



**TO:** SOUTHERN NEVADA DISTRICT BOARD OF HEALTH      **DATE:** May 28, 2026




**RE:** *Approval of the Agreement between the Southern Nevada Health District and The Whiting-Turner Construction Company.*

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**PETITION #32-26**

**That the Southern Nevada District Board of Health approve the Agreement and contract between the Southern Nevada Health District and The Whiting-Turner Construction Company for completing construction of the new BSL3 building of our public health laboratory located at 700 S Martin Luther King Blvd.**

**PETITIONERS:**

**Cassius Lockett, PhD, District Health Officer**   
**Jason Frame, Acting Director of Administration**   
**Bob Kingston, Chief Facilities Officer** 

**DISCUSSION:**

*The BSL-3 lab expansion project for Southern Nevada Health District will add approximately 12,800 square feet to the Southern Nevada Public Health Laboratory in the Las Vegas Medical District. Of this expansion, 8,300 square feet will be built out immediately, while an additional 4,500 square feet of shell space is being prepared for future growth and occupants. As the region's population continues to increase, the expanded laboratory will strengthen the agency's ability to respond to public health threats and improve service capacity for Clark County and neighboring rural communities.*

**FUNDING:**

*The Southern Nevada Health District solicited a formal bid through the RFP process in order to define the best fit for the BSL3 lab expansion project in which The Whiting-Turner Construction Company was selected. The Southern Nevada Health District is using funds from SB118 (SBLBX25) \$3,308,085.96, Clark County Recovery Funds \$3,900,346.15, and SNHD General Funds \$12,834,256.89 to complete the cost of the BSL3 lab expansion project for a total of \$20,042,689.00.*



# 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 First day of May in the year Two Thousand Twenty-Six

**BETWEEN** the Owner:

)

Southern Nevada Health District  
280 S. Decatur Blvd.  
Las Vegas, Nevada 89107

and the Construction Manager:

The Whiting-Turner Contracting Company  
6720 Via Austi Parkway, Suite 550  
Las Vegas, Nevada 89119

for the following Project, SNHD Reference Number C2500139, PWP-CL-2025-526:  
*(Paragraph deleted)*

The Whiting-Turner Contracting Company will serve as Construction Manager at Risk for the construction of a new Biosafety Level 3 laboratory located at 700 S. Martin L. King Blvd., Las Vegas, NV 89106.

The Architect:

)

EC Nevada, LLC  
15231 Laguna Canyon Road  
Suite 200  
Irvine, CA 92618

The Owner and Construction Manager agree as follows.

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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

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## ARTICLE 1 INITIAL INFORMATION

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

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

Design and construction of a new BSL-3 laboratory including phased utility site, and building work at 700 S. Martin L. King Boulevard, Las Vegas, Nevada, 89106.

§ 1.1.2 The Project's physical characteristics:

Two-phase project on a secured urban site with civil improvements, deep utilities, BSL-3 lab construction, and supporting infrastructure.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

*(Paragraph deleted)*

TBD

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

.1 Design phase milestone dates, if any:

Design phase completed November 30, 2025

**.2 Construction commencement date:**

Still to be determined as of full execution of Agreement based on ongoing offsites and utility construction, with construction commencement date anticipated to take place in June 2026

**.3 Substantial Completion date or dates:**

Still to be determined as of full execution of Agreement based on ongoing offsites and utility construction, with Substantial Completion anticipated to take place in September 2027

**.4 Other milestone dates:**

~~It is mutually understood that there are critical financial planning constraints creating milestones for project spend with approximately \$3.2 million to be spent by June 30, 2026 and approximately \$3.9 million to be spent by December 31, 2026~~

**§ 1.1.5** The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below: Construction will proceed in two primary phases. Korte Construction Company, doing business as the Korte Company ("Korte") will complete site and civil work. Construction Manager will follow with building construction. Coordination between both contractors will be led by Owner.

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

Not Applicable

**§ 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:

Owner requires Construction Manager's coordination with Korte during turnover.

**§ 1.1.7.1** Coordination and Transition from Korte Construction Company

**§ 1.1.7.1.1** Owner will coordinate a structured turnover process from Korte, which is performing the initial civil and site utility improvements, to the Construction Manager. This transition will include by not be limited to:

- .1** Joint site walks between Korte and Construction Manager at key milestones to review completed scopes and site readiness
- .2** A formal turnover meeting facilitated by Owner, including participation by Korte, Construction Manager, Architect, and relevant consultants, to review site conditions, access requirements, and any open items or exceptions
- .3** Delivery of as-built documentation, utility testing reports, permit closeouts, and dust control/SWPP compliance documentation by Korte prior to demobilization
- .4** Construction Manager shall coordinate mobilization activities to commence no earlier than completion of Korte's agreed scope and turnover acceptance by Owner.
- .5** Owner shall issue a written notice of site turnover to both Korte Construction Manager confirming acceptance of the transitioned work and authorizing Construction Manager's start of field activities

**This protocol ensures clear delineation of responsibilities and minimizes disruption between the two project phases.**

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

Corey Morrison, Owner's Project Representative  
280 S. Decatur Blvd.  
Las Vegas, NV 89107  
[Morrison@snhd.org](mailto:Morrison@snhd.org)  
702/759-1117

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

Architect

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

.1 Geotechnical Engineer:

David Salter, PEGeotechnical & Environmental Services, Inc.  
7150 Placid Street  
Las Vegas, NV 89119  
Phone: 702/365-1001  
Email: David.Salter@ges-west.com

.2 Civil Engineer:

Retained by the Architect.

.3 Other, if any:

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

§ 1.1.11 The Architect's representative:

Simon Richmond, PE, PMP  
EC Nevada, LLC  
401 West A Street, Suite 320  
San Diego, CA 92101  
Email: srichmond@ewingcole.com  
Phone: (949) 417-7550  
Mobile: (919) 720-9647

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

John Breuer, Project Executive  
6720 Via Austi Parkway, Suite 550  
Las Vegas, NV 89119  
Phone: (702) 650-0700

Mobile: (702) 400-3702  
Email: [John.Breuer@whiting-turner.com](mailto:John.Breuer@whiting-turner.com)

Jacob York, Lead Project Manager  
6720 Via Austi Parkway, Suite 550  
Las Vegas, NV 89119  
Phone: (702) 650-0700  
Mobile: (925) 353-6250  
Email: [jacob.york@whiting-turner.com](mailto:jacob.york@whiting-turner.com)  
Ian Thomas, Lead Project Superintendent  
6720 Via Austi Parkway Suite 550  
Las Vegas, NV 89119  
Phone: (702) 650-0700  
Mobile: (925) 201-9392  
Email: [ian.thomas@whiting-turner.com](mailto:ian.thomas@whiting-turner.com)

Ruby Carrillo, Project Safety Manager  
6720 Via Austi Parkway, Suite 550  
Email: [ruby.carrillo@whiting-turner.com](mailto:ruby.carrillo@whiting-turner.com)  
Phone: (725) 289-6146

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9: Pursuant to the below Article 3, Construction Manager must receive prior approval from Owner to make changes to designated representatives.

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

§ 1.1.14.1 Construction Manager may enter into a contract with a subcontractor licensed pursuant to NRS Chapter 624 to perform certain preconstruction services notwithstanding the provisions of NRS 338.16991 and 338.16995, and subject to the provisions of subsection 2, in accordance with NRS 338.16935.

§ 1.1.14.2 Construction Manager shall advertise for and select, in accordance with the applicable provisions of NRS 338 and NAC 338, the subcontractors required to complete the construction of the Project. Construction Manager acknowledges that it must comply with all the requirements of NRS 338.16991 and NRS 338.1693 as well as the NAC.

§ 1.1.14.3 Construction Manager shall advise Owner of all planned pre-bid, bid, and solicitations, including terms, conditions, contract forms, schedules, bid packages, and other items for Owner's review. Construction Manager will ensure (1) determination of qualifications is made subject to the provisions of NRS 338.16991 and (2) evaluation of proposals and selection of subcontractors are done pursuant to the provisions of NRS 338.16995.

§ 1.1.14.4 All bids shall be received by Construction Manager and shall be reviewed with the Project Team, consisting of Construction Manager, Owner, and Architect. Construction Manager shall utilize a bid system that ensures parity, consistency of bids, and documentation of date and time bids are received to show compliance with advertisement for bids.

§ 1.1.14.5 Construction Manager shall ensure that all proposed subcontractors are properly qualified to perform their portion of work and have a valid Nevada business license pursuant to NRS 338.072.

§ 1.1.14.6 Construction Manager shall comply with all the provisions of NRS 338.020-338.090, inclusive.

§ 1.1.14.7 Within ten (10) days of opening subcontractor proposals, Construction Manager shall provide Owner with a list of the selected subcontractors. Construction Manager shall not substitute any person for itself or a subcontractor that is named on the required list(s) except as provided per NRS 338.16995.

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

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

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

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's 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 other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

### § 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of 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. ~~The parties agree that the contractual relationship of Construction Manager to Owner is one solely of an independent contractor in all respects and that this Agreement and/or any other Contract Documents do not in any way create a partnership, joint venture, or any other relationship between Owner and Construction Manager other than the contractual relationship as specified in this agreement.~~

### § 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified, 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~~as modified shall mean the Construction Manager. Owner agrees that Construction Manager shall not be liable to Owner for the Architect's or its subconsultants' negligent error or omissions in the performance of architectural or engineering services and that, in the event of such errors or omissions, Owner shall look solely to the provider of such professional services for any damages sustained by the Owner.

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

## ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§ 3.0 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 as modified referenced in Section 2.3.1. The Construction Manager's Construction

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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. Pursuant to the above § 1.1.12, the Construction Manager has identified designated representatives authorized to act on behalf of the Construction Manager with respect to the Project.

**§ 3.0.1 Project Lead Superintendent, Project Manager, Project Safety Manager, and Project Executive.** The Construction Manager will employ a qualified and competent lead project superintendent and necessary assistants who will be in attendance at the Project site during the performance of all Work. The lead project superintendent represents the Construction Manager, and communications given to the lead project superintendent shall be as binding as if given to the Construction Manager. The Construction Manager shall further employ a project manager who shall represent the Construction Manager in the overall planning, execution, and closing of the project including but not limited to observing all constraints related to the cost, timing and scope of the Project. The Construction Manager will also designate a project safety manager who will be a primary contact for the Owner regarding project safety. Finally, the Project Executive will provide overall direction and strategic leadership from pre-construction through closeout to ensure Project stays on schedule, within budget, and is completed to Owner's satisfaction.

**§ 3.0.2** The Construction Manager's Designated Representatives as identified in § 1.1.12 of this Agreement are accepted by Owner. Before replacing any of the individuals identified as a Construction Manager's Designated Representative, Construction Manager must furnish in writing to Owner and Architect the name and qualifications of the proposed replacement as soon as is practicable. The Owner and Architect may reply within 14 days to the Construction Manager in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent, safety director and/or project manager, or (2) that the Owner or Architect requires additional time to review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.0.3** Construction Manager shall not assign to the Project a lead project superintendent, project manager, project safety manager, or project executive to whom the Owner or Architect has made reasonable and timely objection. The Construction Manager shall not change the superintendent, project manager, or safety director without the Owner's consent, which shall not unreasonably be withheld or delayed. The parties recognize that in the event Construction Manager changes the superintendent, project manager, or safety director without the consent of Owner, Owner may incur additional expenses and delay that will be difficult or impossible to quantify. Accordingly, in such an event, Construction Manager will pay to Owner a penalty of \$5,000.. In the event of an unforeseen instance, generally termination, resignation, death, or serious illness precluding the ability to carry out duties, requiring a change in the Construction Manager's representatives, the Construction Manager shall contact the Owner immediately to determine any adjustments in the Construction Manager's representatives which shall not be unreasonably withheld.

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

#### **§ 3.1.3 Consultation**

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

**§ 3.1.3.2** The Construction Manager shall advise the Owner and Architect on proposed site use (including staging, operations, warehouse coordination activities for material staging, and parking that might affect adjacent sites) 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 written protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project.

#### § 3.1.4 Project Schedule

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

#### § 3.1.5 Phased Construction

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

#### § 3.1.6 Cost Estimates

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

§ 3.1.6.2 The Architect has progressed the design through Construction Documents and has submitted same to the authority having jurisdiction ("AHJ") for the permit. Prior completed construction estimates by the Architect's team have been issued to the Owner and will be made available to the Construction Manager at the Owners discretion. The Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates. All cost estimates shall comply with Section 7.2.6.1 below relating to the payment of prevailing wages. In addition, all cost estimates shall comply with the requirements of Section 5.2 of AIA Document A201-2017, General Conditions of the Contract for Construction, as modified, relating to the Project constituting a "public work" under NRS 338.010(15)(b).

§ 3.1.7 The Architect has progressed the design through Construction Documents and has submitted same to the AHJ for the permit. 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.

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

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

**§ 3.1.11 Subcontractors and Suppliers**

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

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project. The Construction Manager shall also consult with the Owner and the Architect in determining the most qualified bidders for the Work.

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

**§ 3.1.12 Procurement**

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

**§ 3.1.13 Compliance with Laws**

Subject to the terms of Article 3.2.3 of the General Conditions AIA Document A201 – 2017, as modified, the Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

**§ 3.1.14 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

**Construction Manager's Preconstruction Phase Services include:**

- . 1 Schedule Owner/Architect/Contractor meetings and document preconstruction discussions/decisions. The Construction Manager's Project Manager will take the lead on scheduling meetings and documenting all items and information discussed. Meeting minutes will be expediently produced and distributed to the team for verifications, tracking, and communication of action items to be completed by the parties involved.
- . 2 Perform constructability reviews. The Construction Manager's Project Manager and Lead Project Superintendent will perform reviews with assistance by various support staff. The information gathered will be consolidated into a set of working, red-lined plans, and list of items to review with the Design Team (Construction Manager and Architect) and Owner at the project meetings for implementation into the design documents. Construction Manager may also seek input from subcontractor and/or consultants for more detailed or specific information regarding certain design details or materials to be installed. To the extent possible, Construction Manager will also conduct the investigations and forensic studies to reconcile as-built and existing conditions.
- . 3 Provide advice and project analysis and feedback regarding materials, methods, systems, schedule, sequencing, labor, and other conditions affecting construction and contracting. The Construction Manager's Project Executive, Project Manager, Lead Estimator, and Lead Project Superintendent will contribute innovative suggestions to improve quality and practical recommendations to achieve a realistic, achievable project. This will include assessment of construction feasibility, ease and speed of construction and possibilities such as use of labor-saving, off-site fabrication or pre-assembled systems.

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- . 4 Develop a Master Design and Construction schedule with critical decisions and milestone dates. Scheduling is performed in house by the Construction Manager's Project Managers, with input and support from the Lead Project Superintendent. Upon project award, Construction Manager will provide a preliminary schedule which identifies critical milestone dates, activities related to design development and budget completion and the durations in which the activities must be completed to achieve the desired project delivery timeline. The schedule will include a detailed critical path method construction schedule as the Preconstruction phase reaches completion. Preplanning will include analysis of site logistics to optimize the flow of workers, materials, and equipment to and from the building site, with a strong emphasis on safety and minimum impact to ongoing site and area operations. Once agreed upon by all parties, the schedule will be updated weekly and used to track progress and completion of activities as the design evolves.
- . 5 Develop a Site Specific Safety Program and Storm Water Prevention Plan. The Site Specific Safety Program and Storm Water Prevention Plan will be developed in house by Construction Manager's Project Safety Manager.
- . 6 Life Cycle Cost estimating for effective evaluation of options. This will be performed by the Construction Manager's Project Team in conjunction with subcontractors, suppliers, and engineers to develop the best value for the systems required as the design progresses.
- . 7 Development of the GMP. Construction Manager will prequalify all subcontractors and ensure their compliance with NRS Chapter 338 and NAC Chapter 338. The Construction Manager's Project Manager and Estimator will prepare Customer Scope Worksheets for each trade. Bids will be accumulated and analyzed for a best value presentation to the Owner for approval in a transparent and detailed manner.
- . 8 Identifying long lead items and procurement plan. The Construction Manager's team will verify all potential long lead time material procurement timelines with subcontractors and suppliers as materials get selected.
- . 9 Timelines/requirements associated with permitting, third-party reports and compliance with authorities having jurisdiction. The Construction Manager's Project Manager will work with the Design Team and the Owner to determine when documents must be submitted for review by the authorities having jurisdiction in order to achieve a seamless transition into construction activities. Construction Manager will give input based on past experience relevant to what reports and evaluations will be required in order to completely evaluate and propose the final GMP budget and prepare to perform the work in conformance with the requirements of all entities including; the City of Las Vegas, City of Las Vegas Fire Department, Clark County Department of Air Quality, Nevada Division of Environmental Protection, Occupational Safety and Health Administration, and any other regulatory authority which may have jurisdiction.

### § 3.2 Guaranteed Maximum Price Proposal

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

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom.. Such further development does not include material 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;

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- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency 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. Contract Manager will provide written accounting of its use of contingency to Owner. Any unused contingency funds from this contingency shall be allocated 30% to the Construction Manager and 70% to the Owner, with Construction Manager's allocation to be paid upon Final Completion.

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

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

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

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

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

### § 3.3 Construction Phase

#### § 3.3.1 General

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

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

#### § 3.3.2 Administration

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

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

**§ 3.3.2.3 Monthly Report**

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

**§ 3.3.2.4 Daily Logs**

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

**§ 3.3.2.5 Cost Control**

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

**ARTICLE 4 OWNER'S RESPONSIBILITIES**

**§ 4.1 Information and Services Required of the Owner**

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

*(Paragraph deleted)*

§ 4.1.2. The Owner shall, at the written request of the Construction Manager, prior to the commencement of the Work and thereafter, furnish to the Construction Manager reasonable written evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without 30 days prior written notice to the Construction Manager.

§ 4.1.3 **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.

§ 4.1.3.1 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.

§ 4.1.3.2 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.

§ 4.1.3.3 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.

§ 4.1.4 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.

*(Paragraphs deleted)*

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

*(Paragraph deleted)*

**§ 4.2 Owner's Designated Representative**

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

**§ 4.2.1 Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. This shall not include any legal, insurance and/or accounting services, including auditing services, for the Construction Manager to perform its work or maintain project files, meet auditing/accounting standards or other business and related practices for the Construction Manager to provide and manage the Work or the Project.

**§ 4.3 Architect**

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2019, as modified, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the executed agreement between the Owner and the Architect, and any modifications to the executed agreement between Owner and Architect. Where the Owner is not required by law to secure the services of an architect to perform these services itself per applicable laws and regulations, the Owner reserves the right to serve as the Architect per this section without the execution of any Architectural agreement.

**ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

**§ 5.1 Compensation**

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

\$50,000.00

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

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

**Individual or Position**

**Rate**

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as

sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within three (3) 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 completed.

*(Paragraphs deleted)*

## ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

### § 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee. Notwithstanding anything to the contrary, the Cost of the Work shall exclude costs arising from the Construction Manager's negligence and/or willful misconduct.

§ 6.1.2 The Construction Manager's Fee:

*(Paragraph deleted)*

3.75% of Cost of Work.

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

3.75% of Cost of Work.

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

15%

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed one hundred percent (100 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

*(Paragraph deleted)*

- If Contractor fails to achieve Substantial Completion of the Work on or before the Substantial Completion Date set forth in this Agreement, as such date may be adjusted by approved Change Order, the Contractor shall pay to the Owner liquidated damages in the amount of Five Hundred Dollars (\$500.00) per calendar day for each calendar day following the Grace Period of thirty calendar days past the date of Substantial Completion. The total amount of liquidated damages accessed under this Section shall not exceed 50% of the Construction Manager's Fee.

§ 6.1.7 Other:

Not applicable.

### § 6.2 Guaranteed Maximum Price

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

### § 6.3 Changes in the Work

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

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§ 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, as modified.

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

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

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 as modified 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. All costs in Article 7 or other Costs of Work shall be part of the Guaranteed Maximum Price and subject to all conditions of Section 1.1.14, 3.2 and Section 6.2.

§ 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 those rates customarily paid at the place of the Project, except with prior approval of the Owner.

### **§ 7.2 Labor Costs**

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

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 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:

Not applicable

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

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

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

**§ 7.2.6** Wages shall be paid at the agreed up rates to be set forth in a Rates Attachment to be included in the GMP amendment, and which shall not be subject to audit.

**§ 7.2.6.1 Prevailing Wage, Apprenticeship Utilization Act, and Certified Payroll Reports.** Contracts for construction work for which the estimated cost exceeds \$100,000 shall be subject to the provisions of NRS §§ 338.020-90, including but not limited to payment of prevailing wages, regardless of whether the construction work qualifies as a "public work". Additionally, contracts for construction work are subject to the Apprenticeship Utilization Act as codified by NRS § 338.01165. Furthermore, Nevada Administrative Code (NAC) Chapter 338 applies to this Project,

**§ 7.2.6.2** Construction Manager acknowledges that the Project is subject to the Prevailing Wage Act, NRS §§ 338.020-90 inclusive and as may be amended from time to time. Construction Manager agrees to comply with the Prevailing Wage Act and all other provisions of NRS (and the NAC) that are applicable to the Project. Construction Manager shall use the State Labor Commissioner's prevailing rate of per diem wages in the locality in which the Work will be performed for each craft or type of workman needed to perform the Work. Subject to the provisions of applicable law, Construction Manager agrees not to pay less than the specified prevailing rate of wages to the Construction Manager and its employees selected to perform the Work. Construction Manager will include the substance of the prevailing wages requirement in this Section as contractual language in all contracts and lower tier subcontracts. In addition, all solicitations and contracts shall contain the applicable prevailing wage rates. Owner will obtain the Nevada Office of the Labor Commissioner Public Works Identifying Number for the Project when Construction Manager's GMP has been determined to ensure that applicable prevailing wage rates apply

**§ 7.2.6.3** Construction Manager acknowledges that the Project is subject to the Apprenticeship Utilization Act as codified by NRS § 338.01165 and as may be amended from time to time. Construction Manager agrees to comply with the Apprentice Utilization Act. In addition, all solicitations, contracts, and lower-tier sub-contracts shall contain Apprenticeship Utilization Act requirements.

**§ 7.2.6.4** Construction Manager acknowledges that Certified Payroll Reports must be submitted to Owner pursuant to subsections 4 and 5 of NRS §338.078 with a statement of compliance as required pursuant to subsection 1 of NAC § 338.094, for each month after a contractor or subcontractor commences working on a public work project wherein the contractor or subcontractor employs one (1) or more workers in connection with the public work. Construction Manager will ensure that Certified Payroll Reports for all employees, contractors, and subcontractors are timely submitted to Owner. In addition, all solicitations, contracts, and lower tier contracts shall contain Certified Payroll Reports requirements.

### **§ 7.3 Subcontract Costs**

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

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

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

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

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

**§ 7.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or

value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

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

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

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

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

#### **§ 7.6 Miscellaneous Costs**

**§ 7.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Agreement at a rate of 1.3% for Subcontractor Default Insurance, 1.2% for General Liability Insurance, 0.25% for Builder's Risk Insurance (if required) and 1.0% for Whiting-Turner Payment and Performance Bonds with all percentages applied against the Cost of Work., Such rates shall not be subject to audit.

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

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

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

**§ 7.6.3** Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay. If Construction Manager's Guaranteed Maximum Price includes fees the Owner has paid or is required to pay directly, Construction Manager shall deduct such fees from the Guaranteed Maximum Price as a deductive Change Order.

**§ 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 as modified 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, as modified. 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, and costs outside of electronic equipment and software with which usual and customary duties are conducted, directly related to the Work and located at the site, with the Owner's prior approval.

**§ 7.6.7** Costs of document reproductions and delivery charges.

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

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld. Actual expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

*(Paragraphs deleted)*

#### § 7.7 Other Costs and Emergencies

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

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

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

#### § 7.8 Related Party Transactions

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

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

#### § 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior written approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price, as adjusted pursuant to this Agreement, to be exceeded;
- .9 Costs for services incurred during the Preconstruction Phase.
- .10 Any uninsured losses resulting from Construction Manager's failure to maintain insurance required by the Construction Documents
- .11 Marketing, business development, legal and accounting fees unrelated to the Work;
- .12 Damages, fines or penalties due to code or safety violations;
- .13 Depreciation of any owned equipment not solely used for the Project; and
- .14 Any rework resulting from defective or work not conforming with the Contract Documents.

## ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

## ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. All bids shall be received by the Construction Manager in sealed envelopes (or electronically sealed) and shall be opened privately with the with the Owner and Architect present. If a subcontractor elects not to provide a bid, the Construction Manager shall either receive a statement of no bid from the subcontractor or document the process by which the Construction Manager solicited the bid and none was received, including invitations to bid and any follow-up communications and reasonable efforts to receive a bid. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted and, subject to Section 9.1.1, Owner may object to any subcontractor or supplier. Bids will be reviewed for cost/price, quality of bid related to scope of work to be performed, and other factors to determine the best and most responsive bid with the best cost/price. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

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

## **ARTICLE 10 ACCOUNTING RECORDS**

The Construction Manager shall keep 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 invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract except for any documents relating to agreed upon wage rates, insurance and bond rates, fixed price subcontracts and lump sum change orders, and/or any other fixed price, lumpsum and/or agreed upon contracts, costs or items, which are not subject to audit. 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.

## **ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

### **§ 11.1 Progress Payments**

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

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

Not Applicable

**§ 11.1.3** Provided that a complete and approved Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.

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

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

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

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

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

**§ 11.1.6** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the

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Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

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

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

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

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

#### § 11.1.8 Retainage

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

5%

Five Percent (5%)

§ 11.1.8.1.1 The following items are not subject to retainage:

Insurances (GLI, , SDI, Bonds)

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

*(Paragraph deleted)*

Pursuant to NRS Chapter 338, Owner may withhold a five percent (5%) retainage from progress payments until fifty percent (50%) of the Work as required by the Contract Documents is complete.

§ 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:

Not applicable

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§ 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 as modified.

§ 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. Subcontractor retainage shall not be less than 5% unless mutually agreed upon in writing by Construction Manager and Owner with input from the Architect.

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

## § 11.2 Final Payment

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

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

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

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

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

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

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final and approved Certificate for Payment, completion of all items specified in this section, or as follows:

Not applicable

§ 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.

*(Paragraphs deleted)*

## ARTICLE 12 DISPUTE RESOLUTION

### § 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017 as modified. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 as modified for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(Paragraphs deleted)*

### § 12.2 Binding Dispute Resolution

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

- Arbitration pursuant to Article 15 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction without a jury trial, both parties hereby waiving their right to jury trial in the State of Nevada with Clark County as the exclusive venue.
- Other: *(Specify)*

*(Paragraph deleted)*

## ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination.

In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

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

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

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

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

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

### **§ 13.2.1 Termination**

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

### **§ 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 as modified, 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 as modified.
- .5 In all instances, termination shall include payments from the Owner to the Construction Manager only for the work performed and reasonable overhead and profit on such work.

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

steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

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

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

In all instances, termination shall include payments from the Owner to the Construction Manager only for work performed and reasonable overhead and profit on such work.

#### **§ 13.3 Suspension**

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

### **ARTICLE 14 MISCELLANEOUS PROVISIONS**

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

#### **§ 14.2 Successors and Assigns**

**§ 14.2.1** The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017 as modified, 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 in whole or in part to an institutional lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

#### **§ 14.3 Insurance and Bonds**

##### **§ 14.3.1 Preconstruction Phase**

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

**§ 14.3.1.1** Commercial General Liability, with Owner identified as an additional insured, with policy limits of not less than:

Two million dollars (\$2,000,000 for each occurrence; and  
One million dollars (\$1,000,000) for damages to rented premises  
Ten thousand dollars (\$10,000) medical expenses (any one person)  
Two million dollars (\$2,000,000) Personal and Advertising Injury  
Four million dollars (\$4,000,000) General Aggregate  
Four million dollars (\$4,000,000) Products-Completed Operations Aggregate  
Twenty-five million dollars (\$25,000,000) Total Aggregate

**§ 14.3.1.2** Automobile Liability, with Owner identified as an additional insured, covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than two million dollars (\$2,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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

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

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than one million dollars (\$1,000,000) each accident, one million dollars (\$1,000,000) each employee, and one million dollars (\$1,000,000) policy limit.

§ 14.3.1.5 Professional Liability, with Owner identified as an additional insured, covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate.

#### § 14.3.1.6 Other Insurance

Coverage	Limits
<i>(Row deleted)</i>	

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

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

#### § 14.3.2 Construction Phase

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

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

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017 as modified, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:

#### § 14.5 Other provisions:

§ 14.5.2 Conflict of Interest. By submitting a Proposal in response to 25RFP007, Contract Manager certified it has had no contact with an employee or Board member of the Owner in any manner which would give Construction Manager any advantage over any other Proposer. Owner's employees and Board members shall not receive any compensation, in any manner or form, nor have any interest, direct or indirect, of any kind or nature inconsistent with loyal service to the public. A violation of any of the above is grounds for rejection without further consideration.

§ 14.5.3 Public Records. Pursuant to NRS Chapter 239, information or documents, including this Agreement, and any other documents generated incidental thereto may be opened by Owner to public inspection and copying. Owner will have a duty to disclose unless a particular record is made confidential by law or common law balancing of interests.

§ 14.5.4 Authority. Owner and Construction Manager each represent and warrant to each other that each respectively has the authority to execute and deliver this Agreement and perform their respective obligations thereunder and that the

execution, delivery, and performance of this Agreement have been duly authorized by all necessary action by each respective party.

§ 14.5.5 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same Agreement.

§ 14.5.6 Limited Liability. Owner will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Agreement liability of Owner and/or Construction Manager shall not be subject to punitive damages.

§ 14.5.7 Certification, Restriction of Boycott of Israel. Pursuant to NRS 332.065, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Agreement not to engage in, a boycott of Israel.

§ 14.5.8 Statement of Eligibility. The Parties acknowledge to the best of their knowledge, information, and belief, and to the extent required by law, neither Party nor any of its respective employees/contractors is/are: i) currently excluded, debarred, suspended, or otherwise ineligible to participate in federal health care programs or in federal procurement or non-procurement programs; and ii) has/have not been convicted of a federal or state offense that falls within the ambit of 42 USC 1320a-7(a). If Construction Manager status changes at any time pursuant to this § 14.5.8 Construction Manager agrees to immediately notify Owner in writing, and Owner may terminate this Agreement for cause as described in the above § 13.2.2.

§ 14.5.9 Pursuant to NRS 338.125:

1. In connection with the performance of work under this Agreement, Construction Manager agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, or age, including, without limitation, with regard to employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff termination, rates of pay or other forms of compensation, and selection for training, including without limitation, apprenticeship.
2. Construction Manager further agrees to insert the above provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.
3. Construction Manager agrees that any violation of the provision required by NRS 338.125 constitutes a material breach of contract.

## ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

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

- AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:

☐ Supplementary and other Conditions of the Contract:

*(Table deleted)*

.7 Other documents, if any, listed below:

- .1 Request for Proposal 25RFP007 and all associated addenda.
- .2 Construction Manager proposal dated February 20, 2025

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

**SOUTHERN NEVADA HEALTH DISTRICT**

Signature Redacted  
Signature Redacted

By:

OWNER *(Signature)*

Cassius Lockett, PhD  
District Health Officer

*(Row deleted)*

**THE WHITING-TURNER CONTRACTING COMPANY**

Signature Redacted  
Signature Redacted

By:

CONSTRUCTION MANAGER *(Signature)*

Paul Schmitt  
Senior Vice President

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# AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

for the following PROJECT:

Construction of new Biosafety Level 3 laboratory located at  
700 S. Martin L. King Blvd.  
Las Vegas, Nevada 89106  
SNHD Reference C2500139  
PWP-CL-2025-526

### THE OWNER:

Southern Nevada Health District  
280 S. Decatur Blvd.  
Las Vegas, Nevada 89107

### THE ARCHITECT:

EC Nevada, LLC  
15231 Laguna Canyon Road  
Suite 200  
Irvine, CA 92618

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### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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

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14      **TERMINATION OR SUSPENSION OF THE CONTRACT**

15      **CLAIMS AND DISPUTES**

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

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

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. Neither Owner nor Contractor shall be bound by any provisions of the Contract Documents prepared by the Architect, which provisions amend or conflict with the Owner-Contractor Agreement or these General Conditions.

#### **§ 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 and Contractor shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their respective duties.

#### **§ 1.1.3 The Work**

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

#### **§ 1.1.4 The Project**

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

#### **§ 1.1.5 The Drawings**

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

#### **§ 1.1.6 The Specifications**

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

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

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

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

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

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

**§ 1.2.1** The Contract Document shall 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 as being necessary to produce 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.

**1.2.1.2** The Drawings and Specifications indicate the scope and arrangement of the Project and define the Architectural design concept, the major Architectural elements, the overall dimensions, the type of structural, mechanical, electrical, utility and other systems. The Drawings and Specifications do not necessarily indicate or describe all items required for the full performance and proper completion of the Work. The Contract is let with the understanding that Contractor is to furnish for the Contract Price reasonably inferred items required for proper completion of the Work.

**§ 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.

#### **1.2.3.1 Terminology**

The word "FURNISH" shall be interpreted to mean: Supply and deliver to Project site, ready for unloading, unpacking, assembly, installation, and similar operations.

The word "INSTALL" shall be interpreted to mean: Operations at Project site including unloading, temporarily storing, unpacking, assembling, erecting, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar operations, complete, functioning and ready for the intended use.

The word "PROVIDE" shall be interpreted to mean: Furnish and install, complete and ready for the intended use.

The word CONCEALED shall be understood as referring to Work contained within building floors, walls, or partitions; Work installed in the space between any type of suspended ceiling and the structural floor or roof above; Work installed within a structural shaft, chase or column; and other Work installed so as to be hidden from view.

The word EXPOSED shall be understood as referring to Work installed external to building floors, walls, or partitions; Work installed in a room or space where any type of suspended ceiling is not specified; Work installed in penthouses, mechanical rooms and electrical rooms of all types; and all other Work installed so as to be exposed to view.

The words CONSTRUCTION MANAGER and CONTRACTOR are synonymous and are used interchangeably within these documents.

**1.2.4** The terms and conditions of this Agreement apply to each Contractor and/or Subcontractor.

#### **§ 1.3 Capitalization**

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

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## **§ 1.4 Interpretation**

1.4.1 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.

1.4.2 Wherever singular numbers and/or words are used in the Specifications and the Drawings require more than one of the items described, the plural and/or the word "each" shall be understood and inferred and as many units as are necessary for the complete installation shall be provided.

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

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

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

## **§ 1.6 Notice**

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

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

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

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

*(Paragraphs deleted)*

## **§ 1.8 Order of Precedence**

In the case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) change orders and written modifications to the agreement; (b) the agreement; (c) Special Conditions, if any; (d) these General Conditions of the Contract for Construction; (e) specifications; and drawings. Information identified in one contract Document and not identified in another shall not be considered a conflict or inconsistency.

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

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

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

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

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

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall, as a condition precedent to commencement or continuation of the Work or a portion of the Work, affected by a material change, furnish to the Contractor reasonable written evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum and the Contract Time. If the Owner fails to provide such evidence, as required, within seven (7) days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable written evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without thirty (30) days' prior written notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order, or where the "confidential" information is part of the public record, is already known to the Contractor, or is independently developed by the Contractor without reference to such "confidential" information. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

## § 2.3 Information and Services Required of the Owner

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

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

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

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

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

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

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

### **ARTICLE 3 CONTRACTOR**

#### **§ 3.1 General**

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

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

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

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

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

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

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

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

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

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be fully 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 for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. If the Architect objects, the Architect and the Contractor shall promptly agree to revised means and methods. If such agreement is not reached and the Contractor is directed to proceed with the aforesaid specific instructions concerning construction means, methods, techniques, sequences or procedures in the Contract Documents, the Architect and Owner shall be responsible for any loss or damage arising solely from such means and methods.

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

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

**3.3.4** The Contractor shall be responsible for the laying out the Work and shall be responsible for all lines, elevations, and measurements of the Work. The Contractor must exercise proper precautions to verify all dimensions shown on the Drawings before laying out the Work and the Contractor will be responsible for all costs, expense, damages or losses caused in whole or in part by Contractor's failure to exercise such proper precautions.

**3.3.5** The Contract shall base all measurements, both horizontal and vertical, from established benchmarks. All work shall agree with these established lines and levels.

### **§ 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. Where it becomes necessary for the Contractor or any Subcontractor to move scaffolding and/or staging to permit installation of other work, it shall be included in the Guaranteed Maximum Price.

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

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

### **§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor (or any Subcontractor), improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

### **§ 3.6 Taxes**

The Contractor shall pay all costs resulting from tariffs and all sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Taxes paid by the Contractor shall also include Unemployment and other taxes imposed by local, city, state or federal government. Taxes and assessments on real property comprising site of Project are excluded. The Owner is exempt from state Sales and Use Taxes and Federal Excise Taxes to the extent permitted by respective legislation. Owner will provide necessary information to obtain exemption or rebate of such taxes. Notwithstanding the foregoing, the Price and Schedule do not include any impacts arising from changes in taxes, tariffs or other similar changes in law that are enacted after the date of this Agreement ("Changes"). Contractor shall be entitled to an equitable adjustment in time and/or money for delays and costs that it incurred that arise out of or relate to such Changes.

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

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

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

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities without notice to the Architect and Owner to the extent required under Article 3.2.3, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### **§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines

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that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor knowingly encounters and recognizes 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** Each trade Subcontractor shall have a competent superintendent, foreman, or competent person on the job at all times. The Contractor shall not change, or remove from the job, such superintendent without written prior approval from the Owner.

*(Paragraphs deleted)*

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

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

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's

construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

**§ 3.11 Documents and Samples at the Site**

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

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

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

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

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

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

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. Architect will not review submittals that do not bear Contractor's Approval Stamp and may return them without action.

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

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed by the Architect. The Work so performed by the Contractor shall be in accordance with the reviewed submittals. If material or equipment is installed before submittals concerning that material or equipment have been reviewed by the Architect, the Contractor shall be liable for its removal and replacement at no extra charge to the Owner, if, in the opinion of the Architect the installed material or equipment does not conform to the information given and the design concept expressed in the Contract Documents.

**§ 3.12.8** The Work shall be in accordance with reviewed 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

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

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

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

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

### **§ 3.13 Use of Site**

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

**3.13.2** The Contractor and all Subcontractors shall keep employees out of the areas beyond the Project site except where necessary for actual performance of work.

### **§ 3.14 Cutting and Patching**

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

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

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### **§ 3.15 Cleaning Up**

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

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

### **§ 3.16 Access to Work**

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

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

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

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless, and at the option of the party to be indemnified, defend the Owner, and its directors, officers, employees and agents (but excluding design professionals) from and against costs, expenses, losses, damages, claims, including without limitation, attorneys' fees ("Losses") which in any way arise out of the performance of the Work, provided that such Losses are attributable to death, personal injury or property damage (other than the Work itself), but only to the extent caused by (i) the intentional, reckless, or negligent acts or omissions of Contractor, its employees, Subcontractors, or anyone for whose acts they may be liable in connection with the Project; (ii) corrective measures required under the Federal Occupational Safety & Health Act (OSHA) or any applicable state or local law governing employee health or safety, resulting from the negligence or material breach of contract by Contractor, its employees, Subcontractors, or anyone for whose acts they may be liable; (iii) fines, penalties or similar costs resulting from violation by Contractor, its employees, Subcontractors of any laws, regulations, rules, orders or ordinances of any governmental authority having jurisdiction over the Contractor or the Project; (iv) failure of Contractor or its Subcontractors or Suppliers to comply with any law, regulation, rule or order relating to contributions, taxes or premiums relating to unemployment insurance or withholding or payment of payroll or similar taxes measured by the payroll of employees engaged in work for the Project; or (v) the Contractors failure to comply strictly with the terms of the Contract Documents.

The Contractor also agrees to obtain liability insurance coverage of the type and amounts required by the Contract Documents to cover the obligations of the Contractor to the Owner pursuant to this paragraph and to provide written certification of insurance and the related policies to the Owner.

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

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

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

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Suite 200  
Irvine, CA 92618

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

#### § 4.2 Administration of the Contract

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents except as provided in Section 3.3.1.

§ 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 are encouraged to communicate with each other directly about matters arising out of or related to the Contract. The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner and the Architect shall include the Contractor in all communications that relate to or affect the Contractor's performance of the Work. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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

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

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

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Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

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

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 10 days after written request is made for them.

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

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. If no agreement is made concerning the time within which responses required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 10 days after written request is made for them.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has

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reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

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

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

### **§ 5.3 Subcontractual Relations**

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

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

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

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

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

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

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

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

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

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

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those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. At least thirty (30) days prior to contracting with Separate Contractors, Owner shall fully disclose to Contractor, in detail, Owner's intention with respect to Separate Contractors, including a complete description of the work to be performed by Owner's own forces or by Separate Contractors, prior to execution of the Agreement so that Contractor can take such matters into consideration in preparing its bid or quotation of a Contract Sum. Contractor shall not be bound by the provisions of this Article 6 in the event that Owner has not fully disclosed such matters prior to execution of the Agreement. If the Contractor claims that delay or additional cost 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. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

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

## § 6.2 Mutual Responsibility

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

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

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

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

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

6.2.6 The Contractor is responsible for the scheduling and coordination of the work of all the trades including, but not limited to, Heating, Ventilating and Air Conditioning, Plumbing, Drainage and Fire Protection, Electrical and Elevator Work, and work which will be bid directly to the Owner. The Contractor shall check these phases of the work and arrange that such related work be installed at the appropriate time to avoid interference or delay in the progress of the entire Project.

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

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

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

### **§ 7.1 General**

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

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

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

### **§ 7.2 Change Orders**

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

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

### **§ 7.3 Construction Change Directives**

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

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

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

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

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

- .1 Labor, including foreman, including fringe benefits.
- .2 Social Security, old age, and unemployment contributions
- .3 Materials entering permanently into the work; including freight and/or delivery charge
- .4 The ownership or rental cost of on-site equipment during the time of use on the extra work

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- .5 Power and consumable supplies for the operation of power equipment
- .6 Security
- .7 Applicable taxes
- .8 Insurance
- .9 Bonds

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

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

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

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

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

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

#### § 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor is directed to perform the Work set forth in the Architect's order for a minor change, the Contractor shall make such Claim for adjustment of the Contract Sum or the Contract Time as provided in 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 the date certified by the Architect in accordance with Section 9.8.

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

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## § 8.2 Progress and Completion

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

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

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

## § 8.3 Delays and Extensions of Time

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

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

§ 8.3.3 Notwithstanding any provision(s) of this Contract, if as a direct or indirect result of any virus, disease, or contagion (individually or collectively, "Epidemic" or "Pandemic"), Contractor's work is delayed, disrupted, suspended, or otherwise impacted, including, but not limited to, by (1) disruptions to material and/or equipment supply; (2) illness of Contractor's workforce and/or unavailability of labor; (3) government quarantines, shelter-in-place orders, closures, or other mandates, restrictions, and/or directives; (4) Owner's restrictions and/or directives; and/or (5) fulfillment of Contractor's contractual or legal health and safety obligations associated with an Epidemic or Pandemic, then Contractor shall be entitled to an equitable adjustment to the Contract schedule and duration to account for such disruptions, suspensions, and impacts. To the extent any of the causes identified herein results in an increase in the price of labor, materials, or equipment used in the performance of this Contract, or other costs of performance of the Contract, Contractor shall be entitled to an equitable adjustment to the Contract price for such increases, provided Contractor presents documentation of such increases (including the original prices and/or estimates) and evidence of Contractor's reasonable efforts to find alternative sources of material or equipment supply and/or labor at the original/non-impacted prices and/or estimates.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

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

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

### § 9.2 Schedule of Values

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

### **§ 9.3 Applications for Payment**

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

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

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

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

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

### **9.3.4**

#### **§ 9.4 Certificates for Payment**

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

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

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

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

- .1** Defective Work as to which, after notice, Contractor has without justification failed to undertake corrective action;
- .2** Third party claims filed or reasonable evidence indicating probable filing of such claims, provided that such claims have a reasonable basis in fact, are not covered by bonds or insurance, or claims as to which Contractor is unable to provide Owner of assurance of reasonable protection from financial liability.
- .3** Failure of the Contractor to make payment to Subcontractors or for labor, materials or equipment, in accordance with the provisions of this Agreement or the relevant agreement of the Contractor with such other party;
- .4** Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5** Damage to the Owner or to another contractor but only in the event that Contractor has refused to undertake remedial or repair work for which it is responsible or in the event that there is no insurance coverage or Contractor is unable to provide reasonable assurance of compensation for damages for which it is responsible;
- .6** Reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance of the Contract Sum will not be adequate to cover actual or liquidated damages for the anticipated delay provided that Contractor or others for whom it is responsible are responsible for such delay; or
- .7** Persistent failure to carry out the Work in accordance with the Contract Documents, provided that prior to the submission of the Application for Payment, Architect has given written notice to Contractor describing such persistent failures specifically and informing the Contractor that a portion of payment otherwise due will be withheld unless such failures are cured or, in the case of failures which cannot be cured by the time of payment, unless effective and continuous actions are being taken by Contractor to cure such failures.

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

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

*(Paragraph deleted)*

## **§ 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, promptly, but in no event later than any time period required by applicable law 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 thirty (30) 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 or other security 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. The Work, or a designated portion thereof, shall be deemed substantially complete if Owner's failure to occupy or use is based on reasons unrelated to fault on the part of the Contractor or is caused by circumstances beyond Contractor's reasonable control.

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

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

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time

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within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

#### § 9.9 Partial Occupancy or Use

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

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

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

#### § 9.10 Final Completion and Final Payment

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

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

§ 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

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Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

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

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment and those for indemnification or contributions from claims for bodily injury, death or property damages by or on behalf of third-parties.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

### § 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

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

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

**§ 10.3 Hazardous Materials and Substances**

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

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. Nothing contained herein imposes any duty or responsibility on the Architect to make any assessment regarding the adequacy of the persons proposed by the Owner to perform tests or remove and/or contain materials or substances as provided for in this paragraph. The Architect shall have no duty or responsibility to determine whether the material or substance has been rendered harmless.

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

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity. Unless required by the Contract Documents the Contractor shall not be required to perform without its consent any Work relating to a hazardous material or substance, provided that such Contractor consent shall not unreasonably withheld.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the

Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

#### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's reasonable 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 specified below. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies meeting the approval of the Owner and lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall name the Owner as an additional insured on Contractor's Commercial General Liability insurance, but only with respect to liability for bodily injury, property damage or personal and advertising injury to the extent caused by the negligent acts or omissions of Contractor or those acting on Contractor's behalf in the performance of Contractor's Work for Owner at the Work site.

At a minimum, the completed operations coverage feature of the Comprehensive General Liability policy shall be maintained in force for a minimum of 5 years commencing with issuance of final Certificate for Payment. The Owner requires and has designated minimum limits of insurance to be purchased and maintained by the Contractor pursuant to AIA Document A133-2019, Exhibit B, Insurance and Bonds.

§ 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 meeting the approval of the Owner and lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

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

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within five (5) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor and the lapse of such coverage, the Owner shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

#### § 11.2 Owner's Insurance

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

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does

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not provide written notice, and the Contractor, Subcontractor(s), or Sub-Subcontractor(s) is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor, Subcontractor(s), or Sub-Subcontractor(s) for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within five (5) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### **§ 11.3 Waivers of Subrogation**

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

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

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

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

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

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

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no

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other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

**§ 11.6 All Bond premiums paid by Subcontractors providing labor, materials or equipment to the Project shall be a Cost of the Work for Cost-Plus Contracts, or part of the Contract Price for any lump sum Contract.**

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

### **§ 12.1 Uncovering of Work**

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

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum, including without limitation the cost of correction and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### **§ 12.2 Correction of Work**

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

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

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

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

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

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

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

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

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

### § 12.3 Acceptance of Nonconforming Work

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

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

### § 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract, in whole or in part, 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 an institutional lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### § 13.3 Rights and Remedies

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

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

### § 13.4 Tests and Inspections

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when

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and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

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

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

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

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

*(Paragraphs deleted)*

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

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

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

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

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

§ 14.1.4 If the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

### § 14.3 Suspension by the Owner for Convenience

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

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

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

### § 14.4 Termination by the Owner for Convenience

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

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

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

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

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

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

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arbitrator or judge of disputes between Owner and Contractor. Such disputes shall be resolved by Owner and Contractor under the provisions of this Agreement or by such rights and remedies as are otherwise available to them. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

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

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

#### **§ 15.1.3 Notice of Claims**

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

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

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

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

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

#### **§ 15.1.5 Claims for Additional Cost**

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

#### **§ 15.1.6 Claims for Additional Time**

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

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

#### **§ 15.1.7 Waiver of Claims for Consequential Damages**

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes, but is not limited to,

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

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

## **§ 15.2 Initial Decision**

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

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

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

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

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

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. When a written decision of the Initial Decision Maker states that the decision is final, but subject to mediation, adjudication or litigation, the demand for mediation of a claim covered by such a decision must be made within thirty (30) days after the date the party receives the final written decision of the Initial Decision Maker and the failure to do so within said thirty day period shall result in the Initial Decision Maker's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after mediation, adjudication or litigation has been initiated, such decision may be entered as evidence at the mediation, litigation or adjudication, but shall not supersede those proceedings unless the decision is acceptable to all parties concerned.

### **§ 15.2.6.1 N/A**

**§ 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.

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

**§ 15.3 Mediation**

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

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

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

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

**§ 15.4 [Intentionally Omitted]**

§ 15.4.1 N/A

§ 15.4.1.1 N/A

§ 15.4.2 N/A

§ 15.4.3 N/A

**§ 15.4.4 Consolidation or Joinder**

§ 15.4.4.1 N/A

§ 15.4.4.2 N/A

§ 15.4.4.3 N/A

**ARTICLE 18 WARRANTIES**

**18.1** In addition to the requirements of Article 3, Paragraph 3.4 and Article 12, Paragraph 12.2 of the General Conditions, the warranty requirements included herein shall be a part of the Contract Documents.

**18.2** Various Specification sections require specific written warranties from either Subcontractors, suppliers or manufacturers.

**18.3** Warranties required under Divisions 21, 22, 23, 25, 26, 27 & 28 shall be furnished by the respective Subcontractors for those Divisions.

Init.

Initials Redacted  
Initials Redacted

18.4 All warranties shall become effective from date of Substantial Completion of the project or portion thereof.

#### **ARTICLE 19 ACCESS TO THE WORK**

19.1 Representatives of state and local agencies shall have access at all reasonable times to work wherever it is in preparation or progress. The Contractor shall provide proper facilities for such access and inspection.

#### **ARTICLE 20 STANDARDS, REGULATIONS AND CODES**

20.1 No provision of any referenced standard, standard specification, manual, or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of the Owner or Architect, or any of their consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to the Architect or any of the Architect's consultants, agents, or employees, any duty or authority to supervise or direct the furnishing or performance of the work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 4.2.3 of the General Conditions.

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Initials Redacted  
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## **Guaranteed Maximum Price Amendment**

This Amendment dated the fourteenth day of May in the year 2026, is incorporated into the accompanying AIA Document A133<sup>TM</sup>-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the first day of May in the year 2026 (the "Agreement")

for the following **PROJECT**:

SNHD Reference Number C2500139, PWP-CL-2025-526:  
The Whiting-Turner Contracting Company will serve as Construction Manager at Risk for the construction of a new Biosafety Level 3 laboratory located at 700 S. Martin L. King Blvd., Las Vegas, NV 89106

### **THE OWNER:**

Southern Nevada Health District  
280 S. Decatur Blvd.  
Las Vegas, Nevada 89107

### **THE CONSTRUCTION MANAGER:**

The Whiting-Turner Contracting Company  
6720 Via Austi Parkway, Suite 550  
Las Vegas, Nevada 89119

### **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**

### **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 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 twenty million forty-two thousand six hundred eighty-nine dollars and zero cents (\$ 20,042,689 ), 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

### **ADDITIONS AND DELETIONS:**

The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

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

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

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; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.  
Attachment A, Trade Package Summary

§ 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
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§ 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.

Item	Price	Conditions for Acceptance
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§ 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)
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**ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ 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:

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:

Date of substantial completion to be included in a subsequent amendment.

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:

Not applicable

§ 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.

**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:  
Not applicable

§ A.3.1.2 The following Specifications:  
Attachment D, Specification Log

§ A.3.1.3 The following Drawings:  
Attachment E, Drawing Log

§ A.3.1.4 The Sustainability Plan, if any:  
Not applicable  
Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:  
Not applicable

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:  
Attachment B, Owner Qualifications

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:  
Attachment C, CMAR Staffing Rates

**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:

See Attachment A, Trade Package Summary

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

SOUTHERN NEVADA HEALTH DISTRICT

THE WHITING-TURNER CONTRACTING COMPANY

By: Cassius Lockett, PhD  
Cassius Lockett, PhD (May 18, 2026 17:56:57 PDT)

**OWNER (Signature)**

Cassius Lockett, PhD  
District Health Officer

(Printed name and title)

By: Paul Schmitt  
Paul Schmitt (May 18, 2026 15:23:46 PDT)

**CONSTRUCTION MANAGER (Signature)**

Paul Schmitt  
Senior Vice President

(Printed name and title)

TRADE PACKAGE SUMMARY

ATTACHMENT A  
TRADE PACKAGE SUMMARY



DIVISION		PROPOSED SUBCONTRACTOR	BID DAY SUBMISSION	DESCOPE - ADD/DEDUCT	PROJECT TOTAL	COMMENTS
			COST			
01C	SURVEYING	Dwyer Engineering	\$ 22,000	\$ 8,200	\$ 30,200	Add for pre and post-pour deck surveys.
01S	SECURITY GUARDS	PaAmerican	\$ 293,999	\$ -	\$ 293,999	
03A	STRUCTURAL CONCRETE	Sahara Concrete, Inc.	\$ 869,289	\$ 25,755	\$ 895,044	Add for dewatering and toe board (required at safety cable for elevated decks).
03B	POLISHED/SEALED CONCRETE	Diverzify, LLC	\$ 14,100	\$ -	\$ 14,100	
04A	MASONRY	A-1 Masonry	\$ 249,070	\$ 12,500	\$ 261,570	Add for thermal spacers and temporary shoring of window openings.
05A	STRUCTURAL STEEL	Adams & Smith	\$ 1,246,600	\$ 107,200	\$ 1,353,800	Add for galvanizing exterior steel, L-angle lintels at windows, temporary guardrail, corridor ramp railing, BIM coordination, support steel at transaction window, and connection design costs.
06B	MILLWORK	H2I Group, Inc.	\$ -	\$ -	\$ -	Included in 11A.
07A	WATERPROOFING	Southwest Specialty Contractors, LLC	\$ 39,949	\$ -	\$ 39,949	
07B	BUILDING INSULATION	M&H Building Specialties	\$ 74,599	\$ 89,015	\$ 163,614	Add for SAFP, R12 Rigid insulation w/ AVB at CM-1 locations, Mineral Wool in HM, Mineral Wool @ Expansion Joint. Note that M&H's costs for this package were originally shown in 09A.
07C	METAL PANELS	B&B Specialties LLC	\$ 806,528	\$ 27,225	\$ 833,753	Add for coping cap at parapet and Level 2 leave-out.
07D	ROOFING	A.W. Farrell & Son, Inc.	\$ 219,900	\$ 60,000	\$ 279,900	Add for canopy entrance roofing, wood blocking/sheeting, and PVC bellows.
07E	EXPANSION JOINTS	All S's Construction	\$ 58,924	\$ -	\$ 58,924	
08A	DOORS & HARDWARE	Southwest Door & Hardware	\$ 397,520	\$ 46,000	\$ 443,520	Add for interlocking door hardware, calibration of hardware during commissioning, and pregrouting of door frames.
08B	STOREFRONTS & WINDOWS	NVision Glass, Inc.	\$ 433,770	\$ 8,490	\$ 442,260	Net add to include aluminum frames at wood doors and remove glazing within HM doors (by others)
09A	FRAMING, DRYWALL & PLASTER	M&H Building Specialties	\$ 690,040	\$ 178,325	\$ 868,365	Add for bullnose radius, Temp. Vestibule and Waterproofing at bridge tie-in, and dedicated personnel for delivery coordination, access control, and site maintenance
09B	ACOUSTICAL CEILINGS	M&H Building Specialties	\$ 28,199	\$ 3,150	\$ 31,349	Add for shadow mold detail 7/A4.6.1. Assumed to be at Entry Lobby, Accessioning Room, and Entry Corridor. Note that M&H's costs for this package were originally shown in 09A.
09C	TILE & STONE	Diverzify, LLC	\$ 61,550		\$ 61,550	Low bidder disqualified due to not being able to comply with the Apprenticeship Utilization Act. Costs shown reflect the #2 bidder.
09D	FLOORING	Diverzify, LLC	\$ 80,400	\$ 6,250	\$ 86,650	Low bidder disqualified due to not being able to comply with the Apprenticeship Utilization Act. Costs shown reflect the #2 bidder. Added costs for moisture testing and elevator flooring.
09E	EPOXY FLOORING	Southwest Specialty Contractors, LLC	\$ 16,917		\$ 16,917	
10A	SPECIALTIES	Henri Specialties Co.	\$ 29,289	\$ 8,853	\$ 38,142	Net add to include lockers and hand dryers while removing cubical curtains.
10B	SIGNAGE	YESCO, LLC	\$ 18,400		\$ 18,400	Low (2) bidders determined to be incomplete and YESCO determined to be lowest qualified bidder.
11A	LAB CASEWORK & EQUIPMENT	H2I Group, Inc.	\$ 734,911	\$ (11,296)	\$ 723,615	Deduct to remove eyewash stations, align on mobile cabinet quantity, and provide phenolic countertops in lieu of epoxy at workstations.
12A	WINDOW COVERINGS	Romero Brothers Interiors	\$ 21,254		\$ 21,254	
14A	ELEVATORS & ESCALATORS	TK Elevator Corporation	\$ 123,000	\$ 19,500	\$ 142,500	Add to base bid accounts for operator time for work in shaft (fire proofing patch back, electrical terminations, and inspections).
21A	FIRE PROTECTION	On Guard Fire Protection	\$ 152,000	\$ (18,600)	\$ 133,400	Net deduct to remove Davis Bacon wages (\$20K), remove fire extinguishers (by others), and add BIM coordination
22A	PLUMBING	Universal Plumbing & Heating	\$ 1,596,500	\$ 96,800	\$ 1,693,300	Add for offhaul of spoils, additional compressed air piping, pipe support engineering, and decon shower enclosure.
23A	HVAC	Bombard Mechanical, LLC	\$ 4,346,334	\$ 37,123	\$ 4,383,457	Add to align on damper quantities, include support engineering, and additional crane mobilizations. Includes controls scope.
26A	ELECTRICAL	Mojave Electric	\$ 1,797,346	\$ 148,851	\$ 1,946,197	Add to meet BSL-3 conduit requirements per bid RFI #12 and to capture light fixtures, panels, and transformer missed on initial bid submission.
27A	LOW VOLTAGE	Mojave Electric	\$ -	\$ -	\$ -	Costs for conduit chases and CAT-6 cabling included in 26A. Security/access control devices by owner.
28A	FIRE ALARM	Mojave Electric	\$ -	\$ -	\$ -	Included in 26A.
31A	EARTHWORK	VT Construction	\$ 79,815	\$ 25,564	\$ 105,379	Add for asphalt demo at trash/generator enclosures, furnish of aggregate base for site concrete, and asphalt patching at utility trenches.
32A	ASPHALT PAVING	VT Construction	\$ -	\$ -	\$ -	Included in 31A.
32B	PAVEMENT MARKINGS	Affordable Striping & Sealing LLC	\$ 3,218		\$ 3,218	
32C	SITE CONCRETE	Sahara Concrete, Inc.	\$ 124,344	\$ (14,500)	\$ 109,844	Net deduct for removing light pole bases and adding gas pad.
32D	FENCING & GATES	Red Star Fence	\$ 37,500	\$ (4,500)	\$ 33,000	Net deduct for removing gates covered in 05A and adding gate at mechanical yard.
32E	LANDSCAPING	Black Canyon Construction	\$ 49,350		\$ 49,350	

<b>SUBTOTAL - COST OF WORK</b>	\$ 14,716,615	\$ 859,905	\$ 15,576,520
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Subcontractor Default Insurance (SDI)	1.30%
General Requirements	Fixed
Estimating Contingency	0.00%
Construction/CM Contingency	4.00%
Escalation Contingency	0.00%
General Conditions	Fixed
Liability Insurance	1.20%
Whiting-Turner Bond	1.00%
Whiting-Turner Fee	3.75%
Builder's Risk Insurance (By Owner)	-

\$ 202,518
\$ 412,875
\$ -
\$ 647,750
\$ -
\$ 2,060,415
\$ 226,823
\$ 191,287
\$ 724,501
\$ -

Builder's risk carried by SNHD per meeting on 4/22/26.

<b>PROJECT TOTALS</b>	\$ 20,042,689
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**ATTACHMENT B - OWNER QUALIFICATIONS**

8-May-26

<b>General</b>	
1	We have not included third party testing/inspection requirements, assessment charges, and fees from this GMP. Any revisions required by governing agencies and impacting project cost will be the responsibility of the owner.
2	We have not included costs for all work noted to be part of Phase 2 per drawings, including Key Note 1 on EP2.5 (Phase 2 power plans not available).
3	We have not included city permit or development fees. Assumed to be by client.
4	We have assumed that builders risk policy will be purchased and maintained by SNHD. The deductible is assumed to not exceed \$25,000 and SNHD will be directly responsible for payment.
5	We have not included fees, bonds, and permits required by public, private, utilities, City, and State Agencies, except for permitting of temporary site power and dust control.
6	We have not included any allowances for theft and/or vandalism of any/all permanent equipment, structures, material, etc.
7	We have included a preliminary schedule with a data date of April 22nd, 2026. The project schedule assumes a start date of June 1st, 2026 with a total duration of 320 working days including ten (10) weather days.
8	Clark County prevailing wages are included in this GMP. Excludes Davis Bacon Wages.
9	We have included working normal business hours, Monday thru Friday from 7am to 5pm (no overtime).
10	We have not included any premium time to work off-shift at the existing lab building adjacent to site for any tie-in scope.
11	Jobsite security is included in this GMP, from June 1st, 2026 through September, 1st 2027 as requested by SNHD. Includes One (1) security guard at 24/7 monitoring.
12	We have not included any costs related to pest control.
13	We have not included the cost to perform any design/build work, such as retention of a licensed structural engineer.
14	We have included the following delegated design and deferred submittals: <ul style="list-style-type: none"> <li>i. Fire Suppression</li> <li>ii. Fire Alarm</li> <li>iii. Light gauge metal framing - Non-load bearing walls and metal studs at curtainwalls</li> <li>IV. Acoustic ceiling hangers, supports, and seismic bracing</li> <li>V. Support of Utilities - hangers and supports for piping and ductwork</li> <li>VI. Steel Construction - Connection design, metal stairs, railings, guardrails, and ladders.</li> </ul>
15	We have not included delegated design for the following items: <ul style="list-style-type: none"> <li>i. Structural Concrete - Mix design</li> </ul>
16	The GMP includes the following allowances, approval of allowance utilization to be coordinated with SNHD prior to proceeding and all unused cost to be reconciled. Note that the amounts below reflect cost of work only. <ul style="list-style-type: none"> <li>i. Existing Building Skybridge Patchback - Finish Skin only, Assumed to be IMP - \$40,000</li> <li>ii. Lab Finishes Mockup to Confirm Compatibility with SNHD Decon Process - \$10,000</li> <li>iii. Cold Room MEP Requirements - \$36,000</li> </ul>
17	The Contract Schedule and Contract Price do not presently include any time or amounts for delays and/or impacts on the price of materials, equipment, or labor outside of Whiting-Turner's reasonable control, from epidemics such as the Coronavirus, new tariffs and/or other world events. Contractor shall be entitled to an equitable adjustment in time and money for costs that it incurs directly or indirectly that arise out of or relate to such events including, without limitation, labor, material and equipment price escalation, delays, delay in time, damages and acceleration costs, costs to re-procure, costs to change sub-contractors and suppliers, escalation in the costs of manufactured equipment or goods, or other costs of any kind resulting from such events.
18	We have not included the cost for any requirements dictated by the "National Institute of Health Requirements - BSL-3 Manual" not shown in the drawing set dated 2.9.2026. We have included BSL-3 requirements per bid RFI #12 response dated 4/1/26.
19	We have not included any additional costs that could be incurred if the lab's containment barrier extends further North than the South wall of Corridor 2010.
20	We have assumed approximately 40 parking spaces will be made available at no cost to the project in the parking garage adjacent to site, and have excluded any costs for other parking facilities or shuttling.
21	Whiting-Turner's General Conditions and General Requirements are considered a fixed lump sum amount not subject to audit. Labor rates provided in Exhibit B are assumed to be fixed non-auditable and will apply to future change order work if applicable.
<b>DIVISION 02 - EXISTING CONDITIONS</b>	
1	We have not included demolition of the site CMU walls. This is assumed to be performed by others prior to WT mobilization. Extent of demo is assumed to match extent of new wall shown on S2.0 and A0.1 (approx. 113 linear feet).
2	We have not included the removal and/or build back of the south CMU wall noted as existing in the contract documents.
3	We have included costs for a temporary vestibule at the existing building adjacent to site during demolition activities. Temporary waterproofing includes a barrier mechanically fastened to the exterior of the building at the extent of the opening only. Any additional waterproofing requirements required by SNHD will be handled as an additional cost subject to approval.
4	We have included interior framing/drywall, exterior sheathing, and exterior vapor barrier patchback for the corridor bridge connection. See above allowance for patchback of the architectural skin system. Permanent skin details, waterproofing details, and product spec(s) to be provided by SNHD.
5	We have not included relocation, demolition, or removal of any unforeseen underground obstructions, structures, utilities, etc.

6	We have assumed all site demolition shown on C-101 will be performed by others prior to WT mobilization, including but not limited to curbs, gutters, asphalt paving and base material, light poles & footings, landscaping & trees, sidewalks, etc. Note that we have included trenching for site electrical installation, though this is shown on C-101.
7	We have not included maintaining SNHD access to the (9) parking spots located south of the existing building and marked as "protect-in-place" on C-101. These spaces to be used for construction laydown/parking as needed.
<b>DIVISION 03 - CONCRETE</b>	
1	We have not included costs associated with underpinning of the adjacent building and existing CMU site walls. Underpinning is assumed to be performed by others prior to Whiting-Turner mobilization and the underpinning (if required) will be left in place until the completion of our work.
2	For locations with unknown footing depth (ex: footings adjacent to existing building), we have assumed top of footing to be 1' below finish grade (per note 1 on S2.0).
3	We have included slab on metal deck pours to the thickness indicated on the structural drawings rather than specific elevations.
4	We have included equipment pads per the following: <ul style="list-style-type: none"> <li>- Mechanical Yard: (7) 6" pads located as shown on A2.1.1A (Type 3 pads per 15/S5.1)</li> <li>- North Utility Yard: (1) 12" transformer pad as shown on A0.2 (RS-35 pad per NVE drawings), (1) 18" minimum generator pad as shown on S2.1 (Type 3 pad per 15/S3.1), and (2) 9" minimum electrical pads as shown on S2.1 (Type 2 pads per 14/S5.1)</li> <li>- Level 1 Interior: (5) 6" pads as shown on S2.1 (Type 1 per 13/S5.1)</li> <li>- Level 2 Interior: None</li> <li>- Roof: (5) 18" and (2) 16" pads as shown on A1.3. These pads assumed to follow 21/S5.3 (typical pad on elevated floor deck).</li> </ul>
<b>DIVISION 04 - MASONRY</b>	
1	We have assumed the rebuild of the West site perimeter wall to be full CMU construction, as per structural and architectural details, rather than the existing CMU and wrought iron combination.
2	We have included the rebuild of the West site perimeter wall as 10' tall, as shown in detail 10/A3.1.2. Note that the existing wall is 8' tall.
3	We have not included costs for anti-graffiti coatings at site CMU walls or the masonry veneer. Not shown on contract documents.
4	We have not included custom color match for new CMU construction to match existing site elements.
<b>DIVISION 05 - METALS</b>	
1	We have assumed edge of slab dimension (from column centerline to edge of slab bent plate) will be 10" or less. Accordingly, supplementary L-angles for edge of slab support shown in 17/S5.3 will not be required and are excluded.
2	We have not included supplemental cold-formed metal framing at the roof screen. As there is none shown per the contract documents and assumed to be not required.
3	We have included hot-dip galvanizing for steel exposed to weather per Structural Steel Note #7 on SG.1. This is limited to exterior stairs (including railings, supporting steel members, cane rail, and roof gate), roof screen HSS, L-angle lintels for CMU veneer, and exterior bollards. All other steel assumed to be shop primed and unpainted.
4	All 3rd party shop inspections for structural steel fabrication are assumed to be by owner if required.
5	We have included beam braces at each end of every steel special moment frame beam, as indicated in EwingCole response to Bid RFI #8 (dated 4/2/26)
<b>DIVISION 06 - WOOD AND PLASTICS</b>	
1	We have assumed solid surface countertops with plastic laminate casework in Admin Workroom 2009.
<b>DIVISION 07 - THERMAL AND MOISTURE PROTECTION</b>	
1	We have included costs to furnish and install Kingspan 3" Optimo Insulated Metal Panel (listed as an acceptable alternate manufacturer per specification section 07 4213.19).
2	We have not included costs to modify or replace any existing flashing at the adjacent building that interacts with the new building components.
3	We have included spray applied fire proofing only at steel & metal decking in the (2) bays at Level 2 and Roof Level indicated on sheets LS2.3 and LS2.4.
4	We have not included interior slab joint filler at locations with exposed concrete.
<b>DIVISION 08 - DOORS AND WINDOWS</b>	
1	We have included costs for Viracon VE19-2M glass in lieu of VE16-2M, which has been discontinued. We assume the contract documents will be updated to reflect the use of the VE19-2M glass.
2	We have not included any costs for ventilation between panes of clean room style windows. We have assumed condensation concerns at these windows has been addressed in the system design and will verify this with the corresponding subcontractors and manufacturers.
3	We have assumed that different manufacturers can be used for the formed sill flashing shown on 1/A4.3.2 and remainder of the window system in that detail. Confirmed via Bid RFI #24.
4	We have included construction cores only. Final Keying to be by SNHD.
5	We have not included furnish and install of card readers, facial recognition readers, door position switches. Assumed to be by SNHD.
<b>DIVISION 09 - FINISHES</b>	
1	We have assumed Level 4 finish with primer at all shell space walls per RFI #15 response dated 4/1/26. We have excluded any ceiling or floor finishes at shell spaces.
2	We have assumed all specified finishes within the BSL-3 space are compatible with the intended decontamination processes and chemicals to be used in these spaces.

3	We have included the bullnose corner condition (shown on 9/A4.6.1) at inside corners of gypboard ceilings within the BSL-3 lab space only. Standard L-shape corner bead is assumed at all other drywall inside corners.
4	We have not included the cost to paint steel members and overhead utilities at locations left exposed.
5	All finish selections that have not been determined at this time are included as standard colors. Custom colors are excluded.
<b>DIVISION 10 - SPECIALTIES</b>	
1	We have included all recessed restroom accessories per Bid RFI #31 response provided on 4/2/2026, in lieu of surface mounted accessories originally shown in drawings.
2	We have not included any building or monument signage.
<b>DIVISION 11 - EQUIPMENT</b>	
1	We have included the Steris AMSCO 600LS in lieu of the 430LS, as this sterilizer has been discontinued. We assume the contract documents will be updated to reflect the use of the Steris AMSCO 600LS.
2	We have assumed the specified equipment serving the autoclave's water lines will effectively provide sufficient purified water for autoclave operations.
3	We have not included a recessed slab for the autoclave.
4	We have included costs for gas cylinder racks, but assumed cylinders and gasses will be by SNHD.
<b>DIVISION 12 - FURNISHINGS</b>	
1	We have included epoxy countertops at lab tables and mobile cabinets, and phenolic countertops at workstations.
2	We have not included ceiling service panels in any lab rooms. All lab benches and workstations to be provided with power, data, and compressed air (where applicable) via wall connections.
3	We have assumed Bedcolab is an acceptable alternate manufacturer for lab casework, per H2I substitution request approved by EwingCole.
<b>DIVISION 13 - SPECIAL CONSTRUCTION</b>	
1	We have included the Cold Room 2012-01 by RW Smith & Co., listed as an acceptable manufacturer per spec section 13 2126.
2	We have not included costs for additional support steel for Cold Room condensing units, and have assumed that their location can be coordinated with the current structural design to provide sufficient support. Rooftop units and pads included in Cold Room allowance noted above.
<b>DIVISION 14 - CONVEYING EQUIPMENT</b>	
1	We have included an EOX MRL traction elevator system by TKE, listed as an acceptable manufacturer per spec section 14 2123.16. However, note that Schindler was the basis of architectural & structural design for EwingCole, and the use of a TKE elevator will require some redesign efforts (example: 4' deep pit in lieu of 5'). We have not included any addition costs for the building design to be modified to accommodate the TKE elevator as the impacts are unknown. Instead, we recommend SNHD carry an allowance for this work.
<b>DIVISION 21 - FIRE SUPPRESSION</b>	
1	We have included a manual Class I wet standpipe system as per the fire protection report prepared by TERPconsulting (though not required by code based on building size).
2	We have not included sprinkler coverage at underside of the new connecting sky bridge and entry canopy.
3	We have not included sprinkler coverage at the exterior stair.
4	We have not included any specialty sprinkler systems (i.e., dry system) within the premanufactured cold room. None shown.
<b>DIVISION 22 - PLUMBING</b>	
1	We have not included costs for a pump at the elevator sump pit (none shown).
2	We have not included costs for eyewash stations, which are specifically excluded from the project scope per Bid RFI #16.
3	We have not included costs for supply of nitrogen and helium to lab benches in this phase, as noted on sheet notes 2 & 3 on PS2.1.1B. N2 and HE piping will be terminated the VB-1 control valves for utilization in future phase as confirmed by Bid RFI #18.
4	We have included costs for additional compressed air piping to supply all locations noted as "CA" on architectural equipment and casework plans. We have assumed that the currently specified air compressor is sufficient to supply compressed air to these outlets.
5	We have not included costs for clean dry air supply to Accessioning Room 1004. We have assumed compressed air supply to these locations.
<b>DIVISION 23 - MECHANICAL</b>	
1	We have not included any costs for vacuum systems "VAC" beyond the single countertop vacuum pump in Conventional Test Lab 2028.
2	We have not included any costs for test and balance at the existing building.
3	We have assumed the project's commissioning agent will be contracted directly by SNHD.
4	We have included stainless steel duct only for all lab exhaust and for lab supply between the bubble-tight damper and the diffuser.
<b>DIVISION 26 - ELECTRICAL</b>	
1	We have included (1) load bank test for the generator and will provide a full tank for fuel for the generator following the test.
2	We have included a 800amp exterior switchboard (MSB-2A) and 800amp interior switchboard (MSB-2B) as shown on E3.1.1.
3	We have included costs for the conduit, penetration, and junction box requirements specified in Bid RFI #12 response only within the BSL-3 space and for penetrations leaving this space.
4	For electrical primary runs, we have included trenching, conduits, backfill, and patchback. Primary feeders and transformer (including both primary and secondary side final connections) assumed by NV Energy. We have included the transformer pad.
5	For electrical secondary runs, we have included trenching, conduits, feeders, backfill and patchback.
6	We have assumed reuse of the existing light pole adjacent to the trash and generator enclosures, and have included costs only for reinstallation of this item.
<b>DIVISION 27 - COMMUNICATIONS</b>	

1	We have not included devices and equipment for access control and security systems, to be furnished and installed by SNHD's vendors as per Bid RFI #5 response dated 4/2/26. We have included conduit raceways, boxes, and UTP network cabling only for these scopes.
<b>DIVISION 28 - FIRE ALARM</b>	
1	NONE
<b>DIVISION 31 - EARTHWORK</b>	
1	We have assumed that all over excavation, recompaction, and import of structural fill will be completed by others prior to pad turnover as required by the geotechnical report.
2	We have assumed that the building pad will be turned over to us at -3'-0" (relative to datum as described in Note 1 on S2.0) and have included placing a 4" base course within our scope.
3	We have not included applying for a SWPPP permit, as the site is less than 1 acre.
4	We have not included any costs for offhaul and replacement of soil with swell potential greater than 6%. Assumed to be completed by others prior to WT mobilization
5	We have not included any costs for excavation through strongly cemented (rock-like) soils, as these were not encountered during the geotechnical evaluation.
6	We have not included costs for import of structural fill or backfill or for processing native soils to make them suitable as structural fill or backfill. We have assumed all native soil that we excavate for footing placement will be suitable as backfill, as it will have been over excavated and recompacted by others previously.
<b>DIVISION 32 - EXTERIOR IMPROVEMENTS</b>	
1	We have not included the offsite utility patch and any pavement markings at Wellness Way (Item Numbers 3.11, 3.13, & 3.14 on Korte scope coordination document). Additional clarification from SNHD and design team needed to provide pricing for this item.
2	We are proposing a new gate at the generator enclosure in lieu of re-use of existing, due to minimal cost difference.
3	We have not included all public improvement work; no modifications to existing landscaping, sidewalks, paving, etc. outside of the site CMU wall are included.
<b>DIVISION 33 - SITE UTILITIES</b>	
1	We have not included all storm drain scope, with the exception of making final connections from roof drainage system to the under-sidewalk drain pipe located at the plan East side of the building.
2	We have assumed that domestic water and sanitary sewer lines will be stubbed and capped within 5 feet of our building pad, and fire water will be stubbed and capped above slab elevation at the fire sprinkler riser location noted on FS2.20.
3	We have not included all backflow preventers, fire department connections, and fire hydrants shown on C-301 (including relocating existing fire hydrant as shown on A0.1). Assumed to be by others.
4	We have assumed natural gas to be routed to site by Southwest Gas as shown on PS2.1.1A. Southwest Gas to provide service regulator and meter assembly for 5 PSI natural gas service. We have included natural gas scope beyond the meter assembly, including the overpressure protection regulator.



ATTACHMENT C - CMAR STAFFING RATES

ROLE	HOURLY RATE	ROLE	HOURLY RATE	ROLE	HOURLY RATE
<b>OFFICE</b>		<b>FIELD</b>		<b>SUPPORT STAFF</b>	
INTERN	\$76.00	INTERN	\$76.00	Clerical - Nazneen Iqbal	\$98.77
Project Engineer (PE) - Will Killmond	\$190.00	Field Engineer (FE) - Anthony Chavez	\$190.00	Virtual Design & Construction	\$157.66
Assistant Project Manager (APM)	\$211.00	Senior Field Engineer (Sr. FE)	\$211.00	Quality Manager - Daniel Davis	\$191.74
Project Manager (L1)	\$232.00	Superintendent (SUP L1)	\$232.00		
Project Manager (L2) - Jacob York	\$253.00	Superintendent (SUP L2)	\$253.00		
Project Manager (L3)	\$274.00	Superintendent (SUP L3) - Ian Thomas	\$274.00		
Project Manager (L4)	\$295.00	Superintendent (SUP L4)	\$295.00		
Project Manager (L5)	\$316.00	Superintendent (SUP L5)	\$316.00		
Senior Project Manager (Sr. PM)	\$337.00	Senior Superintendent	\$337.00		

**ATTACHMENT D - SPECIFICATION LOG**

Specification Log		Southern Nevada Health District BSL-3 Lab
<b>DIVISION 00 - PROCUREMENT AND CONTRACTING REQUIREMENTS</b>		
00 01 07	SEALS PAGE	2/9/2026
00 01 15	DRAWING LIST	2/9/2026
00 71 23	GENERAL CONDITIONS (AIA FORM A201-2017 (As Modified, By Reference)	2/9/2026
<b>DIVISION 01 - GENERAL REQUIREMENTS</b>		
01 10 00	SUMMARY	2/9/2026
01 25 00	SUBSTITUTION PROCEDURES	2/9/2026
01 26 00	CONTRACT MODIFICATION PROCEDURES	2/9/2026
01 29 00	PAYMENT PROCEDURES	2/9/2026
01 31 00	PROJECT MANAGEMENT AND COORDINATION	2/9/2026
01 32 00	CONSTRUCTION PROGRESS DOCUMENTATION	2/9/2026
01 32 33	PHOTOGRAPHIC DOCUMENTATION	2/9/2026
01 33 00	SUBMITTAL PROCEDURES	2/9/2026
01 40 00	QUALITY REQUIREMENTS	2/9/2026
01 41 00.05	(IBC 2021) STATEMENT OF SPECIAL INSPECTIONS	2/9/2026
01 42 00	REFERENCES	2/9/2026
01 50 00	TEMPORARY FACILITIES AND CONTROLS	2/9/2026
01 60 00	PRODUCT REQUIREMENTS	2/9/2026
01 73 00	EXECUTION	2/9/2026
01 77 00	CLOSEOUT PROCEDURES	2/9/2026
01 78 23	OPERATION AND MAINTENANCE DATA	2/9/2026
01 78 39	PROJECT RECORD DOCUMENTS	2/9/2026
01 91 00	TESTING, ADJUSTING, AND BALANCING FOR HVAC	2/9/2026
01 91 13	COMMISSIONING	2/9/2026
<b>DIVISION 02 - EXISTING CONDITIONS</b>		
02 41 19	SELECTIVE DEMOLITION	2/9/2026
<b>DIVISION 03 - CONCRETE</b>		
03 30 00	CAST-IN-PLACE CONCRETE	2/9/2026
<b>DIVISION 04 - MASONRY</b>		
04 20 00	UNIT MASONRY	2/9/2026
<b>DIVISION 05 - METALS</b>		
05 12 00	STRUCTURAL STEEL FRAMING	2/9/2026
05 31 00	STEEL DECKING	2/9/2026
05 40 00	COLD-FORMED METAL FRAMING	2/9/2026
05 50 00	METAL FABRICATIONS	2/9/2026
05 51 00	METAL STAIRS AND RAILINGS	2/9/2026
05 75 00	DECORATIVE FORMED METAL	2/9/2026
<b>DIVISION 06 - WOOD, PLASTICS, AND COMPOSITES</b>		
06 10 53	MISCELLANEOUS ROUGH CARPENTRY	2/9/2026
06 16 00	SHEATHING	2/9/2026
06 41 00	ARCHITECTURAL CABINETS	2/9/2026
06 82 00	GLASS-FIBER REINFORCED PLASTIC	2/9/2026
<b>DIVISION 07 - THERMAL AND MOISTURE PROTECTION</b>		
07 13 26	SELF-ADHERING SHEET WATERPROOFING	2/9/2026
07 16 19	METAL OXIDE WATERPROOFING	2/9/2026
07 21 00	THERMAL INSULATION	2/9/2026
07 41 13.16	STANDING-SEAM METAL ROOF PANELS	2/9/2026
07 42 13.19	INSULATED METAL WALL PANELS	2/9/2026
07 54 19	POLYVINYL-CHLORIDE (PVC) ROOFING	2/9/2026

07 62 00	SHEET METAL FLASHING AND TRIM	2/9/2026
07 71 29	MANUFACTURED ROOF EXPANSION JOINTS	2/9/2026
07 81 00	APPLIED FIREPROOFING	2/9/2026
07 84 13	FIRESTOPPING	2/9/2026
07 92 00	JOINT SEALANTS	2/9/2026
07 95 13.16	EXTERIOR EXPANSION JOINT COVER ASSEMBLIES	2/9/2026
<b>DIVISION 08 - OPENINGS</b>		
08 11 13	HOLLOW METAL DOORS AND FRAMES	2/9/2026
08 11 19	STAINLESS STEEL DOORS AND FRAMES	2/9/2026
08 12 16	GLAZED INTERIOR ALUMINUM PARTITIONS, DOORS AND FRAMES	2/9/2026
08 14 16	FLUSH WOOD DOORS	2/9/2026
08 31 13	ACCESS DOORS AND FRAMES	2/9/2026
08 41 13	ALUMINUM-FRAMED ENTRANCES AND STOREFRONTS	2/9/2026
08 51 13	ALUMINUM WINDOWS	2/9/2026
08 71 00	DOOR HARDWARE	4/1/2026
08 71 13.13	AUTOMATIC SWING DOOR OPERATORS-LOW ENERGY & POWER ASSIST	2/9/2026
08 80 00	GLAZING	2/9/2026
08 91 19	FIXED LOUVERS	2/9/2026
<b>DIVISION 09 - FINISHES</b>		
09 05 61.13	MOISTURE VAPOR EMISSION CONTROL	2/9/2026
09 29 00	GYPSUM BOARD SYSTEMS	2/9/2026
09 30 00	TILING	2/9/2026
09 51 13	ACOUSTICAL CEILINGS - **Updated as of 2/9/26 **	2/9/2026
09 65 13	RESILIENT BASE AND ACCESSORIES	2/9/2026
09 65 16	RESILIENT TILE AND SHEET FLOORING	2/9/2026
09 67 23	RESINOUS FLOORING	2/9/2026
09 68 13	TILE CARPETING	2/9/2026
09 91 13	EXTERIOR PAINTING	2/9/2026
09 91 23	INTERIOR PAINTING	2/9/2026
<b>DIVISION 10 - SPECIALTIES</b>		
10 14 23.13	ROOM-IDENTIFICATION SIGNAGE	2/9/2026
10 26 00	WALL AND DOOR PROTECTION	2/9/2026
10 28 00	TOILET AND BATH ACCESSORIES	2/9/2026
10 44 13	FIRE EXTINGUISHERS AND FIRE EXTINGUISHER CABINETS	2/9/2026
10 51 29	PHENOLIC LOCKERS	2/9/2026
10 56 13	METAL STORAGE SHELVING	2/9/2026
<b>DIVISION 11 - EQUIPMENT - NOT USED</b>		
<b>DIVISION 12 - FURNISHINGS</b>		
12 24 13	ROLLER WINDOW SHADES	2/9/2026
12 35 53	LABORATORY CASEWORK	4/1/2026
<b>DIVISION 13 - SPECIAL CONSTRUCTION</b>		
13 21 36	LABORATORY ENVIRONMENTAL ROOMS	2/9/2026
<b>DIVISION 14 - CONVEYING EQUIPMENT</b>		
14 21 23.16	MACHINE ROOM-LESS ELECTRIC TRACTION PASSENGER ELEVATORS	2/9/2026
<b>DIVISION 21 - FIRE SUPPRESSION - NOT USED</b>		
<b>DIVISION 22 - PLUMBING</b>		
22 05 00	COMMON MATERIALS AND METHODS FOR PLUMBING	2/9/2026
22 05 13	ELECTRICAL REQUIREMENTS FOR PLUMBING EQUIPMENT	2/9/2026
22 05 33	HEAT TRACING FOR PLUMBING EQUIPMENT	2/9/2026
22 05 48	VIBRATION ISOLATION AND SEISMIC RESTRAINTS FOR PLUMBING SYSTEMS	2/9/2026
22 07 00	PLUMBING INSULATION	2/9/2026

22 10 00	PLUMBING SYSTEMS	2/9/2026
22 11 00	DISINFECTION OF DOMESTIC WATER LINES	2/9/2026
22 11 23	PLUMBING PUMPS	2/9/2026
22 13 13	FACILITY SANITARY SEWERS	2/9/2026
22 40 00	PLUMBING FIXTURES AND TRIM	2/9/2026
22 60 00	PLUMBING- SPECIAL SYSTEMS	2/9/2026
<b>DIVISION 23 - HEATING VENTILATING AND AIR CONDITIONING</b>		
23 05 00	COMMON MATERIALS AND METHODS FOR HVAC	2/9/2026
23 05 13	ELECTRICAL REQUIREMENTS FOR HVAC EQUIPMENT	2/9/2026
23 05 33	HEAT TRACING FOR HVAC PIPING	2/9/2026
23 05 48	VIBRATION ISOLATION AND SEISMIC RESTRAINTS FOR HVAC SYSTEMS	2/9/2026
23 07 00	HVAC INSULATION	2/9/2026
23 09 00	LABORATORY AIRFLOW CONTROL SYSTEM **- Updated as of 2/9/26 **	2/9/2026
23 09 10	GAS DETECTION	2/9/2026
23 21 13	HYDRONIC PIPING SYSTEM	2/9/2026
23 21 23	HVAC PUMPS	2/9/2026
23 23 00	REFRIGERANT PIPING	2/9/2026
23 24 13	UNDERGROUND DISTRIBUTION PIPING SYSTEMS	2/9/2026
23 25 00	HVAC WATER TREATMENT	2/9/2026
23 30 00	DUCTWORK AND DUCTWORK ACCESSORIES	2/9/2026
23 34 00	FANS AND VENTILATORS	2/9/2026
23 50 00	CENTRAL HEATING EQUIPMENT	2/9/2026
23 51 00	SPECIALTY VENTING	2/9/2026
23 60 00	WATER CHILLERS	2/9/2026
23 70 20	COMMERCIAL ROOFTOP AIR-HANDLING UNITS	2/9/2026
23 70 40	INDUSTRIAL ROOFTOP AIR-HANDLING UNITS	2/9/2026
23 80 00	HEAT TRANSFER	2/9/2026
23 81 00	UNITARY AIR CONDITIONING	2/9/2026
23 84 13	HUMIDIFIERS	2/9/2026
<b>DIVISION 25 – INTEGRATED AUTOMATION</b>		
25 09 00	INSTRUMENTATION AND CONTROLS FOR HVAC	2/9/2026
25 09 33	SEQUENCE OF OPERATIONS FOR HVAC CONTROLS	2/9/2026
<b>DIVISION 26 - ELECTRICAL</b>		
26 05 00	COMMON MATERIALS AND METHODS FOR ELECTRICAL	2/9/2026
26 05 19	LOW-VOLTAGE ELECTRICAL POWER CONDUCTORS AND CABLES	2/9/2026
26 05 26	GROUNDING AND BONDING FOR ELECTRICAL SYSTEMS	2/9/2026
26 05 29	HANGERS AND SUPPORTS FOR ELECTRICAL SYSTEMS	2/9/2026
26 05 33	RACEWAY AND BOXES FOR ELECTRICAL SYSTEMS	2/9/2026
26 05 43	UNDERGROUND DUCTS AND STRUCTURES FOR ELECTRICAL SYSTEMS	2/9/2026
26 05 48	VIBRATION AND SEISMIC CONTROLS FOR ELECTRICAL SYSTEMS	2/9/2026
26 05 53	IDENTIFICATION FOR ELECTRICAL SYSTEMS	2/9/2026
26 05 73	ELECTRICAL SYSTEMS STUDIES AND ANALYSIS	2/9/2026
26 09 23	LIGHTING CONTROL DEVICES	2/9/2026
26 09 43	NETWORK LIGHTING CONTROLS	2/9/2026
26 22 00	LOW-VOLTAGE TRANSFORMERS	2/9/2026
26 24 13	SWITCHBOARDS	2/9/2026
26 24 16	PANELBOARDS	2/9/2026
26 27 13	ELECTRICITY METERING	2/9/2026
26 27 26	WIRING DEVICES	2/9/2026
26 28 16	ENCLOSED SWITCHES AND CIRCUIT BREAKERS	2/9/2026
26 29 13	ENCLOSED CONTROLLERS	2/9/2026
26 29 23	VARIABLE FREQUENCY MOTOR SPEED CONTROLLERS (VFD)	2/9/2026

26 32 13	ENGINE GENERATORS	2/9/2026
26 33 23	CENTRAL BATTERY EQUIPMENT	2/9/2026
26 36 00	TRANSFER SWITCHES	2/9/2026
26 41 13	LIGHTNING PROTECTION FOR STRUCTURES	2/9/2026
26 43 13	SURGE PROTECTION DEVICES FOR LOW-VOLTAGE ELECTRICAL POWER CIRCUITS	2/9/2026
26 51 00	INTERIOR LIGHTING	2/9/2026
26 56 00	EXTERIOR LIGHTING	2/9/2026
<b>DIVISION 27 – COMMUNICATIONS</b>		
27 05 00	COMMON MATERIALS AND METHODS FOR COMMUNICATIONS	2/9/2026
27 05 26	GROUNDING AND BONDING FOR COMMUNICATIONS SYSTEMS	2/9/2026
27 05 28	PATHWAYS FOR COMMUNICATIONS SYSTEMS	2/9/2026
27 05 29	HANGERS AND SUPPORTS FOR COMMUNICATIONS SYSTEMS	2/9/2026
27 05 36	CABLE TRAYS FOR COMMUNICATIONS SYSTEMS	2/9/2026
27 05 44	SLEEVES AND SLEEVE SEALS FOR COMMUNICATIONS PATHWAYS AND CABLING	2/9/2026
27 11 00	COMMUNICATIONS EQUIPMENT ROOM FITTINGS	2/9/2026
27 11 16	COMMUNICATIONS RACKS, FRAMES, AND ENCLOSURES	2/9/2026
27 13 13	COMMUNICATIONS COPPER BACKBONE CABLING	2/9/2026
27 13 23	COMMUNICATIONS OPTICAL FIBER BACKBONE CABLING	2/9/2026
27 15 13	COMMUNICATIONS COPPER HORIZONTAL CABLING	2/9/2026
<b>DIVISION 28 - ELECTRONIC SAFETY AND SECURITY</b>		
28 05 00	COMMON MATERIALS AND METHODS FOR ELECTRONICA SAFETY AND SECURITY	2/9/2026
28 05 13	CONDUCTORS AND CABLES FOR ELECTRONIC SAFETY AND SECURITY	2/9/2026
<b>DIVISION 31 - EARTHWORK</b>		
31 10 00	SITE CLEARING	2/9/2026
31 20 00	EARTH MOVING	2/9/2026
31 23 19	DEWATERING	2/9/2026
31 50 00	EXCAVATION SUPPORT AND PROTECTION	2/9/2026
<b>DIVISION 32 - EXTERIOR IMPROVEMENTS</b>		
32 12 16	ASPHALT PAVING	2/9/2026
32 13 13	CONCRETE PAVING	2/9/2026
32 13 73	CONCRETE PAVING JOINT SEALANTS	2/9/2026
32 17 13	PARKING BUMPERS	2/9/2026
32 17 23	PAVEMENT MARKINGS	2/9/2026
32 17 26	TACTILE WARNING SURFACING	2/9/2026
<b>DIVISION 33 - UTILITIES</b>		
33 05 00	COMMON WORK RESULTS FOR UTILITIES	2/9/2026
33 14 15	SITE WATER DISTRIBUTION PIPING	2/9/2026
33 42 00	STORMWATER CONVEYANCE	2/9/2026

**ATTACHMENT E - DRAWING LOG**

DRAWING LOG		Southern Nevada Health District BSL-3 Lab
Architectural		
AG.2	ABBREVIATIONS & SYMBOL LIST	2/9/2026
AG.3	MOUNTING HEIGHTS & CLEARANCES	2/9/2026
AG.4	CODE REQUIRED SIGNAGE	2/9/2026
AD2.1.A	DEMOLITION PLAN & ELEVATION	2/9/2026
A0.1	ARCHITECTURAL SITE PLAN	2/9/2026
A0.2	ARCHITECTURAL SITE PLAN - NEW TRASH ENCLOSURE & WALL DETAILS	2/9/2026
A1.1	LEVEL 1 REFERENCE PLAN	2/9/2026
A1.2	LEVEL 2 REFERENCE PLAN	2/9/2026
A1.3	ROOF PLAN	2/9/2026
A2.1.1A	FLOOR PLAN LEVEL 1 SECTOR A - DIMENSIONS & NOMENCLATURE	2/9/2026
A2.1.1B	FLOOR PLAN LEVEL 1 SECTOR B - DIMENSIONS & NOMENCLATURE	2/9/2026
A2.1.2A	FLOOR PLAN LEVEL 2 SECTOR A - EQUIPMENT & CASEWORK	2/9/2026
A2.1.2B	FLOOR PLAN LEVEL 2 SECTOR B - EQUIPMENT & CASEWORK	2/9/2026
A2.2.1A	FLOOR PLAN LEVEL 1 SECTOR A - DIMENSIONS & NOMENCLATURE	2/9/2026
A2.2.1B	FLOOR PLAN LEVEL 1 SECTOR B - DIMENSIONS & NOMENCLATURE	2/9/2026
A2.2.2A	FLOOR PLAN LEVEL 2 SECTOR A - EQUIPMENT & CASEWORK	2/9/2026
A2.2.2B	FLOOR PLAN LEVEL 2 SECTOR B - EQUIPMENT & CASEWORK	2/9/2026
ACP2.1.0	LEVEL 1 REFERENCE PLAN - REFLECTED CEILING PLAN	2/9/2026
ACP2.1.A	RCP LEVEL 1 SECTOR A	2/9/2026
ACP2.1.B	RCP LEVEL 1 SECTOR B	2/9/2026
ACP2.2.0	LEVEL 2 REFERENCE PLAN - REFLECTED CEILING PLAN	2/9/2026
ACP2.2.A	RCP LEVEL 2 SECTOR A	2/9/2026
ACP2.2.B	RCP LEVEL 2 SECTOR B	2/9/2026
A3.1.1	BUILDING ELEVATIONS	2/9/2026
A3.1.2	BUILDING ELEVATIONS - CONNECTING CORRIDOR, MECH. YARD & ROOF SCREEN	2/9/2026
A3.1.3	EXTERIOR COLOR & MATERIALS	2/9/2026
A3.3.1	BUILDING SECTIONS	2/9/2026
A3.5.1	WALL SECTIONS	2/9/2026
A4.1.1	PARTITION TYPES	2/9/2026
A4.1.2	PARTITION DETAILS & APPLICABLE UL LISTINGS	2/9/2026
A4.2.1	DOOR SCHEDULES & DETAILS	4/1/2026
A4.2.2	DOOR SCHEDULES & DETAILS	2/9/2026
A4.2.3	WINDOW TYPES & DETAILS	2/27/2026
A4.3.1	EXTERIOR WALL TYPES & DETAILS	2/27/2026
A4.3.2	EXTERIOR WALL TYPES & DETAILS	2/27/2026
A4.3.3	EXTERIOR DETAILS	2/9/2026
A4.3.4	ROOFING DETAILS	2/27/2026
A4.5.1	EXPANSION JOINT SCHEDULE & DETAILS	2/9/2026
A4.6.1	CEILING DETAILS	2/9/2026
A4.6.2	CEILING DETAILS, UL LISTINGS & ICC ES LISTING REPORT	2/9/2026
A4.7.1	CASEWORK SCHEDULE & DETAILS	4/1/2026
A4.7.2	CASEWORK SCHEDULE & DETAILS	4/1/2026
A4.7.3	CASEWORK SCHEDULE & DETAILS	2/9/2026
A4.8.1	EQUIPMENT SCHEDULE - PHASE 1	4/1/2026
A5.1.1	ENLARGED PLANS - LEVEL 1 (LEVEL 2 SIMILAR) RESTROOMS	4/1/2026
A6.1.1	INTERIOR ELEVATIONS - LEVEL 1 - PHASE I	2/9/2026
A6.1.2	INTERIOR ELEVATIONS - LEVEL 2 - SECTOR B - PHASE I	4/1/2026
A8.1.1	VERTICAL CIRCULATION STAIRS	2/9/2026
A8.2.1	VERTICAL CIRCULATION ELEVATOR	2/9/2026
A8.3.1	ELEVATOR DETAILS	2/9/2026
A8.4.1	STAIR#1 DETAILS	2/9/2026

A8.4.2	STAIR #2 DETAILS	2/9/2026
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# AIA Document A133® – 2019 Exhibit B

## Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 1st day of May in the year 2026

for the following **PROJECT**:

The Whiting-Turner Contracting Company will serve as Construction Manager at Risk for the construction of a new Biosafety Level 3 laboratory located at 700 S. Martin L. King Blvd., Las Vegas, NV 89106

### THE OWNER:

Southern Nevada Health District  
280 S. Decatur Blvd.  
Las Vegas, Nevada 89107

### THE CONSTRUCTION MANAGER:

)  
The Whiting-Turner Contracting Company  
6720 Via Austi Parkway, Suite 550  
Las Vegas, Nevada 89119

### ADDITIONS AND DELETIONS:

The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added to or deleted from the original AIA text.

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

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

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### ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

### ARTICLE B.2 OWNER'S INSURANCE

#### § B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or

policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

**§ B.2.2 Liability Insurance**

The Owner shall be responsible for purchasing and maintaining the Owner’s usual general liability insurance.

**§ B.2.3 Required Property Insurance**

**§ B.2.3.1** Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall 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 Owner’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ B.2.3.1.1 Causes of Loss.** The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

<b>Cause of Loss</b>	<b>Sub-Limit</b>
----------------------	------------------

**§ B.2.3.1.2 Specific Required Coverages.** The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s and Construction Manager’s services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

<b>Coverage</b>	<b>Sub-Limit</b>
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**§ B.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ B.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

**§ B.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner’s occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ B.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in

Section 12.2.2 of the General Conditions, “all-risks” property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ B.2.4 Optional Extended Property Insurance.**

The Owner shall purchase and maintain the insurance selected and described below.

*(Select the types of insurance the Owner 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.)*

- § B.2.4.1 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.
  
- § B.2.4.2 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.
  
- § B.2.4.3 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.
  
- § B.2.4.4 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.
  
- § B.2.4.5 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.
  
- § B.2.4.6 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.
  
- § B.2.4.7 Soft Costs Insurance**, to reimburse the 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.

**§ B.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next*

to the description(s) of selected insurance.)

[ ] § B.2.5.1 **Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. (Indicate applicable limits of coverage or other conditions in the fill point below.)

[ ] § B.2.5.2 **Other Insurance**  
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

## **ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS**

### **§ B.3.1 General**

**§ B.3.1.1 Certificates of Insurance.** The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

**§ B.3.1.2 Deductibles and Self-Insured Retentions.** The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager.

**§ B.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

### **§ B.3.2 Construction Manager's Required Insurance Coverage**

**§ B.3.2.1** The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

#### **§ B.3.2.2 Commercial General Liability**

**§ B.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than two million dollars (\$ 2,000,000 ) each occurrence, four million dollars (\$ 4,000,000 ) general aggregate, and four million dollars (\$ 4,000,000 ) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use

- of such property;
- .4 bodily injury or property damage arising out of completed operations;
- .5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions; and
- .6 Construction Manager shall name Owner as an additional insured.

**§ B.3.2.2.2** The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ B.3.2.3** Automobile Liability, with Owner named as additional insured, covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than two million dollars (\$ 2,000,000 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

**§ B.3.2.4** The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

**§ B.3.2.5** Workers' Compensation at statutory limits.

**§ B.3.2.6** Employers' Liability with policy limits not less than one million dollars (\$ 1,000,000 ) each accident, one million dollars (\$ 1,000,000 ) each employee (disease), and \$1,000,000 (\$ 1,000,000 ) policy limit.

**§ B.3.2.7** Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

**§ B.3.2.8** Naming Owner as an additional insured, Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering negligent acts, errors and omissions in the performance of the professional services, with policy limits of not less than one million dollars (\$ 1,000,000 ) per claim and one million dollars (\$ 1,000,000 ) in the aggregate.

**§ B.3.2.9** If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, and shall name Owner as an additional insured, with policy limits of not less than one million dollars (\$ 1,000,000 ) per claim and one million dollars (\$ 1,000,000 ) in the aggregate.

**§ B.3.2.10** Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, naming Owner as an additional insured, with combined policy

limits of not less than two million dollars (\$ 2,000,000 ) per claim and two million dollars (\$ 2,000,000 ) in the aggregate.

§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than ( \$ ) per claim and ( \$ ) in the aggregate.

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ( \$ ) per claim and ( \$ ) in the aggregate.

**§ B.3.3 Construction Manager's Other Insurance Coverage**

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

- [ ] § B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
- [ ] § B.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than ( \$ ) per claim and ( \$ ) in the aggregate, for Work within fifty (50) feet of railroad property.
- [ ] § B.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than ( \$ ) per claim and ( \$ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
- [ ] § B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.
- [ ] § B.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.
- [ ] § B.3.3.2.6 Other Insurance  
*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*

**Coverage**

**Limits**

**§ B.3.4 Performance Bond and Payment Bond**

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:

<b>Type</b>	<b>Penal Sum (\$0.00)</b>
Payment Bond capacity \$500,000,000 per project, Aggregate \$400,000,000 Guarantee: 100% of GMP	
Performance Bond capacity \$500,000,000 per project Aggregate \$400,000,000 Guarantee: 100% of GMP	

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

**ARTICLE B.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows: