of the item when it is no longer used on the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, but only to the extent included in the General Requirements set forth in the Exhibit A – Guaranteed Maximum Price Amendment. The total rental cost of any such equipment may not exceed the purchase price of any comparable item and, if owned by Construction Manager, may not exceed 80% of AED Green Book rental rates. The Construction Manager's furnished equipment will be billed at the equipment billing rates defined in Exhibit E – Equipment Rental Rates. Expendable tools and minor equipment costs. All the foregoing costs will be billed at cost.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal, but only to the extent included in the General Requirements set forth in the Exhibit A – Guaranteed Maximum Price Amendment.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies, but only to the extent included in the General Requirements set forth in the Exhibit A – Guaranteed Maximum Price Amendment.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, provided certificates of insurance and photos are presented with storage invoices for such materials.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Costs of premiums for bonds and insurance which the Construction Manager is required by the Contract Documents to purchase and maintain, or which the Construction Manager deems necessary for the prosecution of the Work, and the cost of Subcontractor's payment and performance bonds required under the subcontracts. Premiums for that portion of insurance required by the Contract Documents that can be directly attributable to this Project for the Construction Manager's employees which premium amounts are included in Exhibit D – Staffing Plan. Premiums for that portion of insurance required by the Contract Documents that can be directly attributable to this Project not for the Construction Manager's employees will be included in Exhibit A – Guaranteed Maximum Price Amendment.

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

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

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable. The 2% excise tax will not be included in the Cost of the Work, but will be reimbursed by the Owner to the Construction Manager. The Construction Manager's Fee will not be calculated on the 2% excise tax.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay. The Construction Manager will assist the Owner in obtaining all necessary permits.

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

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

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

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, but only to the extent included in the General Conditions set forth in the Exhibit A – Guaranteed Maximum Price Amendment.

§ 7.6.7 Costs of document reproductions and delivery charges, but only to the extent included in the General Conditions set forth in the Exhibit A – Guaranteed Maximum Price Amendment.

§ 7.6.8 With the Owner's approval, deposits lost for causes other than the Construction Manager's, Subcontractor's or a Subsubcontractor's negligence, intentional misconduct, or failure to fulfill a specific responsibility in the Contract Documents.

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

§ 7.6.10 Expenses incurred in accordance with the relocation and temporary living allowances of the Construction Manager's personnel required for the Work, but only to the extent included in the General Conditions set forth in the Exhibit A – Guaranteed Maximum Price Amendment.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work, at the rates set forth in the Exhibit D – Staffing Plan, and as set forth in Exhibit A – Guaranteed Maximum Price Amendment.

§ 7.7 Other Costs and Emergencies

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

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

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or intentional misconduct of, or failure to fulfill a specific responsibility by, the Construction Manager, Subcontractors, Subsubcontractors, and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of this Agreement, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

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

§ 7.7.5 The deductible portion of any losses under policies of builder’s risk insurance; provided, however, such loss was not caused in whole or part by negligence or intentional misconduct of the Construction Manager, Subcontractors, Subsubcontractors, and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

§ 7.7.6 Costs incurred by the Construction Manager, because a Subcontractor, Subsubcontractor, or supplier becomes insolvent or bankrupt; provided however, only to the extent reimbursement of such costs does not result in the Guaranteed Maximum Price being exceeded and were not caused by the negligent hiring of the Subcontractor, Subsubcontractor, or supplier or the failure of any of the foregoing to fulfill a specific responsibility of this Agreement.

§ 7.7.7 The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

Type	Penal Sum (\$0.00)
Payment Bond	Guaranteed Maximum Price
Performance Bond	Guaranteed Maximum Price

The Construction Manager’s Fee will not be calculated on the bond premium costs.

§ 7.7.8 Actual premium charges incurred to obtain and maintain a builder’s risk insurance policy for the Project. The Construction Manager’s Fee will not be calculated on the insurance premium costs.

§ 7.8 Related Party Transactions

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

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

§ 7.9 Costs Not To Be Reimbursed

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

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

- .9 Costs for services incurred during the Preconstruction Phase;
- .10 Mark up on the General Conditions or on the General Requirements;
- .11 Management of warranty work;
- .12 Bonuses, profit sharing, incentive compensation, and any other discretionary payments paid to anyone hired by a Subcontractor, Sub-subcontractor, or vendor, unless specifically itemized as a separate line item and set forth in the contract or purchase order, and the Owner has provided specific prior written approval;
- .13 Safety lunches, trainings, and seminars;
- .14 Staff travel for Project specific items such as factory acceptance testing (FAT) and tours of similar facilities, unless approved by Owner in writing;
- .15 Subcontractor Default Insurance;
- .16 Subcontractor Payment and Performance Bonds;
- .17 Office Equipment/Furniture and offices other than the site office; and
- .18 Liquidated Damages and costs related to contesting or justifying such damages.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids or proposals. The Construction Manager will prepare instructions to bidders for approval by the Architect and Owner. Upon the Owner's approval of the instructions to bidders, bids will be obtained from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents and South Dakota laws. The bids shall be received at the Office of the State Engineer and shall be opened by the Office of the State Engineer's Project Engineer. The Owner and the Construction Manager then have the right to review the list of proposed subcontractors and suppliers in consultation with the Architect. The Owner, the Construction Manager, and the Architect will meet to determine which bids will be accepted. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

§ 9.1.2 The Construction Manager, the Owner, and the Architect must confirm to the Architect and to the Owner the basis of each bid, i.e., whether the bid is a fixed bid or if the bid is based on the Cost of the Work (time, materials, overhead, and profit). All bids and the basis of the bids are subject to the Owner's approval.

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

§ 9.3 Contracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Section 9.1.2.

ARTICLE 10 ACCOUNTING RECORDS

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

§ 10.2 All accounting records shall be maintained by the Construction Manager in accordance with generally accepted accounting principles consistently applied. If any inspection by the Owner or the Owner's auditors of the Construction Manager, or of its Subcontractors', Subsubcontractors', or suppliers' accounting records reveal an overcharge, the Construction Manager shall promptly refund the Owner the amount of the overcharge and shall reimburse Owner for its expenses incurred to audit the records.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

«Not Applicable»

§ 11.1.3 The Construction Manager will deliver to the Architect, the Owner, the Owner's representative, and the persons or entities listed in Section 1.1.9 each electronic Application for Payment for Work performed the prior month. The Architect will, by the fifth (5th) day following receipt of the Application for Payment, either issue to the Owner and the Owner's representative a Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager, the Owner and the Owner's representative in writing of the Architect's reasons for withholding certification in whole or in part. The Owner's designated representative will also determine whether the amount approved by the Architect is properly due and advise the Owner, accordingly. The Owner will make payment to the Construction Manager for all amounts not in dispute by electronic funds transfer within thirty (30) days after the Architect's, the Owner's, and the Owner's Representative's receipt of the Application for Payment. The Owner shall at all times retain an amount sufficient to complete the Work pursuant to SDCL §§ 5.18B-11 and 5.18B.13. If the Owner retains any portion of a certified progress payment that is properly due and undisputed beyond the time for payment specified herein and for reasons other than those required by statute, the Owner shall owe and pay the Contractor four percent (4%) interest compounded annually on the retained amount starting from the date payment first becomes due under this article.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, conditional lien waivers executed by the Construction Manager and its Subcontractors and Subsubcontractors with respect to the Work performed under the Application for Payment and unconditional lien waivers for prior payments made by the Owner, and the updated "as-built" documents required by Section 3.3.2.7, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire

Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order or Construction Change Directive; and (3) the Construction Manager's Fee.

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

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

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

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

§ 11.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

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

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

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

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

§ 11.1.8 Retainage

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

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

«Zero percent (0%)»

§ 11.1.8.1.1 The following items are not subject to retainage:

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

« »

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

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

« »

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

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

«There will be withheld from retainage such amount as is equal to 200% of the Cost of the Work and the Construction Manager's Fee thereon for Work to be completed pursuant to the punch lists described in Sections 9.8 and 9.10 of the A201-2017.»

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

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

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

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect and the Owner's designated representative shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect and the Owner's designated representative has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect and the Owner's designated representative has made exhaustive or continuous on-site inspections; or (3) that the Architect and the Owner's designated representative has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

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

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

- 4 Construction Manager has satisfied all conditions of final payment including, without limitation, fulfillment of all requirements of Section 9.10 of the A201-2017.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit at that time. If the Owner does not conduct an audit within the time frame set forth in this Section 11.2.2, the Owner may at a later date still complete said audit as permitted under this Contract.

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

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

§ 11.2.2.3 If the Owner, the Owner's auditor or the Architect conclude that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Owner's or Owner's auditor's audit report. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner or the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made by electronic funds transfer no later than 30 days after the issuance of the Architect's final Certificate for Payment, or a final and unconditional certificate of occupancy has been issued by the governing authority, or Construction Manager has satisfied all conditions of final payment, including without limitation, fulfillment of all requirements of Section 9.10 of the A201-2017, whichever occurs latest. Payment of undisputed amounts shall be made by the Owner not later than thirty (30) days after satisfaction of the foregoing conditions precedent for final payment.

<< >>

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

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

(Insert rate of interest agreed upon, if any.)

<< 4 >> % <<four percent compounded annually>>

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Applicable Procedures

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of the A201-2017.

§ 12.1.2 Intentionally Omitted.

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

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by informal negotiation and mediation pursuant to Article 15 of the A201–2017, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction in the Circuit Court, Hughes County, South Dakota.

ARTICLE 13 TERMINATION OR SUSPENSION

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

§ 13.1.1 Prior to the execution of the Exhibit A - Guaranteed Maximum Price Amendment, the Construction Manager may terminate this Agreement upon not less than seven (7) days' written notice to the Owner, if the Owner has received the Guaranteed Maximum Price proposal and has not approved or rejected the Guaranteed Maximum Price within thirty (30) days, or if the Owner has rejected the Guaranteed Maximum Price proposal and the parties through further negotiation have not been able to agree upon the terms of the Exhibit A - Guaranteed Maximum Price Amendment within thirty (30) days following the Owner's rejection of the Initial Guaranteed Maximum Price proposal.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1. In no event will Construction Manager be entitled to make a Claim for, or receive compensation for, lost anticipated profits. The Construction Manager acknowledges the terms of this provision will fully and equitably compensate it for all labor, materials, and costs incurred of any kind in providing Preconstruction Phase services and Work performed through the date of any such termination.

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

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1. In no event will Construction Manager be entitled to make a Claim for, or receive compensation for, lost anticipated profits. The Construction Manager acknowledges the terms of this provision will fully and equitably compensate it for all labor, materials, and costs incurred of any kind in providing Preconstruction Phase services and Work performed through the date of any such termination.

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

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

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

Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

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

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of the A201–2017.

§ 13.2.2 Termination by the Owner for Cause

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

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

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

§ 13.2.3 Termination by the Owner for Convenience

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

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

« Zero. However, the Construction Manager will be entitled to recover the costs, expenses, and Construction Manager's Fee, as set forth in Section 14.4.3 of the A201–2017»

§ 13.3 Suspension

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

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

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction and Construction Phases

The Construction Manager shall maintain insurance for the duration of the Preconstruction Phase and during the Construction Phase, as set forth in Exhibit F – Contractor’s Insurance.

§ 14.3.1.1 Intentionally Omitted.

§ 14.3.1.2 Intentionally Omitted.

§ 14.3.1.3 Intentionally Omitted.

§ 14.3.1.4 Intentionally Omitted.

§ 14.3.1.5 Intentionally Omitted.

§ 14.3.1.6 Intentionally Omitted.

§ 14.3.1.7 Intentionally Omitted.

§ 14.3.1.8 Intentionally Omitted.

§ 14.3.2 The Construction Manager shall be required to provide performance and payment bonds for the Project as required by South Dakota law.

§ 14.3.3 The Owner shall maintain insurance for the duration of the Preconstruction Phase and the Construction Phase as set forth in the A201-2017.

§ 14.3.4 Prior to performing the Work, except for grading and non-structural Work, Construction Manager will obtain a builder’s risk policy insuring the Work as set forth in Exhibit H – Builder’s Risk Insurance.

§ 14.4 Intentionally Omitted.

§ 14.5 The failure of one party to insist upon or enforce, in any instance, strict performance by the other party of any of the terms of this Agreement, may not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or right on any future occasion.

§ 14.6 The Construction Manager will be liable to and must indemnify the Owner and its officers, elected officials, directors, employees, agents and consultants, and must hold each of the foregoing harmless from and against any and all claims made against any of the foregoing for infringement of any copyright, trademark or patent arising out of the use of any plans, designs, drawings, or specifications furnished by the Construction Manager in the performance of this Agreement, unless the Owner has given its written approval of the use of the system, method, or equipment in connection therewith after explicit warning in writing that there may be an infringement.

§ 14.7 The parties agree the terms of this Agreement must be construed neutrally and not against the Owner or Construction Manager as the drafter of this Agreement.

§ 14.8 Intentionally Omitted.

§ 14.9 The Owner and Construction Manager each covenant, warrant and represent: (i) the individual executing this Agreement on its behalf is duly authorized to execute and deliver this Agreement on behalf of the party for whom he or she signs, (ii) this Agreement is binding upon such party, and (iii) the execution and delivery of this Agreement will not result in any breach of or constitute a default under any agreement, contract or other instrument to which it is a party or by which it may be bound.

§ 14.10 Construction Manager hereby represents and warrants it does not fail or refuse to collect or remit South Dakota or City sales or use tax for transactions which are taxable under the laws of the State of South Dakota

§ 14.11 The parties agree the Construction Manager operates an independent business and is contracting to perform the services and to do the Work according to its own methods, without being subject to the control of the Owner, except as to the product or the result of the services and Work. The relationship between the Owner and the Construction Manager is that as between an independent contractor and an owner and not as an employer-employee relationship. The payment of the Cost of the Work and Construction Manager's Fees under Articles 6 and 7 of this Agreement are inclusive of any use, sales, income, or any other tax, except for excise tax assessed on said Fees.

§ 14.12 When fees or reimbursable expenses are not contracted for as fixed rates amounts, the Construction Manager will maintain, and also require its consultants, Subcontractors, and Subsubcontractors maintain, all books, documents, papers, accounting records, and other evidence which supports the charges invoiced to the Owner relating to this Agreement, and will make all such evidence available for audit by the Owner at Owner's offices at all reasonable times during the term of this Agreement and for a period of three years from the date of final payment for the services rendered under this Agreement.

§ 14.13 If a court of competent jurisdiction determines any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement, and the application of this Agreement to other circumstances will not be affected thereby, and each remaining term will be valid and enforceable to the fullest extent permitted by law.

§ 14.14 «The Construction Manager agrees all communications with the general public and press will be handled by the Owner, and Construction Manager agrees to make no communication, be it official or unofficial, concerning the construction of the Project or its progress without first obtaining the Owner's consent and approval. Construction Manager understands and acknowledges in an attempt to coordinate media and other public interactions to the benefit of both Parties, any effort by Construction Manager to publicize via its website, print media, press release, interviews with the news media, or prominent clients or partners regarding the Construction Manager's relationship with the Owner and the construction of the Project will proceed only after obtaining consent of an in coordination with the Owner.»
« »

§ 15 Other provisions:

« »

§ 15.1 Data Protection and Cyber Security

Construction Manager acknowledges communications with Owner are confidential and Construction Manager must protect the Project data from non-disclosure and avoid cyber security breaches of Owner's computer systems, all in accordance with the requirements of Exhibit I – Data Protection and Cyber Security Requirements attached hereto and incorporated herein by reference.

§ 15.2 Funds Appropriation

If funds are not budgeted or appropriated for any fiscal year for services or Work provided for under the terms of this Agreement, this Agreement will impose no obligation on Owner for payment. In this event, the Agreement will be null and void, except as to payments herein agreed upon for which funds have been appropriated for the services and Work, and no right of action or damage may accrue to the benefit of Construction Manager, and its successors or assignees for any further payments.

§ 15.3 Records

To the extent the Construction Manager's Fees and reimbursable expenses are not contracted for as lump sum amounts

and to the extent its Subcontractors, Sub-subcontractors and Suppliers provide services or supplies that are reimbursable as a Cost of the Work, Construction Manager will maintain, and also require its Subcontractors, Subsubcontractors and Suppliers maintain all books, documents, papers, accounting records, and other evidence which supports the charges invoiced to Owner relating to this Agreement, and will make all such evidence available for audit by Owner at its offices at all reasonable times during the term of this Agreement, and for a period of three years from the date of final payment for the services rendered and Work completed under this Agreement.

§ 15.4 Rights and Remedies

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.

§ 15.5 No Waiver

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

§ 15.6 Audit

Owner will have the right to audit all books and records (in whatever form they may be kept, whether written, electronic, or otherwise) relating or pertaining to this Agreement (including any and all documents and other materials in whatever form they may be kept, which support or underlie those books and records) kept by or under the control of Construction Manager including, but not limited to, those kept by Construction Manager, Subcontractors, Subsubcontractors and Suppliers, and their respective employees, agents, successors, and assigns. Construction Manager must maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this Agreement and for at least three years following the completion of this Agreement. This section may not be construed to limit, revoke, or abridge any other rights, powers or obligations relating to an audit which Owner may have by state, city, or federal statutes, ordinances, regulations or agreements, whether those rights, powers or obligations are expressed or implied. Such audit may be performed by either an internal or external auditor, or both, approved by Owner and must be conducted in accordance with generally accepted auditing standards. Costs associated with obtaining such certified audit reports will be paid by Owner. Owner or its authorized auditors, agents, employees, representatives, or other designees will have the right to audit and inspect such records and books, together with the supporting or underlying documents and materials, from time to time during the term of this Agreement upon reasonable notice to Construction Manager and during ordinary business hours.

§ 15.7 No-Lien Project

The Construction Manager acknowledges the Work is to proceed as a no-lien Project in accordance with the laws of the state of South Dakota regarding public projects. No party, therefore, will have the right to assert a mechanic's or other lien as against the Project real estate or any improvement now existing, or to be constructed thereon. If the Construction Manager or its Subcontractors, Subsubcontractors, suppliers, or any other agent of any of the foregoing file such mechanic's or other lien in violation of the prohibitions set forth in this Section 15.7, the Construction Manager will, at its cost and expense, remove the mechanic's or other lien within 30 days by satisfaction of the bond therefore.

§ 15.8 Confidential Information

All reports, plans, specifications, engineering calculations, technical data, miscellaneous drawings, and information contained therein provided or prepared by Architect, its owners, officers, employees, agents, consultants, construction managers, and contractors in connection with its performance under the Contract Documents and all such information provided by Owner to Architect for the performance of the Contract Documents are confidential and Architect, its owners, officer, employees, agents, consultants, construction manager, and contractors shall not disclose this information to any person, individual, or entity without the express written permission of State.

§ 15.9 No Waiver of Sovereign Immunity

Nothing in this Agreement or the Contract Documents is intended to constitute a waiver of sovereign immunity by or on behalf of the State of South Dakota, its agencies, officers or employees.

ARTICLE 16 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

§ 16.1 No Debarment

Construction Manager certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any Federal department or agency from transactions involving the use of Federal funds.

§ 16.2 State of Israel

Pursuant Executive Order 2020-01, for construction managers, vendors, suppliers, or subcontractors with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars (\$100,000) or more, by signing this Agreement the Construction Manager certifies and agrees it has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations related to the subject matter of this Agreement with a person or entity that is either the State of Israel, or a company doing business in or with Israel, or authorized by, licensed by, or organized under the laws of the State of Israel to do business with the State or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of any of the foregoing in a discriminatory manner. It is understood and agreed, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. The Construction Manager further agrees to provide immediate written notice to the State if, during the term of this Agreement it no longer complies with this certification, and agrees such noncompliance may be grounds for contract termination.

§ 16.3 Compliance With SDCL Chapter 5-18A - No Foreign Entity Representation

Construction Manager certifies and agrees that the following information is correct:

Construction Manager is not an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, trust, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled, directly or indirectly, by a foreign parent entity from, or the government of, the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.

It is understood and agreed, if the certification under this Section 16.3 is false, such false certification will constitute grounds for the purchasing agency to reject the bid or response submitted by the Construction Manager on this Project and terminate any contract awarded based on the bid or response, and further would be cause to suspend and debar a business under SDCL § 5-18D-12.

Construction Manager further agrees to provide immediate written notice to the purchasing agency (the Owner) if during the term of the contract it no longer complies with the certification under this Section 16.3 and agrees such noncompliance may be grounds for contract termination and would be cause to suspend and debar a business under SDCL § 5-18D-12.

§ 16.4 Construction Manager further agrees, if any of these certifications set forth in Article 16 is false, such false certification will constitute grounds for the State to terminate this Agreement. Construction Manager further agrees to provide to the State immediate written notice if, during the term of this Agreement, it no longer complies with a certification, and further agrees such noncompliance may be grounds for the State to terminate this Agreement.

ARTICLE 17 SCOPE OF THE AGREEMENT

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

§ 17.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as modified
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A201™-2017, as modified, General Conditions of the Contract for Construction
- .4 Other Exhibits:
(Check all boxes that apply.)

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

«	Exhibit A	Guaranteed Maximum Price Amendment	1.1.4, 1.2, 3.2.11, 3.2.3.6, 3.2.6, 3.2.7, 3.2.8, 3.2.9, 3.2.14, 3.3.1.2, 3.3.2.2, 4.1.2, 5.1.1, 6.1.1, 6.1.2, 6.2, 6.3.2, 7.1.4, 7.1.5, 7.1.5.21, 7.2.6, 7.5.1, 7.5.2, 7.5.3, 7.5.4, 7.6.1, 7.6.6, 7.6.7, 7.6.10, 7.6.11, 13.1.1, 13.1.3, 13.1.5
	Exhibit B	Owner’s Budget	1.1.3, 1.2, 3.1.10.1, 3.2.3, 3.2.6
	Exhibit C	Project Schedule	1.1.4, 1.2, 3.1.4.1, 3.2.6, 3.2.14
	Exhibit D	Staffing Plan	3.1.9, 5.1.2, 7.1.4.13, 7.2.2, 7.2.2.1, 7.2.3, 7.2.5, 7.6.1, 7.6.11, 7.9.1
	Exhibit E	Equipment Rental Rates	6.1.5, 7.2.5, 7.5.2
	Exhibit F	Contractor’s Insurance	14.3.1
	Exhibit G	Intentionally Omitted	14.3.3
	Exhibit H	Builder’s Risk Insurance	14.3.4
	Exhibit I	Data Protection and Cyber Security Requirements	15.1

»

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

Document	Title	Date	Pages

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

« »

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

State of South Dakota

[Insert Agency Owner]

[Insert Name of Construction Manager]

OWNER (Signature)

« »
« »

(Printed name and title)

(Date)

Recommended By:
The Office of the State Engineer

(Signature) — (Date)

«Stacy Watters, P.E.»
«State Engineer»

(Printed name and title)

Approved as to Form: Office of General
Counsel, Bureau of Human Resources and
Administration

(Signature) (Date)

« »
(Printed name and title)

Reviewed By: [Insert Agency Owner]

(Initials) (Date)

« »
(Printed name and title)

Reviewed By / Required Documents
Received: Office of the State Engineer

(Initials) (Date)

« »
(Printed name and title)

CONSTRUCTION MANAGER (Signature)

« »
« »

(Printed name and title)

(Date)

By: [Insert Construction Manager, as needed]

CONSTRUCTION MANAGER (Signature)

« »
« »

(Printed name and title)

(Date)

Reviewed By: [Insert Construction Manager,
as needed]

(Initials) (Date)

« »
(Printed name and title)

(Initials) (Date)

« »
(Printed name and title)

Reviewed By: [As needed]

(Initials) (Date)

« »
(Printed name and title)

DRAFT AIA® Document A201® - 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

« »
« »
« »

THE OWNER:

(Name, legal status and address)

«State of South Dakota»
«c/o [Agency Name]»
«[Agency Address]»
«[Agency Address Cont.]»
«[Agency Address Cont.]»

THE ARCHITECT:

(Name, legal status and address)

« »
« »
« »
« »
« »

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS

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

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

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

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

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES



INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,

10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,

3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,

9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,

13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and

Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2,

4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4,

9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,

7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,

13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, **9.9.2**, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,

3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,

3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,

9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, **9.9.2**, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,

15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, **11.1.3**, **11.5**

Building Information Models Use and Reliance

1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7,

9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval
13.4.4
Certificates of Insurance
9.10.2
Change Orders
1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3,
7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1,
9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2
Change Orders, Definition of
7.2.1
CHANGES IN THE WORK
2.2.2, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1,
11.5
Claims, Definition of
15.1.1
Claims, Notice of
1.6.2, 15.1.3
CLAIMS AND DISPUTES
3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4
Claims and Timely Assertion of Claims
15.4.1
Claims for Additional Cost
3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**
Claims for Additional Time
3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**
Concealed or Unknown Conditions, Claims for
3.7.4
Claims for Damages
3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3,
11.3.2, 14.2.4, 15.1.7
Claims Subject to Arbitration
15.4.1
Cleaning Up
3.15, 6.3
Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,
6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**
Commencement of the Work, Definition of
8.1.2
Communications
3.9.1, **4.2.4**
Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,
9.10, 12.2, 14.1.2, 15.1.2
COMPLETION, PAYMENTS AND
9
Completion, Substantial
3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1,
9.10.3, 12.2, 15.1.2
Compliance with Laws
2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2,
13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3,
15.2.8, 15.4.2, 15.4.3
Concealed or Unknown Conditions
3.7.4, 4.2.8, 8.3.1, 10.3
Conditions of the Contract
1.1.1, 6.1.1, 6.1.4

Consent, Written
3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2,
15.4.4.2
Consolidation or Joinder
15.4.4
CONSTRUCTION BY OWNER OR BY
SEPARATE CONTRACTORS
1.1.4, **6**
Construction Change Directive, Definition of
7.3.1
Construction Change Directives
1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3,
7.3, 9.3.1.1
Construction Schedules, Contractor's
3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2
Contingent Assignment of Subcontracts
5.4, 14.2.2.2
Continuing Contract Performance
15.1.4
Contract, Definition of
1.1.2
CONTRACT, TERMINATION OR
SUSPENSION OF THE
5.4.1.1, 5.4.2, 11.5, **14**
Contract Administration
3.1.3, 4, 9.4, 9.5
Contract Award and Execution, Conditions Relating
to
3.7.1, 3.10, 5.2, 6.1
Contract Documents, Copies Furnished and Use of
1.5.2, 2.3.6, 5.3
Contract Documents, Definition of
1.1.1
Contract Sum
2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4,
9.1, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2,
12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**
Contract Sum, Definition of
9.1
Contract Time
1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5,
7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1,
8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2,
14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5
Contract Time, Definition of
8.1.1
CONTRACTOR
3
Contractor, Definition of
3.1, **6.1.2**
Contractor's Construction and Submittal
Schedules
3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2
Contractor's Employees
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6,
10.2, 10.3, 11.3, 14.1, 14.2.1.1
Contractor's Liability Insurance
11.1

Contractor's Relationship with Separate Contractors and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4
Contractor's Relationship with the Architect
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the Work
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
2.2.2, 9.7
Contractor's Right to Terminate the Contract
14.1
Contractor's Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.3.6, 3.11
Copyrights
1.5, **3.17**
Correction of Work
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1
Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.4
Costs
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14
Cutting and Patching
3.14, 6.2.5
Damage to Construction of Owner or Separate Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7

Damages for Delay
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2
Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2
Decisions to Withhold Certification
9.4.1, **9.5**, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance, Rejection and Correction of
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1
Delays and Extensions of Time
3.2, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, **9.5.1**, **9.7**, 10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5
Digital Data Use and Transmission
1.7
Disputes
6.3, 7.3.9, 15.1, 15.2
Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2
Emergencies
10.4, 14.1.1.2, **15.1.5**
Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1
Equipment, Labor, or Materials
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4
Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.6, **15.2.5**
Failure of Payment
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2
Faulty Work
(See Defective or Nonconforming Work)
Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's

2.2.1, 13.2.2, 14.1.1.4

GENERAL PROVISIONS

1

Governing Law

13.1

Guarantees (See Warranty)

Hazardous Materials and Substances

10.2.4, **10.3**

Identification of Subcontractors and Suppliers

5.2.1

Indemnification

3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

Information and Services Required of the Owner

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,

9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,

14.1.1.4, 14.1.4, 15.1.4

Initial Decision

15.2

Initial Decision Maker, Definition of

1.1.8

Initial Decision Maker, Decisions

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property

10.2.8, 10.4

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,

9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of

1.1.7

Insurance

6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5,

11

Insurance, Notice of Cancellation or Expiration

11.1.4, 11.2.3

Insurance, Contractor's Liability

11.1

Insurance, Effective Date of

8.2.2, 14.4.2

Insurance, Owner's Liability

11.2

Insurance, Property

10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials

9.3.2

INSURANCE AND BONDS

11

Insurance Companies, Consent to Partial Occupancy

9.9.1

Insured loss, Adjustment and Settlement of

11.5

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest

13.5

Interpretation

1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12

Judgment on Final Award

15.4.2

Labor and Materials, Equipment

1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,

5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,

10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,

9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,

15.4

Liens

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability

3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,

4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,

11.3, 12.2.5, 13.3.1

Limitations of Time

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,

5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,

9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,

15.1.2, 15.1.3, 15.1.5

Materials, Hazardous

10.2.4, **10.3**

Materials, Labor, Equipment and

1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,

5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,

10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and

Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Mediation

8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1,

15.4.1.1

Minor Changes in the Work

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, **7.4**

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7,

10.3.2

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4,
12.2

Notice

1.6, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4,
3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4,
8.2.2 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1,
13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5,
15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance
11.1.4, 11.2.3

Notice of Claims

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5,
15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections
13.4.1, 13.4.2

Observations, Contractor's
3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2,
14.3.1

OWNER

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements
2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5,
9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1,
13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2,
4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1,
7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2,
10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4,
15.2.7

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

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

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

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

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12,
5.3

Partial Occupancy or Use

9.6.6, **9.9**

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1,
14.2.3, 14.2.4, 14.4.3

Payment, Certificates for

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1,
9.10.3, 14.1.1.3, 14.2.4

Payment, Failure of

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Payments, Progress

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Permits, Fees, Notices and Compliance with Laws

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, **3.12**, 4.2.7

Progress and Completion

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

Progress Payments

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

Project, Definition of

1.1.4

Project Representatives

4.2.10

Property Insurance

10.2.5, **11.2**

Proposal Requirements

1.1.1

PROTECTION OF PERSONS AND PROPERTY

10

Regulations and Laws
1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,
10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8,
15.4
Rejection of Work
4.2.6, 12.2.1
Releases and Waivers of Liens
9.3.1, 9.10.2
Representations
3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1
Representatives
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1
Responsibility for Those Performing the Work
3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10
Retainage
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
**Review of Contract Documents and Field
Conditions by Contractor**
3.2, 3.12.7, 6.1.3
Review of Contractor's Submittals by Owner and
Architect
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and
Samples by Contractor
3.12
Rights and Remedies
1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,
6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,
12.2.4, 13.3, 14, 15.4
Royalties, Patents and Copyrights
3.17
Rules and Notices for Arbitration
15.4.1
Safety of Persons and Property
10.2, 10.4
Safety Precautions and Programs
3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4
Samples, Definition of
3.12.3
Samples, Shop Drawings, Product Data and
3.11, 3.12, 4.2.7
Samples at the Site, Documents and
3.11
Schedule of Values
9.2, 9.3.1
Schedules, Construction
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2
Separate Contracts and Contractors
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2
Separate Contractors, Definition of
6.1.1
Shop Drawings, Definition of
3.12.1
Shop Drawings, Product Data and Samples
3.11, 3.12, 4.2.7
Site, Use of
3.13, 6.1.1, 6.2.1

Site Inspections
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4
Site Visits, Architect's
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4
Special Inspections and Testing
4.2.6, 12.2.1, 13.4
Specifications, Definition of
1.1.6
Specifications
1.1.1, 1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14
Statute of Limitations
15.1.2, 15.4.1.1
Stopping the Work
2.2.2, 2.4, 9.7, 10.3, 14.1
Stored Materials
6.2.1, 9.3.2, 10.2.1.2, 10.2.4
Subcontractor, Definition of
5.1.1
SUBCONTRACTORS
5
Subcontractors, Work by
1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4,
9.3.1.2, 9.6.7
Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1
Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3,
9.8, 9.9.1, 9.10.2, 9.10.3
Submittal Schedule
3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
6.1.1, 11.3
Substances, Hazardous
10.3
Substantial Completion
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3,
12.2, 15.1.2
Substantial Completion, Definition of
9.8.1
Substitution of Subcontractors
5.2.3, 5.2.4
Substitution of Architect
2.3.3
Substitutions of Materials
3.4.2, 3.5, 7.3.8
Sub-subcontractor, Definition of
5.1.2
Subsurface Conditions
3.7.4
Successors and Assigns
13.2
Superintendent
3.9, 10.2.6
Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4,
7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

Surety

5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

Surety, Consent of

9.8.5, 9.10.2, 9.10.3

Surveys

1.1.7, 2.3.4

Suspension by the Owner for Convenience

14.3

Suspension of the Work

3.7.5, 5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 14

Taxes

3.6, 3.8.2.1, 7.3.4.4

Termination by the Contractor

14.1, 15.1.7

Termination by the Owner for Cause

5.4.1.1, 14.2, 15.1.7

Termination by the Owner for Convenience

14.4

Termination of the Architect

2.3.3

Termination of the Contractor Employment

14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, 13.4

TIME

8

Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

Time Limits on Claims

3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work

9.3.2, 9.3.3

UNCOVERING AND CORRECTION OF WORK

12

Uncovering of Work

12.1

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 9.1.2

Use of Documents

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.3.2

Waiver of Claims by the Contractor

9.10.5, 13.3.2, 15.1.7

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, 15.1.7

Waiver of Consequential Damages

14.2.4, 15.1.7

Waiver of Liens

9.3, 9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, 11.3

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2

Weather Delays

8.3, 15.1.6.2

Work, Definition of

1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

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. To the extent the Contract Documents conflict, the following will be the order of priority for the purposes of construing them (a lower numbered document will control a higher numbered document in the event of conflict): (1) the Modification; (2) the Agreement; (3) the Supplementary Conditions; (4) these General Conditions; (5) Assumptions and Clarifications; (6) Technical Specifications; (7) Drawings; (8) Shop Drawings.

§ 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, the Owner, and the Contractor shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's, the Owner's, and the Contractor'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 Intentionally Omitted.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The Contract Documents 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.

§ 1.2.4 The Contract Documents must be construed neutrally and not against either the Owner or the Contractor. The Contract Documents must not be construed against the Contractor as the drafter.

§ 1.2.5 Neither the Owner nor the Architect assumes any liability arising out of jurisdictional issues raised or claims advanced by trade organizations or other interested parties based on the arrangement or manner of subdivision of the content of the Specifications and Drawings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined herein or in the Agreement, (2) the titles of numbered articles herein or in the Agreement, 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.

§ 1.4.1 A typical or representative detail indicated on the Drawings shall constitute the standard for workmanship and material throughout corresponding parts of the Work. Where necessary, and where reasonably inferable from the Construction Documents, the Contractor shall adapt such representative detail for application to such corresponding parts of the Work. The details of such adaptation shall be subject to prior approval by the Architect. Repetitive features shown in outline on the Drawings shall be in exact accordance with corresponding features completely shown.

§ 1.4.2 The layout of mechanical and electrical systems, equipment, fixtures, piping, ductwork, conduit, specialty items, and accessories indicated on the Drawings is diagrammatic, and all variations in alignment, elevation, and detail required to avoid interferences and satisfy architectural and structural limitations are not necessarily shown. Actual layout of the Work shall be carried out without affecting the architectural, engineering and structural integrity and limitations of the Work and shall be performed in such sequence and manner as to avoid conflicts, provide clear access to all control points, including valves, strainers, control devices, and specialty items of every nature related to such systems and equipment, obtain maximum headroom, and provide adequate clearances as required for operation and maintenance.

§ 1.4.3 The Drawings shall not be scaled for dimensions. If figured dimensions are not given on the Drawings, the Contractor shall request the same from the Architect giving reasonable advance notice.

§ 1.4.4 All indications or notations which apply to one of a number of similar situations, materials, or processes shall be deemed to apply to all such situations, materials, or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

§ 1.4.5 Where codes, standards, requirements, and publications or public and private trade associations or other bodies are referred to in the Specifications, references thereto shall be understood to be in the latest revision prior to the date of receiving bids, except where otherwise indicated.

§ 1.4.6 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with the quality of the surrounding Work, of the construction of the Project generally, and industry standards.

§ 1.4.7 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents. A copy of the manufacturer's written or printed directions shall be provided to the Owner upon completion of the project.

§ 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.

§ 1.5.3 Any plans, specifications, engineering calculations, technical data, reports, miscellaneous drawings, and all information contained therein provided by the Owner, its consultants, employees, Separate Contractors and agents to the Contractor for the Contractor's performance of its obligations under the Agreement are the property of the Owner. They are to be used only with respect to this Project and are not to be used for any other project. The Contractor may not disseminate these materials to any person or entity, nor may the Contractor use these materials for purposes other than work for the Owner, without the express written approval of the Owner. The Owner shall not unreasonably withhold such approval for dissemination to Subcontractors and suppliers of these materials as necessary.

§ 1.5.4 All reports, plans, specifications, engineering calculations, technical data, miscellaneous drawings, and information contained therein provided to or prepared by the Contractor, its owners, officers, employees, agents, consultants, suppliers, Subcontractors, and Sub-subcontractors in connection with the Contractor's performance under this Agreement are confidential and the Contractor, its owners, officers, employees, agents, consultants, suppliers, Subcontractors, and Sub-subcontractors shall not disclose this information to any person, individual, or entity without the express written permission of the Owner.

§ 1.5.5 All documents covered by Section 1.5.3 and 1.5.4 shall be delivered to the Architect at the completion of the Work. The Contractor may not retain any such documents for its own use without the express written permission of the Owner and any documents that are retained, with or without the Owner's permission, shall be subject to all of the requirements of Sections 1.5.3 – 1.5.5.

§ 1.5.6 The Contractor shall include the requirements of Sections 1.5.3 – 1.5.5 in any contract of any tier it enters into with any consultants, Subcontractors, suppliers, persons, individuals, or entities for the performance of any of the Contractor's obligations under the Contract.

§ 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 overnight delivery courier, or by electronic transmission (email).

§ 1.6.2 Intentionally Omitted.

§ 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. Unless the parties mutually agree otherwise, 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 a written agreement between the parties or, in the absence of any such agreement, AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, or its equivalent as set forth in the Agreement, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, or its equivalent as set forth in the Agreement, 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 to the extent allowed by South Dakota law.

§ 2.1.3 Information and Services Required of the Owner.

§ 2.1.3.1 The Owner shall furnish a survey describing the legal limitations and utility locations for the Project site.

§ 2.1.3.2 The Owner shall secure necessary easements and other property rights required for the construction of the Project.

§ 2.1.3.3 Information under the Owner's control shall be furnished by the Owner with reasonable promptness after receipt from the Contractor of a written request for such information.

§ 2.1.3.4 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, with electronic copies of the Drawings and Specifications necessary for the execution of the Work.

§ 2.1.3.5 The Owner may forward to the Contractor instructions through the Architect or give instructions through the Office of the State Engineer.

§ 2.1.3.6 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work by the Owner or by the Owner's Separate Contractors.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Notwithstanding any other provision of the Contract documents, 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 through the appropriation of funds by the South Dakota Legislature to fund the Owner's Budget for the Project. 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, and the Contract Sum shall be equitably adjusted. If the Contractor, Architect, and Owner do not agree upon the adjustments, then the Contractor or Owner may file a claim under Article 15.

§ 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 and fully fund the Owner's Budget for the Project only if a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence as described in § 2.2.1, within seven 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. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended, and the Contract Sum shall be adjusted, appropriately. The adjustment to the Contract Sum shall include 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 Intentionally Omitted.

§ 2.2.4 Intentionally Omitted.

§ 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 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 in any material respect and fails within ten calendar days after receipt of written notice from the Owner or in such time as may be established in written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, or if the Work is not being performed properly or in accordance with the scheduling provisions of the Contract Documents in any material respect, whether or not the Contractor is in default, the Owner may, after the expiration of such notice period and without prejudice to any other remedy the Owner may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's and State Engineer's additional services made necessary by such default, neglect, or failure. If the

payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner upon demand. If, in the sole judgment of the Owner, an emergency exists as a result of the Contractor's default, neglect, or failure to correct defective Work, which in the Owner's opinion, requires more immediate corrective action than the Contractor is able to provide, then the Owner may, without notice to the Contractor, perform such corrective work or cause it to be performed by others. The Owner shall also have the right to carry out the Work, or any part thereof, during the period of any Work stoppage without terminating the Contract. If the Owner wishes to exercise this right, it will give the Contractor ten days' notice of its intent to do so. In any such case, an appropriate deductive Change Order shall be issued in accordance with Article 7, the amount of which shall not exceed an amount which equals the estimated direct cost, plus the Architect's and State Engineer's fees, of performing the Work which the Owner elects to perform and the proportionate amount of the Construction Manager's fee associated therewith.

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. However, if the Architect fails to timely administer the Contract, or if tests, inspections, or approvals are required or performed in a manner which is not timely and causes a delay in the Contractor's performance of the Work, Contractor will be entitled to an increase in the Contract Sum and an extension of the Contract Time.

§ 3.1.4 The Contractor shall retain a competent Registered Professional Engineer or Registered Land Surveyor, acceptable to the Owner and the Architect, who shall establish the exterior lines and required elevations of all buildings and structures to be erected on the Project site, and shall establish sufficient lines and grades for the construction of associated Work such as, but not limited to, roads, utilities and site grading. The Engineer or Land Surveyor shall certify as to the actual location of the constructed facilities in relation to property lines, building lines, easements, and other restrictive boundaries.

§ 3.1.5 The Contractor shall establish the building grades, lines, levels, columns, walls, and partition lines required by the various Subcontractors and Sub-subcontractors in laying out their Work.

§ 3.1.6 The Contractor shall coordinate and supervise the Work performed by Subcontractors and Sub-subcontractors to the end that the Work is carried out without conflict between trades or jurisdictional disputes and so no Subcontractor or Sub-subcontractors, at any time, causes delay to the general progress of the Work.

§ 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. The Contractor's failure to do so will cause any additional cost incurred by the Contractor to be its sole responsibility. The Contractor shall number Requests for Information in consecutive order. The Contractor shall maintain a log of each Request for Information

indicating the date it was issued, the date or dates of any correspondence and/or discussions on the Request for Information, and the date a final answer is received. 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 and the Owner 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 within seven days of its receipt of the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. If the Architect objects to the Contractor's proposed alternative, Contractor will be entitled to stop the Work until such means, methods, techniques, sequences or procedures are agreed upon by the Architect and the Contractor. In this event, the Contract Time shall be extended appropriately, and the Contract Sum shall be increased appropriately.

§ 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 as set forth in Section 3.18.1.

§ 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. The word "provide" shall mean furnish and complete installation, including connections, unless otherwise specified. All connection charges, assessments or inspection fees which may be imposed by any public agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility, except the final water and sewer connection charges which shall be paid by the Owner.

§ 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.

§ 3.4.2.1 The products, materials and equipment of manufacturers referred to in the Specifications and on the Drawings are intended to establish the standard of quality and design required by the Architect; however, products, materials, and equipment manufacturers, other than those specified, may be used, if equivalent and approved in writing by the Architect.

§ 3.4.2.2 It is deemed that the term “or approved equal” is included after all products, materials, and equipment referred to in the Specifications or on the Drawings.

§ 3.4.2.3 The Owner in consultation with the Architect will be the sole judge of equivalency of proposed substitute products, materials, and equipment. The Architect will make written recommendation of acceptance or rejection to the Owner. The Owner will then authorize the Architect to issue to the Contractor written approval or rejection of the substitution.

§ 3.4.2.4 If the Contractor desires to use a substitute item, the Contractor shall make application to the Architect in writing in sufficient time (having regard to the progress of the Work, the period of delivery of the goods concerned and adequate time for the Owner's and Architect's review) stating and fully identifying the proposed substitute, cost changes (if any), and submitting substantiating data, sample, brochures, etc. of item proposed. It is the Contractor's responsibility to provide sufficient evidence by tests or other means to support any request for approval of substitution.

§ 3.4.2.5 Prior to proposing any substitute item, the Contractor shall satisfy itself the item the Contractor proposes is, in fact, equal to that specified, it will fit into the space allocated, it affords comparable ease of operation, maintenance, and service, its appearance, longevity, and suitability for the climate and use are comparable to that specified, and the substitution is in the Owner's best interest.

§ 3.4.2.6 The burden of proof a proposed substitution is equal to a specified item shall be upon the Contractor, who shall support its request with sufficient test data and other means to permit the State Engineer and Architect to make a fair and equitable decision on the merits of the proposal. Any item by a manufacturer other than those cited in the Contract Documents, or of brand name or model number or of generic species other than those cited in the Contract Documents will be considered a substitution.

§ 3.4.2.7 Materials and methods proposed as substitutions for specified items shall be supported by certification of their acceptance for use by an authority or by a person or persons having jurisdiction over the use of the specified material or method.

§ 3.4.2.8 Acceptance of substitutions shall not relieve the Contractor from responsibility for compliance with all the requirements of the Construction Documents. The Contractor shall be responsible at its own expense for any changes in other parts of the Work of the Contractor or the Owner or the Owner's Separate Contractors caused by substitutions, including cost of all design and redesign services related thereto incurred by the Architect and the Contractor's consultants.

§ 3.4.2.9 The Contract Time shall be extended, and the Contract Sum will be equitably adjusted, but only in the event the substitution is approved by the Owner, and the extension of the Contract Time and the adjustment of the Contract Sum are included with the request and approved by the Owner. No later request by the Contractor for an extension of the Contract Time or adjustment in the Contract Sum will be allowed.

§ 3.4.2.10 All costs for the evaluation of substitutions proposed by the Contractor or subcontractor at any tier, whether approved or not, shall be borne by the proposer.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall take, and shall require each subcontractor to take, all steps reasonably necessary to avoid labor disputes or stoppages.

§ 3.4.4 Except in the event of an emergency, no substantial field operations shall be performed outside of regular working hours without the prior notification of the Architect and the Owner. The Contractor will not be entitled to additional compensation for Work performed outside of regular working hours, except as otherwise expressly agreed

in writing by the Owner prior to the performance of such overtime Work. Additional compensation for such authorized overtime shall be limited to the direct cost of the premium portion only of such authorized overtime. No additional indirect costs or fees shall be included.

§ 3.4.5 All materials and equipment shall be delivered, handled, stored, installed, and protected to prevent damage in accordance with best current practice in the industry, in accordance with manufacturers' specifications and recommendations, and in accordance with the Contract Document requirements. The Contractor must store packaged materials and equipment in their original and sealed containers, marked with the brand and manufacturer's name, until ready for use, and deliver materials and equipment in ample time to facilitate inspections and tests prior to installation. The term "delivery" in reference to any item specified or indicated, means the unloading and storing with proper protection at the Project site. Damaged materials or equipment will be rejected and removed from the Project site by the Contractor.

§ 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.

§ 3.5.3 Where the Contract Documents provide for equipment and material warranties in addition to the Contractor's warranty contained in Section 3.5.1, such warranties shall at a minimum:

§ 3.5.3.1 Provide the term of the warranty shall start on the date of Substantial Completion of the Project or the date the Owner takes beneficial occupancy of any portion of the Project that requires the use or start-up of the warranted equipment or materials, whichever date occurs first;

§ 3.5.3.2 Provide for complete repair or replacement of defective equipment or materials;

§ 3.5.3.3 Provide all materials, shipping, and labor necessary to repair or replace defective equipment or materials at no expense to the Owner;

§ 3.5.3.4 Provide any replacement parts used in repairing or replacing defective equipment or materials shall be new or in a like-new condition;

§ 3.5.3.5 Provide for the complete repair or replacement of defective equipment or materials within 14 days after receiving written notice of the defect; provided, however, the Owner may, at its sole discretion, grant an extension of time for good cause shown;

§ 3.5.3.6 Provide for no limitation of liability should the Contractor and/or manufacturer fail to repair or replace defective equipment or materials within the time specified in Section 3.5.3.5 or should the remedy of repair or replacement otherwise fail;

§ 3.5.3.7 Be construed under South Dakota law; and

§ 3.5.3.8 Provide any legal action brought on the warranty shall be brought only in Circuit Court, Hughes County, South Dakota.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use, excise, 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. The Owner does not require inspection and license fees be paid to a municipality or county for Work performed on the Owner's property (State property).

§ 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. The Contractor shall indemnify the Owner and the Architect against all costs, fines, and damages, and all actions, claims, and proceedings, due to its failure to do so.

§ 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 It is not the responsibility of the Contractor to make certain the Construction Documents are in accordance with applicable laws, statutes, building codes, and regulations. If the Contractor observes that any of the Construction Documents are at variance therewith in any respect, the Contractor shall promptly notify the Owner and the Architect in writing, and any necessary changes shall be accomplished by appropriate modification to the Construction Documents.

§ 3.7.5 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.

§ 3.7.6 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, at the times required in the Agreement, 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 as required in the Agreement 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, (2) allow the Architect reasonable time to review submittals, and (3) include deadlines for the Architect's review and response to the Contractor's 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. If the Architect fails to timely respond to the Contractor's submittals, the Contractor will be entitled to an increase in the Contract Sum and an extension of the Contract Time based on the excess time it took for the Architect to complete its duties and based upon any increased costs incurred by the Contractor including the reasonable costs of shutdown, delay, and start-up, plus interest as provided in the Contract Documents. The Contractor may incorporate the submittal schedule into the Construction Critical Path Method (CPM) schedule or submit for the Architect's approval just the submittal portion of the schedule.

§ 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 and included in the Project Schedule 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 Intentionally Omitted.

§ 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 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 3.12.10.1, 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; provided, however, the Architect will promptly correct any errors, inconsistencies, or omissions discovered by or made known to the Architect. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify the portion of the Work to be performed pursuant to the Contractor's design professional's services 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 reasonably specified by the Architect.

§ 3.12.11 The Contractor shall submit to the Architect for review a schedule for the submittal of Shop Drawings, Project Data, Samples, and other submittals. The Contractor shall review, approve, and submit to the Architect, with reasonable promptness and in such sequence as to cause no delay in the Work or in the services of the Architect or any Separate Contractor, all Shop Drawings, Data, Samples, and other submittals required by the Contract Documents, in accordance with the schedule approved by the Architect.

§ 3.12.11.1 The Architect reserves the right to review Shop Drawings, Product Data, Samples, and other submittals in a sequence consistent with the sequence of erection, installation, and assembly of the various elements of the Work.

§ 3.12.11.2 The Contractor's identification of Shop Drawings, Product Data, Samples, and other submittals shall include verification of information required in Section 3.12.17 and Section 3.12.17.2.

§ 3.12.11.3 No extension of time will be granted, nor will any consideration be given to claims arising out of the Contractor's failure to submit any Shop Drawings, Product Data, Samples, or other submittals according to the submittal schedule or otherwise in a manner which does not allow adequate lead time for the Architect's review, or does not allow ample time for revision, resubmission, and subsequent review by the Architect as required.

§ 3.12.11.4 In the interest of coordination and expediting the Work in critical areas, i.e., wall system bracing, mechanical/electrical systems, the Contractor and its Subcontractors shall perform clash detection utilizing Building Information Models.

§ 3.12.12 By submitting Shop Drawings, Product Data, Samples, and other submittals, the Contractor represents the Contractor has determined and verified all materials, field measurements, and field construction criteria related thereto, checked the Shop Drawings, Product Data, Samples, and other submittals for complete dimensional accuracy; the Contractor has checked to insure that Work contiguous with and having bearing on the Work shown on the Shop Drawings is accurately and clearly shown; and the Contractor has checked and coordinated the information contained within such submittals with the requirements of the Contract Documents.

§ 3.12.12.1 Any Shop Drawing, Product Data, Samples, or other submittals submitted without the Contractor's approval will not be processed for review by the Architect, but will be returned to the Contractor for the Contractor's compliance with the above procedures, in which event it will be deemed the Contractor has not complied with the provisions herein specified, and the Contractor shall bear the risk of all delays as if no Shop Drawing, Product Data, Sample, or other submittal had been submitted.

§ 3.12.12.2 Shop Drawings shall bear a coordination and approval stamp signed by the Contractor and each contiguous Subcontractor, and Sub-subcontractor, which shall confirm the representations set forth in this Section 13.12.13. Shop Drawings shall bear the seal of a registered professional engineer or the Architect when required by the Specifications or applicable laws.

§ 3.12.13 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Construction Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or other submittals under section 4.2.7 and Section 3.12.17 unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submission and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data, Samples, or other submittals by the Architect's approval thereof. Any deviation shall also be indicated on such Shop Drawing, Product Data, Sample, or other submittal by circling or other approved means.

§ 3.12.14 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or other submittals to revisions other than those requested by the Architect on previous submittals. Unless such written notice has been given, the Architect's Action (as defined in Section 3.12.18.1) on a resubmitted Shop Drawing, Product Data, Sample, or other submittal shall not constitute Review and Action of any changes not requested on the prior submittal.

§ 3.12.15 No portion of the Work requiring submission of a Shop Drawing, Product Data, Sample, or other submittal shall be commenced until the submittal has been approved by the Architect as provided in Section 3.12.17. All such portions of the Work shall be in accordance with approved submittals.

§ 3.12.15.1 No Shop Drawing, Product Data, Sample, or other submittal shall be issued to the field without the Architect's Action stamp affixed thereto.

§ 3.12.16 Shop Drawing, Product Data, and Other Submittals Procedures

§ 3.12.16.1 Shop Drawing Requirements: Shop Drawings and other submittals shall show design, materials (kind, thickness and finish), dimensions, connections, rough openings, routing details, and other details necessary to insure they accurately interpret the Drawings and Specifications and also show adjoining Work in such detail as required to provide proper connection with the same. Shop Drawings and other submittals shall be numbered consecutively and insofar as possible shall be uniform in size.

§ 3.12.16.2 Identification: All Shop Drawing, Product Data, and other submittals shall be identified with the name of the Project, Project Number, building or buildings for which the Shop Drawings, Product Data, and other submittals are being submitted, and shall contain the Architect's name, Contractor's name, Subcontractor's name, Sub-subcontractor's name, date of submittal, drawing number, revision, if any, as well as the Specification section under which the Work is to be performed and the Drawing and detail numbers that relate to the Shop Drawings, Product Date, and other submittals.

§ 3.12.16.3 Transmittals: All Shop Drawings, Product Data, and other submittals shall be accompanied by a letter of transmittal from the Contractor setting forth the same identification information as required above under Section 3.12.16.2. The Contractor shall number transmittals consecutively in sequence with the sample transmittals and shall indicate the Submittal Procedure number being followed. The transmittal shall also indicate if Shop Drawing is a resubmittal and note the Architect's file number for the original submittal.

§ 3.12.16.4 Submittal Procedures: The Contractor shall submit to the Architect copies of Shop Drawings, Product Data, and other submittals in accordance with the Submittal Procedures listed below.

§ 3.12.16.4.1 Shop Drawings, Product Data, and other submittals shall be sent by the Contractor to the Architect's employees and consultants as designated by the Architect.

§ 3.12.16.4.2 Shop Drawings, Product Data, and other submittals can be sent via an electronic method (email or other electronic platform). The Contractor, the Architect, and the Owner shall agree on the submittal method (email, other electronic platform, etc.).

§ 3.12.16.4.3 Shop Drawings, Product Data, and other submittals shall be clearly legible and physical product samples shall be provided whenever necessary.

§ 3.12.17 Architect's Distribution & Stamp: Following the Architect's review of each Shop Drawing, Product Data, and other submittals submission, the Architect will retain a copy of the submittal for the Architect's records, as well as return copies of the Shop Drawings, Product Data, and other submittals to the Contractor and to the Owner with the Architect's stamp and signature affixed thereto, annotated as follows:

§ 3.12.17.1 "A Action": "A Action" means the submission is in general conformance with the design concept. Construction, fabrication, and/or manufacture can proceed subject to the provision the Work shall be in accordance with the requirements of the Construction Documents. Final acceptance of the Work shall be contingent upon such compliance.

§ 3.12.17.2 "B Action": "B Action" means the submission is in general conformance with the design concept, subject to notations by the Architect on the returned Shop Drawings, Product Data, or other submittals. Construction, fabrication, and/or manufacture can proceed, subject to the provision the Work shall be carried out in compliance with all annotations and/or corrections indicated on the returned Shop Drawings, Product Data, or other submittals and in accordance with the requirements of the Construction Documents. Final acceptance of the Work shall be contingent upon such compliance.

§ 3.12.17.3 "C Action": "C Action" means the Contractor shall revise and resubmit the Shop Drawings, Product Data, or other submittals in accordance with all annotations and/or corrections indicated therein. Construction, fabrication and/or manufacture cannot proceed. Shop Drawings, Product Data, or other submittals bearing a "C Action" stamp shall not be permitted on the Project Site.

§ 3.12.17.4 "D Action": "D Action" means the submission is rejected for nonconformance with the design concept, and the Contractor shall make a new submittal which shall comply with the requirements of the Construction Documents. Construction, fabrication, and/or manufacture cannot proceed. Shop Drawings, Product Data, or other submittals bearing a "D Action" stamp shall not be permitted on the Project Site.

§ 3.12.18 Contractor's Distribution: When transparencies are returned "A Action" or "B Action", the Contractor shall obtain and provide such number of prints to the Subcontractor as may be required by the Subcontractor for the Subcontractor's distribution to Sub-subcontractors. The Contractor shall have copies of all "A Action" or "B Action" Shop Drawings, Product Data, or other submittals at the Project Site at all times and shall make them available to the Architect's representatives.

§ 3.12.19 Cost of Submittal and Distribution: All charges in connection with the delivery to the Architect of Shop Drawings, Product Data, or other submittals shall be paid by the Contractor. All charges in connection with the distribution to the Contractor of Shop Drawings, Product Data, or other submittals shall be paid by the Contractor.

§ 3.12.20 Samples

§ 3.12.20.1 Samples Procedures

§ 3.12.20.1.1 Sample Requirements: Where possible, all samples required for a particular Specification Section shall be submitted together.

§ 3.12.20.1.2 Samples shall be submitted from the same source which will supply the actual job. Samples shall be of adequate size to show quality, type, color, range, finish, texture, and other specified characteristics.

§ 3.12.20.1.3 Samples of materials or products which are normally furnished in containers or packages, which bear descriptive labels and/or application or installation instructions, shall be submitted with such labels and/or instructions.

§ 3.12.20.2 Identification: All Samples shall be labeled, tagged, or otherwise clearly identified. Labels or tags shall set forth the name of the Project, the project number, buildings for which the Sample is being submitted, Architect, Contractor, Subcontractor, and/or supplier, the name of the manufacturer, fabricator, or processor, the trade designation, grade and quality of the material or product, the date of submittal, and specific identification of each sample and a precise reference to the Specification Article and Sub Article wherein the material, product, or element of the Work is specified. Each label or tag shall have sufficient clear space to permit the application of the approval stamp of the Contractor and the action stamp of the Architect.

§ 3.12.20.3 Transmittals: All Samples shall be accompanied by a letter of transmittal from the Contractor setting forth the same identification information as required above under Section 3.12.12.2. The Contractor shall number transmittals consecutively in sequence with the Shop Drawings and Product Data transmittals. Where appropriate, test data and/or manufacturers' certificates shall be referenced in and forwarded with the letter of transmittal. Samples without accompanying certificates or test data will be returned without action.

§ 3.12.20.4 Submittal Procedure: The Contractor shall submit the number of Samples as indicated below:

§ 3.12.20.4.1 The parties acknowledge variations in texture, graining, color, or other characteristics may be anticipated in furnished materials, assemblies, or elements of the Work, and Contractor shall endeavor to provide a sufficient number of Samples of such materials or products to indicate the full range of characteristics which will be present in the materials or products proposed for the Work. Any such materials or products delivered or erected prior to approval shall be subject to rejection.

§ 3.12.20.4.2 All Samples shall be submitted in triplicate to the Architect's home office, or where directed by the Architect, except as otherwise set forth in other Sections of the Contract Documents.

§ 3.12.20.5 The Architect's Distribution & Stamp: Following the Architect's review of each Sample submission, the Architect will return one set of each submission to the Contractor with the Architect's stamp and signature affixed thereto and annotated in a manner conforming to the convention established in Section 3.12.17.

§ 3.12.20.6 Contractor's Distribution: When Samples are returned 'Action A' or 'Action B', the Contractor shall retain such Samples in a suitable place at the Project site for use by the Contractor, Subcontractors, Sub-subcontractors, the Architect and the Architect's authorized representatives to ensure all Work is being installed in accordance with the Samples. The remaining Samples will be retained by the Architect.

§ 3.12.20.7 Cost of Submittal and Distribution: All charges in connection with the delivery of Samples to the Architect's home office or where directed by the Architect (and all charges in connection with the subsequent distribution thereof by the Architect) shall be paid by the Contractor.

§ 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. In the event the Contractor is not hired to complete the interior finishes for various portions of the Project, the Contractor will be the party responsible for determining where, if any space is available, Separate Contractors completing the interior finishes may lay down materials and equipment.

§ 3.13.1 Notwithstanding the designation of construction limits or the indication of temporary fences or barricades, the provisions of the Contract Documents governing certain portions or phases of the Work may require certain operations be carried out beyond such designated limits. Trenching, utility work, site development, landscaping, and all other Work, if required beyond such designated limits, shall be scheduled in such a manner as to cause or occasion a minimum of inconvenience or disturbance or interference with the normal operation of the Owner, abutters, and the public. The Contractor shall obtain the Owner's prior approval for such operations, prosecute such operations expeditiously, and restore the affected area and other areas needed for access to their original condition immediately upon completion of such operations, unless otherwise specified herein.

§ 3.13.2 All operations, including pumping, draining, and control of surface and ground water shall be carried out so as to avoid endangering the Work of any adjacent facility or property, or interrupting, restricting, or otherwise infringing or interfering with the use thereof.

§ 3.13.3 The Contractor shall confine operations at the Project site to work related activities. The Contractor shall not use the Project site for lodging or as a personal residence.

§ 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. The Contractor shall restore all areas requiring cutting, fitting, or patching 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.

§ 3.14.3 Structural elements of the Work shall not be cut, patched, or otherwise altered or repaired without written authorization by the Architect.

§ 3.14.4 Authorization to proceed with remedial operations for any damaged or defective element or portion of the Work shall not constitute a limitation or a waiver of the Architect's or the Owner's right to require the removal and replacement of any Work which fails to fulfill the requirements of the Contract Documents.

§ 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. The Contractor shall provide facilities for such access so the Architect may perform the Architect's functions under the Contract Documents. The Owner reserves the right of access to any part of the Work, at any time, for the purpose of observation, or testing, or to install other work, either with its own forces or with Owner's Separate Contractors. Such access is not to be construed to mean partial occupancy by the Owner, and no claim for additional compensation by the Contractor because of such access or installation of such work will be considered. The Contractor shall cooperate with the Owner during Owner's or the Owner's Separate Contractor's access or performance of work.

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents, officers, 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 or malicious 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. In defending the Owner and its agents, officers, and employees, the Contractor will engage other professionals including, but not limited to, legal counsel, which professionals are subject to the Owner's approvals, which approvals will not be unreasonably withheld. 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. The obligations of the Contractor under this indemnification obligation will apply to all matters except those arising from the negligence or the malicious acts or omissions of the Owner, the Architect or the Owner's Separate Contractors. Further, the

obligation of the Contractor under this indemnification provision will not extend to the liability of the Architect, its consultants, agents, or employees arising out of (1) the preparation or approval of maps, Drawings, opinions, reports, surveys, Change Orders, designs or Specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, its consultants, agents or employees, provided such giving or failure to give is the primary cause of the injury or damage.

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

§ 3.18.3 The Contractor agrees to defend, indemnify, and save the Owner, and Architect, or any of its consultants, and their respective successors, agents, or employees harmless from all costs, liabilities, damages or expenses, including reasonable attorneys' fees, incurred by them, by virtue of any claim or claims whatsoever filed by any Subcontractor, Sub-subcontractor, mechanic, laborer, or material supplier making claims arising from the Work by, through, or under the Contractor for which payment has been made by the Owner to the Contractor. The Contractor also hereby agrees to defend, indemnify, and hold harmless, protect, and defend the Owner, the Architect and the Architect's consultants, and their respective successors, agents, or employees from and against any liability, claim, judgment, loss, damage, attorneys' fees, court costs, and expenses of collection, occasioned in whole or in part by the failure of the Contractor, its Subcontractor, or Sub-subcontractors to comply with any of the terms or provisions of the Contract Documents.

§ 3.18.4 Indemnification of Intangible Property

The Contractor will defend, indemnify, and hold harmless the Owner, the Architect and the Architect's consultants, and their respective successors, agents, and employees (each an "Indemnitee") from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees and the cost of enforcing any right to indemnification arising out of or resulting from any loss of, loss of use of, damage to, corruption of, and inability to access or inability to manipulate Electronic Data. Notwithstanding the foregoing, Contractor's obligation to indemnify all Indemnitees on a combined basis will be limited to the sum of Contractor's electronic data liability insurance policy in the sum of \$1,000,000.00 required under the Agreement. Such obligation shall be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to an Indemnitee.

§ 3.18.4.1 Definition of Electronic Data

"Electronic Data" means information, facts or programs, stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, services, data processing devices, or any other media which one uses with electronically controlled equipment.

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, under the direction of the State Engineer, will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction of the Project at least through 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.

§ 4.2.1.1 The Contractor shall accept instructions only from the Architect or Owner, and not the Architect's consultants, except as the Architect and State Engineer shall authorize in writing.

§ 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 Work or 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. Notwithstanding any other provisions herein to the contrary, the Owner may communicate at any time with any person.

§ 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. If the Architect fails to timely review and certify the Contractor's Applications for Payment, the Contractor will be entitled to increases in the Contract Sum and extensions of the Contract Time, as appropriate, in light of the Architect's delay.

§ 4.2.6 The Architect has the responsibility and authority to reject Work that does not conform to the Contract Documents. Whenever, in the Architect's reasonable and professional judgment, 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 timely review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples 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 Contractor will prepare Change Orders. The Architect will prepare 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 3.7.5.

§ 4.2.9 The Architect will conduct, at the time and place approved by the Owner with representatives of the state agencies involved in the Project, 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 in writing of any duties, responsibilities, and limitations of authority upon the execution of the Agreement, and thereafter upon any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 **Intentionally Omitted.**

§ 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, and will not show partiality to either.

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

§ 4.2.14 The Architect will timely review and respond to requests for information about the Contract Documents. The Architect's response to such requests, which is subject to approval by the State Engineer on the Owner's behalf, 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. If the Architect fails to perform these responsibilities within time limits agreed upon, or otherwise with reasonable promptness, the Contractor will be entitled to an increase in the Contract Sum and an extension of the Contract Time, as appropriate.

§ 4.2.15 The duties, responsibilities and limitations of authority of the Architect as the Owner's representative during construction as set forth in the Contract Documents will not be modified or extended without the written consent of the Owner, the Contractor, and the Architect.

§ 4.2.16 In case of the termination of the employment of the Architect, the Owner shall appoint a replacement Architect whose status under the Contract Documents shall be that of the former Architect.

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 Prior to the issuance of a request for bids or proposals, the Contractor 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 7 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 7-day period shall constitute notice of no reasonable objection.

§ 5.2.2 Award of Subcontracts and Other Contracts for Portions of the Work. The Contractor shall conduct an investigation of each of its proposed Subcontractor's capabilities to assure each is responsible and has the requisite experience, skill, physical plant, and financial strength necessary to perform each Subcontractor's respective Work.

The Contractor shall not contract with any Subcontractor that is not responsible or does not have the requisite experience, skill, physical plant, and financial strength necessary to perform its part of the Work.

§ 5.2.2.1 Each subcontract shall require the Subcontractor to consent to any assignment to the Owner of the subcontract in the event of a default by the Contractor hereunder.

§ 5.2.2.2 Nothing in Section 5.2 shall be construed to create a privity of contract between the Owner and any Subcontractor.

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

§ 5.2.4 If the Owner or Architect has objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no objection. If the proposed but rejected Subcontractor was 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.

§ 5.2.5 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 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 identical to Articles 3, 6, 10, 11 and 12 of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. The Owner will provide to the Contractor copies of contracts with Separate Contractors. If the Contractor claims that delay or additional cost is involved because of such action by the Owner or Owner's Separate Contractors, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.1.1 The Work of the Owner or Owner's Separate Contractors may include Work assigned to the Contractor under the Contract Documents which Work, as determined by the Owner, is not being performed properly or in accordance with the scheduling provisions of the Contract Documents, whether or not the Contractor is in default under Section 14.2.1 and whether or not the Owner has terminated the Contract under Section 14.2.3. If the Owner elects to exercise this right, it will do so upon reasonable notice to the Contractor. There shall be an appropriate adjustment in amounts payable to the Contractor to reflect the Work undertaken by the Owner, which the parties shall confirm by Change Order in accordance with Article 7. If the Contractor claims delay is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 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, including an adjustment to the Contract Time. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised. In addition, the Contractor will be entitled to an increase in the Contract Sum to the extent the Contractor's responsibilities, services, or costs are increased due to the presence of Separate Contractors at the job site or otherwise.

§ 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. Notwithstanding the foregoing, the Owner recognizes space at the job site is limited.

§ 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, upon having actual knowledge of discrepancies or defects, promptly notify the Architect and the Owner of discrepancies or defects in the construction or operations by the Owner or Separate Contractor that render it unsuitable for proper execution and results of the Contractor's Work. The Contractor shall not be responsible for any discrepancies or defects in the construction or operations by the Owner or Separate Contractor. Upon discovery, the Architect, the Owner and the Contractor will meet to determine how to correct the discrepancies or defects, who will correct the discrepancies or defects, who will pay to correct the discrepancies or defects, and the schedule for correcting the discrepancies or defects. If the Contractor claims the Contractor is entitled to an extension of the Contract Time and an increase in the Contract Sum, the Contractor may make a claim as provided in Article 15.

§ 6.2.3 Subject to Section 8.3, 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 Contractors 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 Project Site and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible. If the Contractor disputes any assignment of costs, the Contractor may file a notice of a Claim in accordance with Article 15.

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.

§ 7.1.4 The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

§ 7.1.4.1 By mutual acceptance of an adjustment in the Guaranteed Maximum Price based on the estimated Cost of the Work and Construction Manager's Fee associated with the change, including, with respect to trade package Work performed by Subcontractors or self-performed by Contractor, a lump sum adjustment, all of which shall be properly itemized and supported by sufficient substantiating data to permit evaluation. The Contractor and its Subcontractors and Sub-subcontractors shall use the Office of State Engineer proposal breakdown spreadsheet available on the Office of State Engineer website. Proposals shall be supported by a completely detailed analysis of the proposed change subdivided into the Work of the Contractor and/or the Work of each Subcontractor and/or Sub-subcontractor involved in the proposed change, as applicable, with each such subdivision further broken down into the following elements:

§ 7.1.4.1.1 Number of labor hours to be performed by each trade, craft or classification of employee involved in the proposed change.

§ 7.1.4.1.2 The hourly rate for each such trade, craft, or classification of employee, including the appropriate wage supplement for social security, old age and unemployment contributions, and such other employee benefits as may be established by statute or by written agreement negotiated by and between organizations representing such crafts or trades and representatives of their employers.

§ 7.1.4.1.3 The estimated quantity of each item or element of material and/or equipment entering into the proposed change.

§ 7.1.4.1.4 The unit cost of each such item or element of material and/or equipment.

§ 7.1.4.1.5 Rental of items or units of construction plant and equipment with a schedule of the period or periods of use of such item or unit in connection with the proposed change.

§ 7.1.4.1.6 Rental terms and rates for each such item or unit of construction plant and equipment. Rental for equipment shall be based on the following:

§ 7.1.4.1.6.1 Hourly rental rates for Construction Manager-owned equipment shall be determined in accordance with Section 6.1.5 of the Agreement; and

§ 7.1.4.1.6.2 Hourly rental rates for equipment owned by a subcontractor shall not exceed 80% of the applicable rates for equipment listed in the AED Green Book.

§ 7.1.4.1.7 Power and/or other utilities entering into the proposed change.

§ 7.1.4.1.8 Rates and terms applicable to such power and/or other utilities.

§ 7.1.4.1.9 Additional premiums, if applicable, for the extension of insurance and bond coverages as required herein to the proposed change.

§ 7.1.4.1.10 Applicable federal, state, and local taxes.

§ 7.1.4.1.11 The Construction Manager's General Conditions and the Construction Manager's Fee computed as provided in the Agreement. In addition to the General Conditions and Fee provided in the Agreement, additional General Conditions and fee for trade package performed by Subcontractors or self-performed by Contractor shall be determined in accordance with Section 7.1.9.

§ 7.1.4.1.12 Any General Requirements costs incurred without markup.

§ 7.1.5 By unit prices stated in the Contract Documents or subsequently agreed upon.

§ 7.1.6 By cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

§ 7.1.7 By the method provided in Section 7.1.15.

§ 7.1.8 The Contractor shall require the itemized analysis of each portion of the proposed change to be performed by a Subcontractor and/or Sub-subcontractor be prepared by each such Subcontractor and/or Sub-subcontractor in accordance with the format established herein. Copies of all such itemized analysis shall be appended to the Contractor's itemized analysis of the proposed change in the Work.

§ 7.1.9 For purposes of calculating the General Conditions and Construction Manager's Fee in relation to Change Orders, the net cost of a proposed change in the Work shall include, and unless otherwise agreed in writing prior to the performance of the proposed change, shall be limited to the fair and reasonable estimated cost of the total of all of the individual items, elements, or components involved in the proposed change in the Work (including adds and deducts) as set forth in this Section 7.

§ 7.1.10 For each portion of a proposed net additive change in the Work to be performed directly by the Contractor, the cost to the Owner shall include an increment for the General Conditions and Construction Manager's Fee of the Contractor associated with such portion of proposed change of 8% of the net cost of the Work.

§ 7.1.11 For each portion of a proposed net additive change in the Work to be performed directly by a Subcontractor, in addition to an increment or increments for Subcontractor's General Conditions and profit associated therewith of 8%, the cost to the Owner shall include a supplementary increment or increments for Contractor's General Conditions and the Construction Manager's Fee associated therewith of 6% of the net cost of the Work.

§ 7.1.12 In computing General Conditions and the Construction Manager's Fee, the percentage for General Conditions and the Construction Manager's Fee shall be taken on basic wage only. No percentage override shall be taken on Social Security, old age and unemployment contributions, contributions to industry funds, education, and training funds and/or similar wage supplements, contributions or benefits.

§ 7.1.13 Items, elements, or components of changes in the Work or proposed changes which shall be classified as General Conditions, and excluded therefrom, shall include, but shall not necessarily be limited to:

§ 7.1.13.1 All classifications of administrative, supervisory, and clerical personnel not engaged manually in the performance of the Work, including timekeepers, clerks, watchmen, and security personnel;

§ 7.1.13.2 Miscellaneous expense, job burden, and/or other generalized categories of cost or expense;

§ 7.1.13.3 Use of small tools and miscellaneous materials; and

§ 7.1.13.4 Insurance other than insurance coverage required in the Agreement.

§ 7.1.14 In changes in the Work involving both additions to and deductions in the Work, or any portion or element thereof, or the relocation or rearrangement of items, portions or elements thereof, or the substitution of any items, portions, or elements thereof, such additions and deductions shall be balanced, and the Contractor's Fee computed on the same basis for deductions as well as additions. If at the request of the Architect and/or the Owner a number of unrelated changes in the Work are set forth individually, summarized, and totaled in a single Change Order for reasons of administrative convenience, the amount or amounts of individual deductive changes in the Work set forth therein shall, in any event, be balanced against the amount or amounts of individual additive changes in computing the Contractor's Fee for the purpose of addition or deduction.

§ 7.1.15 If none of the methods set forth in Section 7.1 is agreed upon, the Contractor, provided the Contractor receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the Owner on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for the Construction Manager's Fee. In such case, and also under Sections 7.1.6 and 7.1.7 above, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order, at the end of each day, and will submit to the Owner or the Owner's designated representative: (a) daily time slips showing the name of each person employed on such work, the number of hours which the person is employed thereon, the character of the person's duties, and the wages and benefits to be paid to the person and on the person's behalf, and (b) a memorandum of the equipment used in the performance of such Work, together with the rental claimed therefor. Unless otherwise provided in the Contract Documents, costs shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including Social Security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's or workmen's compensation insurance; bond premiums; rental value of equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the change. Pending final determination of cost to the Owner, payments on account shall be made on the basis of amounts reasonably estimated by the Owner. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract sum will be the amount of the actual net cost as confirmed by the Architect and agreed to by the Owner. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance or credit for the Construction Manager's Fee shall be figured on the basis of the net increase, or decrease, if any, with respect to that change.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Contractor 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 Intentionally Omitted.

§ 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, invoices and bids confirming the costs and 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, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. If the Contractor disagrees with the method for adjustment in the Contract Sum, the Architect, the Owner and the Contractor will meet in an effort to determine the adjustment on the basis of one or more bids for the Work attributed to the change. If the Owner and the Contractor cannot agree on the adjustment in the Contract Sum, the Contractor may make a claim as provided in Article 15. 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 and/or the Contract Sum, 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 and the Owner 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 by invoices and bids. 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 Contractor 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 Owner. If the Contractor and the Architect cannot agree whether the minor change in the Work increases the Contract Sum or extends the Contract Time, the Contractor may file a Claim under Article 15.

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 as defined in 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 is of the essence. The time limits stated in the Contract Documents are of the essence of the Contract.

§ 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.

§ 8.2.4 Whenever portions of the Work fall behind the Project Schedule, the Owner and the Architect shall be notified and advised of action being taken to return the Project to its original Project Schedule and such action shall be indicated on the Project Schedule which shall then be revised. If, in the opinion of the Architect or the Owner, the Contractor is not taking adequate steps to improve or maintain the progress of the Work, the Architect or the Owner may require the Contractor to increase the number of shifts, and/or overtime operations, days of Work, and other steps necessary, all without additional cost to the Owner.

§ 8.3 Delays and Extensions of Time/Increases in the Contract Sum

§ 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 utility companies failing to timely move existing utility lines from or deliver utility services to the Project Site; (4) adverse weather conditions not reasonably anticipated or other natural catastrophes; (5) orders of governmental authorities not due to the negligent or malicious acts of the Contractor its Subcontractors or Subsubcontractors; (6) wars or acts of terrorism; or (7) by the occurrences beyond the control, fault, or negligence of the Contractor or its Subcontractors or Sub-subcontractors which by exercise of reasonable diligence the Contractor or its Subcontractors or Sub-subcontractors are unable to prevent or provide against (each a "force majeure event"), the Contractor shall be entitled to an equitable adjustment in the Contract Time and the Contract Sum.

§ 8.3.1.1 Within ten days of the occurrence of a force majeure event, the Contractor must give to the Owner and the Architect written notice of the occurrence of the force majeure event. The written notice must include the following information:

§ 8.3.1.2 The identification of the force majeure event and its current impact upon the Project;

§ 8.3.1.3 If known, the impact of the force majeure event upon the Contract Sum, Owner's Budget, Project Schedule, if already agreed upon by the Owner and Contractor, and any other impacts to the Project of which the Contractor is aware;

§ 8.3.1.4 Mitigation steps to be taken by the Contractor so as to eliminate, or at least minimize, the impacts of the force majeure event upon the terms set forth in Section 8.3.1.2 and Section 8.3.1.1.

§ 8.3.1.5 The Contractor must take reasonable steps to mitigate the impact of any force majeure event. The Contractor must, on a weekly basis, keep the Owner fully apprised of the continuation of the force majeure event and the information required above. The Contractor will be entitled to an adjustment to the Project Schedule, the Contract Sum, Contractor's Preconstruction Phase Fees, if applicable, to the extent required as a result of the force majeure event. The Contractor's entitlement to an adjustment to the Project Schedule, the Contract Sum, and the Contractor's Preconstruction Phase Fees, if applicable, will not be superior to the right of the Owner or prevent the Owner from terminating this Contract pursuant to Article 14.4.1.

§ 8.3.2 Any Claim for extension of the Contractor Time or increase in the Contract Sum and the Contractor's Preconstruction Phase Fees, if applicable, under Section 8.3.1 not agreed upon by the Contractor and the Owner may be filed in accordance with Article 15, otherwise it will be waived. In the case of continuing delay only one Claim is necessary.

§ 8.3.3 The Contractor shall not be entitled to a separate extension of the Contract Time as a consequence of each one of a number of causes of delay which may have a concurrent effect on the progress of the Work.

§ 8.3.4 The Owner shall have the right to defer the Owner's decision or decisions with reference to any Claim for an extension of the Contract Time or increase in the Contract Sum made pursuant to the provisions of this Article until the facts or circumstances which form the basis for such Claim are fully assessed to the Owner's reasonable satisfaction.

§ 8.3.5. Notwithstanding any other the provision in the Contract, Claims for an extension of time arising out of changes in the Work authorized pursuant to a Change Order, shall be made in writing prior to or concurrent with the submission of the Contractor's proposal pursuant to such change. No extension of time arising out of changes in the Work will be granted after the date upon which the Contractor is authorized to proceed with such change or changes in the Work, unless specific provisions governing a subsequent determination of an extension of time have been incorporated into such authorization to proceed with such change or changes in the Work. No Claim for damages or separate compensation for delay arising from such change in the Work shall be recognized or be deemed valid, it being understood that any additional cost to the Contractor arising from such change shall be included in the amended Contract Sum set forth in such Change Order.

§ 8.3.6. Notwithstanding any other provision of the Contract, time extensions will not be granted for rain, wind, snow, or other natural phenomena of normal intensity for the locality where the Work is performed. Determinations of the extent of delay attributable to unusual weather phenomena shall be made by comparing the weather for the contract period involved with the average of the preceding five (5) year climactic range during the same period on the calendar. National Oceanic and Atmospheric Administration National Weather Service statistics for the locality or area where the Work is performed shall be used to determine the five (5) year average weather conditions. Time extensions for weather delays do not entitle the Contractor to "extended overhead" recovery.

§ 8.3.7 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract or under applicable law. If the Architect or Owner or Owner's Separate Contractors and suppliers are delayed in the commencement of progress of the Work by an act or omission of the Contractor, the Owner will be entitled to an equitable adjustment in the Contract Sum for costs associated with such delay.

§ 8.3.8 Should the Contractor fail to substantially complete the Work within the time agreed upon in the Contract Documents, or within such extra time as may have been allowed by increases in the Contract Time, or by formally approved extensions granted by the Owner, the Contractor and the Contractor's surety shall be liable for and shall pay the Owner the sums stipulated in the Contract as liquidated damages for each calendar day of delay until the Work is substantially complete. The parties agree the liquidated damages stipulated in the Contract are not a penalty or disproportionate to any damages reasonably expected by reason of inconvenience to the public, added cost of engineering and supervision for the Project, and other items that may cause an expenditure of public funds due to the Contractor's failure to complete the Work within the time specified in the Contract. In addition to liquidated damages, if any delay on the part of the Contractor, any Subcontractor or Sub-subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable results in any claim by third parties against the Owner or the Architect arising out of such delay, the Contractor shall pay, satisfy, and discharge all losses, damages and expenses arising out of such claims, including attorneys' fees, and shall defend, indemnify, and hold harmless the Owner and the Architect and their agents and employees from and against all costs, fees, losses, damages, and expenses arising out of such Claims enforced against the Owner or the Architect.

§ 8.3.9 No extension of time will be granted to the Contractor for any delay other than those described in Section 8.3.1. Should the Contractor fail, refuse, or neglect to supply a sufficient number of workers or to deliver the materials and equipment with such promptness as to prevent delay in the progress of the Work, or fail in any material respect diligently to commence and prosecute the Work and to proceed in accordance with the approved Project Schedule, or if the different parts thereof are not commenced, prosecuted, finished, delivered, or installed in such manner as will insure Substantial Completion in accordance with the approved Project Schedule, or if the Contractor shall fail in the performance of any of its obligations under the Contract in any material respect, the Owner shall have the right to direct the Contractor, at the Contractor's cost and expense, to furnish such additional labor and to expedite deliveries of materials, (or the Owner may furnish such labor and expedite such deliveries at the cost of the Contractor in accordance with Section 2.5), which labor or expediting shall, in the Owner's opinion, be sufficient to speed up and complete the Work in accordance with the Project Schedule. If such additional labor shall not be available, the Owner shall have the right to direct the Contractor, at the Contractor's own cost and expense, to work overtime to such an extent as will be sufficient, in the Owner's opinion, to speed up and complete the Work as herein provided.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum (i.e., the Guaranteed Maximum Price) will be stated in the Agreement when determined 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 and the Owner 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 and the Owner. This schedule, unless objected to by the Architect and the Owner, 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 the Owner and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. If the Architect or the Owner object to the proposed changes to the schedule of values, the Contractor, the Architect and the Owner will meet as soon as possible to determine to what extent, if any, the schedule of values will be amended. If the Contractor, the Architect and the Owner do not agree upon the adjustments, then the Contractor or the Owner may file a Claim under Article 15.

§ 9.3 Applications for Payment

§ 9.3.1 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 as required in the

Contract Documents, such as copies of requisitions, and releases and waivers of liens from first tier 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; provided, the Contractor and its Subcontractors were entitled to receive payment for Work for which Certificates for Payment have been previously issued and payments have been made by the Owner therefore.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, by the 15th day of the month, 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;
- .7 failure to carry out the Work in accordance with the Contract Documents;
- .8 a lien or attachments is filed and such lien is not discharged within 5 days of demand from the Owner;
- .9 failure of the Contractor and/or the mechanical or electrical Subcontractors, or Sub-subcontractors to comply with the mandatory requirements for maintain "up-to-day" Record Drawings;
- .10 incomplete or otherwise inadequate Application for Payment; or
- .11 reasonable evidence the Contractor is in material breach the Contractor's obligations under the Contract.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, the Architect, the Owner, and the Contractor will, within seven days of issuance of a written protest, meet in an attempt to resolve the dispute. If the Architect, the Owner, and the Contractor come to an agreement as to the amount to be paid and any action required of the Contractor or the Owner, the agreement will be reduced in writing and signed by the Architect, the Contractor, and the Owner. If the Architect, the Contractor, and the Owner cannot come to an agreement, then the aggrieved 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 Certificate 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. For the portions of the Project which do not include finishing the interior spaces by the Contractor, utilization of the Work by the Owner means the delivery of the building structure sufficient for the Owner, a tenant, or a Separate Contractor to begin finishing the interior space.

§ 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 When the Architect is notified the Contractor believes a portion of the Project is Substantially Complete, the Architect will review the Work performed for the Project. The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected. If the Architect finds such Work to be Substantially Complete, it will so advise the Owner and Contractor. In that event, the Architect will, in conjunction with the Contractor, compare the list of items still to be completed, as developed by the Contractor, with the actual condition of the Work as observed by the Architect and the Architect will prepare and deliver to the Owner and the Contractor a punch list of all incomplete and unsatisfactory items as either reported to or observed by the Architect. The Architect will also specifically inspect the Work with the Owner and will add to the punch list any additional items discovered during that review. The Architect, Contractor and Owner will agree to a database on which all punch list items for the Project will be prepared to enhance the parties' access to punch list information. If the Architect finds the Project is not substantially completed, the Architect, the Owner and the Contractor will again complete an inspection or inspections of the Project once substantially completed.

§ 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. The adjustment may not exceed 200% of the cost of completing or correcting the Work.

§ 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 In the event the Owner desires to exercise the privilege of beneficial occupancy, the Owner shall give reasonable notice to the Architect and the Contractor. If the Architect determines such proposed occupancy is reasonable and proper, the Architect shall issue a Certificate of Submittal Completion for that portion of the Project. The Contractor shall cooperate with the Owner in providing services and facilities reasonably required for the health, safety, and comfort of the occupants and other parties lawfully present and/or entering or leaving the Project Site. Mutually acceptable arrangements shall be made between the Owner and the Contractor regarding procedures, terms, and conditions governing the operation and maintenance of such services and facilities as may be utilized for the benefit of the Owner. The Owner will assume proportionate and reasonable responsibility for operation of systems, equipment, and/or utilities required to provide such services, in part or in total, including proportionate and reasonable expenses of operation incidental thereto. The warranty period for that portion of the Project will commence in accordance as of the date set forth in the Certificate of Substantial Completion. No such beneficial occupancy shall accelerate the commencement of any warranty period on any system also serving portions of the Project which have not yet achieved Substantial Completion.

§ 9.9.3 The Owner's beneficial occupancy or use of such designated areas, subdivisions, or portion of the Work shall not constitute acceptance of systems, materials, or elements of the Work which are not in accordance with the requirements of the Contract Documents; nor relieve the Contractor from the Contractor's obligations to complete the Work; nor for responsibility for loss or damage due to or arising out of defects in, or malfunctioning of, systems, materials, equipment, or elements of the Work; nor from other unfulfilled obligations or responsibilities of the Contractor under the Contract. If, however, damage results solely from any act of the Owner, the Owner will assume its proportionate responsibility for such damage.

§ 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, the Architect will notify the Owner. The Owner and the Architect will then complete an inspection of the Work. If the punch list items have not all been completed, the Contractor will address and complete all remaining punch list items. This process will continue until the Architect and the Owner find the Work acceptable under the Contract Documents and the Contract has been fully performed. The Contractor will then issue a final Application of Payment. Upon receipt of a final Application for Payment, 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, otherwise satisfied, or will be promptly made upon the Contractor's receipt of final payment made by the Owner, (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 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 as required in the Contract Documents, 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 or by law. 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 reasonable payments that the Owner has made 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 Owner shall make final payment of all sums due to the Contractor 30 days after the completion and acceptance of the Project by the Owner and Contractor's compliance with Section 9.10.2, above. If the Owner fails to make final payment to the Contractor within the time specified herein, the Owner shall pay the Contractor interest at the rate of four percent (4%) compounded annually on the amount retained starting from the date final payment first became due.

§ 9.10.5 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 any warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.6 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 Project site, including ingress and egress thereto, 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 Project site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and

- 3 other property at the Project 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. The structure of the Project is designed to support the loads of the finished building. No provision is included for stresses or loads imposed by construction operations. If the Contractor desires to place such loads in excess of the design load shown on Drawings, the Contractor shall submit Drawings and calculations prepared by, and bearing the seal of, a professional structural engineer of the proposed method for supporting such loads for the Architect's review and approval. No loading of any kind in excess of design loads shall be placed on any part of the building structure prior to the Architect's approval of submitted drawings and calculations. The costs of the Architect's review shall be borne by the Contractor.

§ 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 at the next weekly meeting of the Contractor, the Architect, and the Owner as set forth in Section 3.3.2.3 of the Agreement. The Contractor shall prepare a written report setting forth the circumstances and details related to any accident or occurrences involving death, bodily injury, sickness, disease, personal injury, and/or loss or injury to or destruction of tangible property. Such reports shall be forwarded promptly to the insurance carriers, the Architect and the Owner. The report shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.8.1 Emergencies: In any emergency affecting the safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss and shall as promptly as conditions permit notify the insurance carriers, the Owner, and the Architect of the nature of the emergency and circumstances related thereto. Immediately thereafter, the Contractor shall prepare a written report setting forth in detail the action taken and describing in detail all circumstances and conditions which are related to such action.

§ 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. The Contractor is not responsible for Hazardous Materials encountered at the Project site, including delays arising from encountering such Hazardous Materials, except for those Hazardous Materials (i) specifically identified by type and location in the Contract Documents to be part of the Work, or (ii) brought to the Project site by Contractor or its agents, Subcontractors, Sub-Subcontractors, laborers, materials suppliers, equipment suppliers, or others performing the Work, and negligently handled or stored by any of them, or released by any of them into the environment for any reason. As between the Owner and the Contractor, the Owner shall be deemed to be the generator of all Hazardous Materials that existed at the Project site prior to the commencement of the Contractor's Work (including for Hazardous Materials that are specifically identified by type and location to be part of the Work), and the Owner shall sign all manifests (as owner or generator, as indicated on the manifest) required to accompany the transportation and disposal of such Hazardous Materials. The Owner expressly agrees the Contractor is not responsible for any pre-existing Hazardous Materials at the Project site that are not specifically identified by type and location in the Contract Documents to be part of the Work or any Hazardous Materials brought to the Project site by anyone other than Contractor or its agents, Subcontractors, Sub-Subcontractors, laborers, materials suppliers, equipment suppliers, or others performing the Work, unless negligently handled or stored by any of them, or released by any of them into the environment for any reason. If the Contractor encounters a suspected Hazardous Material not expressly identified in the Contract Documents to be a part of the Work, including but not limited to asbestos or polychlorinated biphenyl (PCB), the Contractor shall, upon recognizing the condition, have the right to immediately stop Work in the affected area and notify the Owner that Hazardous Materials have been encountered at the Project Site.

§ 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 Hazardous Material reported by the Contractor and, in the event such Hazardous Material 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 Hazardous Material or who are to perform the task of removal or safe containment of the Hazardous Material. 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 Hazardous Material 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 SDCL §3-21-13, the Owner shall defend, indemnify and hold harmless the Contractor, Subcontractors, Sub-subcontractors, laborers, materials suppliers, equipment suppliers, others performing the Work, 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, fines, judgments, and penalties arising out of or resulting from performance of the Work in any area affected by Hazardous Materials except with respect to Hazardous Materials identified as the Contractor's responsibility under Section 10.3.1, 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 the Contractor brings to the site unless such Hazardous Materials are required by the Contract Documents. The Owner shall be responsible for Hazardous Materials required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such Hazardous Materials.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of Hazardous Materials 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 or fault on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a Hazardous Material solely by reason of performing Work as required by the

Contract Documents, the Contractor may submit a Claim in accordance with Article 15 for reimbursement by the Owner 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.

§ 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 Intentionally Omitted.

§ 11.2 Owner's Insurance

§ 11.2.1 Intentionally Omitted.

§ 11.2.2 Property Insurance. As set forth in the Contract Documents, the Contractor or the Owner will upon the approval of the Guaranteed Maximum Price obtain a builder's risk policy of insurance in the amount of the Guaranteed Maximum Price, as set forth in the Agreement. If the party required to purchase the builder's risk policy ("BR Purchaser") 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 BR Purchaser shall inform the other party (the "Other Party") in writing prior to commencement of the Work. Upon receipt of notice from the BR Purchaser, the Other Party may delay commencement of the Work and may obtain insurance that will protect the interests of the Owner, Contractor, Subcontractors, and Sub-Subcontractors in the Work. In the event the BR Purchaser was required to and fails to procure coverage, the BR Purchaser waives all rights against the Other Party to the extent the loss to the BR Purchaser would have been covered by the insurance to have been procured by the BR Purchaser. If the BR Purchaser does not provide written notice, and the Other Party is damaged by the failure or neglect of the BR Purchaser to purchase or maintain the required insurance, the BR Purchaser shall reimburse the Other Party for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Required Property Insurance. Within three (3) business days of the date the BR Purchaser becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Agreement, the BR Purchaser shall provide notice to the Other Party of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Other Party: (1) the Other Party, upon receipt of notice from the BP Purchaser, 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 BP Purchaser or the Other Party; (2) the Contract Time and Contract Sum shall be equitably adjusted if the Owner is the BR Purchaser; and (3) the BR Purchaser waives all rights against the Other Party to the extent any loss to the BR Purchaser 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 BR Purchaser shall not relieve the BR Purchaser of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, 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 Work, except such rights as they have to proceeds of such insurance. 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 Work, or if after final payment property insurance is to be provided on the completed Work through a policy or policies other than those insuring the Work during the construction period, 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. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.4 Loss of Use 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, due to fire or other hazards however caused. 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 BR Purchaser securing the builder's risk insurance as fiduciary and made payable to the Other Party 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 BR Purchaser shall pay the Other Party its just share of insurance proceeds received by the BR Purchaser, and by appropriate agreements the Other Party shall make payments to its consultants and subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the BR Purchaser shall notify the Other Party of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Other Party shall have 21 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Other Party does not object, the BR Purchaser shall settle the loss and the Other Party shall be bound by the settlement and allocation. Upon receipt, the BR Purchaser 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 Other Party timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the BR Purchaser 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 or the Owner'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 or the Owner 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 of the discovered condition and give the Contractor an opportunity to make the correction, the Owner waives its right to require correction of the discovered condition by the Contractor and to make a claim for breach of warranty of the discovered condition. 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. The Owner shall bear the cost of correcting destroyed or changed Work caused by the Owner or its Separate Contractors.

§ 12.2.5 If the Contractor fails to correct defective or non-conforming Work as provided in Sections 3.5, 12.1, and 12.2, the Owner may correct it in accordance with Section 2.5.

§ 12.2.6 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the Architect, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within 10 days thereafter, the Owner may, upon 10 additional days written notice, sell such Work at auction or a private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Architect's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due to the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner upon demand.

§ 12.2.7 The Contractor shall bear the cost of making good all Work of the Owner or Separate Contractors destroyed or damaged by such correction removal completed by the Contractor.

§ 12.2.8 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.

§ 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 and the Owner timely notice of when and where tests and inspections are to be made so that the Architect and the Owner 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 and the Owner.

§ 13.4.5 If the Architect and the Owner is to observe tests, inspections, or approvals required by the Contract Documents, the Architect and the Owner 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.

§ 13.4.7 Where certain testing and inspection requirements are set forth in the various sections of the Construction Documents to be performed at the expense of the Owner, the Owner will retain the services of testing laboratories, agencies, or consultants, to perform such tests or inspections and render such services as may be required to verify the Work fulfills the requirements and intent of the Construction Documents. Such services will be performed in a manner consistent with the requirements of the Owner and the various agencies having jurisdiction over the Work and in accordance with reasonable standards of architectural and engineering practice.

§ 13.4.8 The Owner reserves the right to modify the scope of or to re-allocate any of the testing and inspection services specified in the various sections of the Construction Documents to be performed by a testing laboratory, agency or consultant retained by the Owner in connection with the Work when it can be satisfactorily established that such adjustment in scope is consistent with the intent of the Construction Documents. In the event the Contractor shall not concur with such modification of scope or re-allocation of such services, the Contractor shall immediately notify the Architect and Owner in writing.

§ 13.4.9 If the Architect determines any Work requires special inspection, testing, or approval which Section 13.4.1 does not include, the Architect will upon written authorization from the Owner, order the performance of such services by qualified independent testing laboratories, agencies or consultants as may reasonably be required or instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Section 13.4.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Construction Documents, the Contractor shall bear all costs thereof, including the cost of the tests, correction of the Work, the cost of retesting, and compensation for the Architect's additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

§ 13.4.9.1 If the Architect's observation or any inspection or testing undertaken pursuant to Section 13.4 reveals a failure in any one of a number of identical or similar items or elements incorporated in the Work to comply with (1) the requirements of the Construction Documents or, (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations, building codes, or orders of any public authority having jurisdiction, the Architect will have the authority to order inspection and/or testing of all such items or elements of the Work, or of a representative number of such items or elements of the Work, as the Architect may in the Architect's reasonable opinion consider necessary or advisable, and the Contractor shall bear all costs thereof, including the cost of the tests, correction of the Work, the cost of retesting, and the Architect's additional services, if any are required, made necessary thereby. However, neither the Architect's authority to act under Section 13.4, nor any decision made by the Architect in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Architect to the Contractor, any Subcontractor, or Sub-subcontractor, any of their agents or employees, or any other person performing any of the Work.

§ 13.4.10 Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by the Contractor to the Architect and the Owner.

§ 13.4.10.1 The Contractor shall obtain and deliver promptly to the Owner any certificates of final inspection of any part of the Work or operating permits for any mechanical or electrical apparatus, such as elevators, escalators, boilers, air compressors, fire alarms, etc., which may be required by law to permit full use and occupancy, by the Owner of the Project. Except as is otherwise provided in Section 9.8, receipt of such permits or certificates by the Owner shall be a condition precedent to Substantial Completion of the Work.

§ 13.4.10.2 Copies of reports issued as a result of services performed at the expense of the Owner pursuant to the provisions of this Section 13.4 will be distributed to all parties to the Contract.

§ 13.4.11 If the Architect or the Owner is to observe the inspections, tests, or approvals required by the Contract Documents, they will do so promptly and, where practicable, at the source of supply.

§ 13.4.12 In connection with testing and inspection services performed at the expense of the Owner, the Contractor shall provide Samples of materials and/or elements of the Work required as test specimens and shall provide incidental labor and facilities at the site reasonably required in support of such services.

§ 13.4.13 The cost of testing services required solely for the convenience of the Contractor in the Contractor's scheduling and performance of the Work shall be borne by the Contractor

§ 13.4.14 The cost of testing services related to remedial operations performed to correct deficiencies in the Work shall be borne by the Contractor.

§ 13.4.15 If, during the course of the performance of any testing, inspection, control, balancing, adjusting, or similar services by the Contractor or an agent of the Contractor, it is the opinion of the Architect the Contractor or said agent has failed to perform such services in a satisfactory manner, the Contractor shall, at the Contractor's own expense, retain the services of a service organization which is satisfactory to the Architect for the performance of such services.

§ 13.4.16 If the Contractor has scheduled any independent entity to conduct testing, inspection, balancing, adjusting, or similar services, and said entity arrives at the appropriate time but, through no fault of its own or that of the Owner or Architect, is not able to perform said services as scheduled by the Contractor, the Contractor shall be responsible for any additional cost resulting from said entity's idle time or the need to reschedule such entity for a new time.

§ 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 90 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' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed including the Contractor's Fee as set forth in the Agreement, demobilization costs, and the costs attributable to the termination of subcontractors and purchase orders. The Owner will not be responsible for the Contract Sum, overhead, profit, or the Construction Manager's Fee for Work not completed.

§ 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' written 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 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 refuses or fails to prosecute the Work in accordance with the Contract Documents in any material respect;
- .3 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .4 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .5 fails to coordinate its Work with Subcontractors of all tiers and with the Owner and the Owner's Separate Contractors as required under the Contract Documents;
- .6 fails to comply materially with the Project Schedule;
- .7 fails to promptly replace material or equipment or correct rejected Work;
- .8 otherwise is guilty of breach of a provision of the Contract Documents; or
- .9 is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of the Contractor's creditors, or a trustee or receiver is appointed for the Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar law.

§ 14.2.2 In the event of any default by the Contractor under the Contract, the Owner shall have the right to take such measures as it deems necessary to correct the default at the Contractor's sole cost and expense and to deduct such costs, including but not limited to the Office of State Engineer's and the Architect's fees, as it may incur from amount otherwise owing to the Contractor, or to terminate the Contract in accordance with Section 14.2.1 in addition to any and all other remedies the Owner may now or hereafter have. If the amounts owing to the Contractor are insufficient to cover the Owner's cost of corrections, the Contractor shall pay such amount promptly upon demand.

§ 14.2.3 When any of the reasons described in Section 14.2.1 exist, the Owner shall give the Contractor and the Contractor's surety 10 days' written notice, during which the Contractor and/or the surety may rectify the cause of the termination. If rectified to the satisfaction of the Owner within said 10 days, the Owner may rescind its notice of termination. If not rectified, the termination for cause shall become effective at the end of the 10-day notice period. In the alternative, the Owner may postpone the effective date of the termination notice, at its sole discretion, if it should receive reassurances from the Contractor and its surety that the causes of termination will be remedied in a time and manner which the Owner finds acceptable. If at any time more than 10 days after the notice of termination, the Owner determines the Contractor or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the Owner may immediately terminate the Contract for cause by giving written notice to the Contractor and its surety. In no event shall termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds. Upon termination, the Owner may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials and equipment to be incorporated into the Project, 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.

§ 14.2.4 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.

§ 14.2.5 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 Architect, upon application, and this obligation for payment shall survive termination of the Contract. If a party disputes the Architect's decision, the party may file a Claim under Article 15.

§ 14.2.6 If it should be judicially determined the Owner improperly terminated this Contract for cause, then the termination shall be deemed to be a termination for the convenience of the Owner.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 Subject to the provisions of Section 14.1, 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 payment for demobilization, subsequent remobilization, costs directly associated with protecting and securing the affected Work, General Conditions expenses, General Requirements expenses, and the Construction Manager's Fee thereon. 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 This Agreement depends upon the continued availability of appropriate funds and expenditure authority from the South Dakota Legislature for this Project. If for any reason the South Dakota Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the Owner upon five (5) business days' written notice. Contractor agrees termination for any of these reasons is not a default by the Owner, nor does it give rise to a Claim against the Owner or any officer, agent, or employee of the Owner, and Contractor waives any Claim against the same.

§ 14.4.3 Upon receipt of notice from the Owner of such termination for the Owner's convenience, under Sections 14.4.1 or 14.4.2, 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. The Contractor shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence. Upon payment of the foregoing, the Owner shall have no further obligation to the Contractor of any nature.

§ 14.4.4 In case of such termination for the Owner's convenience under Sections 14.4.1 or 14.4.2, 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 orders for equipment and materials, including attorneys' fees; and the termination fee, if any, set forth in the Agreement.

§ 14.4.5 In no event shall termination for the convenience of the Owner under Sections 14.4.1 or 14.4.2 terminate the obligations of the Contractor's surety on its payment and performance bonds for Work completed prior to the termination of the Contract.

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 written notice to the other party with a copy sent to the Architect and shall be initiated within thirty (30) days after occurrence of the event giving rise to such Claim or within thirty (30) 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 written notice to the other party.

§ 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 agreement of the parties, 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 agreement of the parties.

§ 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

To the extent permitted by law, 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, tenant claims against the Owner, 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 Negotiation of Claim

§ 15.2.1 After submission of a Claim, Project representatives of each party must meet in person, or by other mutually agreeable means, within a reasonable amount of time to discuss and negotiate the Claim.

§ 15.2.2 If the Project representatives are unable to resolve the Claim within thirty (30) days of submission under Section 15.2.1, either party may refer by written notice the matter to senior representatives of each party, who shall promptly meet in person, or by other mutually agreeable means, to discuss and negotiate the Claim,

§ 15.2.3 If the senior representatives of the parties are unable to resolve the Claim within thirty (30) days of referral under Section 15.2.2, either party may demand mediation in writing as provided in Section 15.3.

§ 15.2.4 Intentionally Omitted.

§ 15.2.5 Intentionally Omitted.

§ 15.2.6 Intentionally Omitted.

§ 15.2.6.1 Intentionally Omitted.

§ 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 on Project proceeds, 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 litigation.

§ 15.3.2 If informal negotiation procedures under Section 15.2 are exhausted and fail to resolve the Claim, either party may give written demand for mediation. Within thirty (30) days of receipt of such written demand by the party receiving the demand for mediation, the parties must confer and select a mutually acceptable mediator who, unless agreed otherwise by the parties, is licensed to practice law in the state where the Project is located. Thereafter, the mediation must take place within thirty (30) days of said selection at the call of the mediator, subject to any continuance due to agreement of the parties or availability of the mediator. If the parties are unable to agree upon a mediator within thirty (30) days of receipt of such demand by the party receiving the demand for mediation, the parties will petition a court where the litigation will be filed if mediation is not successful, and the court will select a mediator licensed to practice law in the state where the Project is located. Thereafter, the mediation will take place within thirty (30) days of the court ordered selection at the call of the mediator, subject to any continuance due to agreement of the parties or availability of the mediator. Absent agreement of the parties, the mediation session must not last more than eight (8) hours in length and the parties will equally share in the cost of the mediator for the mediation session. The mediation must be held in in the county where the litigation must be filed pursuant to the terms of the Contract, and require in-person attendance by each party unless another arrangement for location and attendance is mutually agreed upon.

§ 15.3.3 If the parties participated in mediation but were not able to resolve the Claim, either party may file a lawsuit to resolve the Claim. As mediation is a precondition to litigation, neither party may commence with filing of litigation proceedings to resolve the Claim, unless a court where the litigation will be filed if mediation is not successful determines a party has failed, without good cause, to participate in mediation as provided in this Section 15.3. In such case, said failing party will have waived its rights as to the Claim. Thereafter, the non-failing party may file a lawsuit to resolve the Claim, but the party determined to have failed to participate in the mediation will have waived its rights with respect to the Claim.

§ 15.3.4 Notwithstanding any provision to the contrary, either party may file an appropriate action in a court where litigation will be filed for binding dispute resolution, if necessary for the sole purpose to preserve lien rights or to ensure timely filing under the law in accordance with the Statute of Limitations or Statute of Repose. In such case, any such filing must be immediately stayed pending exhaustion of informal negotiation and mediation required in Sections 15.2 and 15.3. In all matters litigated, the prevailing party will be entitled to recover its costs and expenses,

including attorneys' fees incurred as a result of the Claim, the mediation, and the litigation. Agreements reached in mediation will be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.3.5 EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE CONTRACT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OF THE ACTIONS OF EITHER PARTY TO THE CONTRACT IN NEGOTIATION, EXECUTION AND DELIVERY, PERFORMANCE OR ENFORCEMENT OF THE CONTRACT.

§ 15.3.6 Rights and Remedies.

§ 15.3.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. This provision relates particularly to the Contractor's obligations under Article 12.

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

§ 15.4 Intentionally Omitted.

DRAFT AIA® Document A133® – 2019

Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the « » day of « » in the year « », is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the « » day of « » in the year « » (the “Agreement”)
(In words, indicate day, month, and year.)

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

« »
« »
« »

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

«State of South Dakota »
« »
« »
« »
« »
« »

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

« »
« »
« »

TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 CONSTRUCTION MANAGER’S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS
- A.5 OTHER INFORMATION

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

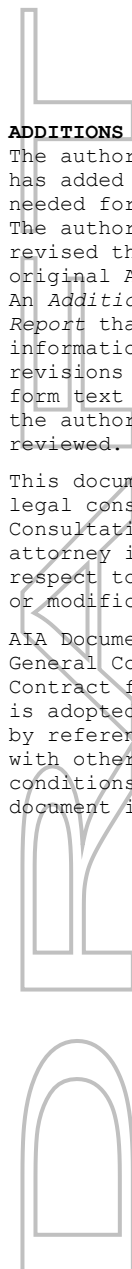
§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the

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

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

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



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

Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed << >> (\$ << >>), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 **Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; General Conditions, as set forth in detail under §A.1.1.7, the General Requirements, as set forth under §A.1.1.8, the Contractor's excise fee, the payment and performance bonds fees, the builder's risk insurance premium, and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.

(Provide itemized statement below or reference an attachment.)

<< >>

§ A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 **Alternates**

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ A.1.1.6 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)

§ A.1.1.7 The General Conditions, as identified in Schedule A-1 attached to this Guaranteed Maximum Price Amendment.

§ A.1.1.8 The General Requirements, as identified in Schedule A-2 attached to this Guaranteed Maximum Price Amendment.

§ A.1.1.8 The Performance Bond and Payment Bond premiums are \$ _____.

§ A.1.1.10 The builder's risk insurance premium is \$ _____.

§ A.1.1.11 The Construction Manager's insurance costs attributable to the Project, other than for employee related insurance, is \$ _____.

§ A.1.1.12 Sales, use, consumer, and excise taxes is \$ _____, broken down as follows: _____.

§ A.1.1.13 Government Fees for the building permit, licenses, and inspections are \$ _____.

§ A.1.1.14 Royalties and license fees to be paid for the use of a particular design, process, or product are \$_____.

ARTICLE A.2 PROJECT SCHEDULE

§ A.2.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

[« »] The date of execution of this Amendment.

[« »] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

« »

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 Substantial Completion

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

[« »] Not later than « » (« ») calendar days from the date of commencement of the Work.

[« »] By the following date: « »

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

§ A.2.3.4 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Final Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

[« »] Not later than « » (« ») calendar days from the date of commencement of the Work.

[« »] By the following date: « »

§ A.2.3.5 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Final Completion of the entire Work, the Construction Manager shall achieve Final Completion of such portions by the following dates:

Portion of Work	Final Completion Date

§ A.2.3.6 If the Construction Manager fails to achieve Final Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

§ A.2.3.7 The updated Project Schedule is attached as Schedule A-3 to this Guaranteed Maximum Price Amendment.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ A.3.1.2 The following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

« »

Section	Title	Date	Pages

§ A.3.1.3 The following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

« »

Number	Title	Date

§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption and clarification.)

« »

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

<< >>

ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:

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

<< >>

ARTICLE A.5 OTHER INFORMATION

§ A.5.1 The commissioning requirements for the Project, as identified in Schedule A-4 attached to this Guaranteed Maximum Price Amendment.

§ A.5.2 The Subcontracts which are fixed bid, as identified in Schedule A-5 to this Guaranteed Maximum Price Amendment.

§ A.5.3 The Subcontracts which are Cost of the Work (time, materials, overhead, and profit) bid, as identified in Schedule A-6 to this Guaranteed Maximum Price Amendment.

§ A.5.4 The list of long-lead time items of materials and equipment that must be ordered, as identified in Schedule A-7 to this Guaranteed Maximum Price Amendment.

§ A.5.5 The list of Work to be self-performed by the Construction Manager and the not to exceed pricing therefore, as identified in Schedule A-8 to this Guaranteed Maximum Price Amendment.

§ A.5.6 The date when the Construction Manager and the Owner must sign this Guaranteed Maximum Price Amendment to preserve the Guaranteed Maximum Price is _____, 20__.

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

State of South Dakota

[Insert Agency Owner]

[Insert Construction Manager]

OWNER *(Signature)*

<< >><>

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

<< >><>

(Printed name and title)

RECOMMENDED BY:
THE OFFICE OF THE STATE ENGINEER

Stacy Watters, P.E.
State Engineer

Schedule A-1
Attached to the Guaranteed Maximum Price Amendment
General Conditions

Supervisory and Administrative Staff:

<u>Name</u>	<u>Position</u>	<u>Hourly Rate</u>	<u>Dollar Amount</u>
-------------	-----------------	--------------------	----------------------



Vehicle Charges:



Technology and Field Administrative Charges:

- .1 Staff Computer(s) in jobsite trailer;
- .2 Document Management Software;
- .3 Staff cell phones;
- .4 Jobsite trailer internet (wired or wireless);
- .5 Construction Trailer Furnishings;
- .6 Staff Office Supplies & Office Equipment/Furniture;
- .7 Progress & Final Photos;
- .8 Postage/Delivery;
- .9 Water;
- .10 Blueprints, O&M's, Printing and Reproductions;
- .11 Other equipment and materials utilized by the Construction Manager's supervisory and administrative staff at the project site;
- .12 Per Diem – Field Staff;
- .13 Lodging – Field Staff;
- .14 Truck Expenses – Field Staff; and
- .15 Other items pre-approved by the Owner.



Schedule A-2
Attached to the Guaranteed Maximum Price Amendment
General Requirements

- .1 Jobsite Trailer;
- .2 Jobsite Trailer Temporary Power;
- .3 Jobsite Trailer – Set-Up and Tear-Down;
- .4 Cellular Phones for Contractor Onsite Staff;
- .5 Two-Way Radios (But not both cellular phones and two-way radios);
- .6 Jobsite Internet Service;
- .7 Copier and Printer;
- .8 Document Reproduction;
- .9 Progress Photos, if requested by owner;
- .10 Postage and Couriers;
- .11 Office Supplies;
- .12 Office Furniture;
- .13 Small Tools and Supplies;
- .14 Site Alarm Systems and Site Security, if requested by the owner;
- .15 Fire Protection;
- .16 Project Signs (directional, safety, etc.);
- .17 Traffic Control and Flagging;
- .18 Project protective equipment and trade safety labor;
- .19 Jobsite and Project Safety Requirements;
- .20 Temp Toilets;
- .21 Professional Survey**;
- .22 General Cleanup – Interim**;
- .23 General Cleanup – Final**;
- .24 Snow Removal;
- .25 Haul Debris Services and Dumpsters;
- .26 Minor Dewatering Labor;
- .27 Minor Dewatering Equipment;
- .28 Temporary Water;
- .29 Temporary Electrical^^;
- .30 Temporary HVAC (Allowance)^^;
- .31 Temporary Natural Gas (Allowance)^^;
- .32 Taps, Meters, and Fees;
- .33 Temporary Fencing and Gates;
- .34 Temporary Jobsite Barricades, Barriers, and Enclosures;
- .35 Temporary Parking Leases;
- .36 Floor and Finishing Protection;
- .37 Fire Extinguishers during construction;
- .38 Erosion Control;
- .39 Storm Water Prevention Plan;
- .40 Temporary Roads;
- .41 Maintain Temporary Roads and Streets;
- .42 Surveying**; and
- .43 Other items approved by the Owner.

** Denotes item to be bid out as separate package

^^ Denotes item which Owner may determine to make payment directly to the provider



Schedule A-3
Attached to the Guaranteed Maximum Price Amendment
Project Schedule



Schedule A-4
Attached to the Guaranteed Maximum Price Amendment
Commissioning Requirements For The Project



Schedule A-5
Attached to the Guaranteed Maximum Price Amendment
Subcontracts Which Are Fixed Bid



Schedule A-6
Attached to the Guaranteed Maximum Price Amendment
Subcontracts Which Are Cost Of The Work (Time, Materials, Overhead, And Profit) Bid



Schedule A-7
Attached to the Guaranteed Maximum Price Amendment
List Of Long-Lead Time Items Of Materials and Equipment That Must Be Ordered



Schedule A-8
Attached to the Guaranteed Maximum Price Amendment
The List Of Work To Be Self-Performed And The Not To Exceed Pricing Therefore



EXHIBIT A
Guaranteed Maximum Price Amendment
[To Be Completed When the GMP is Approved]

EXHIBIT B
Owner's Budget

EXHIBIT C
Project Schedule

EXHIBIT D
Staffing Plan/Vehicle Rental Rates

Pursuant to Section 1.3 of the Agreement, the following persons identified above may not be changed from their positions without the Owner’s prior written consent:

PERSONNEL AT HOME OFFICE
(Included in General Conditions)

<u>Staff Person</u>	<u>Staff Position</u>	<u>Hourly Rate Breakdown</u>
	Principal in Charge	
	Project Executive	
	Senior Project Manager	
	Project Coordinator Scheduler	
	Project Accountant	
	Preconstruction Manager	
	Estimator	
	MEP Coordinator	
	BIM Coordinator	
	HPGB Administrator	

**PERSONNEL STATIONED AT JOBSITE
(Included in General Conditions)**

<u>Staff Person</u>	<u>Staff Position</u>	<u>Hourly Rate Breakdown</u>
	General/Senior Superintendent	
	Superintendent	
	Assistant Superintendent	
	Project Manager	
	Project Engineer	
	Safety Manager	

VEHICLE RENTAL RATES

<u>Vehicle Category</u>	<u>Rental Rates</u>

EXHIBIT E
Equipment Rental Rates

Equipment

Rate

Skidsteer
Telehandler
Sweeper
Storage Containers
Hippo Hopper
Equipment FOG

EXHIBIT F
Construction Manager’s Insurance

Section	
1	General Requirements
2	Worker’s Compensation/Employer’s Liability Insurance
3	Employer’s Liability Insurance
4	Business Automobile Liability Insurance
5	Commercial General Liability Insurance
6	Excess Liability or Umbrella Liability Insurance
7	Inland Marine Contractor’s Equipment Insurance
8	Pollution Liability Insurance
9	Motor Carrier Endorsement
10	Rigger’s Liability Insurance
11	Cyber Liability Insurance
12	Professional Liability Insurance
13	Subcontractor Insurance Requirements

1. GENERAL REQUIREMENTS

1.1 Summary of Construction Manager’s (“CM”) Insurance Requirements. Construction Manager shall obtain and maintain in force the insurance specified below for both on-site and off-site operations.

1.2 Certificates of Insurance/Endorsements. Upon the execution of the Agreement and later upon the request of the Owner, CM must furnish to Owner certificates of insurance and required endorsements as evidence of insurance coverages and minimum limits required herein. Owner’s receipt of a non-conforming certificate of insurance and required amendatory endorsements without objection, or Owner’s failure to collect a certificate of insurance and required amendatory endorsements, will not waive or alter CM’s duty to comply with this requirement.

1.3 Occurrence and Claims Made Policy Forms. Except for Professional Liability, Contractors Pollution Liability, and Environmental and Asbestos Insurance, claims made policies are not acceptable. Those policies permitted to be on a claims-made basis shall be effective (retroactively, if applicable) from the date of commencement of all activities in connection with the Work until 10 years after final completion of the Project or the expiration of the applicable statute of repose of the State in which the Project is located (whichever is longer). The retroactive date must be shown and must be before the date of this Agreement or the beginning of the Work, whichever occurred earlier. If the coverage is canceled or non-renewed, and not replaced with another claims made policy form with a retroactive date prior to the effective date of the Agreement, CM must purchase “extended reporting” coverage until Final Completion.

1.3.1 Post Completion Insurance Period. The insurance must be maintained, and evidence of insurance must be provided for at least three years after the date of Substantial Completion, unless otherwise set forth in this Exhibit.

1.4 Additional Insured. For each policy below where the Owner shall be an Additional Insured, such Additional Insured status shall be to “The State of South Dakota, its officers and employees.”

1.5 Cancellation/Non-Renewal Notices. CM shall provide for thirty (30) days’ written notice to the Owner prior to the cancellation or material change of any insurance required herein (or ten (10) days’ notice for non-payment of premium).

2. REQUIRED INSURANCE TYPES AND AMOUNTS: CM shall purchase and maintain insurance of the types and in the amounts described below. The insurance shall be written by insurance companies and on policy forms acceptable to the Owner. Each insurer providing insurance coverage as required hereunder shall be a licensed insurer authorized to issue such coverage in each State in which any part of the Work is performed. The insurer shall have an AM Best rating of “A-VII” or better. The Owner, in its sole discretion, shall have the right to reject any insurer.

3. WORKERS’ COMPENSATION & EMPLOYER’S LIABILITY INSURANCE

3.1 Statutory Worker’s Compensation coverage (including occupational disease) will be provided for in the State in which the Project is located and the State of hire, if different. Employer’s Liability Coverage will be provided with the following minimum limits:

Bodily Injury by Accident, each accident	\$1,000,000
Bodily Injury by Disease, each employee	\$1,000,000
Bodily Injury by Disease, policy limit	\$1,000,000

3.2 Terms and Conditions shall include:

3.2.1 Certificate must clearly identify that coverage applies in the State in which the Project is located.

3.2.2 The policy shall include a Waiver of Subrogation in favor of the Owner unless prohibited by State law.

4. AUTOMOBILE LIABILITY INSURANCE	
4.1	Commercial Automobile Liability insurance covering all owned, leased, and non-owned vehicles used in connection with the work with limits of \$1,000,000 combined single limit per accident for bodily injury and property damage which shall apply as primary and non-contributory insurance. The Owner shall be an Additional Insured on a primary basis. The policy must include coverage for bodily injury, death and property damage arising out of ownership, maintenance, or use of any motorized vehicle on or off the site of the Project, including contractual Liability coverage. The policy must also include coverage for loading and unloading activities.
	If hauling of hazardous waste is part of the work, the policy shall include an MCS 90 endorsement and the ISO Form CA 99 48 (Pollution Liability Broadened Coverage for Business Automobile).
4.2	Waiver of Subrogation. The policy shall include a Waiver of Subrogation in favor of the Owner and any other parties as may be required by the Contract, Subcontract or Agreement.
5. COMMERCIAL GENERAL LIABILITY INSURANCE	
5.1	<u>Commercial General Liability Coverages.</u> Contractor will obtain and maintain commercial general liability insurance covering operations by or on behalf of Contractor. Coverage must include, but not be limited to, liability arising from premises, operations, work performed by subcontractors, products-completed operations, contractual liability, and personal and advertising injury.
5.2	<u>Minimum Limits of Liability</u>
	\$1,000,000 Each Occurrence Bodily Injury and Property Damage
	\$1,000,000 Personal and Advertising Injury
	\$2,000,000 Aggregate for Products-Completed Operations
	\$2,000,000 General Aggregate
	\$5,000 Medical Expense (any one person)
5.3	<u>Electronic Data Liability</u>
5.3.1	<u>Electronic Data Liability Coverages.</u> Contractor will provide electronic data liability covering claims involving damages arising out of loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data. As used herein, "electronic data" means information, facts or programs, stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, servers, data processing devices or any other media which are used with electronically controlled equipment.
5.3.1.1	<u>Limits for CM will not be less than:</u>
	\$1,000,000 Each Occurrence
	\$1,000,000 Annual Aggregate
	Limits for Subcontractors may be lower than the amounts stated above.
5.3.1.2	<u>Form.</u> The electronic data liability policy will be issued as an endorsement to the commercial general liability policy and will be occurrence-based.
5.3.1.3	<u>Third Party Liability Coverage.</u> The electronic data liability policy must include by endorsement third party coverage.
5.4	<u>General Aggregate shall apply separately to this project. Commercial General Liability policy must be written on an "occurrence" form CG 00 01 (or equivalent) and include the following coverage:</u>
5.4.1	Ongoing Construction Operation(s) in effect while work is being performed by Contractor
5.4.2	Products and Completed Operations, to remain in force, whether by endorsement or renewal of coverage from the date of final completion of the Work until at least 10 years after final completion of the Project after final completion of the Project or the expiration of the applicable statute of repose of the State in which the Project is located (whichever is longer).
5.4.3	Contractual Liability (insured contract) coverage sufficient to meet the requirements of this Contract (including defense costs and attorneys' fees assumed under contract)
5.4.4	Personal and Advertising Injury Liability coverage (with the contractual exclusion deleted)
5.4.5	Operations performed within 50' of railroad with railroad contractual exclusion deleted
5.4.6	Independent Contractors, covering operations of all Subcontractors and sub-subcontractors
5.4.7	Broad Form Property Damage coverage
5.4.8	No Exclusions applicable to the Work
	CM's policies required herein shall contain no exclusions or limitations with respect to the method of insuring the project including the implementation of a controlled insurance program (wrap up); provided, however, Subcontractors' policies may contain such exclusions.
5.5	CM will furnish Certificates of Insurance providing evidence that the Owner, and any other parties identified by written contract or agreement, are Additional Insureds on a primary, non-contributory basis for both ongoing and completed operations. The Additional Insured Endorsement(s) shall be CG 20 10 07/04 and CG 20 37 07/04, or equivalent forms, A copy of the CGL Additional Insured Endorsement(s) must be attached to the Certificate of Insurance.

The policy shall include a Waiver of Subrogation in favor of the Owner and any other parties as may be required by the Prime Contract, utilizing form CG 24 04 or equivalent.

6. EXCESS/UMBRELLA LIABILITY INSURANCE

6.1 Excess Liability Coverages. CM must maintain excess liability insurance or umbrella liability insurance on an occurrence basis in the amount of at least **\$20,000,000** per occurrence and in the aggregate. Each Subcontractor must maintain excess liability insurance or umbrella liability insurance on an occurrence basis in the amount of at least **\$2,000,000** per occurrence and in the aggregate.

6.2 Follow Form Requirement. The terms of such coverage must follow form to, or otherwise be at least as broad as, the primary underlying coverages, including amending the "other insurance" provisions as required to provide additional insured coverage on a primary, non-contributory basis except when an OCIP will cover the loss.

6.3 Waiver of Subrogation. The excess liability insurance carrier or the umbrella liability insurance carrier must waive subrogation rights against Owner and its officers, directors, agents, and employees.

6.4 Additional Insured Endorsement. The State of South Dakota, its officers and employees, must be included as additional insureds on Contractor's excess liability insurance or umbrella liability insurance.

6.5 Primary and Non-Contributory. CM's excess liability insurance or umbrella liability insurance carrier must confirm by endorsement the policy will apply as primary and not contributory.

7. CONTRACTOR'S INLAND MARINE INSURANCE

7.1 Inland Marine Coverages. CM must maintain inland marine coverage for CM's tools and equipment (including trailers), either purchased, rented, leased, or borrowed, that will not be incorporated into the Project.

7.2 Waiver of Subrogation for CM's Tools and Equipment. To the fullest extent permitted by law, CM waives and must require by endorsement its inland marine insurance carrier for the policy described in Section 7.1 to waive subrogation rights against Owner, including its officers, directors, agents, and employees for losses paid under the insurance policy described in Section 7.1.

8. ENVIRONMENTAL OR POLLUTION LIABILITY INSURANCE

8.1 Coverage Requirements. Pollution Liability is required of all Subcontractors performing the following work: abatement, remediation, removal, storage, transportation or disposal of any hazardous materials; final cleaning, excavation; interior walls; marine operations, HVAC, any wet systems, underground tanks, asbestos, soil handling and soil removal, building envelopes, or any other work if specifically required by the Owner the minimum policy limit shall be **\$1,000,000** per claim or occurrence and in the aggregate, including coverage for bodily injury, property damage and clean-up costs related to ongoing and completed operations.

8.1.1 Coverage shall include coverage for mold, mildew, spores and microbial events and Legionnaire's Disease

8.1.2 All terms of insurance are subject to approval of The Owner

8.1.3 The policy shall include a Waiver of Subrogation in favor of the Owner, and any other parties as may be required by the Prime Contract.

8.1.4 EIFS exclusions are not permitted

8.1.5 If coverage is on a "claims made" basis the retroactive date must precede the start date of the work.

8.2 The State of South Dakota, its officers and employees, must be added as Additional Insureds on this policy on a primary and noncontributory basis and shown on the Certificate of Insurance.

8.3 The policy shall be effective (retroactively, if applicable) from the date of commencement of all activities in connection with the Work until 10 years after final completion of the Project or the expiration of the applicable statute of repose of the State in which the Project is located (whichever is greater/longer).

9. RIGGER'S LIABILITY INSURANCE

9.1 If the Work involves the rigging, hoisting, lowering, raising, or moving of property or equipment of others, then Riggers Liability Insurance is required to insure against physical loss or damage to the property or equipment, which is in the care, custody, or control of the Rigger, with limits sufficient for replacement of the property or equipment being rigged.

10. CYBER LIABILITY INSURANCE

10.1 Cyber Coverage. CM will obtain and maintain cyber liability insurance with limits of **\$2,000,000.00** each incident and in the aggregate.

10.2 Third Party Coverage. CM's cyber liability insurance policy must include third party coverage.

11. PROFESSIONAL LIABILITY INSURANCE

11.1 Professional Liability Insurance. If the Owner requests the CM or the CM's Subcontractors or consultants provide architectural or engineering design services, then the party providing said services will obtain and maintain Professional Liability insurance written on a claims made basis with the limits of liability in amounts not less than **One Million Dollars (\$1,000,000)** per claim and in the aggregate, insuring the party and the acts of others for whom the design party may be liable, against any and all liabilities arising out of or in connection with the negligent acts, errors, and omissions of any of the foregoing

in connection with the carrying out of the professional design services for the Project. The deductible may not exceed **One Hundred Thousand Dollars (\$100,000)** without the Owner's consent. The design party shall be solely responsible for the payment of any insurance deductible under its respective policy.

12. SUBCONTRACTOR INSURANCE REQUIREMENTS

12.1 Coverage Amounts. Except as stated above, CM's subcontractors of every tier must obtain and maintain worker's compensation insurance, employer's liability insurance, business automobile liability insurance, commercial general liability insurance, and pollution liability insurance (if applicable to subcontractor's Work) in the same amounts (except for excess liability or umbrella liability coverage must be \$2,000,000) and meeting the same additional insured and waiver of subrogation endorsement requirements as are imposed upon CM.

EXHIBIT G
Intentionally Omitted

EXHIBIT H
Builder's Risk Insurance
(Construction Manager To Provide Builder's Risk Policy)
[To Be Completed When the GMP is Approved]

Section	
1	Status of Builder's Risk Insurance
1.1	Owner to Purchase
2	Terms of Builders Risk Insurance
2.1	Purchase of Builder's Risk Insurance
2.2	Causes of Loss
2.3	Specific Required Coverages
2.4	Deductibles and Self-Insured Retentions
2.5	Occupancy or Use Prior to Substantial Completion
2.6	Adjustment and Settlement of an Insured Loss
3	Failure to Purchase and Maintain Builder's Risk Insurance
3.1	Failure to Purchase Builder's Risk Insurance
3.2	Notice of Cancellation or Expiration of Builder's Risk Insurance

1. STATUS OF BUILDERS RISK INSURANCE

1.1 **Builder's Risk Insurance will be purchased by Construction Manager (the "Purchaser") as provided in this Exhibit.**

2. TERMS OF BUILDER'S RISK INSURANCE

2.1 **Construction Manager to Purchase Builder's Risk Insurance.** Construction Manager must purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The builder's risk insurance coverage will be no less than the amount of the initial Guaranteed Maximum Price (the "GMP"), plus the value of subsequent modifications increasing the GMP for labor performed and materials and equipment supplied to the Project. The builder's risk insurance must be maintained until Substantial Completion, unless otherwise agreed in writing by the parties to the Agreement. This insurance must include the interests of Owner, Construction Manager, and Subcontractors of every tier as insureds. This insurance must include the interests of mortgagees, if any, as loss payees. A copy of the policy and a certificate of insurance evidencing the policy and naming the State of South Dakota as Certificate Holder shall be provided to Owner prior to commencement of the Work.

2.2 **Causes of Loss.** The builder's risk insurance required by this Exhibit must provide coverage for direct physical loss or damage, and may not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm, unless otherwise indicated below. The insurance must also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, designs, specifications, workmanship, or materials when that damage is caused by an ensuing covered cause of loss. Sub-limits, if any, will be as follows:

Cause of Loss	Sub-Limit
"Earth Quake" including "Earth Movement"	
"Water Damage" or "Flood" <i>Excluding Flood Zones A, V, B, Shaded X</i>	
"Wind Storm or Hail"	

Deductibles:	
The following deductibles apply in any one "occurrence."	
\$	Physical loss of or damage to Covered Property, unless otherwise shown below.
\$	"Earth Movement";
\$	"Water Damage" or "Flood";
\$	"Wind Storm or Hail";
\$	"Soft Costs" & Loss of Use

2.3 Specific Required Coverages. The builder’s risk insurance required by this **Exhibit** must provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The builder’s risk insurance must also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for any engineers’, architects’, contractor’s, and subcontractors’ services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, will be as follows:
(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

<u>Coverage</u>	<u>Sub-Limit</u>
<u>Policy Limit of Liability</u>	<u>(GMP) per “occurrence”</u>
<u>Builder’s Risk Property Limits of Liability</u>	
<u>Project site</u>	<u>\$ GMP per “occurrence”</u>
<u>Escalation Clause – Insured Project</u>	<u> % Minimum</u>
<u>Transit</u>	<u>\$ Per Conveyance</u>
<u>“Temporary Offsite Location”</u>	<u>\$ Per Location</u>
<u>“Water Damage”</u>	<u>(GMP) per “occurrence”</u>
<u>Delay in Completion Aggregate Limit of Liability</u>	<u>\$ Aggregate</u>

Limits of Liability

Claim Preparation Expenses	\$
Construction Documentation and Records	\$
Construction Trailers	\$
Contract Penalties	\$
Contractor and Owner Extra Expenses	\$
Contractor Extra Expenses	\$
“Owner’s Extra Expense”	\$
Crane Re-Erection Expense	\$
Damage to Existing Real Property Due to Construction Activities	\$
Debris Removal	\$
Design Professional Fees	
Emergency Property Protection Expense – Annual Aggregate	\$
Fire Projective Equipment Refills	\$
Off Premises Service Interruption – Additional Expenses	\$
Ordinance or Law – Demolition and Increase Cost of Construction	\$
Ordinance or Law – Undamaged Portion of the Insured Project	\$
Pollutant Clean-Up and Decontamination – Policy Aggregate	\$
Prevention of Access – Ingress or Egress	\$
Removal to Preserve Covered Property	\$
Reward Payments	\$
Spare construction Materials	\$
Testing	\$

As respect to Delay in Completion Coverage, the following shall apply per “occurrence”:

<u>Civil Authority</u>	<u>\$</u>	<u>Number of Days:</u>
<u>Ingress or Egress</u>	<u>\$</u>	<u>Number of Days:</u>
<u>Off Premises Service Interruption</u>	<u>\$</u>	<u>Number of Days:</u>

2.4 No Occupancy or Use Prior to Owner Obtaining Property Insurance. Owner’s occupancy or use of any completed or partially completed portion of the Work may not commence until the insurance company or companies providing the builder’s risk insurance have consented in writing to the continuance of coverage or Owner has secured property insurance insuring the Work. Owner will take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of the builder’s risk insurance, unless Construction Manager agrees otherwise in writing.

2.5 Optional Extended Property Insurance. Construction Manager must purchase and maintain the insurance selected and described below.

(Select the types of insurance Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

2.5.1 Loss of Use, Business Interruption, and Delay in Completion Insurance, to reimburse the Owner for loss of use of the Owner’s property, or the inability to conduct normal operations due to a covered cause of loss. _____ \$ _____

2.5.2 Ordinance or Law Insurance, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement, or use of the Project. _____ \$ _____

2.5.3 Expediting Cost Insurance, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property. _____ \$ _____

2.5.4 Extra Expense Insurance, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred. _____ \$ _____

2.5.5 Civil Authority Insurance, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance. _____ \$ _____

2.5.6 Ingress/Egress Insurance, for loss due to the necessary interruption of the insured’s business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage. _____ \$ _____

2.5.7 Soft Costs Insurance, to reimburse Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses. (Including Loss of Use, Etc., under Section 2.6.1 above.) _____ \$ _____

2.6 Adjustment and Settlement of an Insured Loss.

2.6.1 Adjustment by Construction Manager. A loss insured under the builder’s risk insurance required by this Exhibit will be adjusted by Construction Manager, as a fiduciary, and made payable to Construction Manager as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 2.8.1. Construction Manager will pay Owner, Owner’s just share of insurance proceeds received by Construction Manager, and by appropriate agreements, Owner will make payments to its consultants and separate contractors in a similar manner.

2.6.2 Loss Settlement Process. In accordance with Section 11.5.2 of the A201 General Conditions of the Agreement, prior to settlement of an insured loss, Construction Manager must notify Owner of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. Owner will have twenty-one (21) days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If Owner does not object, Construction Manager must settle the loss, and Owner will be bound by the settlement and allocation. Upon receipt, Construction Manager will deposit the

insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or neither party terminates the Agreement as provided therein, Owner and Construction Manager will execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If Owner timely objects to either the terms of the proposed settlement or the allocation of the proceeds, Construction Manager may proceed to settle the insured loss, and any dispute between the Owner and Construction Manager arising out of the settlement or allocation of the proceeds must be resolved pursuant to the terms of the Agreement. Pending resolution of any dispute, Owner and Contractor may execute a Change Order for the reconstruction of the damaged or destroyed Work.

2.6.3 **Responsible for Deductible Amount.** The Owner will be responsible for the costs associated with the deductible amount and any co-insurance amount under the builder's risk insurance, unless the loss is caused in whole or in part by the Construction Manager, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by them, or by anyone whose acts they may be liable and for which the Contractor is responsible.

3. FAILURE TO PURCHASE AND MAINTAIN BUILDERS RISK INSURANCE

3.1 **Failure to Purchase Builder's Risk Insurance.** If Construction Manager fails to purchase and maintain the builder's risk insurance with all the coverages and in the amounts described in this Exhibit, Construction Manager must inform Owner in writing prior to commencement of the Work in accordance with Section 11.2.2 of the A201 General Conditions of the Agreement. Upon receipt of notice from Construction Manager, Owner may delay commencement of the Work and may obtain insurance that will protect the interests of Owner, Construction Manager, Subcontractor, and Sub-subcontractors of every tier in the Work. When the failure to provide coverage has been cured or resolved, the Guaranteed Maximum Price and Project Schedule must be equitably adjusted.

3.2 **Notice of Cancellation or Expiration of Builder's Risk Insurance.** Within three (3) business days of the date Construction Manager becomes aware of an impending or actual cancellation or expiration of the builder's risk insurance, Construction Manager must provide notice to Owner of such impending or actual cancellation or expiration as set forth in Section 11.2.3 of the A201 General Conditions of the Agreement. Unless the lapse in coverage arises from an act or omission of Construction Manager: (1) Construction Manager, upon receipt of notice from Owner, will have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either Owner or Construction Manager; and (2) The Project Schedule and Guaranteed Maximum Price will be equitably adjusted. If Construction Manager purchases replacement coverage, the cost of the insurance will be charged to Owner by an appropriate Change Order.

[Signature Page Follows]

State of South Dakota

[Insert Agency Owner]

OWNER *(Signature)*

« »
« »

(Printed name and title)

(Date)

**Recommended By:
The Office of the State Engineer**

(Signature) *(Date)*

«Stacy Watters, P.E.»
«State Engineer»

(Printed name and title)

**Approved as to Form: Office of General
Counsel, Bureau of Human Resources and
Administration**

(Signature) *(Date)*

« »
(Printed name and title)

Reviewed By: [Agency Owner]

(Initials) *(Date)*

« »
(Printed name and title)

**Reviewed By / Required Documents
Received: Office of the State Engineer**

(Initials) *(Date)*

« »
(Printed name and title)

[Insert Construction Manager]

CONSTRUCTION MANAGER *(Signature)*

« »
« »

(Printed name and title)

(Date)

[Insert Construction Manager, as needed]

CONSTRUCTION MANAGER *(Signature)*

« »
« »

(Printed name and title)

(Date)

[Insert Construction Manager, as needed]

(Initials) *(Date)*

« »
(Printed name and title)

[Insert Construction Manager, as needed]

(Initials) *(Date)*

« »
(Printed name and title)

**Reviewed By: [Insert Construction Manager,
as needed]**

(Initials) *(Date)*

« »
(Printed name and title)

EXHIBIT I
Data Protection and Cyber Security Requirements

1. Definitions. Terms that are capitalized, but not defined in the Standard Agreement AND GENERAL CONDITIONS Between Owner and Construction Manager, are defined as follows:

1.1 “Authorized Employees” means Construction Manager’s employees and consultants who have a need to know and have access to Protected Data to enable Construction Manager to perform its Services for the Project.

1.2 “Authorized Persons” means Construction Manager’s agents and consultants who have a need to know and have access to Protected Data to enable Construction Manager to perform Construction Manager’s Services for the Project.

1.3 “Data Breach Claim” means any and all claims or causes of action, whether by Owner, or any other person arising from or related to: (i) access to, disclosure of, or use of Protected Data by an unauthorized party whom obtained access to the Protected Data, whether directly or indirectly, through Construction Manager or its Authorized Employees or Authorized Persons; or (ii) any unauthorized disclosure or use of Protected Data by Construction Manager, its Authorized Employees or Authorized Persons.

1.4 “Protected Data” unless otherwise defined under the laws of the state which govern the Agreement, means any and all information of Construction Manager, Owner, and any person other than Construction Manager, where access to such information may give rise to a Data Breach Claim, including, but not limited to government issued identification numbers, financial account numbers, credit card numbers, debit card numbers, personal identification numbers, passwords and similar information, and other data available, directly or indirectly through online access points or portals such as building information modeling and other such access points or portals.

1.5 “Security Breach” means: (i) any act or omission that compromises either the security, confidentiality or integrity of Protected Data or the hardware, software, and systems of Owner (including, but not limited to, breaches resulting from errors, defects, viruses, worms, and similar damage-causing intrusive means) or the physical, technical, administrative or organizational safeguards put in place by Construction Manager that relate to the protection of the security, confidentiality or integrity of Protected Data; or (ii) a breach or alleged breach by Construction Manager of its obligations under this Exhibit.

2. Acknowledgements of Construction Manager. Construction Manager acknowledges and agrees in the course of Construction Manager’s Services pursuant to the Agreement, Construction Manager may receive or have access to Protected Data. Construction Manager must comply with the terms and conditions set forth in this Exhibit in its collection, receipt, transmission, storage, disposal, use and disclosure of Protected Data and be responsible

for the unauthorized collection, receipt, transmission, access, storage, disposal, use and disclosure of Protected Data resulting from its noncompliance with this Exhibit. Construction Manager will be responsible for, and remain liable to, Owner for the actions and omissions of all Authorized Employees and Authorized Persons concerning the treatment of Protected Data as if they were Construction Manager's own actions and omissions.

In recognition of the foregoing, Construction Manager agrees and covenants it will: (i) keep and maintain all Protected Data in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use or disclosure of Protected Data; (ii) use and disclose Protected Data solely and exclusively for the purposes for which the Protected Data, or access to it, is provided pursuant to the terms and conditions of the Agreement, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Protected Data for Construction Manager's own purposes or for the benefit of anyone other than Owner; and (iii) not, directly or indirectly, disclose Protected Data to any person other than Authorized Employees and Authorized Persons, without express written consent from Owner.

3. Construction Manager's Obligations; Protected Data Security. Construction Manager represents and warrants that its collection, access, use, storage, disposal and disclosure of Protected Data does and will comply with best practices and consistent with any requirements of Owner that are provided to Construction Manager in writing including, but not limited to the following.

3.1 Construction Manager will maintain administrative, physical and technical safeguards to protect Protected Data that are not less rigorous than industry practices reasonably expected of Construction Management firms in the construction and delivery of correctional facilities projects, and will ensure all safeguards, including the manner in which Protected Data is collected, accessed, used, stored, processed, disposed of and disclosed comply with applicable data protection and privacy laws, as well as the terms and conditions of this Exhibit.

3.2 Intentionally omitted.

3.3 Construction Manager's safeguards for the protection of Protected Data must include: (i) limiting access of Protected Data to Authorized Employees and Authorized Persons; (ii) securing business facilities, data centers, paper files, servers, back-up systems and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, device application, database and platform security; (iv) securing information transmission, storage and disposal; (v) implementing authentication and access controls within media, applications, operating systems and equipment; (vi) encrypting Protected Data stored on any mobile media; (vii) encrypting Protected Data transmitted over public or wireless networks; (viii) segregating Protected Data from information of Construction Manager or its other customers so Protected Data is not commingled with any other types of information; (ix) implementing appropriate personnel security and integrity procedures and practices including, but not limited to, conducting background checks consistent with

applicable law; and (x) providing appropriate information security training to Construction Manager's employees.

3.4 During the term of each Authorized Employee's employment by Construction Manager, Construction Manager must cause all Authorized Employees to abide strictly to Construction Manager's obligations under this Exhibit. At all times any Authorized Persons are engaged by Construction Manager, Construction Manager must cause all Authorized Persons to abide strictly to Construction Manager's obligations under this Exhibit.

4. Security Breach; Notification and Procedure. Construction Manager must, as soon as practicable, but no later than as may be required by applicable law after Construction Manager becomes aware of a Security Breach, give to Owner written notice of the Security Breach, detailing the nature of the Security Breach and information accessed in conjunction with the Security Breach.

4.1 Promptly following Construction Manager's notification to Owner of a Security Breach, the parties will coordinate with each other to investigate the Security Breach in accordance with the provisions of this Exhibit and Owner's policies and procedures.

4.2 Intentionally omitted.

4.3 Construction Manager must use best efforts to immediately remedy any Security Breach and prevent any further Security Breach at Construction Manager's expense in a manner agreed to by the parties or, in the absence of agreement, determined by Owner in its reasonable discretion. In addition, Construction Manager will promptly reimburse Owner for all costs, fees, and expenses (including reasonable attorneys' fees) incurred by Owner in responding to, and mitigating damages caused by any Security Breach, including all costs of notice required by applicable law and remediation.

4.4 Except as required by law, Construction Manager agrees it will not inform any third party of any Security Breach without first obtaining Owner's prior written consent, which consent will be in Owner's sole discretion; provided, however, that Construction Manager may inform its attorneys, cyber security experts, cyber liability carrier, and insurance agent so long as these recipients agree to no further disclosure of said Security Breach or information that part of or related to said Security Breach without the Owner's prior written consent. Further, Construction Manager agrees Owner will have the sole right to determine: (i) whether notice of the Security Breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies or others as required by law or regulation, or otherwise in Owner's discretion; and (ii) the contents of the notice, whether any type of remediation may be offered to affected persons, and the nature and extent of any remediation.

4.5 Construction Manager agrees to fully cooperate, at its own expense, with Owner in any litigation or other formal action deemed necessary by Owner to protect its rights relating to the use, disclosure, protection and maintenance of Protected Data.

5. Compliance by Construction Manager. To the extent Construction Manager maintains, acquires, discloses, uses, or has made available to Construction Manager any Protected Data, Construction Manager will comply with the provisions of this Exhibit. Construction Manager will immediately notify Owner if Construction Manager is not in compliance with the requirements of this Exhibit.

6. Indemnification. Construction Manager will defend, indemnify and hold harmless Owner and its elected and appointed officials, employees, agents, and assigns (each an "Indemnitee") from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including attorneys' fees and the cost of enforcing any right to indemnification under this Exhibit, arising out of or resulting from: (i) any Security Breach; (ii) any Data Breach Claim; (iii) any other third-party claim against any Indemnitee arising out of or resulting from Construction Manager's failure to comply with any of its obligations under this Exhibit; (iv) any losses suffered directly by any Indemnitee arising out of or resulting from Construction Manager's failure to comply with any of its obligations under this Exhibit; and (v) any other losses, claims, or causes of action arising out of or resulting from Construction Manager's failure to comply with any of its obligations under this Exhibit. The indemnification obligations in this Section 6 are in addition to the indemnification obligations of Construction Manager pursuant to the Agreement.

7. Damages. Section 15.1.7 "Waiver of Claims for Consequential Damages" set forth in the A201-2017 is not applicable to any liability of Construction Manager arising under this Exhibit. Construction Manager acknowledges and agrees, with respect to any Data Breach Claim and Construction Manager's obligations of indemnification pursuant to this Exhibit, any party to whom Construction Manager owes an obligation under this Exhibit will be entitled, to the extent permitted by law, to recover from Construction Manager all actual damages, incidental and consequential damages, and all related costs and expenses including attorneys' fees. Irrespective of the foregoing, however, the maximum amount for which Construction Manager will be liable for any Data Breach Claim or other breach of the requirements of this Exhibit will be, to the extent permitted by law, the limit of Construction Manager's cyber liability insurance required under this Agreement, which is \$2,000,000.00 for each incident and in the aggregate.

8. Equitable Relief. Construction Manager acknowledges any breach of its covenants or obligations set forth in this Exhibit may cause Owner irreparable harm for which monetary damages would not be adequate compensation and agrees then, in the event of such breach or threatened breach, Owner is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which Owner may be entitled at law or in equity. Such remedies may not be deemed to be exclusive but will be in addition to all other remedies available at law or in equity.

9. Survival. All the provisions of this Exhibit will survive the termination or expiration of the Agreement.