

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

Public comment will be taken for each regular agenda item as each item is discussed. Individuals will be limited to one comment per agenda item. Individuals are asked to come to the microphone, sign in, and state their name. Speakers are asked to sign in so that the spelling of names is correct in the minutes of the meeting. Speakers should address all comments/questions to the Commission.

WEDNESDAY, JULY 24, 2019

5:30 p.m. BUSINESS MEETING

CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders;
- (b) Consider approval to execute a contract with Mar Lan Construction for Construction Manager at Risk services for the Behavioral Health Campus Housing Project (Jackie Waggoner);
- (c) Review and Approve an Amendment to the Memorandum of Understanding between the Kansas Department of Corrections Division of Juvenile Services and Douglas County Kansas for the Youth Advocacy Program. (Pam Weigand)
- (d) Consider awarding construction contract for Project No. 2019-20 regarding N 1200 Road/Route 1061 intersection improvements to Hamm, Inc. in the low bid amount of \$148,242.78. (Keith Browning);
- (e) Consider approval to purchase Snap-Tite pipe culvert liners culvert numbers 20.08N-08.54E and 20.32N-07.90E at a cost of \$53,148.16 plus shipping costs for Project 2017-66. (Keith Browning);
- (f) Consider approval of the minutes from July 10, 2019; and
- (g) Accounts payable.

REGULAR AGENDA

- (2) Discussion on herbicide use at Lone Star Lake for treatment of riprap shore lining and for treatment of Eurasian Watermilfoil (Keith Browning);
- (3) Consider approval of a contract with Mar Lan Construction for construction services in the amount of \$111,332, and authorizes the Interim County Administrator to approve change orders up to 10% of that amount. Additionally, the Board provides staff direction on modifying our lease terms and accepting offer made by the landlord.(Jackie Waggoner)
- (4) Recess into executive session for approximately 30 minutes to discuss the current employer-employee negotiations between the City's administrative staff and representatives of the Local 1596 International Association of Firefighters, pursuant to the employer-employee negotiations exception set forth in K.S.A. 75-4319(b)(3). The justification for the executive session is to keep employer-employee negotiations matters confidential at this time. At the end of the executive session, the City Commission will resume its regular meeting in the City Commission Room.
- (5) General Public Comment
General Public Comment will be at the end of each meeting with a limit of one comment per person and keep their comments brief. Individuals may not give unused time to other speakers. As a general practice, the Commission will not discuss/debate these items, nor will the Commission make decisions on items presented during this time, rather they will refer the items to staff for follow up, if necessary.
- (6) Committee Reports
- (7) Commissioner and/or Administrator Miscellaneous
- (8) Adjourn

WEDNESDAY, JULY 31, 2019

-Proclamation to recognize the "Community Health Facility's 20th Anniversary"

WEDNESDAY, AUGUST 7, 2019 - cancelled

WEDNESDAY, AUGUST 14, 2019

5:30 p.m.

-LDCFM Accreditation

WEDNESDAY, AUGUST 21, 2019

WEDNESDAY, AUGUST 28, 2019

-Proclamation for "First Responders Appreciation Month"

WEDNESDAY, OCTOBER 2, 2019- cancelled

***Note:** The Douglas County Commission meets regularly on Wednesdays at 5:30 p.m., and at 4:00 p.m. for Work Sessions as needed. Meetings are held at the Douglas County Courthouse (2nd Floor) at 1100 Massachusetts Street, Lawrence, KS 66044. Specific regular meeting dates that are not listed above have not been cancelled unless specifically noted on this schedule.*



DOUGLAS COUNTY ADMINISTRATIVE SERVICES

Division of Purchasing

1100 Massachusetts Street
Lawrence, KS 66044-3064
(785) 832-5286 Fax (785) 838-2480
www.douglascountyks.org

MEMO TO: The Board of County Commissioners
Sarah Plinsky, Interim County Administrator

FROM: Jackie Waggoner, Purchasing Director

SUBJECT: Execute Contract for Behavioral Health Campus Housing Projects

DATE: July 17, 2019

On June 12, 2019 the Board of County Commissioners awarded a contract to Mar Lan Construction for Construction Manager at Risk services for construction phases for the implementation of the Behavioral Health Campus Tier 2 and Tier 3 Housing Projects and authorized the Interim County Administrator to finalize the contract.

Attached are the AIA documents reflecting pre-construction services at \$5,000, general conditions at a rate of 5.43%, and overhead and profit at 6.0%. This contract includes three exhibits in which two have not been defined: Exhibits A (GMP) & C (scope and timeline for the preconstruction phase) by design, will be determined at a later date, and exhibit B (General Conditions Matrix) is established and part of the contract. Once the exhibits are finalized staff will provide an update to the Board.

Jill deVries Jolicoeur and I will be available at the meeting to answer any questions you may have.

SUGGESTED MOTION: The Board of County Commissioners executes the contract with Mar Lan Construction for Construction Manager at Risk services of the Behavioral Health Campus Housing Project.

AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Behavioral Health Housing
Lawrence Kansas

THE OWNER:

(Name, legal status and address)

The Board of County Commissioners of Douglas County, KS
1100 Massachusetts Street
Lawrence, KS 66044

THE ARCHITECT:

(Name, legal status and address)

Treanor Architects, PA Professional Corp.
1040 Vermont Street
Lawrence, KS 66044

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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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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, Modifications issued after execution of the Contract, written responses to formal requests for information, and each document's respective exhibits and attachments, all of which form the Contract Documents, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. 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 or make a proposal, Instructions to Bidders or persons making proposals, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, approved Shop Drawings and submittals, requests for information, proposed change orders, the reports and drawings of subsurface and physical conditions, or portions of Addenda relating to bidding or proposal requirements. Electronic manifestations of documents shall not be Contract Documents, and shall be used at the risk of its user.

§ 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's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be obligated to Owner for and entitled to performance and enforcement of obligations under the Contract related to performance of the Architect's duties. In the event of a conflict or inconsistencies among terms and conditions contained within the Contract Documents, the term or condition that imposes the greater responsibility on Contractor or which more greatly limits Contractor's rights shall control, as determined by Owner.

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

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

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies among parts of the Contract Documents, or among the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement, as determined by Owner. The terms and conditions of this Section 1.2.1, however, shall not relieve the Contractor of any of the obligations set forth in Sections 3.2 and 3.7.

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

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

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

.1 Whenever a product is specified in accordance with a federal specification, an ASTM Standard, and American National Standards Institute Specification, or other association standard, the Contractor shall present a certificate from the manufacturer when requested by the Architect or Owner or required in the Specifications, certifying that the product complies with the particular standard or specification. When requested by the Architect, Owner or as specified, support test data shall be submitted to substantiate compliance.

.2 Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a Modification in the Work. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

.3 No provision of any such reference document or standard shall be effective to change the responsibilities of Owner, Architect or other person involved in the Project from those set forth in the Contract Documents, nor to assign to any of them any responsibility, duty or authority for safety precautions or procedures or to supervise or direct the performance of the Work.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

§ 1.5.1 The 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 any 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.

§ 1.5.3 Prior to execution of the Contract, the Contractor and each Subcontractor evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools and equipment, and (v) other similar issues. The Owner assumes no responsibility or liability for the safety of then Project site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor or supplier to have complied with the requirements of this Section 1.5.3.

§ 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 may agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will endeavor to 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, but agree that electronic manifestations of documents shall not be Contract Documents, and shall be used at the risk of its user.

§ 1.8 Building Information Models Use and Reliance

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

ARTICLE 2 OWNER

§ 2.1 General

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

(Paragraph deleted)

§ 2.2 Evidence of the Owner's Financial Arrangements

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

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

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

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others, but only if they 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, fees and performance obligations 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 Architect is the person or entity is identified in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 [deleted]

§ 2.3.4 The Owner shall furnish surveys describing known physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. To the extent the information is not contrary to Contractor's knowledge or against good practices, the Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the performance of the Work.

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

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

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

§ 2.6 Extent of Owner's Rights

§ 2.6.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner granted (i) in the Contract Documents, (ii) at law or (iii) in equity.

§ 2.6.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the site, Work or Project, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

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 and its Subcontractors and suppliers shall be lawfully licensed, if and as 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. All of Contractor's work shall conform to the Contract Documents. No change therefrom shall be undertaken without the prior review by the Architect and approval by the Owner. Contractor shall be responsible for details of the Work necessary to carry out the intent of the drawings and specifications, or which are customarily performed. When more detailed information is required for performance of the Work or when an interpretation of the Contract Documents is requested, the Contractor shall submit a written request to the Architect and Owner, and the Architect shall furnish such information or interpretation in the form of an architect's supplemental instruction or other written or drawn form or drawing. Where only part of the Work is indicated, similar parts shall be considered repetitive. Where any detail is shown and components thereof are fully described, similar details not fully described shall be considered to incorporate the fully described details and components. In the case of inconsistency between drawings and specifications or within either documents not clarified by addendum, the better quality or greater quantity shall be provided in accordance with the Architect's interpretation at no extra cost to the Owner.

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

§ 3.1.4 Contractor shall staff the Project with a competent superintendent and project manager who shall not be changed without the Owner's consent, which will not be unreasonably withheld.

§ 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, correlated personal observations with requirements of the Contract Documents, and is satisfied as to the matters under Section 1.5.3.

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

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

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

§ 3.3 Supervision and Construction Procedures

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

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and suppliers 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 Contractor shall be fully responsible for the layout of the Work and shall ensure that the Work is in the proper location as required by the Contract Documents. Contractor shall establish and maintain alignment and grades, including the setting of stakes, ranges, grid lines and other appurtenance facilities. Before starting construction, Contractor shall ensure that monuments or markers which delineate the site boundaries are placed in the proper position, and that all portions of the work are wholly within limits of Owner's ownership, leasehold, easement or

right-of-way interest in the property. Contractor shall be responsible for the accurate replacement of any boundary markers which are disturbed, removed or destroyed during the performance of the Work.

§ 3.3.5 The Contractor shall be responsible for the shoring required to protect the Work or adjacent property and shall pay for any damage caused by failure to shore or by improper shoring or by failure to give proper notice. Shoring shall be removed only after completion of permanent supports.

§ 3.4 Labor and Materials

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

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. If the Contractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the following provisions apply:

.1 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; (iv) the adjustment, if any, in the Contract Time and the construction schedule in the event the substitution is acceptable; and (v) an affidavit stating that (a) the proposed substitution conforms to and meets all the requirements of the pertinent specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than ten (10) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

.2 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit the designated space; (iv) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (v) when in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interest, in terms of cost, time or other considerations.

§ 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.

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade.

.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

§ 3.5 Warranty

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

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The Contractor agrees to assign the warranties to the Owner at the time in accordance with Section 9.8.4 and further agrees to perform the Work in such manner so as to preserve any and all such warranties.

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 The Contractor shall secure and pay for all building permits necessary for Contractor to carry out the Work. The Contractor shall secure and pay for all other applicable permits, licenses and performance obligations necessary for the Contractor to execute and complete the Work. All connection charges or inspection fees as may be imposed by any public authority or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or any other public or private body with jurisdiction over the Project in connection with the Work. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary backup materials, and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, parking meter removal, and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

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

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or in documents presented by the Owner as unconditional representations of actual conditions 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 2 work days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions do not justify an equitable adjustment to the terms of the Contract, the

Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect in writing while continuing to perform other portions of the Work. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the affected operations. The Contractor shall continue to suspend such affected 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 and Project Manager

§ 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, and a competent project manager and necessary assistants who are not required to be on site. The superintendent and project manager shall represent the Contractor, and communications given to the superintendent or project manager shall be as binding as if given to the Contractor.

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

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

§ 3.10 Contractor's Construction and Submittal Schedules

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

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

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

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect that fulfill the requirements of the Contract Documents.

§ 3.10.4 The construction schedule shall be in such detail reasonably acceptable to the Owner and Architect and shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). If the form of the schedule is not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Architect or Owner and resubmitted for such acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner and Architect of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to as "progress reports"). In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Modification. Acceptance, approval or review by the Owner or Architect under this Article shall not accelerate the Contract Time, any Milestone Date or the Work or alter, adopt or otherwise approve the construction or submittal schedules, but rather is limited to the form of the schedules.

§ 3.10.5 In the event the Owner or Architect reasonably determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents as a result of Contractor negligence, the Owner and Architect shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's or Architect's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner or Architect under or pursuant to this Section 3.10.5.

.2 The Owner or Architect may exercise the rights furnished it under or pursuant to this Section 3.10.5 as frequently as the Owner or Architect deems necessary to help ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents. .3 Action or inaction by Owner or Architect under this Article shall not relieve or alter Contractor's responsibilities under the Contract Documents, including but not limited to any schedules.

§ 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 or on behalf of the Contractor to illustrate some portion of the Work.

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§ 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 help establish standards by which the Work will be judged.

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

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

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

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect in writing 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 provide or cause to be provided professional services that constitute the practice of architecture or engineering when required by the Contract Documents for a portion of the Work or as needed for the Contractor to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall ensure such services are provided in a lawful manner.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are 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 and who shall comply with reasonable requirements of the Owner regarding qualifications and insurance. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified

to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

§ 3.13 Use of Site

§ 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 any entity for which the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner other than signage as required by statute.

§ 3.13.3 Protection of construction materials and equipment and any Owner furnished materials and equipment to be incorporated in the Work stored at the Project site from weather, flood, environmental conditions, theft, damage, Subcontractors and all other adversity is solely the responsibility of the Contractor.

§ 3.13.4 Without prior written approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances and parking areas other than those designated by the Owner. The Contractor shall comply with all rules promulgated by the Owner in connection with the use and occupancy of the Project site as amended from time to time.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work, to make its parts fit together properly, or to properly fit with or separate from adjacent property. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise expressly 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 or property of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them ("Indemnatee") 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, but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

§ 3.18.3 The Contractor's defense and indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority.

§ 3.18.4 If one or more of the Indemnitees demand performance by the Contractor of obligations under this Section 3.18 or other provisions of the Contract Documents and if Contractor refuses to assume or perform, or delays in assuming or performing Contractor's obligations, Contractor shall pay each Indemnatee who has made such demand its respective attorneys' fees, costs, and other expenses incurred in enforcing this provision. The defense and indemnity required herein shall, however, be a binding obligation upon Contractor whether or not an Indemnatee has made such demand. Even if a defense is successful to a claim or demand for which Contractor is obligated to indemnify the Indemnitees from under this Section, Contractor shall remain liable for all costs of defense. The indemnity obligations of Contractor under this Section 3.18 shall survive termination of this Agreement or final payment thereunder.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have

control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

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

§ 4.2.4 Communications

The Owner and Contractor may communicate directly without Architect and shall include the Architect in all communications identified or believed to be material to the Architect's services or professional responsibilities, but it remains the sole duty of Architect to enquire and investigate in regard to communications and other information necessary for the performance of its services and professional responsibilities. 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 or its written designee. 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 apparently due the Contractor and will issue Certificates for Payment in such amounts. Any review, certification or approval of an Application for Payment by Architect or other third party (by Certificate for Payment or otherwise) is not a declaration that such Application for Payment or the sums within are undisputed.

§ 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 after consultation with Owner, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

§ 4.2.10 If the Owner and Architect agree in writing, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site.

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

§ 4.2.12 Interpretations and the related opinions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and giving opinions thereon, the Architect will endeavor to secure faithful performance by both Owner and Contractor and will not show partiality to either.

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

§ 5.2.1 No later than thirty (30) days subsequent to the full execution of the Contract, the Contractor shall furnish the Owner and the Architect, in writing, with (i) the name, trade, and subcontract amount for each Subcontractor, and (ii) the names of all persons or entities proposed as manufacturers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing Subcontractor. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. Contractor remains solely responsible for the actions and inactions of each Subcontractor.

§ 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

§ 5.3.1 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.

§ 5.3.2 All subcontracts shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract. In no event shall such designation give Subcontractor a direct claim for payment against Owner.

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Except as permitted in Section 7.3 and Subparagraph 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 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.

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, Contract Time and the construction schedule.

§ 7.3 Construction Change Directives

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

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

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

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

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3 and 7.3.8, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

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

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

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

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

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

§ 7.3.9 Contractor shall not request payment for Work completed under the Construction Change Directive in Applications for Payment until final determination of the total cost. If a reasonable time has expired without a final determination, Contractor may request payment for such completed Work and 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, and such sum shall be included in the next Application for Payment. 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.

§ 7.3.11 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Time, the Architect shall determine the method and the adjustment on the basis of reasonable durations and impacts. In such case, the Contractor shall keep and present, in such form as the Architect may prescribe, an impact schedule with appropriate supporting data.

§ 7.3.12 If Contractor does not present an itemized accounting, impact schedule or appropriate supporting data to the satisfaction of Architect with twenty-one (21) days of the issuance of the Construction Change Directive, Architect shall decide the issues based on its professional judgment and experience, and Contractor waives the right to submit such information and agrees to the Architect's decision.

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused, or could not have been anticipated, by the Contractor, (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay and (3) is of a duration not less than one (1) day.

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

§ 8.3.3 Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under Subparagraph 8.3.1, shall be the sole remedy of the Contractor for any delay at any time in the commencement or progress of the Work, including but not limited to any (1) delay in the commencement, prosecution or completion of the Work, (2) hindrance or obstruction in the performance of the Work, (3) loss of productivity or acceleration, or (4) other similar claims, (collectively referred to in this Subparagraph 8.3.3 as "Delays"), whether or not such Delays are foreseeable, unless a Delay is caused by acts of the Owner constituting active interference with the Contractor's performance of the Work, and only to the extent such acts continue after the Contractor furnishes the Owner with written notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration.

§ 8.3.4 If the Contractor submits a schedule or progress report indicating, or otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

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 or Owner. A failure to object shall not be deemed consent to the allocations or the values contained therein.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, releases and waivers of liens from Subcontractors and suppliers, and other information under Section 9.3.1.3, 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.

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a duly executed Contractor's lien and/or payment bond claim waiver to the extent of payments received and duly executed and acknowledged sworn statements showing all Subcontractors and suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and supplier in the requested progress payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and suppliers; (ii) duly executed waivers of mechanics' and suppliers' liens and/or payment bond claims from all Subcontractors to the extent of payments received and, when appropriate, from suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts due for work completed during the period of time covered in any previous Application for Payment to the extent of payments received; and (iii) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect. If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

§ 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. The Contractor shall also comply with the following specific requirements:

- .1 The aggregate cost of materials stored off site shall not exceed Twenty Thousand Dollars (\$20,000.00) at any time without written approval of the Owner.
- .2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Owner's Lender, including without limitation, recorded financing statements, UCC filings, and UCC searches.
- .3 With each Application for Payment, Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.
- .4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.
- .5 Representatives of the Owner shall have the right to make inspections of the storage areas at any time.

.6 Such materials shall be (i) protected from diversion, destruction, theft and damage to the satisfaction of the Owner; (ii) specifically marked for use on the Project; and (iii) segregated from other materials at the storage facility.

§ 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.

§ 9.3.3.1 The Contractor further expressly undertakes to defend the Owner, Owner's title insurer and/or Owner's lender, at the Contractor's sole expense, against any actions, lawsuits, or proceedings brought against the Owner, Owner's title insurer and/or Owner's lender as a result of claims made against payment bonds and/or liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, or any portion of the property of any of them (bond and lien claims referred to collectively as "liens" in this Subparagraph 9.3.3). The Contractor hereby agrees to defend, indemnify and hold the Owner, Owner's title insurer and/or Owner's lender harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings;

§ 9.3.3.2 The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor has caused the lien to be released from the site of the Project and/or the applicable bond; and

§ 9.3.3.3 Notwithstanding the foregoing, Owner reserves the right to settle any disputed payment bond claim or mechanic's or material supplier's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor shall promptly reimburse the Owner, upon demand, for any payments so made.

§ 9.3.4 Notwithstanding any provision to the contrary, the following terms apply to all Work, Applications for Payments and payments.

§ 9.3.4.1 Payments are due and payable within the times stated in the Contract Documents after presentation of an Application for Payment in the amount of the undisputed amounts in each timely and properly completed Application for Payment. Undisputed amounts from timely and properly completed Applications for Payment unpaid after the statutorily required time period shall bear interest at the legal rate prevailing in Kansas. Any review, certification or approval of an Application for Payment by Architect or other third party (by Certificate for Payment or otherwise) is not a declaration that such Application for Payment or the sums within are undisputed.

§ 9.3.4.2 "Disputes" shall exist as to the amounts due Contractor in an Application for Payment only in the event that the Application for Payment is in error, there is reasonable evidence that Contractor is in violation of a term(s) of the Contract Documents, and/or there are claims or the suggestion of claims on account of Contractor for the Work but only to the extent caused by Contractor and those for which it is responsible. (Individually and in combination referred to as "Cause of Dispute.") The amount of the dispute shall be one hundred and twenty-five percent (125%) of Owner's good faith estimate of the dollars believed to be necessary to protect Owner from loss related to the Cause of Dispute, and may be withheld from any Application for Payment or payment. In the event of a Cause of Dispute, Owner will provide written notice to Contractor of the reasons therefor and shall thereafter provide Contractor with a reasonable opportunity to cure. Within seven calendar days of the resolution of the Cause of Dispute to the Owner's reasonable satisfaction, the Owner shall pay Contractor the money withheld as a result of the resolved Cause of Dispute.

§ 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 apparently 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; (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum, or (5) concluded that the application or amounts thereunder are undisputed. Any review, certification or approval of an Application for Payment by Architect or other third party (by Certificate for Payment or otherwise) is not a declaration that such Application for Payment or the sums within are undisputed.

§ 9.5 Decisions to Withhold Certification

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

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

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

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

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

§ 9.6 Progress Payments

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

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

Notwithstanding anything in this Subparagraph 9.6.2 to the contrary, the Owner may elect, in the Owner's sole discretion and upon written notice to Contractor, to make any payment requested by the Contractor on behalf of a Subcontractor of any tier jointly payable to the Contractor and such subcontractor. The Contractor and such Subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint payment be construed to create any (i) contract between the Owner and a Subcontractor of any tier, (ii) obligations from the Owner to such Subcontractor, or (iii) rights in such Subcontractor against the Owner.

§ 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. Contractor shall not condition payment to a Subcontractor or supplier contingent upon receipt of payment from Owner, except to the extent that nonpayment is made expressly and solely as a result of the performance of such Subcontractor or supplier.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law, and nothing within this Section shall be deemed to create a fiduciary relationship between a Subcontractor or supplier and Owner or a right to payment from the Owner directly to a Subcontractor or supplier. The Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

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

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

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

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

§ 9.7 Failure of Payment

§ 9.7.1 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 undisputed 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.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, or there is cause with non-certification under Section 9.5.1, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 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; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all required certificates of occupancy and any other permits, approvals, licenses, certifications, authorizations, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project and whose procurement is the responsibility of the Contractor or arising from its Work.

§ 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 under this Section 9.8. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, 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 satisfies Substantial Completion, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents or as Owner otherwise determines is required to ensure proper performance of the Contract (including but not limited to timely, final and proper completion of all Work and any claims that might arise).

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's written 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. 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. Issuance of the Final Certificate is not a representation that the application is undisputed.

§ 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, (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, (7) as-built drawings, (8) a complete list of Subcontractors and principal vendors on the Project, including addresses and telephone numbers, (9) an indexed, loose leaf binder of complete installation, operation and maintenance manuals, including all manufacturers' literature, of equipment and materials used in the Work, (10) an indexed, loose leaf binder, of all inspection reports, permits, and temporary and final certificates of occupancy and licenses necessary for the occupancy of the Project, and, (11) any and all other items required pursuant to the Contract Documents. 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. The Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.10.3 [Deleted]

§ 9.10.4 No payment, whether partial or final, or approval or certification of any payment, or partial or entire use or occupancy of the Work or the Project, by Owner or Architect shall constitute a waiver of Claims by the Owner. A nonexhaustive list of claims that remain include, but are not limited to:

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

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a release and waiver of claims by that payee against Owner and/or Architect relating to the Work and for every act or alleged neglect of Owner and/or Architect related to the Work or Contract Documents.

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, including but not limited to the Work. Unsafe practices are not permitted.

Init.

§ 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, including but not limited to tenants, visitors, and employees of Owner;
- .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 vehicles, 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 barriers, posting danger signs and other protection and warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damages to such property or improvements shall be promptly repaired by the Contractor.

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

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials and Substances

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

§ 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. The Work in the affected area shall be resumed immediately following the occurrence of any one of the following events: (i) the Owner causes remedial work to be performed that results in the absence of materials or substances such as asbestos or polychlorinated biphenyl (PCB); or (ii) the Owner and the Contractor, by written agreement decide to resume performance of the Work; or (iii) the Work may safely and lawfully proceed, as evidenced by a written report to both the Owner and the Contractor, which is prepared by a reputable environmental engineer. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 [Deleted]

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

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

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

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

11.1 CONTRACTOR'S INSURANCE

11.1.1 Contractor shall secure from the date of the Agreement and maintain for such periods of time as set forth below, insurance of such types and in such amounts specified below, to protect Contractor, Owner and others against all hazards or risks of loss described below.

11.2 COMMERCIAL GENERAL LIABILITY

11.2.1 Contractor shall secure and maintain from the date of the Agreement and for a period of at least three (3) years from the date of Final Completion of the entire Work commercial general liability insurance ("CGL") with a combined single limit of not less than Three Million Dollars (\$3,000,000) per occurrence. If such CGL insurance contains a general aggregate limit, it shall separately apply to this Project. Such CGL insurance shall be on an occurrence basis.

11.2.2 The CGL insurance required herein shall be written on a comprehensive form and shall cover claims and liability in connection with or resulting from the Contractor's operations and activities under the Contract, for personal injuries, occupational sickness, disease, death or damage to tangible property of others arising out of

any operations or activities of the Contractor, its agents, or any Subcontractors of any tier or by anyone directly or indirectly employed by either of them.

- 11.2.3 The CGL insurance required herein shall include premises, operations, independent contractors, products-completed operations, personal injury and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) coverages. There shall be no endorsement or modification of the CGL policy limiting the scope of coverage for liability arising from blasting, explosion, collapse, or underground property damage.
- 11.2.4 Owner and Lender shall be endorsed as "additional insureds" under the CGL policy to the fullest extent permitted by law. The CGL policy shall also contain a "Separation of Insureds" provision. If Contractor's CGL policy does not contain a "Separation of Insureds" provision, Contractor's CGL policy shall be endorsed to provide cross-liability coverage.
- 11.2.5 Contractor waives all rights against Owner, Lender and their consultants, agents, officers, representatives and employees for recovery of damages to the extent those damages are covered by the CGL policy required hereunder.

11.3 AUTOMOBILE LIABILITY

- 11.3.1 Contractor shall secure and maintain from the date of the Agreement and for a period of at least three (3) years from the date of Final Completion of the entire Work, insurance, to be on comprehensive form, which shall protect Contractor against any and all claims for all injuries and all damage to property arising from the use of automobiles, trucks and motorized vehicles, in connection with the performance of Work under this Contract, and shall cover the operation on or off the site of the Work of all motor vehicles licensed for highway use whether they are owned, non-owned or hired. Such insurance shall include contractual liability coverage and shall provide coverage on the basis of the date of any accident. The liability limits under such policy shall not be less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage per accident. Owner and Lender shall be endorsed as an "additional insured".
- 11.3.2 Contractor waives all rights against Owner, Lender and their consultants, agents, officers, directors and employees for recovery of damages to the extent such damages are covered by the automobile liability insurance required hereunder.

11.4 WORKERS' COMPENSATION INSURANCE

- 11.4.1 Contractor shall purchase and maintain workers' compensation insurance and employers' liability insurance which shall protect Contractor from claims for injury, sickness, disease or death of Contractor's employees or statutory employees. In case any Work is sublet, Contractor shall require any Subcontractor of any tier to provide the insurance coverages required under this Section 11.4.
- 11.4.2 Contractor's workers' compensation insurance coverage shall be in compliance with all applicable Laws, including the statutes of the state where the Project is located. Contractor's employers' liability coverage limits shall not be less than \$500,000 each accident for bodily injury by accident or \$500,000 each employee for bodily injury by disease.
- 11.4.3 Contractor waives all rights against Owner, Lender and their consultants, agents, officers and directors and employees for recovery of damages to the extent these damages are covered by the workers' compensation and/or employers' liability insurance required hereunder.

11.5 GENERAL REQUIREMENTS FOR LIABILITY INSURANCE COVERAGES

- 11.5.1 All insurance coverages procured by Contractor shall be provided by agencies and insurance companies acceptable to and approved by Owner. All insurance coverages shall be provided by insurance companies that are duly licensed to conduct business in the state where the Project is located as an admitted carrier. The form and content of all insurance coverages provided by Contractor are subject to the approval of Owner. All required coverages shall be obtained and paid for by Contractor. Any approval of the form, content or

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insurance company by Owner shall not relieve the Contractor from the obligation to provide the coverages required herein.

- 11.5.2 All insurance coverage procured by the Contractor shall be provided by insurance companies having policyholder ratings no lower than "A" and financial ratings not lower than "X" in the Best's Insurance Guide, latest edition in effect as of the date of the Agreement, and subsequently in effect at the time of renewal of any policies required by the Contract Documents. Insurance procured by Contractor covering the additional insureds shall be primary insurance and any insurance maintained by Owner shall be excess insurance.
- 11.5.3 Contractor shall cause its insurance carriers to waive all rights of subrogation against Architect, Owner and their officers, employees and agents to the fullest extent permitted by law.
- 11.5.4 The Contractor shall furnish Owner with certificates, policies or binders which indicate the Contractor and Owner are covered by the required insurance showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates, policies or binders shall be submitted to Owner within ten (10) days from the date of the execution of the Agreement. All certificates, policies and binders shall be executed by a duly authorized agent of each of the applicable insurance carriers and shall contain the statement that: "The insurance covered by this certificate will not be canceled or altered except after thirty (30) days' written notice has been received by Owner." All certificates, policies and binders shall be in a form acceptable to Owner. Contractor shall provide certified copies of all insurance policies required above within ten (10) days of Owner's written request for said copies.
- 11.5.5 With respect to all insurance coverages required to remain in force and affect after final payment, Contractor shall provide Owner additional certificates, policies and binders evidencing continuation of such insurance coverages along with Contractor's application for final payment and shall provide certificates, policies and binders thereafter as requested by Owner.
- 11.5.6 The maintenance in full current force and effect of such forms and amounts of insurance and bonds required by the Contract Documents shall be a condition precedent to Contractor's exercise or enforcement of any rights under the Contract Documents.
- 11.5.7 Failure of Owner to demand certificates, policies and binders evidencing insurance coverages required by the Contract Documents, approval by Owner of such certificates, policies and binders or failure of Owner to identify a deficiency from evidence that is provided by Contractor shall not be construed as a waiver of Contractor's obligations to maintain the insurance required by the Contract Documents.
- 11.5.8 Owner shall have the right to terminate the Contract if Contractor fails to maintain the insurance required by the Contract Documents.
- 11.5.9 If Contractor fails to maintain the insurance required by the Contract Document, Owner shall have the right, but not the obligation, to purchase said insurance at Contractor's expense. If Owner is damaged by Contractor's failure to maintain the insurance required by the Contract Documents, Contractor shall bear all reasonable costs properly attributable to such failure.
- 11.5.10 By requiring the insurance set forth herein and in the Contract Documents, Owner does not represent or warrant that coverage and limits will necessarily be adequate to protect Contractor, and such coverages and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.
- 11.5.11 If Contractor's liability policies do not contain a standard separation of insureds provision, such policies shall be endorsed to provide cross-liability coverage.
- 11.5.12 If a part of the Work hereunder is to be sublet, the Contractor shall: (1) require each Subcontractor to secure insurance which will protect said Subcontractor and supplier against all applicable hazards or risks of loss designated in accordance with Article 11 hereunder; and (2) require each Subcontractor or supplier to assist in every manner possible in the reporting and investigation of any accident, and upon request, to cooperate

with any insurance carrier in the handling of any claim by securing and giving evidence and obtaining the attendance of witnesses as required by any claim or suit.

11.6 BUILDER'S RISK INSURANCE

- 11.6.1 The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the state where the Project is located, as an admitted carrier, builder's risk insurance on the entire Work. Such insurance shall be written on a completed value form and in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work. The insurance shall apply on a replacement cost basis.
- 11.6.2 The insurance as required in Section 11.6.1 shall name as insureds, Owner, Contractor and all Subcontractors of any tier. The insurance policy shall contain a provision that the insurance will not be canceled, allowed to expire or materially changed until at least thirty (30) days prior written notice has been given to Owner.
- 11.6.3 The insurance as required in Section 11.6.1 shall cover the entire Work. Insured property shall include portions of the Work located away from the site but intended for use at the site, and shall also cover portions of the Work in transit. The policy shall include as insured property scaffolding, false work, and temporary buildings located at the site. In the event of a claim, the policy shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, ordinance or regulation.
- 11.6.4 The insurance required by this Section 11.6 shall be on an all risk form and shall be written to cover all risks of physical loss or damage to the insured party except those perils customarily excluded, provided however, the policy shall insure, without limitation, at least against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, lightening, earthquake, flood, frost, water damage, windstorm and freezing.
- 11.6.5 If there are any deductibles applicable to the insurance required by this Section 11.6, Contractor shall pay any part of any loss not covered because of the operation of such deductibles.
- 11.6.6 The insurance as required in this Section 11.6 shall be maintained in effect until the earliest of the following dates:
 - 11.6.6.1 the date which all persons and organization who are insureds under the policy agree in writing that it shall be terminated;
 - 11.6.6.2 the date on which final payment of this Contract has been made by Owner to Contractor; or
 - 11.6.6.3 the date on which the insurable interests in the property of all insureds other than Owner have ceased.
- 11.6.7 Owner and Contractor waive all rights against (1) each other and any of their Subcontractors of any tier, agents and employees, each of the other, (2) Architect and Architect's consultants, and (3) separate contractors described in Article 6, if any, and any of their subcontractors of any tier, suppliers, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.6 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance. Owner or Contractor, as appropriate, shall require of Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors of any tier, suppliers, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise, to the fullest extent permitted by law. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, was at fault or was negligent in causing the loss and whether or not the person or entity had an interest in the property damaged.

- 11.6.8 The Contractor shall pay Subcontractors of any tier their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors of any tier to make payments to their Sub-subcontractors in similar manner.
- 11.6.9 Partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.7 PERFORMANCE AND PAYMENT BONDS

- 11.7.1 The Contractor shall furnish a Performance Bond and Labor and Material Payment Bond, in form and substance satisfactory to the Owner and, without limitation, complying with the following specific requirements:

.1 Bonds shall be executed by a responsible surety licensed in Kansas, with a Best's rating of no less than A/X11, and shall remain in effect for a period of not less than two (2) years following the date of Substantial Completion or the time required to resolve any items of the incomplete Work and the payment of any disputed amounts, whichever time period is longer.

.2 The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum and all subsequent increases.

.3 The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney indicating the monetary limit of such power.

.4 Every Bond under this Section 11.7.1 must display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond:

.1 The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.

.2 The surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.

.5 Each Bond under this Section 11.7.1 shall contain a dual obligee rider listing any Lender as an obligee.

(Paragraphs deleted)

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 or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for the Architect's or Owner's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction (including all costs of

correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work), 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. Contractor, Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

§ 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 an express written acceptance of such condition. If the Contractor fails to correct nonconforming Work promptly after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents or any unknown, unconfirmed, nonconforming Work, even if a manifestation of same was identified by Owner within the one-year time period. Establishment of the one-year period for correction of Work as described in Section 12.2 relates only to the specific, limited obligation of the Contractor to promptly correct the Work Owner knows and confirms to be nonconforming, 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, nor shall serve to waive claims for issues related to the condition even if such condition was accepted in writing.

§ 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 and the nonconforming aspect of the Work at issue shall be expressly identified and represented as being accepted in its nonconforming state in writing. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 13.2 Successors and Assigns

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

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender or other entity providing construction financing or credit enhancement for the Project. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect and Owner of when and where tests and inspections are to be made so that the Architect and Owner 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. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor. Contractor shall also be responsible for paying the costs of testing ordered by Architect or Owner because of a belief of the existence of defective Work as a result of prior defective Work of Contractor.

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

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

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due and liquidated at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Payments and amounts due and unpaid by Contractor to Owner under the Contract Documents shall bear interest from the date payment is due at the rate of one and one-half percent (1.5%) per month.

§ 13.6 GENERAL

§ 13.6.1 The terms of this Contract and all representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Work and shall remain in effect so long as Owner is entitled to protection of its rights under applicable law.

§ 13.6.2 Reviews, certifications, approvals or other alleged oversight by Owner or its representatives of the Contractor's performance of Work or obligations under the Contract Documents, including but not limited to as related to submittals, schedules, Applications for Payment, performance of Work or safety, shall not be deemed the approval, acceptance or condoning of same nor the waiver, alteration or abandonment of the requirements of the Contract Documents or Project. Equally, no action or inaction of Owner or its representatives shall be deemed to waive, alter or abandon the requirements of the Contract Documents or Project.

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, supplier, 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; or
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

(Paragraphs deleted)

§ 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, and direct costs incurred by reason of such termination. Anticipated lost profits, overhead, income, opportunities or other consequential damages are not recoverable.

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

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

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

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

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. In the event termination under Section 14.2 is later determined to have been improper, termination shall be deemed to have been made under Section 14.4.

§ 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 directly caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract or portions thereof 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 Upon such termination the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including without limitation, anticipated profits or overhead. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims that the Owner has against the Contractor under the Contract, and (iii) the

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value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

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 term "Claim" does not include Owner's allegations of nonconforming Work. 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 or otherwise make adjustments (including but not limited to set-off) to Applications for Payment.

§ 15.1.2 Time Limits on Claims

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

§ 15.1.3 Notice of Claims

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

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

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

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given within seven days of the execution of the portion of the Work that is the subject of the Claim. 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 as averaged over five years, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

Except to the extent covered by the valid and collectible insurance carried by the Contractor under Article 11, the Contractor waives Claims against Owner for consequential damages arising out of or relating to this Contract. This waiver includes

- .1 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 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 (i) an award of liquidated damages recoverable under the Agreement; (ii) the use of diminished income stream in the calculation of "diminution of value" of the Work, in the event the Owner exercises its right under Paragraph 12.3 to reduce the Contract Sum by an appropriate amount; or (iii) the obligation of the Contractor to reimburse the Owner for any fines from governmental entities or additional costs and expenses for the Architect or other consultants, or separate contractors, arising out of any act or omission of the Contractor.

§ 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 (not to exceed 14 days from the date of response), or (3) advise the Initial Decision Maker that no supporting data will be furnished. If a meaningful response is not received within the ten days the party shall waive any right to furnish information. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

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

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. Mediation and dispute resolution in regard to any initial decision shall be *de novo*.

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

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

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

§ 15.3 Mediation

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

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

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

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

§ 15.4 Arbitration

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

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

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

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

§ 15.4.4 Consolidation or Joinder

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

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

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

§ 15.5 Attorneys' Fees and other Costs

§ 15.5.1 In the event of any litigation or arbitration arising out of this Contract, the prevailing party shall be entitled to receive from the losing party an amount equal to the prevailing party's costs incurred in regard to the dispute, including, without limitation, the prevailing party's attorney's fees, costs and disbursements.

Additions and Deletions Report for

AIA® Document A201™ – 2017

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Behavioral Health Housing
Lawrence Kansas

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The Board of County Commissioners of Douglas County, KS
1100 Massachusetts Street
Lawrence, KS 66044

...

Treanor Architects, PA Professional Corp.
1040 Vermont Street
Lawrence, KS 66044
PAGE 2

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. Modifications issued after execution of the Contract, written responses to formal requests for information, and each document's respective exhibits and attachments, all of which form the Contract Documents, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. 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, bid or make a proposal, Instructions to Bidders or persons making proposals, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, approved Shop Drawings and submittals, requests for information, proposed change orders, the reports and drawings of subsurface and physical conditions, or portions of Addenda relating to bidding or proposal requirements. Electronic manifestations of documents shall not be Contract Documents, and shall be used at the risk of its user.

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be obligated to Owner for and entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties related to performance of the Architect's duties. In the event of a conflict or inconsistencies among terms and conditions contained within the Contract Documents, the term or condition that imposes the greater responsibility on Contractor or which more greatly limits Contractor's rights shall control, as determined by Owner.

...

The term "Work" means the construction and services expressly and implicitly 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.

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§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies among parts of the Contract Documents, or among the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement, as determined by Owner. The terms and conditions of this Section 1.2.1, however, shall not relieve the Contractor of any of the obligations set forth in Sections 3.2 and 3.7.

...

.1 Whenever a product is specified in accordance with a federal specification, an ASTM Standard, and American National Standards Institute Specification, or other association standard, the Contractor shall present a certificate from the manufacturer when requested by the Architect or Owner or required in the Specifications, certifying that the product complies with the particular standard or specification. When requested by the Architect, Owner or as specified, support test data shall be submitted to substantiate compliance.

.2 Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a Modification in the Work. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

.3 No provision of any such reference document or standard shall be effective to change the responsibilities of Owner, Architect or other person involved in the Project from those set forth in the Contract Documents, nor to assign to any of them any responsibility, duty or authority for safety precautions or procedures or to supervise or direct the performance of the Work.

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~~§ 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' any 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.Owner.

§ 1.5.3 Prior to execution of the Contract, the Contractor and each Subcontractor evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools and equipment, and (v) other similar issues. The Owner assumes no responsibility or liability for the safety of then Project site. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor or supplier to have complied with the requirements of this Section 1.5.3.

...

The parties ~~shall~~may agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will endeavor to 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.~~data, but agree that electronic manifestations of documents shall not be Contract Documents, and shall be used at the risk of its user.~~

...

~~§ 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.~~

§ 2.2.1 Prior to commencement of the Work and upon written reasonable request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner

provides such evidence. If commencement of the Work is delayed under this Section ~~2.2.1, 2.2.1~~ due to reasonable and timely requests, the Contract Time shall be extended appropriately.

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

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

...

§ 2.3.1 Except for ~~permits and fees permits, fees and performance obligations~~ 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~~ Architect is the person or entity is identified 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.~~ [deleted]

§ 2.3.4 The Owner shall furnish surveys describing known physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. ~~The To the extent the information is not contrary to Contractor's knowledge or against good practices, the~~ Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe-performance of the Work.

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

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If the Contractor ~~defaults defaults, fails~~ 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 default, failure~~ or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor

are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.6 Extent of Owner's Rights

§ 2.6.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner granted (i) in the Contract Documents, (ii) at law or (iii) in equity.

§ 2.6.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the site, Work or Project, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

...

§ 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 and its Subcontractors and suppliers shall be lawfully licensed, if and as 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. All of Contractor's work shall conform to the Contract Documents. No change therefrom shall be undertaken without the prior review by the Architect and approval by the Owner. Contractor shall be responsible for details of the Work necessary to carry out the intent of the drawings and specifications, or which are customarily performed. When more detailed information is required for performance of the Work or when an interpretation of the Contract Documents is requested, the Contractor shall submit a written request to the Architect and Owner, and the Architect shall furnish such information or interpretation in the form of an architect's supplemental instruction or other written or drawn form or drawing. Where only part of the Work is indicated, similar parts shall be considered repetitive. Where any detail is shown and components thereof are fully described, similar details not fully described shall be considered to incorporate the fully described details and components. In the case of inconsistency between drawings and specifications or within either documents not clarified by addendum, the better quality or greater quantity shall be provided in accordance with the Architect's interpretation at no extra cost to the Owner.

§ 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~~ (in)activities or duties of the Owner or 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.

§ 3.1.4 Contractor shall staff the Project with a competent superintendent and project manager who shall not be changed without the Owner's consent, which will not be unreasonably withheld.

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§ 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~~. Documents, and is satisfied as to the matters under Section 1.5.3.

...

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and suppliers 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.

...

§ 3.3.4 Contractor shall be fully responsible for the layout of the Work and shall ensure that the Work is in the proper location as required by the Contract Documents. Contractor shall establish and maintain alignment and grades, including the setting of stakes, ranges, grid lines and other appurtenance facilities. Before starting construction, Contractor shall ensure that monuments or markers which delineate the site boundaries are placed in the proper position, and that all portions of the work are wholly within limits of Owner's ownership, leasehold, easement or right-of-way interest in the property. Contractor shall be responsible for the accurate replacement of any boundary markers which are disturbed, removed or destroyed during the performance of the Work.

§ 3.3.5 The Contractor shall be responsible for the shoring required to protect the Work or adjacent property and shall pay for any damage caused by failure to shore or by improper shoring or by failure to give proper notice. Shoring shall be removed only after completion of permanent supports.

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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. If the Contractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the following provisions apply:

.1 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; (iv) the adjustment, if any, in the Contract Time and the construction schedule in the event the substitution is acceptable; and (v) an affidavit stating that (a) the proposed substitution conforms to and meets all the requirements of the pertinent specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow the Architect no less than ten (10) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.

.2 Substitutions and alternates may be rejected without explanation and will be considered only under one or more of the following conditions: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (ii) specified products are unavailable through no fault of the Contractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit the designated space; (iv) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (v) when in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interest, in terms of cost, time or other considerations.

...

§ 3.4.4 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

.1 If the Work is to be performed by trade unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage, or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or

regulations of any kind at any time in force among members or councils that regulate or distinguish the activities that shall not be included in the work of any particular trade.

.2 In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

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§ 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. The Contractor agrees to assign the warranties to the Owner at the time in accordance with Section 9.8.4 and further agrees to perform the Work in such manner so as to preserve any and all such warranties.

...

§ 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. all building permits necessary for Contractor to carry out the Work. The Contractor shall secure and pay for all other applicable permits, licenses and performance obligations necessary for the Contractor to execute and complete the Work. All connection charges or inspection fees as may be imposed by any public authority or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or any other public or private body with jurisdiction over the Project in connection with the Work. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary backup materials, and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, parking meter removal, and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

...

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 in documents presented by the Owner as unconditional representations of actual conditions 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 14-2 work days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, do not justify an equitable adjustment to the terms of the Contract, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Architect in writing while continuing to perform other portions of the Work. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the affected operations. The Contractor shall

continue to suspend such affected 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.

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§ 3.9 Superintendent and Project Manager

§ 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, Work, and a competent project manager and necessary assistants who are not required to be on site.~~ The superintendent and project manager shall represent the Contractor, and communications given to the superintendent or project manager shall be as binding as if given to the Contractor.

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

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

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§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and ~~Architect~~ Architect that fulfill the requirements of the Contract Documents.

§ 3.10.4 The construction schedule shall be in such detail reasonably acceptable to the Owner and Architect and shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). If the form of the schedule is not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Architect or Owner and resubmitted for such acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner and Architect of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to as "progress reports"). In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Modification. Acceptance, approval or review by the Owner or Architect under this Article shall not accelerate the Contract Time, any Milestone Date or the Work or alter, adopt or otherwise approve the construction or submittal schedules, but rather is limited to the form of the schedules.

§ 3.10.5 In the event the Owner or Architect reasonably determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents as a result of Contractor negligence, the Owner and Architect shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's or Architect's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule.

.1 The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner or Architect under or pursuant to this Section 3.10.5.

.2 The Owner or Architect may exercise the rights furnished it under or pursuant to this Section 3.10.5 as frequently as the Owner or Architect deems necessary to help ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents..3 Action or inaction by Owner or Architect under this Article shall not relieve or alter Contractor's responsibilities under the Contract Documents, including but not limited to any schedules.

...

~~§ 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 or on behalf of the Contractor to illustrate some portion of the Work.~~

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

~~§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Documents but are the Contractor's representations as to how it will perform its work. 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.~~

...

~~§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect in writing 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.~~

...

~~§ 3.12.10 The Contractor shall not be required to provide provide or cause to be provided professional services that constitute the practice of architecture or engineering unless such services are specifically when required by the Contract Documents for a portion of the Work or unless as needed for 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 ensure such services are provided in a lawful manner.~~

~~§ 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, professional and who shall comply with reasonable requirements of the Owner regarding qualifications and insurance. 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.

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~~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.~~ § 3.13.1 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 any entity for which the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner other than signage as required by statute.

§ 3.13.3 Protection of construction materials and equipment and any Owner furnished materials and equipment to be incorporated in the Work stored at the Project site from weather, flood, environmental conditions, theft, damage. Subcontractors and all other adversity is solely the responsibility of the Contractor.

§ 3.13.4 Without prior written approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances and parking areas other than those designated by the Owner. The Contractor shall comply with all rules promulgated by the Owner in connection with the use and occupancy of the Project site as amended from time to time.

...

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or Work, to make its parts fit together properly, properly, or to properly fit with or separate from adjacent property. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise expressly 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 or property 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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§ 3.18.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them ("Indemnitee") from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

...

§ 3.18.3 The Contractor's defense and indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), and punitive damages (if any) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and (iii) failure to

secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority.

§ 3.18.4 If one or more of the Indemnitees demand performance by the Contractor of obligations under this Section 3.18 or other provisions of the Contract Documents and if Contractor refuses to assume or perform, or delays in assuming or performing Contractor's obligations, Contractor shall pay each Indemnatee who has made such demand its respective attorneys' fees, costs, and other expenses incurred in enforcing this provision. The defense and indemnity required herein shall, however, be a binding obligation upon Contractor whether or not an Indemnatee has made such demand. Even if a defense is successful to a claim or demand for which Contractor is obligated to indemnify the Indemnitees from under this Section, Contractor shall remain liable for all costs of defense. The indemnity obligations of Contractor under this Section 3.18 shall survive termination of this Agreement or final payment thereunder.

...

§ 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, Owner and Architect. Consent shall not be unreasonably withheld.

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The Owner and Contractor may communicate directly without Architect and shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications identified or believed to be material to the Architect's services or professional responsibilities, but it remains the sole duty of Architect to enquire and investigate in regard to communications and other information necessary for the performance of its services and professional responsibilities. 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. Owner or its written designee. 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 apparently due the Contractor and will issue Certificates for Payment in such amounts. Any review, certification or approval of an Application for Payment by Architect or other third party (by Certificate for Payment or otherwise) is not a declaration that such Application for Payment or the sums within are undisputed.

§ 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, advisable after consultation with Owner, 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.

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

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

§ 4.2.12 Interpretations and decisions the related opinions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making

such interpretations and decisions, giving opinions thereon, 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 and Contractor and will not show partiality to either.

...

§ 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 No later than thirty (30) days subsequent to the full execution of the Contract, the Contractor shall furnish the Owner and the Architect, in writing, with (i) the name, trade, and subcontract amount for each Subcontractor, and (ii) the names of all persons or entities proposed as manufacturers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design, design) and, where applicable, the name of the installing Subcontractor. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. Contractor remains solely responsible for the actions and inactions of each Subcontractor.

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~~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. § 5.3.1 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.

§ 5.3.2 All subcontracts shall specifically provide that the Owner is an intended third-party beneficiary of such subcontract. In no event shall such designation give Subcontractor a direct claim for payment against Owner.

...

§ 5.4.4 Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

...

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

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

§ 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~~ activities, ~~damage to the Work~~, ~~discrepancies~~ 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.

...

§ 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. Except as permitted in Section 7.3 and Subparagraph 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

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§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, Contract Time and the construction schedule.

...

§ 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~~, Section 7.3.3.3 and 7.3.8, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, ~~fringe benefits required by agreement or custom~~, workers' compensation insurance, and other employee costs approved by the Architect;

...

- .3 ~~Rental~~ Reasonable rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

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~~§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may Contractor shall not request payment for Work completed under the Construction Change Directive in Applications for Payment. The Payment until final determination of the total cost. If a reasonable time has expired without a final determination, Contractor may request payment for such completed Work and 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-justified, and such sum shall be included in the next Application for Payment. 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.~~

...

§ 7.3.11 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Time, the Architect shall determine the method and the adjustment on the basis of reasonable durations and impacts. In such case, the Contractor shall keep and present, in such form as the Architect may prescribe, an impact schedule with appropriate supporting data.

§ 7.3.12 If Contractor does not present an itemized accounting, impact schedule or appropriate supporting data to the satisfaction of Architect with twenty-one (21) days of the issuance of the Construction Change Directive, Architect shall decide the issues based on its professional judgment and experience, and Contractor waives the right to submit such information and agrees to the Architect's decision.

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

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused, or could not have been anticipated, by the Contractor, (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay and (3) is of a duration not less than one (1) day.

...

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under Subparagraph 8.3.1, shall be the sole remedy of the Contractor for any delay at any time in the commencement or progress of the Work, including but not limited to any (1) delay in the commencement, prosecution or completion of the Work, (2) hindrance or obstruction in the performance of the Work, (3) loss of productivity or acceleration, or (4) other similar claims, (collectively referred to in this Subparagraph 8.3.3

as "Delays"), whether or not such Delays are foreseeable, unless a Delay is caused by acts of the Owner constituting active interference with the Contractor's performance of the Work, and only to the extent such acts continue after the Contractor furnishes the Owner with written notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration.

§ 8.3.4 If the Contractor submits a schedule or progress report indicating, or otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

...

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. Architect or Owner. A failure to object shall not be deemed consent to the allocations or the values contained therein.

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§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and other information under Section 9.3.1.3, and shall reflect retainage if provided for in the Contract Documents.

...

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (i) a duly executed Contractor's lien and/or payment bond claim waiver to the extent of payments received and duly executed and acknowledged sworn statements showing all Subcontractors and suppliers with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and supplier in the requested progress payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and suppliers; (ii) duly executed waivers of mechanics' and suppliers' liens and/or payment bond claims from all Subcontractors to the extent of payments received and, when appropriate, from suppliers and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts due for work completed during the period of time covered in any previous Application for Payment to the extent of payments received; and (iii) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner or the Architect. If required by the Owner's title insurer, if any, the Contractor shall execute a personal gap undertaking in form and substance satisfactory to such title insurer.

§ 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. The Contractor shall also comply with the following specific requirements:

.1 The aggregate cost of materials stored off site shall not exceed Twenty Thousand Dollars (\$20,000.00) at any time without written approval of the Owner.

.2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Owner's Lender, including without limitation, recorded financing statements, UCC filings, and UCC searches.

.3 With each Application for Payment, Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.

.4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.

.5 Representatives of the Owner shall have the right to make inspections of the storage areas at any time.

.6 Such materials shall be (i) protected from diversion, destruction, theft and damage to the satisfaction of the Owner; (ii) specifically marked for use on the Project; and (iii) segregated from other materials at the storage facility.

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§ 9.3.3.1 The Contractor further expressly undertakes to defend the Owner, Owner's title insurer and/or Owner's lender, at the Contractor's sole expense, against any actions, lawsuits, or proceedings brought against the Owner, Owner's title insurer and/or Owner's lender as a result of claims made against payment bonds and/or liens filed against the Work, the site of any of the Work, the Project site and any improvements thereon, or any portion of the property of any of them (bond and lien claims referred to collectively as "liens" in this Subparagraph 9.3.3). The Contractor hereby agrees to defend, indemnify and hold the Owner, Owner's title insurer and/or Owner's lender harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings;

§ 9.3.3.2 The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor has caused the lien to be released from the site of the Project and/or the applicable bond; and

§ 9.3.3.3 Notwithstanding the foregoing, Owner reserves the right to settle any disputed payment bond claim or mechanic's or material supplier's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor shall promptly reimburse the Owner, upon demand, for any payments so made.

§ 9.3.4 Notwithstanding any provision to the contrary, the following terms apply to all Work, Applications for Payments and payments.

§ 9.3.4.1 Payments are due and payable within the times stated in the Contract Documents after presentation of an Application for Payment in the amount of the undisputed amounts in each timely and properly completed Application for Payment. Undisputed amounts from timely and properly completed Applications for Payment unpaid after the statutorily required time period shall bear interest at the legal rate prevailing in Kansas. Any review, certification or approval of an Application for Payment by Architect or other third party (by Certificate for Payment or otherwise) is not a declaration that such Application for Payment or the sums within are undisputed.

§ 9.3.4.2 "Disputes" shall exist as to the amounts due Contractor in an Application for Payment only in the event that the Application for Payment is in error, there is reasonable evidence that Contractor is in violation of a term(s) of the Contract Documents, and/or there are claims or the suggestion of claims on account of Contractor for the Work but only to the extent caused by Contractor and those for which it is responsible. (Individually and in combination referred to as "Cause of Dispute.") The amount of the dispute shall be one hundred and twenty-five percent (125%) of Owner's good faith estimate of the dollars believed to be necessary to protect Owner from loss related to the Cause of Dispute,

and may be withheld from any Application for Payment or payment. In the event of a Cause of Dispute, Owner will provide written notice to Contractor of the reasons therefor and shall thereafter provide Contractor with a reasonable opportunity to cure. Within seven calendar days of the resolution of the Cause of Dispute to the Owner's reasonable satisfaction, the Owner shall pay Contractor the money withheld as a result of the resolved Cause of Dispute.

§ 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 apparently 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-Sum~~, or (5) concluded that the application or amounts thereunder are undisputed. Any review, certification or approval of an Application for Payment by Architect or other third party (by Certificate for Payment or otherwise) is not a declaration that such Application for Payment or the sums within are undisputed.

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

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

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Notwithstanding anything in this Subparagraph 9.6.2 to the contrary, the Owner may elect, in the Owner's sole discretion and upon written notice to Contractor, to make any payment requested by the Contractor on behalf of a Subcontractor of any tier jointly payable to the Contractor and such subcontractor. The Contractor and such Subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint payment be construed to create any (i) contract between the Owner and a Subcontractor of any tier, (ii) obligations from the Owner to such Subcontractor, or (iii) rights in such Subcontractor against the Owner.

§ 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. Contractor shall not condition payment to a Subcontractor or supplier contingent upon receipt of payment from Owner, except to the extent that nonpayment is made expressly and solely as a result of the performance of such Subcontractor or supplier.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor

fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law. law, and nothing within this Section shall be deemed to create a fiduciary relationship between a Subcontractor or supplier and Owner or a right to payment from the Owner directly to a Subcontractor or supplier. The Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

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~~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.~~ § 9.7.1 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 undisputed 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.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, or there is cause with non-certification under Section 9.5.1, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

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§ 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; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all required certificates of occupancy and any other permits, approvals, licenses, certifications, authorizations, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project and whose procurement is the responsibility of the Contractor or arising from its Work.

...

§ 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. complete under this Section 9.8. 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, satisfies Substantial Completion, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work

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

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. Documents or as Owner otherwise determines is required to ensure proper performance of the Contract (including but not limited to timely, final and proper completion of all Work and any claims that might arise).

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§ 9.10.1 Upon receipt of the Contractor's written 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.~~ Documents. 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. Issuance of the Final Certificate is not a representation that the application is undisputed.

§ 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, the~~ Owner, (7) as-built drawings, (8) a complete list of Subcontractors and principal vendors on the Project, including addresses and telephone numbers, (9) an indexed, loose leaf binder of complete installation, operation and maintenance manuals, including all manufacturers' literature, of equipment and materials used in the Work, (10) an indexed, loose leaf binder, of all inspection reports, permits, and temporary and final certificates of occupancy and licenses necessary for the occupancy of the Project, and, (11) any and all other items required pursuant to the Contract Documents. 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. The Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

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

~~§ 9.10.4 The making of final payment~~ No payment, whether partial or final, or approval or certification of any payment, or partial or entire use or occupancy of the Work or the Project, by Owner or Architect shall constitute a waiver of Claims by the ~~Owner except those arising from~~ Owner. A nonexhaustive list of claims that remain include, but are not limited to:

...

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a release and 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 against Owner and/or Architect relating to the Work and for every act or alleged neglect of Owner and/or Architect related to the Work or Contract Documents.

...

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the ~~Contract~~ Contract, including but not limited to the Work. Unsafe practices are not permitted.

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- .1 employees on the Work and other persons who may be affected ~~thereby;~~ thereby, including but not limited to tenants, visitors, and employees of Owner;

...

- .3 other property at the site or adjacent thereto, such as vehicles, trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

...

§ 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 barriers, posting danger signs and other protection and warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damages to such property or improvements shall be promptly repaired by the Contractor.

...

§ 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~~ condition in writing.

§ 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, The~~ Work in the affected area shall ~~resume upon written~~

agreement of the Owner and Contractor, be resumed immediately following the occurrence of any one of the following events: (i) the Owner causes remedial work to be performed that results in the absence of materials or substances such as asbestos or polychlorinated biphenyl (PCB); or (ii) the Owner and the Contractor, by written agreement decide to resume performance of the Work; or (iii) the Work may safely and lawfully proceed, as evidenced by a written report to both the Owner and the Contractor, which is prepared by a reputable environmental engineer. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

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

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§ 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, Documents and in compliance with all applicable requirements for such Work, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

...

11.1 CONTRACTOR'S INSURANCE

11.1.1 Contractor shall secure from the date of the Agreement and maintain for such periods of time as set forth below, insurance of such types and in such amounts specified below, to protect Contractor, Owner and others against all hazards or risks of loss described below.

11.2 COMMERCIAL GENERAL LIABILITY

11.2.1 Contractor shall secure and maintain from the date of the Agreement and for a period of at least three (3) years from the date of Final Completion of the entire Work commercial general liability insurance ("CGL") with a combined single limit of not less than Three Million Dollars (\$3,000,000) per occurrence. If such CGL insurance contains a general aggregate limit, it shall separately apply to this Project. Such CGL insurance shall be on an occurrence basis.

11.2.2 The CGL insurance required herein shall be written on a comprehensive form and shall cover claims and liability in connection with or resulting from the Contractor's operations and activities under the Contract, for personal injuries, occupational sickness, disease, death or damage to tangible property of others arising out of any operations or activities of the Contractor, its agents, or any Subcontractors of any tier or by anyone directly or indirectly employed by either of them.

11.2.3 The CGL insurance required herein shall include premises, operations, independent contractors, products-completed operations, personal injury and advertising injury and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) coverages. There shall be no endorsement or modification of the CGL policy limiting the scope of coverage for liability arising from blasting, explosion, collapse, or underground property damage.

11.2.4 Owner and Lender shall be endorsed as "additional insureds" under the CGL policy to the fullest extent permitted by law. The CGL policy shall also contain a "Separation of Insureds" provision. If Contractor's

CGL policy does not contain a "Separation of Insureds" provision, Contractor's CGL policy shall be endorsed to provide cross-liability coverage.

- 11.2.5 Contractor waives all rights against Owner, Lender and their consultants, agents, officers, representatives and employees for recovery of damages to the extent those damages are covered by the CGL policy required hereunder.

11.3 AUTOMOBILE LIABILITY

- 11.3.1 Contractor shall secure and maintain from the date of the Agreement and for a period of at least three (3) years from the date of Final Completion of the entire Work, insurance, to be on comprehensive form, which shall protect Contractor against any and all claims for all injuries and all damage to property arising from the use of automobiles, trucks and motorized vehicles, in connection with the performance of Work under this Contract, and shall cover the operation on or off the site of the Work of all motor vehicles licensed for highway use whether they are owned, non-owned or hired. Such insurance shall include contractual liability coverage and shall provide coverage on the basis of the date of any accident. The liability limits under such policy shall not be less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and property damage per accident. Owner and Lender shall be endorsed as an "additional insured".

- 11.3.2 Contractor waives all rights against Owner, Lender and their consultants, agents, officers, directors and employees for recovery of damages to the extent such damages are covered by the automobile liability insurance required hereunder.

11.4 WORKERS' COMPENSATION INSURANCE

- 11.4.1 Contractor shall purchase and maintain workers' compensation insurance and employers' liability insurance which shall protect Contractor from claims for injury, sickness, disease or death of Contractor's employees or statutory employees. In case any Work is sublet, Contractor shall require any Subcontractor of any tier to provide the insurance coverages required under this Section 11.4.

- 11.4.2 Contractor's workers' compensation insurance coverage shall be in compliance with all applicable Laws, including the statutes of the state where the Project is located. Contractor's employers' liability coverage limits shall not be less than \$500,000 each accident for bodily injury by accident or \$500,000 each employee for bodily injury by disease.

- 11.4.3 Contractor waives all rights against Owner, Lender and their consultants, agents, officers and directors and employees for recovery of damages to the extent these damages are covered by the workers' compensation and/or employers' liability insurance required hereunder.

11.5 GENERAL REQUIREMENTS FOR LIABILITY INSURANCE COVERAGES

- 11.5.1 All insurance coverages procured by Contractor shall be provided by agencies and insurance companies acceptable to and approved by Owner. All insurance coverages shall be provided by insurance companies that are duly licensed to conduct business in the state where the Project is located as an admitted carrier. The form and content of all insurance coverages provided by Contractor are subject to the approval of Owner. All required coverages shall be obtained and paid for by Contractor. Any approval of the form, content or insurance company by Owner shall not relieve the Contractor from the obligation to provide the coverages required herein.

- 11.5.2 All insurance coverage procured by the Contractor shall be provided by insurance companies having policyholder ratings no lower than "A" and financial ratings not lower than "X" in the Best's Insurance Guide, latest edition in effect as of the date of the Agreement, and subsequently in effect at the time of renewal of any policies required by the Contract Documents. Insurance procured by Contractor covering the additional insureds shall be primary insurance and any insurance maintained by Owner shall be excess insurance.

- 11.5.3 Contractor shall cause its insurance carriers to waive all rights of subrogation against Architect, Owner and their officers, employees and agents to the fullest extent permitted by law.
- 11.5.4 The Contractor shall furnish Owner with certificates, policies or binders which indicate the Contractor and Owner are covered by the required insurance showing the type, amount, class of operations covered, effective dates and date of expiration of policies. Such certificates, policies or binders shall be submitted to Owner within ten (10) days from the date of the execution of the Agreement. All certificates, policies and binders shall be executed by a duly authorized agent of each of the applicable insurance carriers and shall contain the statement that: "The insurance covered by this certificate will not be canceled or altered except after thirty (30) days' written notice has been received by Owner." All certificates, policies and binders shall be in a form acceptable to Owner. Contractor shall provide certified copies of all insurance policies required above within ten (10) days of Owner's written request for said copies.
- 11.5.5 With respect to all insurance coverages required to remain in force and affect after final payment, Contractor shall provide Owner additional certificates, policies and binders evidencing continuation of such insurance coverages along with Contractor's application for final payment and shall provide certificates, policies and binders thereafter as requested by Owner.
- 11.5.6 The maintenance in full current force and effect of such forms and amounts of insurance and bonds required by the Contract Documents shall be a condition precedent to Contractor's exercise or enforcement of any rights under the Contract Documents.
- 11.5.7 Failure of Owner to demand certificates, policies and binders evidencing insurance coverages required by the Contract Documents, approval by Owner of such certificates, policies and binders or failure of Owner to identify a deficiency from evidence that is provided by Contractor shall not be construed as a waiver of Contractor's obligations to maintain the insurance required by the Contract Documents.
- 11.5.8 Owner shall have the right to terminate the Contract if Contractor fails to maintain the insurance required by the Contract Documents.
- 11.5.9 If Contractor fails to maintain the insurance required by the Contract Document, Owner shall have the right, but not the obligation, to purchase said insurance at Contractor's expense. If Owner is damaged by Contractor's failure to maintain the insurance required by the Contract Documents, Contractor shall bear all reasonable costs properly attributable to such failure.
- 11.5.10 By requiring the insurance set forth herein and in the Contract Documents, Owner does not represent or warrant that coverage and limits will necessarily be adequate to protect Contractor, and such coverages and limits shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.
- 11.5.11 If Contractor's liability policies do not contain a standard separation of insureds provision, such policies shall be endorsed to provide cross-liability coverage.
- 11.5.12 If a part of the Work hereunder is to be sublet, the Contractor shall: (1) require each Subcontractor to secure insurance which will protect said Subcontractor and supplier against all applicable hazards or risks of loss designated in accordance with Article 11 hereunder; and (2) require each Subcontractor or supplier to assist in every manner possible in the reporting and investigation of any accident, and upon request, to cooperate with any insurance carrier in the handling of any claim by securing and giving evidence and obtaining the attendance of witnesses as required by any claim or suit.

11.6 BUILDER'S RISK INSURANCE

- 11.6.1 The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the state where the Project is located, as an admitted carrier, builder's risk insurance on the entire Work. Such insurance shall be written on a completed value form and in the amount of the initial Contract Sum as well as subsequent modifications thereto for the entire Work. The insurance shall apply on a replacement cost basis.

- 11.6.2 The insurance as required in Section 11.6.1 shall name as insureds, Owner, Contractor and all Subcontractors of any tier. The insurance policy shall contain a provision that the insurance will not be canceled, allowed to expire or materially changed until at least thirty (30) days prior written notice has been given to Owner.
- 11.6.3 The insurance as required in Section 11.6.1 shall cover the entire Work. Insured property shall include portions of the Work located away from the site but intended for use at the site, and shall also cover portions of the Work in transit. The policy shall include as insured property scaffolding, false work, and temporary buildings located at the site. In the event of a claim, the policy shall cover the cost of removing debris, including demolition as may be made legally necessary by the operation of any law, ordinance or regulation.
- 11.6.4 The insurance required by this Section 11.6 shall be on an all risk form and shall be written to cover all risks of physical loss or damage to the insured party except those perils customarily excluded, provided however, the policy shall insure, without limitation, at least against the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, lightening, earthquake, flood, frost, water damage, windstorm and freezing.
- 11.6.5 If there are any deductibles applicable to the insurance required by this Section 11.6, Contractor shall pay any part of any loss not covered because of the operation of such deductibles.
- 11.6.6 The insurance as required in this Section 11.6 shall be maintained in effect until the earliest of the following dates:
- 11.6.6.1 the date which all persons and organization who are insureds under the policy agree in writing that it shall be terminated;
- 11.6.6.2 the date on which final payment of this Contract has been made by Owner to Contractor; or
- 11.6.6.3 the date on which the insurable interests in the property of all insureds other than Owner have ceased.
- 11.6.7 Owner and Contractor waive all rights against (1) each other and any of their Subcontractors of any tier, agents and employees, each of the other, (2) Architect and Architect's consultants, and (3) separate contractors described in Article 6, if any, and any of their subcontractors of any tier, suppliers, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.6 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance. Owner or Contractor, as appropriate, shall require of Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors of any tier, suppliers, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise, to the fullest extent permitted by law. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, was at fault or was negligent in causing the loss and whether or not the person or entity had an interest in the property damaged.
- 11.6.8 The Contractor shall pay Subcontractors of any tier their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors of any tier to make payments to their Sub-subcontractors in similar manner.
- 11.6.9 Partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.7 PERFORMANCE AND PAYMENT BONDS

11.7.1 The Contractor shall furnish a Performance Bond and Labor and Material Payment Bond, in form and substance satisfactory to the Owner and, without limitation, complying with the following specific requirements:

.1 Bonds shall be executed by a responsible surety licensed in Kansas, with a Best's rating of no less than A/X11, and shall remain in effect for a period of not less than two (2) years following the date of Substantial Completion or the time required to resolve any items of the incomplete Work and the payment of any disputed amounts, whichever time period is longer.

.2 The Performance Bond and the Labor and Material Payment Bond shall each be in an amount equal to the Contract Sum and all subsequent increases.

.3 The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power of attorney indicating the monetary limit of such power.

.4 Every Bond under this Section 11.7.1 must display the Surety's Bond Number. A rider including the following provisions shall be attached to each Bond:

.1 The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any addition, alteration change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder, and notice to the Surety of such matters is hereby waived.

.2 The surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner.

.5 Each Bond under this Section 11.7.1 shall contain a dual obligee rider listing any Lender as an obligee.

§ 11.1 Contractor's Insurance and Bonds

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

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

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

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

§ 11.2 Owner's Insurance

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

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

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

§ 11.3 Waivers of Subrogation

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

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

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

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

§11.5 Adjustment and Settlement of Insured Loss

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

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

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

§ 12.1.2 If a portion of the Work has been covered that the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, of correction (including all costs of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work), shall be at the Contractor's expense.

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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. Contractor, Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

...

§ 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, an express written acceptance of such condition. If the Contractor fails to correct

nonconforming Work ~~within a reasonable time during that period~~ promptly after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

...

§ 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. ~~Documents or any unknown, unconfirmed, nonconforming Work, even if a manifestation of same was identified by Owner within the one-year time period.~~ 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.~~ Section 12.2 relates only to the specific, limited obligation of the Contractor to promptly correct the Work Owner knows and confirms to be nonconforming, 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 obligations,~~ nor shall serve to waive claims for issues related to the condition even if such condition was accepted in writing.

...

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. ~~equitable and the nonconforming aspect of the Work at issue shall be expressly identified and represented as being accepted in its nonconforming state in writing.~~ Such adjustment shall be effected whether or not final payment has been made.

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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.~~

...

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

...

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect and Owner of when and where tests and inspections are to be made so that the Architect and Owner 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. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor. Contractor shall also be responsible for paying the costs of testing ordered by Architect or Owner because of a belief of the existence of defective Work as a result of prior defective Work of Contractor.

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Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due and liquidated at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Payments and amounts due and unpaid by Contractor to Owner under the Contract Documents shall bear interest from the date payment is due at the rate of one and one-half percent (1.5%) per month.

§ 13.6 GENERAL

§ 13.6.1 The terms of this Contract and all representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Work and shall remain in effect so long as Owner is entitled to protection of its rights under applicable law.

§ 13.6.2 Reviews, certifications, approvals or other alleged oversight by Owner or its representatives of the Contractor's performance of Work or obligations under the Contract Documents, including but not limited to as related to submittals, schedules, Applications for Payment, performance of Work or safety, shall not be deemed the approval, acceptance or condoning of same nor the waiver, alteration or abandonment of the requirements of the Contract Documents or Project. Equally, no action or inaction of Owner or its representatives shall be deemed to waive, alter or abandon the requirements of the Contract Documents or Project.

...

§ 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, supplier, 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; or
- .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.

...

§ 14.1.3 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 direct costs incurred by reason of such termination. Anticipated lost profits, overhead, income, opportunities or other consequential damages are not recoverable.

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- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers; Suppliers;

...

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. In the event termination under Section 14.2 is later determined to have been improper, termination shall be deemed to have been made under Section 14.4.

...

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

...

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

...

§ 14.4.3 ~~In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement. Upon such termination the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including without limitation, anticipated profits or overhead. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims that the Owner has against the Contractor under the Contract, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum.~~

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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 term "Claim" does not include Owner's allegations of nonconforming Work. 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. Documents or otherwise make adjustments (including but not limited to set-off) to Applications for Payment.

...

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

...

§ 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~~ given within seven days of the execution of the portion of the Work that is the subject of the Claim. 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, time as averaged over five years,~~ could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

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~~The Contractor and Owner waive Claims against each other~~ Except to the extent covered by the valid and collectible insurance carried by the Contractor under Article 11, the Contractor waives Claims against Owner for consequential damages arising out of or relating to this Contract. This ~~mutual~~-waiver includes

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

This ~~mutual~~-waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude ~~assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~ (i) an award of liquidated damages recoverable under the Agreement; (ii) the use of diminished income stream in the calculation of "diminution of value" of the Work, in the event the Owner exercises its right under Paragraph 12.3 to reduce the Contract Sum by an appropriate amount; or (iii) the obligation of the Contractor to reimburse the Owner for any fines from governmental entities or additional costs and expenses for the Architect or other consultants, or separate contractors, arising out of any act or omission of the Contractor.

...

§ 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, furnished (not to exceed 14 days from the date of response),~~ or (3) advise the Initial Decision Maker that no supporting data will be furnished. ~~If a meaningful response is not received within the ten days the party shall waive any right to furnish information.~~ 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.

...

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. Mediation and dispute resolution in regard to any initial decision shall be *de novo*.

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§ 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~~ in accordance with the American Arbitration Association's 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.

...

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by ~~in accordance with the American Arbitration Association in accordance with its~~ Association's Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for

arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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§ 15.5 Attorneys' Fees and other Costs

§ 15.5.1 In the event of any litigation or arbitration arising out of this Contract, the prevailing party shall be entitled to receive from the losing party an amount equal to the prevailing party's costs incurred in regard to the dispute, including, without limitation, the prevailing party's attorney's fees, costs and disbursements.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Christopher Burger, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:34:55 ET on 07/19/2019 under Order No. 8669359253 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

AIA® Document A133™ – 2009

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 12th day of June in the year 2019
(In words, indicate day, month and year.)

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

The Board of County Commissioners of Douglas County, KS
1100 Massachusetts Street
Lawrence, KS 66044

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

MarLan Construction LC
1008 New Hampshire, Ste. 200
Lawrence, KS 66044

for the following Project:
(Name and address or location)

Behavioral Health Housing
Lawrence Kansas

The Architect:
(Name, legal status and address)

Treanor Architects, PA Professional Corp.
1040 Vermont Street
Lawrence, KS 66044

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

Jill deVries Jolicoeur
Douglas County Courthouse
1100 Massachusetts, Unit 205
Lawrence, KS 66044
Telephone Number: 785-330-2890

Mobile Number: 785-393-6435
Email Address: jjolicoeur@douglascountyks.org

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

Gale Lantis

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™–2007, 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.

Init.

1008 New Hampshire, Ste. 200
Lawrence, KS 66044
Telephone Number: 785-749-2647

Mobile Number: 785-979-1526
Email Address: gale@marlanconstruction.com

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

The Owner and Construction Manager agree as follows.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 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 the execution of this Agreement, other documents listed in this Agreement, Modifications issued after execution of this Agreement, written responses to formal requests for information, and each document's respective exhibits and attachments, all of which form the Contract Documents and are as fully a part of the Contract Documents as if attached to this Agreement or repeated herein. Approved Shop Drawings and submittals, requests for information, proposed change orders, the advertisement or invitation to bid or make a proposal, Instructions to Bidders or persons making proposals, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and the reports and drawings of subsurface and physical conditions are not Contract Documents. 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 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. Electronic manifestations of documents shall not be Contract Documents, and shall be used at the risk of its user. The Contract Documents represent 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. In the event of a conflict between the terms and conditions contained within this Agreement with any terms and conditions within the General Conditions as amended, the term or condition that imposes the greater responsibility on Construction Manager or which more greatly limits Construction Manager's rights shall control.

§ 1.2 Relationship of the Parties

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

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, as amended, which documents are incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree in writing, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. Any review of the Construction Manager's services and Work by the Owner or Architect shall not waive, release or relieve the Construction Manager of its obligation to properly perform its services and Work. The acceptance of any services or Work by the Owner or Architect shall not relieve Construction Manager of the responsibilities for compliance with the terms of this Agreement or subsequent correction of such errors or deficiencies unless, and only to the extent, Owner has knowingly waived such correction requirements in writing.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. In addition to the Preconstruction Phase services in section 2.1, the scope and timeline for the Preconstruction Phase services are outlined in Exhibit C, which shall be supplied, agreed upon, and incorporated herein by reference within a reasonable time of Construction Manager conferring with Architect.

§ 2.1.2 Consultation

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. The Construction Manager shall advise the Owner and the Architect on site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; construction cost analysis to keep project on budget; availability of materials and labor, and reducing the impacts of any such shortages; time requirements for procurement, installation and construction; 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 and economies. Construction Manager shall be primarily responsible for coordinating the distribution and assembly of information needed to perform the Preconstruction Phase services and provide the Work, including but not limited to the collection of any information from the Owner or Architect. The Construction Manager shall assist in the Architect's investigation and assessment of existing facilities and the existing conditions at the site of the Project.

§ 2.1.3 When Project requirements in Section 3.1.1 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 in the form of a graphical representation of the activities and events that will occur in the Project. 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 could affect the Project's timely completion. The Project schedule shall also include, but not be limited to, 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 well in advance of construction; certification requirements, including inspections and tours; the occupancy requirements of the Owner; and such other detail as reasonably requested by Owner or Architect. If the Owner or Architect has a reasonable objection to a Project schedule submitted by Construction Manager, the Project schedule shall be promptly revised by the Construction Manager in accordance with the recommendations of the Owner and Architect, and re-submitted for approval.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration economies, cost

reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

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

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's use. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.5.3 Upon the request of Owner, Construction Manager will provide the supporting data for each prepared estimate.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project. Upon request of Owner, Construction Manager shall furnish to Owner for its information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from which proposals will be requested for each principal portion of the Work. The receipt of such a list shall not require Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and for the Owner's information, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well 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.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. 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.

§ 2.1.9 Notices and Compliance with Laws

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

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

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

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom, as set forth in detail in Paragraphs 2.2.10 through 2.2.12 of this Agreement.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .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, allowances, contingencies (separately identifying contractor and owner contingencies), and the Construction Manager's Fee (identified by both subparts);
- .4 The Project schedule developed pursuant to Paragraph 2.1.3; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contractor contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order and an owner contingency for the Owner's exclusive use to cover costs as determined only with the express written permission of Owner. The contractor contingency shall not be used for costs described in Paragraph 6.8. Construction Manager shall keep Owner informed of the use and balance of each contingency and, upon request, why the expenditure from the contractor contingency was not part of its estimates.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and 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.

§ 2.2.6 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.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall promptly notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 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.

§ 2.2.10 Construction Manager recognizes and acknowledges that the Guaranteed Maximum Price proposal may be submitted before all Construction Documents are completed by the Architect. In submitting the Guaranteed Maximum Price proposal, Construction Manager shall take into account the level of completeness of the Design Development Documents and Construction Documents and Construction Manager shall exercise its best skill and efforts to make: (i)

appropriate judgments and inferences in connection with the requirements of the documents; and (ii) all inquiries of the Design Professional to clarify the documents as necessary to develop an accurate and binding Guaranteed Maximum Price proposal.

§ 2.2.11 If the Construction Documents were not designated as being ready for construction prior to Construction Manager's Guaranteed Maximum Price proposal and are further developed by the Architect to achieve a constructible and biddable set of Construction Documents ("Biddable Construction Documents"), a copy of the Biddable Construction Documents shall be furnished to the Construction Manager for its review. Construction Manager shall not be permitted to claim any adjustment to the executed Exhibit A (the Guaranteed Maximum Price proposal amendment) in connection with the Biddable Construction Documents except for Scope Changes. A "Scope Change" is defined as Work described in the Biddable Construction Documents that is not reasonably inferable from either the Design Development Documents or any other previously furnished Contract Documents by a reasonably prudent and careful contractor and is: (i) materially inconsistent with the Design Development Documents and previously furnished Construction Documents; or (ii) a material change in quantity, quality, programmatic requirements or other substantial deviation in the Design Development Documents and previously furnished Construction Documents. Construction Manager acknowledges and agrees that the Biddable Construction Documents are not intended to change the scope, quality, quantity, function or design intent of information set forth in the Design Development Documents or previously furnished Construction Documents and not all differences between the Design Development Documents and or previously furnished Construction Documents and the Biddable Construction Documents, or information first appearing in the Biddable Construction Documents, constitute Scope Changes, but rather are scope detailing. After reviewing the Biddable Construction Documents provided by the Architect, the Construction Manager shall notify the Owner in writing of any item in the Biddable Construction Documents that, in Construction Manager's opinion, represents a Scope Change, setting forth in detail, with particularity, the reasons the Construction Manager contends that information or requirements of the Biddable Construction Documents represent a Scope Change (such a notice referred to as a "Scope Verification Request"). Failure of Construction Manager to provide a Scope Verification Request within thirty (30) calendar days after the date of receipt of the Biddable Construction Documents for such portions of the Work to be bid by Construction Manager shall mean that the Biddable Construction Documents are consistent with the Design Development Documents and previously furnished Construction Documents, no Scope Change exists, and the executed Exhibit A (the Guaranteed Maximum Price proposal amendment) shall remain unchanged.

§ 2.2.12 If Construction Manager timely submits to the Owner a Scope Verification Request, Owner shall have the following options:

- .1** Within seven (7) calendar days after receipt of a Scope Verification Request, the Owner may direct the Architect to redesign that aspect of the Biddable Construction Documents to bring the alleged Scope Change into original scope compliance. The Construction Manager shall cooperate with the Owner and Architect during the redesign effort and shall make recommendations appropriate to correct such portions of the Biddable Construction Documents. The Architect shall then submit to the Construction Manager and the Owner the revised Construction Documents; or
- .2** If, upon review of a Scope Verification Request, the Owner believes that the portion of the Work described therein does not constitute a Scope Change, the Owner shall so advise the Construction Manager within fifteen (15) calendar days of receipt of such Scope Verification Request. The Owner and the Construction Manager will attempt to resolve their disagreement and identify elements of the Scope Verification Request that can be revised. If such disagreement is not resolved, the Work described in the Scope Verification Request shall be identified in a list (the "Disputed Work List") to be prepared and periodically updated by the Owner. Whenever possible, the Owner and the Construction Manager shall resolve items set forth in the Disputed Work List, confirming such resolution in a written memorandum signed by both parties. An appropriate Change Order, if necessary, will then be issued. All items remaining in the Disputed Work List shall be performed by the Construction Manager as required by the Contract Documents. Such disputes shall be resolved in accordance with Paragraph 9.1.

§ 2.3 Construction Phase

§ 2.3.1 General

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

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's unqualified written acceptance of the Construction Manager's Guaranteed Maximum Price proposal, and the Owner's issuance of a Notice to Proceed and the lesser duration of the issuance of applicable permits or the reasonable time therefore.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under written subcontracts or by other appropriate written 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 and shall deliver such bids to the Architect. Construction Manager shall comply with the requirements of K.S.A. § 19-216e in regard to the bids. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, (4) can be awarded that portion of the Work under K.S.A. § 19-216e and other applicable statutes, and (5) the Owner or Architect has no reasonable objection to the bidder, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and 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 and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 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 prior written consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, 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 Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2 and K.S.A. § 19-216e.

§ 2.3.2.5 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 to the Owner and Architect.

§ 2.3.2.6 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 submittal schedule in accordance with Section 3.10 of A201-2017, as amended.

§ 2.3.2.7 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. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, 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.

§ 2.3.2.8 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 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201–2017, as amended, shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2017, as amended, shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program, developed with the assistance of Architect and Construction Manager, 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.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control, necessary for the Project, 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 to the extent a reasonably prudent construction manager would rely upon the accuracy of such information and services. Construction Manager shall be responsible for its own interpretations and implementation of the information and services and shall exercise proper precautions relating to the safe performance of the Work.

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

§ 3.1.4.2 The Owner shall furnish surveys describing known physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable and necessary for the Project, 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 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, provided that Construction Manager shall verify the location of all utility services and lines and otherwise comply with the Kansas Underground Utility Damage Prevention Act. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are necessary for the Project, shall furnish services of geotechnical engineers, which may include but are not limited to 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.

Init.

§ 3.1.4.4 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, necessary for the Project, 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.

§ 3.2 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 amended, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 3.3 Architect

The Owner shall retain an Architect to provide Basic Services as described in AIA Document B101™–2007, Standard Form of Agreement Between Owner and Architect, as amended. Upon request of the Construction Manager, the Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's proper performance of Preconstruction Phase services, the Owner shall pay the Construction Manager the stipulated sum of five thousand dollars (\$5,000.00) ("Preconstruction Phase Fee"). Any and all salaries, expenses, costs, charges, fees, overhead, profit, and all other amounts incurred by Construction Manager related to its performance of Preconstruction Phase services are included in the Preconstruction Phase Fee; the Preconstruction Phase Fee is the maximum amount Owner will pay Construction Manager for Preconstruction Phase services. In addition to the Preconstruction Phase services in section 2.1, the scope and timeline for the Preconstruction Phase services are outlined in Exhibit C, which shall be supplied, agreed upon, and incorporated herein by reference within a reasonable time of Construction Manager conferring with Architect.

(Paragraphs deleted)

§ 4.2 Payments

§ 4.2.1 Construction Manager shall submit monthly invoices for Preconstruction Phase services rendered the previous month. Each invoice shall allocate the Preconstruction Phase Fee among various categories of the services in a format and allocation agreeable to Owner in a schedule of values ("Preconstruction Schedule of Values"). The Preconstruction Schedule of Values shall be used solely as a basis of the Owner's review of Construction Manager's invoices for Preconstruction Phase services. The amount of each monthly invoice shall represent the value of services actually and properly performed during the prior calendar month in accordance with the Preconstruction Schedule of Values, and shall be calculated as the percentage of each category of Preconstruction Phase services reflected in the Preconstruction Schedule of Values actually and properly performed during the prior calendar month. The monthly invoices shall be in a form and completed in the detail acceptable to the Owner, and such invoices shall be accompanied by such supporting data and/or work product as may be required by the Owner.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice in the amount of the undisputed amounts in each timely and properly completed invoice. Undisputed amounts from timely and properly completed invoices unpaid after the Statutorily required time period shall bear interest at the legal rate prevailing in Kansas.

§ 4.2.3 "Disputes" shall exist as to the amounts due Construction Manager in an invoice only in the event that the invoice is in error, there is reasonable evidence that Construction Manager is in violation of a term(s) of the Contract Documents, and/or there are claims or the suggestion of claims on account of Construction Manager for the Work but only to the extent caused by Construction Manager and those for which it is responsible. (Individually and in combination referred to as "Cause of Dispute.") The amount of the dispute shall be one hundred and twenty-five

- .1 Take the allowable Cost of Work for the pending Application for Payment. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2017, as amended ;
- .2 Add the Construction Manager's Fee (its subparts, as applicable);
- .3 Subtract retainage of Five percent (5.00 %);

(Paragraph deleted)

- .4 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors or other representatives in such documentation; and
- .5 Subtract amounts, if any, for which the Owner has set off or Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2017, as amended .

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. Subcontractor retention shall not be greater than the Construction Manager's retention.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Owner and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Owner or Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Owner or Architect has made exhaustive or continuous on-site inspections; or that the Owner or 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 or other representatives acting in the sole interest of the Owner.

§ 7.1.11 "Disputes" shall exist as to the amounts due Construction Manager in an Application for Payment only in the event that the Application for Payment is in error, there is reasonable evidence that Construction Manager is in violation of a term(s) of the Contract Documents, and/or there are claims or the suggestion of claims on account of Construction Manager for the Work but only to the extent caused by Construction Manager and those for which it is responsible. (Individually and in combination referred to as "Cause of Dispute.") The amount of the dispute shall be one hundred and twenty-five percent (125%) of Owner's good faith estimate of the dollars believed to be necessary to protect Owner from economic harm resulting from the Cause of Dispute, and may be withheld from any Application for Payment. In the event of a Cause of Dispute, Owner will provide written notice to Construction Manager of the reasons therefor and shall thereafter provide Construction Manager with a reasonable opportunity to cure. Within seven calendar days of the removal of the Cause of Dispute to the Owner's reasonable satisfaction, the Owner shall pay Construction Manager the money withheld as a result of the resolved Cause of Dispute.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum less that portion of the retainage attributable to the Work on the Project still being performed, 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 Section 12.2.2 of AIA Document A201-2017, as amended , and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- .3 a final Certificate for Payment has been issued by the Architect; and
- .4 all requirements of Section 9.8 of AIA Document A201-2017, as amended , have been satisfied.

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 Certificate for Payment, or as follows:

Init.

§ 7.2.2 The Owner's auditors or other representative will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors or other representatives report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, 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 Section 9.5.1 of the AIA Document A201-2017, as amended. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2017, as amended. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors or other representative report the Cost of the Work as substantiated by the Construction Manager's final accounting to be 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 Section 15.2 of A201-2017, as amended. 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 or other representative 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 and agreed by Owner to be undisputed.

(Paragraph deleted)

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2017, as amended.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2017.)

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2017, as amended. 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 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2017, as amended, the method of binding dispute resolution shall be as follows:

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

☐ Arbitration pursuant to Section 15.4 of AIA Document A201-2017

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2017, as amended, 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.

Init.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 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 Section 14.1.1 of A201–2017, as amended .

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services 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 4.1 or include any costs, profit or overhead for services that were not performed.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 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 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee (its subparts, as applicable) computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 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.

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 which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. 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 10, 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.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will be responsible 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 and they arose after assignment. 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, but in no event shall such costs include any costs, profit or overhead for services that were not performed.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2017, as amended .

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2017, as amended, shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement or include any costs, profit or overhead for services that were not performed.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2017, as amended, shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above or include any costs, profit or overhead for services that were not performed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017, as amended. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2017, as amended, except that the term "profit" shall be understood to mean the Overhead and Profit Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

§ 10.4 In no event shall any costs or fees incurred by Construction Manager in relation to the Construction Phase be paid to Construction Manager until Owner issues Construction Manager a Construction Phase notice to proceed. Until such time, all such costs and fees shall be borne entirely by Construction Manager and not paid by Owner, even if Owner derives a benefit therefrom. Said costs and fees shall become eligible for payment under the terms of this Agreement only upon issuance of a Construction Phase notice to proceed. In the event Owner does not issue a Construction Phase notice to proceed for whatever reason, the Construction Manager will not receive any fees, expected profits or other compensation in relation to the Construction Phase.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2017, as amended.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2017 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2017, as amended, shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2017, as amended, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

§ 11.5.1 INDEMNITY

§ 11.5.1.1 To the fullest extent permitted by Law, the Construction Manager shall hold harmless and indemnify the Owner and any of its officers, directors, employees, and their successors (collectively the "Indemnified Parties"), from and against liability, loss, costs, and expenses arising out of or resulting from the negligent performance of the Construction Manager's Services under this Agreement to the extent caused by the negligent act or omission (i) of the Construction Manager, or (ii) of the Construction Manager's subcontractors and/or suppliers, or (iv) the agents, servants, or employees of Construction Manager and any Construction Manager's subcontractor and/or supplier, to the extent such claim, damage, loss or expense is not caused by the negligence or fault of any of the Indemnified Parties. Nothing contained herein shall be construed to require Construction Manager to indemnify the Indemnified Parties from liability, losses, costs and expenses proximately caused by the Indemnified Parties, or each of them. The above-said right of indemnity shall be in addition to other rights of indemnity that any of the Indemnified Parties may

possess. The indemnification obligations of Construction Manager under this Agreement shall survive termination of this Agreement or final payment hereunder.

§ 11.5.1.2 In any and all claims against the Owner by any employee of Construction Manager or any of Construction Manager's subcontractors and/or suppliers, anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable, the indemnity obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefit payable by or for Construction Manager or any of Construction Manager's subcontractors and/or suppliers under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

§11.5.2 KANSAS LEGAL REQUIREMENT

§11.5.2.1 If the successful firm is a corporation organized outside the State of Kansas, it will be necessary to qualify with the Secretary of State of Kansas to do business within the State (K.S.A. 17-7301 K.S.A. seq.). Nonresident individuals or partnerships and nonresident corporations not already registered with the Secretary of State are required to register with the Director of Revenue, to file a bond to assure payment of taxes, and to pay a fee of \$10 for each contract or subcontract with exceeds \$3,000 (K.S.A. 79-1008 to 79-1015).

§ 11.5.2.2 Nonresident contracts are required to appoint an agent for service of process who is a resident of the county in which the work is to be performed. It is unlawful for any payment to be made until the appointment of a local agent has been filed with the Clerk of the District Court (K.S.A. 16-113).

§ 11.5.2.3 Construction Manager shall not in any way, directly or indirectly, discriminate against any person because of age, race, color, handicap, sex, national origin, or religious creed.

§ 11.5.2.4 Consistent with K.S.A. 44-1030, the Construction Manager agrees as follows:

- .1 The Construction Manager shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, national origin or ancestry.
- .2 In all solicitations or advertisements for employees, the Construction Manager shall include the phrase "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (the "Commission").
- .3 If the Construction Manager fails to comply with the manner in which it reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Construction Manager shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the Owner.
- .4 If the Construction Manager is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Construction Manager shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the Owner, without recourse against Owner.
- .5 The Construction Manager shall include the provisions of Clauses (1) through (4) in every consulting agreement, subcontract or purchase order so that provisions will be binding upon such consultant, subcontractor or vendor.

§ 11.5.3. INTERPRETATION. In the event of a conflict between the terms and conditions contained within this Agreement with any terms and conditions within the General Conditions as amended, the term or condition that imposes the greater responsibility on Construction Manager or which more greatly limits Construction Manager's rights shall control.

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 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.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended.
- .2 AIA Document A201–2017, General Conditions of the Contract for Construction, as amended
- .3

(Paragraphs deleted)

Other documents:

(List other documents, if any, forming part of the Agreement.)

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

OWNER *(Signature)*

Jill deVries Jolicoeur, Assistant to the County
Administrator or Designee

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

Gale Lantis, General Manager

(Printed name and title)

Init.

Additions and Deletions Report for

AIA® Document A133™ – 2009

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 13:38:13 ET on 07/19/2019.

PAGE 1

AGREEMENT made as of the 12th day of June in the year 2019

...

The Board of County Commissioners of Douglas County, KS
1100 Massachusetts Street
Lawrence, KS 66044

...

MarLan Construction LC
1008 New Hampshire, Ste. 200
Lawrence, KS 66044

...

Behavioral Health Housing
Lawrence Kansas

...

Treanor Architects, PA Professional Corp.
1040 Vermont Street
Lawrence, KS 66044

...

Jill deVries Jolicoeur
Douglas County Courthouse
1100 Massachusetts, Unit 205
Lawrence, KS 66044
Telephone Number: 785-330-2890

...

Mobile Number: 785-393-6435
Email Address: jjolicoeur@douglascountyks.org

...

Gale Lantis
1008 New Hampshire, Ste. 200

Lawrence, KS 66044
Telephone Number: 785-749-2647
PAGE 2

Mobile Number: 785-979-1526
Email Address: gale@marlanconstruction.com
PAGE 3

12 SCOPE OF THE AGREEMENT

EXHIBIT A - GUARANTEED MAXIMUM PRICE AMENDMENT

...

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, written responses to formal requests for information, and each document's respective exhibits and attachments, all of which form the Contract Documents and are as fully a part of the Contract Documents as if attached to this Agreement or repeated herein. Approved Shop Drawings and submittals, requests for information, proposed change orders, the advertisement or invitation to bid or make a proposal, Instructions to Bidders or persons making proposals, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and the reports and drawings of subsurface and physical conditions are not Contract Documents. 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 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. ~~The Contract represents Electronic manifestations of documents shall not be Contract Documents, and shall be used at the risk of its user.~~ The Contract Documents represent 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. In the event of a conflict between the terms and conditions contained within this Agreement with any terms and conditions within the General Conditions as amended, the term or condition that imposes the greater responsibility on Construction Manager or which more greatly limits Construction Manager's rights shall control.

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For the Preconstruction Phase, ~~AIA Document A201™-2007, A201™-2017,~~ General Conditions of the Contract for Construction, as amended, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in ~~A201-2007, which document is A201-2017, as amended,~~ which documents are incorporated herein by reference. The term "Contractor" as used in ~~A201-2007 A201-2017~~ shall mean the Construction Manager.

...

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may ~~agree, agree in writing,~~ in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. Any review of the Construction Manager's services and Work by the Owner or Architect shall not waive, release or relieve the Construction Manager of its obligation to properly perform its services and Work. The acceptance of any services or Work by the Owner or Architect shall not relieve Construction Manager of the responsibilities for compliance with the terms of this Agreement or subsequent correction of such errors or deficiencies unless, and only to the extent, Owner has knowingly waived such correction requirements in writing.

...

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. In addition to the Preconstruction Phase services in section 2.1, the scope and timeline for the Preconstruction Phase services are outlined in Exhibit C, which shall be supplied, agreed upon, and incorporated herein by reference within a reasonable time of Construction Manager conferring with Architect.

...

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. The Construction Manager shall advise the Owner and the Architect on ~~proposed~~ site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; ~~availability of materials and labor; construction cost analysis to keep project on budget; availability of materials and labor, and reducing the impacts of any such shortages;~~ time requirements for procurement, installation and construction; 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.~~ reductions and economies. Construction Manager shall be primarily responsible for coordinating the distribution and assembly of information needed to perform the Preconstruction Phase services and provide the Work, including but not limited to the collection of any information from the Owner or Architect. The Construction Manager shall assist in the Architect's investigation and assessment of existing facilities and the existing conditions at the site of the Project.

§ 2.1.3 When Project requirements in Section 3.1.1 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.~~ acceptance in the form of a graphical representation of the activities and events that will occur in the Project. 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.~~ responsibilities, and identify items that could affect the Project's timely completion. The updated Project schedule shall include Project schedule shall also include, but not be limited to, 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 well in advance of construction; and the occupancy requirements of the Owner. certification requirements, including inspections and tours; the occupancy requirements of the Owner; and such other detail as reasonably requested by Owner or Architect. If the Owner or Architect has a reasonable objection to a Project schedule submitted by Construction Manager, the Project schedule shall be promptly revised by the Construction Manager in accordance with the recommendations of the Owner and Architect, and re-submitted for approval.

...

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

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

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the

Owner's approval. ~~use.~~ The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.5.3 Upon the request of Owner, Construction Manager will provide the supporting data for each prepared estimate.

...

The Construction Manager shall develop bidders' interest in the Project. Upon request of Owner, Construction Manager shall furnish to Owner for its information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from which proposals will be requested for each principal portion of the Work. The receipt of such a list shall not require Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and for the Owner's acceptance, information, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well 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.

...

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, Work and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order therefrom, as set forth in detail in Paragraphs 2.2.10 through 2.2.12 of this Agreement.

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- .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, allowances, ~~contingency, and the Construction Manager's Fee;~~ contingencies (separately identifying contractor and owner contingencies), and the Construction Manager's Fee (identified by both subparts);
- .4 ~~The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; Project schedule developed pursuant to Paragraph 2.1.3; and~~

...

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its a contractor contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. Order and an owner contingency for the Owner's exclusive use to cover costs as determined only with the express written permission of Owner. The contractor contingency shall not be used for costs described in Paragraph 6.8. Construction Manager shall keep Owner informed of the use and balance of each contingency and, upon request, why the expenditure from the contractor contingency was not part of its estimates.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and 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, proposal.~~

...

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the ~~agreed-upon~~ agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall promptly notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

...

§ 2.2.10 Construction Manager recognizes and acknowledges that the Guaranteed Maximum Price proposal may be submitted before all Construction Documents are completed by the Architect. In submitting the Guaranteed Maximum Price proposal, Construction Manager shall take into account the level of completeness of the Design Development Documents and Construction Documents and Construction Manager shall exercise its best skill and efforts to make: (i) appropriate judgments and inferences in connection with the requirements of the documents; and (ii) all inquiries of the Design Professional to clarify the documents as necessary to develop an accurate and binding Guaranteed Maximum Price proposal.

§ 2.2.11 If the Construction Documents were not designated as being ready for construction prior to Construction Manager's Guaranteed Maximum Price proposal and are further developed by the Architect to achieve a constructible and biddable set of Construction Documents ("Biddable Construction Documents"), a copy of the Biddable Construction Documents shall be furnished to the Construction Manager for its review. Construction Manager shall not be permitted to claim any adjustment to the executed Exhibit A (the Guaranteed Maximum Price proposal amendment) in connection with the Biddable Construction Documents except for Scope Changes. A "Scope Change" is defined as Work described in the Biddable Construction Documents that is not reasonably inferable from either the Design Development Documents or any other previously furnished Contract Documents by a reasonably prudent and careful contractor and is: (i) materially inconsistent with the Design Development Documents and previously furnished Construction Documents; or (ii) a material change in quantity, quality, programmatic requirements or other substantial deviation in the Design Development Documents and previously furnished Construction Documents. Construction Manager acknowledges and agrees that the Biddable Construction Documents are not intended to change the scope, quality, quantity, function or design intent of information set forth in the Design Development Documents or previously furnished Construction Documents and not all differences between the Design Development Documents and or previously furnished Construction Documents and the Biddable Construction Documents, or information first appearing in the Biddable Construction Documents, constitute Scope Changes, but rather are scope detailing. After reviewing the Biddable Construction Documents provided by the Architect, the Construction Manager shall notify the Owner in writing of any item in the Biddable Construction Documents that, in Construction Manager's opinion, represents a Scope Change, setting forth in detail, with particularity, the reasons the Construction Manager contends that information or requirements of the Biddable Construction Documents represent a Scope Change (such a notice referred to as a "Scope Verification Request"). Failure of Construction Manager to provide a Scope Verification Request within thirty (30) calendar days after the date of receipt of the Biddable Construction Documents for such portions of the Work to be bid by Construction Manager shall mean that the Biddable Construction Documents are consistent with the Design Development Documents and previously furnished Construction Documents, no Scope Change exists, and the executed Exhibit A (the Guaranteed Maximum Price proposal amendment) shall remain unchanged.

§ 2.2.12 If Construction Manager timely submits to the Owner a Scope Verification Request, Owner shall have the following options:

1. Within seven (7) calendar days after receipt of a Scope Verification Request, the Owner may direct the Architect to redesign that aspect of the Biddable Construction Documents to bring the alleged Scope Change into original scope compliance. The Construction Manager shall cooperate with the Owner and Architect during the redesign effort and shall make recommendations appropriate to correct such portions of the Biddable Construction Documents. The Architect shall then submit to the Construction Manager and the Owner the revised Construction Documents; or

.2 If, upon review of a Scope Verification Request, the Owner believes that the portion of the Work described therein does not constitute a Scope Change, the Owner shall so advise the Construction Manager within fifteen (15) calendar days of receipt of such Scope Verification Request. The Owner and the Construction Manager will attempt to resolve their disagreement and identify elements of the Scope Verification Request that can be revised. If such disagreement is not resolved, the Work described in the Scope Verification Request shall be identified in a list (the "Disputed Work List") to be prepared and periodically updated by the Owner. Whenever possible, the Owner and the Construction Manager shall resolve items set forth in the Disputed Work List, confirming such resolution in a written memorandum signed by both parties. An appropriate Change Order, if necessary, will then be issued. All items remaining in the Disputed Work List shall be performed by the Construction Manager as required by the Contract Documents. Such disputes shall be resolved in accordance with Paragraph 9.1.

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§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, ~~A201–2017~~, as amended, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's unqualified written acceptance of the Construction Manager's Guaranteed Maximum Price ~~proposal or proposal~~, and the Owner's issuance of a Notice to Proceed, ~~whichever occurs earlier. Proceed and the lesser duration of the issuance of applicable permits or the reasonable time therefore.~~

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§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under written subcontracts or by other appropriate written 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 and shall deliver such bids to the Architect. Construction Manager shall comply with the requirements of K.S.A. § 19-216e in regard to the bids. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (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, (4) can be awarded that portion of the Work under K.S.A. § 19-216e and other applicable statutes, and (5) the Owner or Architect has no reasonable objection to the bidder, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and 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 and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 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 prior written consent of the Owner. If the Subcontract is awarded on a cost-plus a ~~cost-plus~~ fee basis, 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 Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section ~~6.10.2~~ 6.10.2 and K.S.A. § 19-216e.

...

§ 2.3.2.6 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 submittal schedule in accordance with Section 3.10 of A201-2007-A201-2017, as amended.

§ 2.3.2.7 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. The Construction Manager shall also 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.

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Section 3.12.10 of A201-2007-A201-2017, as amended, shall apply to both the Preconstruction and Construction Phases.

...

Section 10.3 of A201-2007-A201-2017, as amended, shall apply to both the Preconstruction and Construction Phases.

...

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

...

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's ~~control-control~~, necessary for the Project, 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 to the extent a reasonably prudent construction manager would rely upon the accuracy of such information and services~~. Construction Manager shall be responsible for its own interpretations and implementation of the information and services and shall exercise proper precautions relating to the safe performance of the Work.

...

§ 3.1.4.2 The Owner shall furnish surveys describing known physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as ~~applicable, applicable and necessary for the Project~~, 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 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~~, provided that Construction Manager shall verify the location of all utility services and lines and otherwise comply with the Kansas Underground Utility Damage Prevention Act. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are ~~requested, necessary for the Project~~, shall furnish services of geotechnical engineers, which may include but are not limited to 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.

§ 3.1.4.4 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-control~~, necessary for the Project, 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.

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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 A201-2007, A201-2017, as amended, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

...

The Owner shall retain an Architect to provide ~~services, duties and responsibilities~~ Basic Services as described in AIA Document B133TM-2014, B101TM-2007, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The as amended. Upon request of the Construction Manager, the Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

...

§ 4.1.1 For the Construction Manager's proper performance of Preconstruction Phase services, the Owner shall ~~compensate the Construction Manager as follows: pay the Construction Manager the stipulated sum of five thousand dollars (\$5,000.00) ("Preconstruction Phase Fee"). Any and all salaries, expenses, costs, charges, fees, overhead, profit, and all other amounts incurred by Construction Manager related to its performance of Preconstruction Phase services are included in the Preconstruction Phase Fee; the Preconstruction Phase Fee is the maximum amount Owner will pay Construction Manager for Preconstruction Phase services. In addition to the Preconstruction Phase services in section 2.1, the scope and timeline for the Preconstruction Phase services are outlined in Exhibit C, which shall be supplied, agreed upon, and incorporated herein by reference within a reasonable time of Construction Manager conferring with Architect.~~

§ 4.1.2 ~~For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2: (Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)~~

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

§ 4.1.4 ~~Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.~~

§ 4.2.1 ~~Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Construction Manager shall submit monthly invoices for Preconstruction Phase services rendered the previous month. Each invoice shall allocate the Preconstruction Phase Fee among various categories of the services in a format and~~

allocation agreeable to Owner in a schedule of values ("Preconstruction Schedule of Values"). The Preconstruction Schedule of Values shall be used solely as a basis of the Owner's review of Construction Manager's invoices for Preconstruction Phase services. The amount of each monthly invoice shall represent the value of services actually and properly performed during the prior calendar month in accordance with the Preconstruction Schedule of Values, and shall be calculated as the percentage of each category of Preconstruction Phase services reflected in the Preconstruction Schedule of Values actually and properly performed during the prior calendar month. The monthly invoices shall be in a form and completed in the detail acceptable to the Owner, and such invoices shall be accompanied by such supporting data and/or work product as may be required by the Owner.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid—() days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. invoice in the amount of the undisputed amounts in each timely and properly completed invoice. Undisputed amounts from timely and properly completed invoices unpaid after the Statutorily required time period shall bear interest at the legal rate prevailing in Kansas.
(Insert rate of monthly or annual interest agreed upon.)

—%—§ 4.2.3 "Disputes" shall exist as to the amounts due Construction Manager in an invoice only in the event that the invoice is in error, there is reasonable evidence that Construction Manager is in violation of a term(s) of the Contract Documents, and/or there are claims or the suggestion of claims on account of Construction Manager for the Work but only to the extent caused by Construction Manager and those for which it is responsible. (Individually and in combination referred to as "Cause of Dispute.") The amount of the dispute shall be one hundred and twenty-five percent (125%) of Owner's good faith estimate of the dollars believed to be necessary to protect Owner from economic harm resulting from the Cause of Dispute, and may be withheld from any invoice. In the event of a Cause of Dispute, Owner will provide written notice to Construction Manager of the reasons therefor and shall thereafter provide Construction Manager with a reasonable opportunity to cure. Within seven calendar days of the removal of the Cause of Dispute to the Owner's reasonable satisfaction, the Owner shall pay Construction Manager the money withheld as a result of the resolved Cause of Dispute.

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

If authorized by the Owner to proceed with construction under paragraph 2.3.1.2, the Construction Manager's Fee shall be 6.00% of the Cost of the Work for the Overhead and Profit Fee, plus a General Conditions Fee of 5.43% of the Cost of the Work. The Overhead and Profit Fee shall cover all home office and other overhead and all profit of Construction Manager. At the time of establishing the GMP, Construction Manager shall also establish and separately delineate an Overhead and Profit GMP. The General Conditions Fee shall cover all General Conditions of Construction Manager, including but not limited to what is identified as General Conditions in the General Conditions Matrix, which is incorporated herein as Exhibit B, and any expenses within corporate billing rates. At the time of establishing the GMP, Construction Manager shall also establish and separately delineate a General Conditions GMP.

...

The fee percentages are fixed

...

The fee percentage shall apply to self-performed work if Construction Manager's bid has been selected pursuant to the statutory process after active and competitive bidding.

...

§ 5.2.3 The difference, as of the date of final completion, between (i) the total aggregate sum of the Cost of the Work plus the Construction Manager's Fee (and each of its subparts) and (ii) the Guaranteed Maximum Price (such difference equals the "Savings") shall inure to the total benefit of the Owner.

§ 5.3.1 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 Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, A201-2017, General Conditions of the Contract for Construction-Construction, as amended. The Construction Manager ~~shall~~may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 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 Section 7.3.3 of AIA Document A201-2007, A201-2017, General Conditions of the Contract for Construction-Construction, as amended.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 A201-2017, as amended, and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 A201-2017, as amended, shall have the meanings assigned to them in AIA Document A201-2007 A201-2017, as amended, and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts ~~awarded with the Owner's prior consent shall not be awarded on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.~~fee, unless the Owner provides its prior written approval.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 A201-2017, as amended, shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee (and its subparts) as defined in Section 5.1 of this Agreement. Consequently, the total amount earned by the Construction Manager as the Fee may increase or decrease, depending upon the nature of any changes in the Work, but the basis of the Construction Manager's Fee (and its subparts) shall always remain the percentages in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee (and its subparts) 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 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee (and its subparts) 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.

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§ 6.1.1 The term Cost of the Work shall mean costs necessarily and properly incurred by the Construction Manager pursuant to K.S.A. § 19-216e in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7 and to the extent they have been necessarily and properly incurred pursuant to K.S.A. § 19-216e.

...

§ 6.1.3 Costs, as defined in this Article 6, shall be actual costs paid by the Construction Manager, less all discounts, rebates, incentives, credits and salvages that shall be taken by or given to the Construction Manager. All payments made by the Owner, whether those payments are actually made before or after the execution of the Agreement, shall be included within the Guaranteed Maximum Price; provided, however, that in no event shall the Owner be required to reimburse the Construction Manager for any portion of the Cost of the Work incurred prior to the execution of this Agreement unless the Construction Manager has received the Owner's express written consent prior to incurring such costs.

§ 6.1.4 Notwithstanding the breakdown or categorization of any costs to be reimbursed in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

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

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.) performing work expressly benefitting only the Project and to the extent not part of General Conditions. General Conditions personnel are identified in the General Conditions Matrix, which is incorporated herein as Exhibit B, with the exception of supervisory "Quality Control" which shall be part of General Conditions. When non General Conditions personnel are charged to the Project at the corporate billing rate, their rate shall not be multiplied by the General Conditions Rate.

§ 6.2.3 ~~Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, 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.~~~~[deleted]~~

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, ~~for personnel not covered by such 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 6.2.1 through 6.2.3. These costs shall not be Cost of the Work to the extent already calculated into a charged corporate billing rate.

§ 6.2.5 ~~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, with the Owner's prior approval.~~

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. As required under the alternative project delivery building construction procurement act, Construction Manager shall competitively bid the construction services and otherwise comply with all requirements of K.S.A. § 19-216e. In the event Construction Manager desires to self perform work, it shall take all efforts necessary to encourage, solicit and otherwise receive competitive bids for the same work from other contractors, subcontractors and/or suppliers pursuant to K.S.A. § 19-216e.

...

§ 6.4.1 Costs, including transportation and preapproved storage, of materials and equipment incorporated or to be incorporated in the completed construction. Construction Manager shall order materials and equipment so as to most efficiently maximize value and minimize storage.

...

§ 6.5.1 Costs of necessary transportation, preapproved storage, installation, maintenance, dismantling 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.

§ 6.5.2 Rental charges for ~~temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers~~ necessary temporary facilities, machinery and equipment that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. Rental charges shall be consistent with those generally prevailing in the location of the Project. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. item may not exceed eighty percent (80%) of the fair market value of any comparable item as of the date such item is first put into service in connection with the Work. The Construction Manager shall pay any excess rental charges. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

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~~§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office, land line telephone service at the site.~~

~~§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work. Work when performing work expressly benefitting only the project and to the extent not part of General Conditions. General Conditions personnel identified in the General Conditions Matrix, which is incorporated herein as Exhibit B, with the exception of "Quality Control" which shall be part of General Conditions. When non General Conditions personnel are charged to the Project at the corporate billing rate, their rate shall not be multiplied by the General Conditions Rate.~~

...

~~§ 6.5.7 Excluded from Cost of the Work shall be the costs of trucks, phones, software or other expenses within employee billing rate calculations regardless if they are charged to the Project.~~

~~§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.~~

~~§ 6.6.2 Sales, use or similar Sales taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.~~

...

~~§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 43.5.3-13.4.3 of AIA Document A201-2007 A201-2017, as amended, or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.~~

~~§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and 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. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee (or its subparts) or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 A201-2017, as amended, or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.~~

~~§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval. [deleted]~~

...

~~§ 6.6.8 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.~~

~~§ 6.6.9 Subject to the Owner's prior approval, 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.~~

...

§ 6.7.2 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 Section 10.4 of AIA Document A201-2007-A201-2017, as amended.

§ 6.7.3 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 fault or negligence or failure to fulfill a specific responsibility of the Construction Manager and has been preapproved in writing by Owner as a change order, 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.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007-A201-2017, as amended, 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 6.8.
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- .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, other offices~~, except as specifically provided in Section 6.2, or as may be provided in Article 11;

...

- .3 Overhead and general conditions and expenses, except as may be expressly included in Sections 6.1 to 6.7;

...

- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the fault or negligence or failure of 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 to fulfill a specific responsibility of the Contract; of the Contract, including but not limited to the costs of correcting damaged, defective or non-conforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work;

...

- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
.8 Costs for services incurred during the ~~Preconstruction Phase~~; Phase; and
.9 There shall be no fee (Overhead and Profit Fee or General Conditions Fee) charged on either the Overhead and Profit Fee or General Conditions Fee.

...

§ 6.9.1 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 them 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 Owner. 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.

...

§ 6.10.1 For purposes of ~~Section 6.10, the term "related party"~~ Sections 6.10 and 6.3, the term "Related Party" shall mean a parent, subsidiary, affiliate or other entity related to or affiliated with or having common ownership or management with the Construction Manager; the Construction Manager or in which the Construction Manager has direct or indirect ownership or control; any entity in which any stockholder in, or management employee of, the Construction Manager ~~owns any~~ has a direct or indirect interest in excess of ten percent in the aggregate; any entity

owned in whole or in part by Construction Manager; any entity with more than a fifty percent (50%) interest in the Construction Manager; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term ~~"related party"~~ "Related Party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a ~~related party, Related Party,~~ the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the ~~related party~~ Related Party and the anticipated cost to be incurred, before any such transaction is ~~consummated or cost incurred, solicited, bid pursuant to K.S.A. § 19-216e, consummated or otherwise incurred as a cost.~~ If the Owner, after such notification, authorizes the proposed ~~transaction, transaction to be solicited and bid pursuant to K.S.A. § 19-216e,~~ and the work awarded to the Construction Manager pursuant to K.S.A. § 19-216e then the cost incurred shall be included as a cost to be ~~reimbursed, reimbursed~~ subject to the terms of this Agreement, and the Construction Manager shall procure the Work, equipment, goods or service from the ~~related party, Related Party,~~ as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a ~~related party~~ Related Party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3, 2.3.2.3, without recourse against Owner

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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 or other representatives shall, during regular business hours and upon reasonable notice, be afforded immediate access to, and shall be permitted to inspect, audit and copy, the Construction Manager's records and accounts, including but not limited to complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of ~~three~~ seven years after final payment, or for such longer period as may be required by law. Such right of access may be exercised with respect to records pertaining to changes, contract performance, Claims, or if this Agreement is terminated for default or convenience. Construction Manager shall include the provisions of this Section 6.11 in all its contracts and all tier subcontracts. If any review under this Section 6.11 reveals an overcharge upon final reconciliation of the GMP, Construction Manager shall pay the Owner upon demand an amount equal to one hundred twenty percent (120%) of such overcharge, as reimbursement for such overcharge and the administrative expenses incurred in determining the overcharge. The requirements of this Section 6.11 shall not apply to any portion of an overcharge that is the subject of a good faith dispute between the Owner and Construction Manager.

...

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the ~~Architect,~~ Architect and approved by the Owner, 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.~~ Documents, subject, however, to the other provisions of Article 7 and AIA Document A201-2017, as amended.

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

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the fifth day of a month, the Owner shall make payment of the ~~certified amount undisputed amounts from timely and properly completed applications for payment~~ to the Construction Manager not later than the fifteenth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, any payment shall be made by the Owner not later than Forty-five (45) days after the Architect receives the Application for Payment.

...

§ 7.1.4 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 cash disbursements ~~already have been made or intended to be made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.~~ the amount in the pending Application for Payment. With each Application for Payment, the Construction Manager shall submit an updated Construction Schedule in a format agreed to by the Owner and Construction Manager.

§ 7.1.5 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 the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.~~ Cost of the Work incurred since the last application for payment plus the applicable Fee.

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- ~~1~~ Take 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 schedule of values. the allowable Cost of Work for the pending Application for Payment. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007; A201-2017, as amended ;
- ~~2~~ Add 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 Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- ~~3~~ Add the Construction Manager's Fee, less retainage of ~~—~~ percent (~~—~~ %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion; the Construction Manager's Fee (its subparts, as applicable);
- ~~4~~ Subtract retainage of ~~—~~ percent (~~—~~ %) from that portion of the Work that the Construction Manager self performs; 3 Subtract retainage of Five percent (5.00 %);
- ~~5~~ Subtract the aggregate of previous payments made by the Owner;
- ~~6~~ 4 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors or other representatives in such documentation; and
- ~~7~~ 5 Subtract amounts, if any, for which the Owner has set off or Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007; A201-2017, as amended .

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. Subcontractor retention shall not be greater than the Construction Manager's retention.

...

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Owner and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Owner or Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Owner or Architect has made exhaustive or continuous on-site inspections; or that the Owner or 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 or other representatives acting in the sole interest of the Owner.

§ 7.1.11 "Disputes" shall exist as to the amounts due Construction Manager in an Application for Payment only in the event that the Application for Payment is in error, there is reasonable evidence that Construction Manager is in violation of a term(s) of the Contract Documents, and/or there are claims or the suggestion of claims on account of Construction Manager for the Work but only to the extent caused by Construction Manager and those for which it is responsible. (Individually and in combination referred to as "Cause of Dispute.") The amount of the dispute shall be one hundred and twenty-five percent (125%) of Owner's good faith estimate of the dollars believed to be necessary to protect Owner from economic harm resulting from the Cause of Dispute, and may be withheld from any Application for Payment. In the event of a Cause of Dispute, Owner will provide written notice to Construction Manager of the reasons therefor and shall thereafter provide Construction Manager with a reasonable opportunity to cure. Within seven calendar days of the removal of the Cause of Dispute to the Owner's reasonable satisfaction, the Owner shall pay Construction Manager the money withheld as a result of the resolved Cause of Dispute.

...

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract ~~Sum~~, Sum less that portion of the retainage attributable to the Work on the Project still being performed, 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 Section 12.2.2 of AIA Document A201-2007, A201-2017, as amended , 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- Architect; and
- .4 all requirements of Section 9.8 of AIA Document A201-2017, as amended , have been satisfied.

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§ 7.2.2 The Owner's auditors or other representative will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors or other representatives report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, 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 Section 9.5.1 of the AIA Document A201-2007- A201-2017, as amended . The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007- A201-2017, as amended . The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors or other representative report the Cost of the Work as substantiated by the Construction Manager's final accounting to be 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 Section 15.2 of A201-2007- A201-2017, as amended . 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 or other representative 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~~ Payment and agreed by Owner to be undisputed.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager 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 the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be

~~recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.~~

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document ~~A201-2007~~, A201-2017, as amended.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document ~~A201-2007~~, A201-2017.)

...

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of ~~A201-2007~~, A201-2017, as amended. 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 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document ~~A201-2007~~, A201-2017, as amended, the method of binding dispute resolution shall be as follows:

...

☐ Arbitration pursuant to Section 15.4 of AIA Document ~~A201-2007~~, A201-2017

☒ Litigation in a court of competent jurisdiction

...

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document ~~A201-2007~~, A201-2017, as amended, 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.

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§ 10.1.1 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 Section 14.1.1 of ~~A201-2007~~, A201-2017, as amended.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services 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 ~~4.1-4.1~~ or include any costs, profit or overhead for services that were not performed.

...

- .2 Add the Construction Manager's Fee (its subparts, as applicable) computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 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

...

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will ~~reimburse or indemnify the Construction Manager~~ be responsible 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~~, terminated and they arose after assignment. 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~~ such termination, but in no event shall such costs include any costs, profit or overhead for services that were not performed.

...

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document ~~A201-2007~~ A201-2017, as amended.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of ~~A201-2007~~ A201-2017, as amended, shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this ~~Agreement~~ Agreement or include any costs, profit or overhead for services that were not performed.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of ~~A201-2007~~ A201-2017, as amended, shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, ~~except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed~~ above or include any costs, profit or overhead for services that were not performed.

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The Work may be suspended by the Owner as provided in Article 14 of AIA Document ~~A201-2007~~ A201-2017, as amended. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document ~~A201-2007~~ A201-2017, as amended, except that the term "profit" shall be understood to mean the ~~Construction Manager's Overhead and Profit~~ Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

§ 10.4 In no event shall any costs or fees incurred by Construction Manager in relation to the Construction Phase be paid to Construction Manager until Owner issues Construction Manager a Construction Phase notice to proceed. Until such time, all such costs and fees shall be borne entirely by Construction Manager and not paid by Owner, even if Owner derives a benefit therefrom. Said costs and fees shall become eligible for payment under the terms of this Agreement only upon issuance of a Construction Phase notice to proceed. In the event Owner does not issue a Construction Phase notice to proceed for whatever reason, the Construction Manager will not receive any fees, expected profits or other compensation in relation to the Construction Phase.

...

§ 11.1 Terms in this Agreement shall have the same meaning as those in ~~A201-2007~~ A201-2017, as amended.

...

Section 1.5 of ~~A201-2007~~ A201-2017 shall apply to both the Preconstruction and Construction Phases.

...

Section 13.1 of ~~A201-2007~~ A201-2017, as amended, shall apply to both the Preconstruction and Construction Phases.

...

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, A201-2017, as amended, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

...

§ 11.5.1 INDEMNITY

§ 11.5.1.1 To the fullest extent permitted by Law, the Construction Manager shall hold harmless and indemnify the Owner and any of its officers, directors, employees, and their successors (collectively the "Indemnified Parties"), from and against liability, loss, costs, and expenses arising out of or resulting from the negligent performance of the Construction Manager's Services under this Agreement to the extent caused by the negligent act or omission (i) of the Construction Manager, or (ii) of the Construction Manager's subcontractors and/or suppliers, or (iv) the agents, servants, or employees of Construction Manager and any Construction Manager's subcontractor and/or supplier, to the extent such claim, damage, loss or expense is not caused by the negligence or fault of any of the Indemnified Parties. Nothing contained herein shall be construed to require Construction Manager to indemnify the Indemnified Parties from liability, losses, costs and expenses proximately caused by the Indemnified Parties, or each of them. The above-said right of indemnity shall be in addition to other rights of indemnity that any of the Indemnified Parties may possess. The indemnification obligations of Construction Manager under this Agreement shall survive termination of this Agreement or final payment hereunder.

§ 11.5.1.2 In any and all claims against the Owner by any employee of Construction Manager or any of Construction Manager's subcontractors and/or suppliers, anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable, the indemnity obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefit payable by or for Construction Manager or any of Construction Manager's subcontractors and/or suppliers under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

§11.5.2 KANSAS LEGAL REQUIREMENT

§11.5.2.1 If the successful firm is a corporation organized outside the State of Kansas, it will be necessary to qualify with the Secretary of State of Kansas to do business within the State (K.S.A. 17-7301 K.S.A. seq.). Nonresident individuals or partnerships and nonresident corporations not already registered with the Secretary of State are required to register with the Director of Revenue, to file a bond to assure payment of taxes, and to pay a fee of \$10 for each contract or subcontract with exceeds \$3,000 (K.S.A. 79-1008 to 79-1015).

§ 11.5.2.2 Nonresident contracts are required to appoint an agent for service of process who is a resident of the county in which the work is to be performed. It is unlawful for any payment to be made until the appointment of a local agent has been filed with the Clerk of the District Court (K.S.A. 16-113).

§ 11.5.2.3 Construction Manager shall not in any way, directly or indirectly, discriminate against any person because of age, race, color, handicap, sex, national origin, or religious creed.

§ 11.5.2.4 Consistent with K.S.A. 44-1030, the Construction Manager agrees as follows:

- .1 The Construction Manager shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, national origin or ancestry.
- .2 In all solicitations or advertisements for employees, the Construction Manager shall include the phrase "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (the "Commission").

- .3 If the Construction Manager fails to comply with the manner in which it reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Construction Manager shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the Owner.
- .4 If the Construction Manager is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Construction Manager shall be deemed to have breached the present contract and it may be cancelled, terminated, or suspended, in whole or in part, by the Owner, without recourse against Owner.
- .5 The Construction Manager shall include the provisions of Clauses (1) through (4) in every consulting agreement, subcontract or purchase order so that provisions will be binding upon such consultant, subcontractor or vendor.

§ 11.5.3. INTERPRETATION. In the event of a conflict between the terms and conditions contained within this Agreement with any terms and conditions within the General Conditions as amended, the term or condition that imposes the greater responsibility on Construction Manager or which more greatly limits Construction Manager's rights shall control.

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- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended.
- .2 AIA Document A201–2007, A201–2017, General Conditions of the Contract for Construction, as amended
- .3 AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 ~~AIA Document E202™ 2008, Building Information Modeling Protocol Exhibit, if completed, or the following:~~
- .5—Other documents:

...

Jill deVries Jolicoeur, Assistant to the County
Administrator or Designee

Gale Lantis, General Manager

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Christopher Burger, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:38:13 ET on 07/19/2019 under Order No. 1757959790 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

General Conditions Matrix			
Description	Scope of Work		
	In 5.43% General Conditions	Cost of Work	Owner Cost not in GMP
Office Personnel			
Project Executive	X		
Project Manager	X		
Estimating	X		
Project Engineer	X		
Accounting	X		
Field Personnel			
Superintendent	X		
Field Engineer	X		
Foreman		X	
Safety Officer	X		
Quality Control	X		
Field Expenses			
Temporary utilities	X		
Office trailer rental	X		
Copier/FAX/office equipment	X		
Jobsite office supplies	X		
Storage trailer rental-if required		X	
Vehicles	X		
Site signage	X		
Temporary toilets	X		
Water, ice, cups	X		
Dumpsters and trash service	X		
CM owned equipment & small tools	X		
Surveying by others		X	
Layout	X		
Interim jobsite cleaning	X		
Final cleaning		X	
Fire protection	X		
Mobilization and Demobilization	X		
Equipment rental		X	
Temporary fencing		X	
Mock-ups	X		
Other Expenses			
Bonds		X	
Builders risk insurance		X	
Building permit		X	
General liability insurance	X		
Professional liability insurance	X		
Delivery/postage/printing	X		
Procure project management expense	X		
Testing			X
Commissioning			X
Design			X



MEMORANDUM

TO: Board of County Commissioners, Douglas County
Sarah Plinsky, Interim County Administrator

FROM: Pam Weigand, Criminal Justice Services Director

SUBJECT: Review and Approve an Amendment to the Memorandum of Understanding between the Kansas Department of Corrections Division of Juvenile Services and Douglas County Kansas.

DATE: July 16, 2019

Douglas County entered into a memorandum of understanding on September 21, 2016 with the Youth Advocate Program, Inc. (YAP) to provide Douglas County with an alternative to out-of-home placement for moderate and high risk youthful offenders, and for re-entry of youthful offenders from state correctional facilities. The cost of YAP services are paid for with KDOC-JS funds that are front loaded to Douglas County.

The Kansas Department of Corrections Division of Juvenile Services (KDOC-JS) is working on finalizing a contract for the continuation of YAP services in SFY 2020. KDOC-JS is asking counties to sign an amendment to ensure that reimbursements for YAP services continue to occur until the contract is finalized.

I will be available at the Commission meeting to answer questions. Thank you for your consideration.

AMENDMENT to Memorandum of Understanding
KANSAS DEPARTMENT OF CORRECTIONS – JUVENILE SERVICES and
Douglas County Criminal Justice Services

This AMENDMENT NO. 4 made and entered into as of this ____ day of _____, 2019, by and between the DEPARTMENT of Corrections of the State of Kansas, Division of Juvenile Services (hereinafter called the “KDOC-JS”) and Douglas County Criminal Justice Services (hereinafter called “County”);

WHEREAS, the DEPARTMENT desires to extend the term of this Memorandum of Understanding; and

WHEREAS, the County is willing to continue providing YAP under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and of the mutual promises contained in the Memorandum of Understanding, it is mutually agreed as follows:

1. To extend the term of the term of Amendment No. 3 for continuation of YAP from June 30, 2019 to September 30, 2019, or until such time as the DEPARTMENT and County enter into a new contract for YAP, whichever occurs first.

All other terms and conditions of the Contract executed November 28th, 2016, and the Amendment executed on July 28, 2017 shall remain in full force and effect except as specifically amended herein.

IN WITNESS WHEREOF, the parties have caused this contract to be executed on the day and year first above mentioned.

Kansas Department of Corrections

Douglas County Criminal Justice Services

By: _____

By: _____

Hope Cooper
Deputy Secretary of Juvenile
And Adult Community-based Services

Michelle Derusseau
BOCC Chair

Date: _____

Date: _____



DOUGLAS COUNTY PUBLIC WORKS

3755 E. 25th Street
Lawrence, KS 66046
(785) 832-5293 Fax (785) 842-1201
dgcopubw@douglascountyks.org
www.douglascountyks.org

Keith A. Browning, P.E.
Director of Public Works/County Engineer

MEMORANDUM

To : Board of County Commissioners

From : Keith A. Browning, P.E., Director of Public Works/County Engineer

Date : July 18, 2019

Re : Consider awarding construction contract for Project No. 2019-20
N 1200 Road/Route 1061 intersection improvements

We opened bids today for a project to construct intersection improvements at the N 1200 Road/Route 1061 intersection. Only one bid was received:

Bidder	Total Bid
Hamm, Inc.	\$148,242.78
<i>Engineer's Estimate</i>	<i>\$147,446.00</i>

You will recall we opened bids for this project earlier this summer and received one bid only from the same contractor. The BOCC rejected that bid as it exceeded the Engineer's Estimate by more than 10%. The second bid opening did not result in any lower bids than the lone bid previously received.

Although the lone bid exceeds the Engineer's Estimate by 0.5%, K.S.A. 68-521 allows letting a road construction contract that exceeds the Engineer's Estimate by up to 10%.

Action Required: Award a construction contract for Project No. 2019-20, N 1200 Road/Route 1061 intersection improvements, to Hamm, Inc. in the low bid amount of \$148,242.78.

DOUGLAS COUNTY PUBLIC WORKS
PROJECT 2019-20 BID #19-F-0017
ROUTE 1061/N1200 INTERSECTION IMPROVEMENTS
BID TABULATION
July 18, 2019

ITEM NO.	BID ITEM	UNIT	QTY	ENGINEER'S ESTIMATE		Hamm Inc					
				UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
1	MOBILIZATION	L.S.	1	\$18,000.00	\$18,000.00	\$13,670.15	\$13,670.15				
2	CONTRACTOR CONSTRUCTION STAKING	L.S.	1	\$4,000.00	\$4,000.00	\$5,350.00	\$5,350.00				
3	UNCLASSIFIED EXCAVATION	C.Y.	607	\$15.00	\$9,105.00	\$34.98	\$21,232.86				
4	COMPACTION OF EARTHWORK (TYPE B, MR-90)	C.Y.	65	\$4.00	\$260.00	\$2.70	\$175.50				
5	COMPACTION OF EARTHWORK (TYPE AA, MR-3-3)	C.Y.	138	\$8.00	\$1,104.00	\$3.30	\$455.40				
6	CROSS ROAD PIPE (18") (RCP)	L.F.	80	\$55.00	\$4,400.00	\$69.40	\$5,552.00				
7	END SECTION (18") (RC)	EA.	1	\$600.00	\$600.00	\$712.38	\$712.38				
8	GRATED AREA INLET (HS-20 WHEEL LOADING)	EA.	1	\$5,000.00	\$5,000.00	\$4,189.54	\$4,189.54				
9	FLOWABLE FILL (LOW STRENGTH)	C.Y.	12	\$140.00	\$1,680.00	\$250.50	\$3,006.00				
10	MILLING (2")	S.Y.	256	\$12.00	\$3,072.00	\$15.00	\$3,840.00				
11	HMA-COMMERCIAL GRADE (CLASS A) (SM-12.5A) (PG 78-28) (SURFACE) (2")	TON	109	\$130.00	\$14,170.00	\$115.00	\$12,535.00				
12	HMA-COMMERCIAL GRADE (CLASS A) (SM-12.5A) (PG 78-28) (BASE) (8")	TON	347	\$130.00	\$45,110.00	\$115.00	\$39,905.00				
13	AGGREGATE BASE (AB-3) (6")	S.Y.	829	\$14.00	\$11,606.00	\$7.35	\$6,093.15				
14	WATER (AGGREGATE BASE) (SET PRICE)	MGAL	1	\$35.00	\$35.00	\$35.00	\$35.00				
15	TRIAX GEOGRID (TX-160)	S.Y.	829	\$10.00	\$8,290.00	\$12.00	\$9,948.00				
16	AGGREGATE SURFACING (AB-3) (6")	TON	19	\$38.00	\$722.00	\$40.67	\$772.73				
17	AGGREGATE SHOULDERING (AB-3)	TON	16	\$45.00	\$720.00	\$62.26	\$996.16				
18	EROSION CONTROL MAT (CLASS 2, TYPE F)	S.Y.	934	\$5.50	\$5,137.00	\$5.50	\$5,137.00				
19	SEDIMENT REMOVAL (SET PRICE)	C.Y.	1	\$35.00	\$35.00	\$35.00	\$35.00				
20	SWPPP INSPECTION	EA.	6	\$300.00	\$1,800.00	\$450.00	\$2,700.00				
21	MONUMENT BOX (LID ONLY)	EA.	1	\$800.00	\$800.00	\$1,001.91	\$1,001.91				
22	MAINTENANCE AND RESTORATION OF HAUL ROADS (SET PRICE)	L.S.	1	\$2,000.00	\$2,000.00	\$2,000.00	\$2,000.00				
23	TEMP. FERTILIZER, SEED, AND MULCH	AC	0.2	\$4,000.00	\$800.00	\$2,000.00	\$400.00				
24	PERM. FERTILIZER, SEED, AND MULCH	AC	0.2	\$5,000.00	\$1,000.00	\$5,000.00	\$1,000.00				
25	TRAFFIC CONTROL	L.S.	1	\$8,000.00	\$8,000.00	\$7,500.00	\$7,500.00				
TOTAL BID -					\$147,446.00		\$148,242.78				

Keith A. Browning, PE, Director of Public Works

Date

Jamie Shew, Douglas County Clerk



DOUGLAS COUNTY, KANSAS

OFFICE OF THE COUNTY ENGINEER

SPECIFICATIONS AND CONTRACT DOCUMENTS

FOR

DOUGLAS COUNTY PROJECT NO. 2019-20

N1200 AND E2200 INTERSECTION IMPROVEMENTS

BID # 19-F-0017

Douglas County Commissioners

Michelle Derusseau, Chairman

Patrick Kelly, Member

Nancy Thellman, Member

Approved By:

Keith A. Browning, P.E.
Director of Public Works
and County Engineer

Date: 6/27/2019

DOUGLAS COUNTY, KANSAS
PROJECT NO. 2019-20
BID # 19-F-0017

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<http://www.ksdot.org/bureaus/burConsMain/specprov/2015specprov.asp>

DOUGLAS COUNTY, KANSAS
PROJECT NO. 2019-20
BID # 19-F-0017
NOTICE TO CONTRACTORS

Notice is hereby given that sealed proposals for the performance of the contract above noted will be received in the Office of the Douglas County Clerk until 10:00 A.M., Thursday, July 18, 2019, and then publicly opened in the Courthouse, 1100 Massachusetts Street, Lawrence, Kansas.

Douglas County Project 2019-20 consists of installing a grated area inlet, RCP outlet pipe with end section, grading, aggregate base, Geogrid placement, HMA base & surface asphalt, milling, erosion control blanket, temporary erosion control, seeding, aggregate shouldering, aggregate surfacing, and Traffic Control.

Douglas County Project 2019-20 is located at the intersection of N1200 and E2200 Roads 1 mile south of Eudora, Kansas.

All bids must be submitted on forms obtainable at Drexel Technologies @ www.drexeltech.com in their eDistribution plan room or Demand Star @ www.demandstar.com, and are open for public inspection. Proposals shall be submitted in sealed envelopes, addressed to the Office of the County Clerk, Courthouse, 1100 Massachusetts, Lawrence, Kansas 66044, upon which is clearly written or printed "Proposal for Douglas County Project No. 2019-20", and the name and address of the bidder. Any bids received after the closing time will be returned unopened.

Copies of plans and specifications can be seen or purchased for a Non-Refundable fee on-line at www.drexeltech.com in their eDistribution plan room, additional assistance is available at distribution@drexeltech.com. Information regarding this project can be found in the "Public Jobs" link on the website. Contractors desiring the Contract Documents for use in preparing bids may also obtain a set of such documents from Drexel Technologies; 10840 West 86th Street, Lenexa, KS 66214, telephone number is 913-371-4430. Bidding documents will be shipped only if the requesting party assumes responsibility for all related charges. Plans are on file and open for public inspection at the Office of the County Engineer.

All bids must be accompanied by a CERTIFIED CHECK, CASHIER'S CHECK or a BID BOND for not less than Five Percent (5%) of the base bid as a guarantee that if awarded the Contract, the bidder will enter into a Contract and give bond as required. Said check or bond shall be made payable to the Board of County Commissioners, Douglas County, Kansas.

Contracts will be awarded only to such bidders as are on the list of Pre-Qualified Contractors for the Kansas Department of Transportation on the date established for receiving and opening of bids. All subcontractors must be approved or vetted by Douglas County.

The Board of County Commissioners of Douglas County, Kansas reserve the right to reject any or all bids and to waive technicalities, and to award the contract to the bidder that the Commission deems best suited to accomplish the work.

DOUGLAS COUNTY PUBLIC WORKS
Keith A. Browning, P.E.
Director of Public Works
Date: 6/27/2019

Publication Date: 6/27/2019
7/13/2019

cc: Lawrence Journal World
Douglas County Commission
Douglas County Operations

Douglas County Administrator
Douglas County Clerk

DOUGLAS COUNTY, KANSAS
PROJECT NO. 2019-20
BID # 19-F-0017

INFORMATION FOR BIDDERS

1. Proposals must be submitted on duly executed copy of the Proposal Forms obtained by Demand Star or Drexel Technologies.
2. Proposals must be in sealed envelopes, addressed to the Office of the County Clerk, Courthouse, Lawrence, Kansas, upon which is clearly written, or printed, "Proposal for Douglas County Project No. 2019-20" and the name and address of the bidder.
3. Each bidder shall state in his Proposal, his name, place of residence and his exact post office address, and the names and addresses of all persons or parties interested with him therein. Anyone signing a Proposal as an agent for another must file, with the Proposal, acceptable evidence of his authority to do so.
4. Each bidder is required to deposit with his Proposal a Certified Check, Cashier's Check or Bid Bond in the amount of five percent (5%) of the base bid. The above required deposit will serve as a guarantee that the bidder will file all bonds required and enter into the Contract, should it be awarded to him, according to the terms of his bid, within twenty-one (21) days after the certification of the award. Should the Contractor fail to file approved surety bonds or enter into Contract with Douglas County, Kansas, the bid security shall be forfeited as liquidated damages, and the money realized therefrom turned into the County Treasury.
5. Contracts will be let only to such bidders as are on the list of Pre-Qualified Contractors for the Kansas Department of Transportation on the date established for receiving and opening of bids.
6. All subcontractors must be approved or vetted by Douglas County.
7. Bidders must show their unit prices, make extensions based on the unit price bid for each item and total the bid for all items.
8. In the event any discrepancy occurs between the unit prices and the gross sum bid, the unit price shall apply.
9. Proposals must be signed.
10. Failure to comply with one or all of the above stated requirements will be considered sufficient grounds for rejection of the Proposal.
11. The winning bidder shall, within twenty-one (21) days of the Award of the Contract, file an approved Statutory Bond and an approved Performance and Maintenance Bond in an amount equal to the total bid.

DOUGLAS COUNTY, KANSAS
PROJECT NO. 2019-20
BID # 19-F-0017

SPECIFICATIONS

THE STANDARD SPECIFICATIONS FOR STATE ROAD AND BRIDGE CONSTRUCTION OF THE KANSAS DEPARTMENT OF TRANSPORTATION, EDITION OF 2015, shall be the Specifications for this Contract except the Sections and Articles which shall be deleted from the STANDARD SPECIFICATIONS and shall be revised as hereinafter shown.

DIVISION 100

GENERAL CLAUSES AND COVENANTS

Section 101.3

DEFINITIONS

BID BOND – DELETE item and ADD – The approved form of security, executed by the bidder and his surety or sureties, guaranteeing the execution of a satisfactory contract and the filing of an acceptable contract bond if the bidder's offer is accepted. The bid bond shall be a Certified Check, Cashier's Check or Bid Bond in the amount of five percent (5%) of the base bid. Said check or bond shall be made payable to the Board of County Commissioners, Douglas County, Kansas.

CONTRACT - DELETE item and ADD - The written agreement between the Board of County Commissioners of Douglas County, Kansas, and the Contractor setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the work, the furnishing of labor and materials, and the basis of payment.

The Contract shall include the Contract Documents, which shall include the Proposal, Plans, Specifications, Contract Drawings, Supplemental Specifications, Special Provisions, Contract, Performance and Maintenance Bond, and the Statutory Bond, and also any change orders and agreements that are required to complete the construction of the work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

CONTRACT BOND - DELETE item and ADD - The Statutory Bond and the Performance and Maintenance Bond executed by the Contractor and his Surety, guaranteeing execution of the Contract and all Supplemental Agreements pertaining thereto and the payment of all legal debts pertaining to the construction of the Project.

DEPARTMENT - ADD - Douglas County, Kansas, represented by its Board of County Commissioners.

ENGINEER - DELETE item and ADD - Douglas County, Kansas, or the Director of Public Works of Douglas County, Kansas, acting directly or through his authorized representatives on behalf of Douglas County, Kansas.

LABORATORY - ADD - The testing laboratory designated by the Engineer.

SPECIFICATIONS (Continued)

RETAINAGE – ADD – From the grand total of the work completed as estimated by the Engineer, there shall be deducted five (5) percent to be retained by the County as required by KSA 68-521 until full and satisfactory completion of the Contract, Specifications and Contract Documents and the Engineer shall certify the balance to the Commission for payment; except that no amount less than Five Hundred Dollars (\$500.00) will be paid unless the total amount of the Contract remaining unpaid is less than Five Hundred Dollars (\$500.00).

SECRETARY - DELETE item and ADD - COUNTY - Douglas County, Kansas, represented by its Board of County Commissioners.

STATE - DELETE item and ADD - COUNTY - Douglas County, Kansas represented by its Board of County Commissioners.

Section 102

BIDDING REQUIREMENTS AND CONDITIONS

102.1 NOTICE TO CONTRACTORS (ADVERTISEMENT), DELETE item and ADD – Douglas County will publish a Notice to Contractor's to notify prospective Contractors of a letting. This notice describes the contemplated work, informs the Contractor how to obtain Bidding Proposal Forms, identifies the location of plans and specifications, identifies the time and place for receiving bids, and reserves Douglas County's right to reject bids. All proposal blanks shall be obtained by prequalified bidders from Drexel Technologies at www.drexeltech.com or from Demand star at www.demandstar.com. Proposal forms will be issued up to, but not after the close of business on the day preceding the opening of bids.

102.2(a) Prequalification Requirements. - DELETE the first sentence beginning with "Before...." and ending with "....work" and ADD - Bidders shall be prequalified for the type and magnitude of work covered by this Contract with the Kansas Department of Transportation as of the date established for receiving and opening of bids and shall give signed permission, if requested by the Engineer, to Douglas County, Kansas, to obtain the bidder's qualification from the Kansas Department of Transportation. Bidders will be classified under one or more of the classifications listed under section 102.2(b).

102.11 BID BONDS - DELETE item and ADD - No Proposal will be accepted unless accompanied by a certified check, cashier's check or a bid bond in the amount of five percent (5%) of the base bid and made payable to the Board of County Commissioners, Douglas County, Kansas. The full amount of the proposed guaranty shall be forfeited to the County in liquidation of damages sustained in the event the bidder (or bidders) fail to execute a satisfactory Contract and file Contract Bonds within twenty-one (21) days after the notice of the award of Contract.

The Guarantees of the two (2) lowest responsible bidders shall remain in full force until such time as the execution of a Contract has been completed by the successful bidder and satisfactory Contract Bonds have been furnished. The Guarantees will be returned after the above has been accomplished.

SPECIFICATIONS (Continued)

102.12 SUBMITTING PROPOSALS - DELETE item and ADD - Each Proposal must be submitted on forms obtainable at Drexel Technologies at www.drexeltech.com or Demand Star at www.demandstar.com and must be submitted in sealed envelopes, addressed to the Office of the County Clerk, Courthouse, Lawrence, Kansas, upon which is clearly written or printed "Proposal for Douglas County Project No. 2019-20", and the name and address of the bidder. When a Proposal is sent by mail, the above mentioned envelope shall be enclosed in another envelope addressed to the County Clerk, Courthouse, Lawrence, Kansas. All Proposals shall be filed prior to the time and at the place specified in the Notice to Contractors. Proposals received after the stated time for filing will be returned to the bidders unopened. Faxed bids will not be accepted. Douglas County is not responsible for lost or misdirected bids, whether lost or misdirected by the postal or courier service of the bidder or the Douglas County mail room.

102.13 WITHDRAWING PROPOSALS BEFORE THE LETTING - DELETE item and ADD - A Proposal may be withdrawn after it has been delivered to the Office of the County Clerk, Courthouse, Lawrence, Kansas, by a letter or by written request of the bidder or his authorized representative in person, provided the request is in the hands of the County Clerk or Board of County Commissioners before the stipulated time for the opening of the Proposals.

102.14 REVISING PROPOSALS – DELETE item and ADD -A withdrawn Proposal may be corrected or altered in person by the bidder or his authorized representative and resubmitted before the stipulated time for opening of the Proposals.

Proposals cannot be altered or corrected by wire or letter.

Section 103

AWARD AND EXECUTION OF CONTRACT

103.3 CONTRACT BOND REQUIREMENTS - DELETE item and ADD - The successful bidder before entering into a Contract and within twenty-one (21) days after notice of the award of the Contract, shall execute a Statutory Bond and a Performance and Maintenance Bond in the form prescribed by the County and in the penal sum of the amount of the Contract, with a Surety to be approved by the County. The Statutory Bond and the Performance and Maintenance Bond shall be conditioned upon the faithful performance of the Contract and the payment of all indebtedness incurred for all labor, materials and supplies furnished therefore. The Bonds must be kept in full force for the time required by law and, if longer, during the applicable warranty periods. In the event the Surety or Bonding Company fails or becomes financially insolvent, then the Contractor shall, within five (5) business days of such failure or insolvency, file new and sufficient bonds in the amount designated by the County.

103.4 (a) EXECUTING THE CONTRACT - DELETE this section and ADD - The successful bidder shall furnish satisfactory Bonds, certificate(s) of insurance, and sign the contract within twenty-one (21) days after notice of the award of Contract.

SPECIFICATIONS (Continued)

103.5 FAILING TO EXECUTE THE CONTRACT - DELETE item and ADD - The failure of the successful bidder to execute a Contract and file Contract Bonds within twenty-one (21) days from the date of the notice of the award shall, at the option of the County, be just cause for the annulment of the award and for the forfeiture of the proposal guaranty to the County, not as a penalty but in liquidation damages sustained through delay.

In the event that the County opts to annul the award, the Contract may be reawarded to the next lowest responsible bidder, or Proposals may again be received at some later date.

Section 109

MEASUREMENT AND PAYMENT

109.2 SCOPE OF PAYMENT – ADD the following paragraph 109.2(f)RETAINAGE –: From the grand total of the work completed as estimated by the Engineer, there shall be deducted five (5) percent to be retained by the County as required by KSA 68-521 until full and satisfactory completion of the Contract, Specifications and Contract Documents and the Engineer shall certify the balance to the Commission for payment; except that no amount less than Five Hundred (\$500.00) will be paid unless the total amount of the Contract remaining unpaid is less than Five Hundred Dollars (\$500.00).

109.5 PROGRESS PAYMENTS, DELETE the last sentence of subsection 109.5(a) “Work Accomplished” and replace with the following – “The Engineer may withhold from progress payments, liquidated damages, reimbursement for remedial work under subsection 105.5f., excess costs for breach of contract, final cleanup work expenses, five (5) percent contract retainage as required by KSA 68-521, and other deducts the Contract Documents specify. Douglas County will make one progress payment per month.

DOUGLAS COUNTY, KANSAS
PROJECT NO. 2019-20
BID # 19-F-0017
PROPOSAL

TO THE BOARD OF COUNTY COMMISSIONERS OF
DOUGLAS COUNTY, KANSAS
COURTHOUSE
LAWRENCE, KANSAS 66044

1. Proposal of Hamm, Inc. for the performance of "Douglas County Project No. 2019-20", in Douglas County, Kansas, by the construction of the work as described in the specifications and contract documents for the above mentioned project as set forth in the "Schedule of Prices".
2. The undersigned agrees to execute a contract for the proposed work within twenty-one (21) days after notice of the award of the Contract and to complete the work, if the proposal is accepted, within Twenty (20) working days. The earliest anticipated date for the "Notice to Proceed" is August 19, 2019. The latest anticipated date for the "Notice to Proceed" is September 30, 2019.
3. In conformity with Article 108.8 of the Specifications, the liquidated damages for this Contract shall be as stated in TABLE OF LIQUIDATED DAMAGES.
4. In submitting this bid, the undersigned declares that he is the only person interested in said bid; that is made without any connection with any person or persons making another bid for the same Contract; that is in all respects fair and without collusion, fraud or misrepresentation.
5. The undersigned further declares that he has carefully examined the specifications, form of contract, and special provisions, and that he has inspected the actual location of the work, together with the local sources of supplies, and has satisfied himself as to all quantities and conditions, and understands that in signing this proposal he waives all right to plead any misunderstanding regarding the same.
6. The undersigned acknowledges receipt of the following Addenda:

Addendum No.

Dated

Hamm, Inc.
Name of Organization

By:

[Signature]
President

DOUGLAS COUNTY, KANSAS
PROJECT NO. 2019-20
BID # 19-F-0017
SCHEDULE OF PRICES

<u>LINE ITEM NO.</u>	<u>ROAD ITEMS</u>	<u>UNIT</u>	<u>QUANTITY</u>	<u>UNIT COST</u>	<u>AMOUNT</u>
1	MOBILIZATION	L.S.	1	13,670.15	13,670.15
2	CONTRACTOR CONSTRUCTION STAKING	L.S.	1	5,350.00	5,350.00
3	UNCLASSIFIED EXCAVATION	C.Y.	607	34.98	21,232.86
4	COMPACTION OF EARTHWORK (TYPE B, MR-90)	C.Y.	65	2.70	175.50
5	COMPACTION OF EARTHWORK (TYPE AA, MR-3-3)	C.Y.	138	3.30	455.40
6	CROSS ROAD PIPE (18") (RCP)	L.F.	80	69.40	5,552.00
7	END SECTION (18") (RC)	EA.	1	712.38	712.38
8	GRATED AREA INLET (HS-20 WHEEL LOADING)	EA.	1	4,189.54	4,189.54
9	FLOWABLE FILL (LOW STRENGTH)	C.Y.	12	250.50	3,006.00
10	MILLING (2")	S.Y.	256	15.00	3,840.00
11	HMA-COMMERCIAL GRADE (CLASS A) (SM-12.5A) (PG 76-28) (SURFACE) (2")	TON	109	115.00	12,535.00
12	HMA-COMMERCIAL GRADE (CLASS A) (SM-12.5A) (PG 76-28) (BASE) (8")	TON	347	115.00	39,905.00
13	AGGREGATE BASE (AB-3) (6")	S.Y.	829	7.35	6,093.15
14	WATER (AGGREGATE BASE) (SET PRICE)	MGAL	1	\$35.00	\$35.00
15	TRIAX GEOGRID (TX-160)	S.Y.	829	12.00	9,948.00
16	AGGREGATE SURFACING (AB-3) (6")	TON	19	40.67	772.73
17	AGGREGATE SHOULDERING (AB-3)	TON	16	62.26	996.16
18	EROSION CONTROL MAT (CLASS 2, TYPE F)	S.Y.	934	5.50	5,137.00
19	SEDIMENT REMOVAL (SET PRICE)	C.Y.	1	\$35.00	\$35.00
20	SWPPP INSPECTION	EA.	6	450.00	2,700.00

DOUGLAS COUNTY, KANSAS
PROJECT NO. 2019-20
BID # 19-F-0017
SCHEDULE OF PRICES

21	MONUMENT BOX (LID ONLY)	EA.	1	1,001.91	1,001.91
22	MAINTENANCE AND RESTORATION OF HAUL ROADS (SET PRICE)	L.S.	1	\$2000.00	\$2000.00
23	TEMP. FERTILIZER, SEED, AND MULCH	AC	0.2	2,000.00	400.00
24	PERM. FERTILIZER, SEED, AND MULCH	AC	0.2	5,000.00	1,000.00
25	TRAFFIC CONTROL	L.S.	1	7,500.00	7,500.00

NOTE: Bidder shall extend all items and total bid.

TOTAL BID \$148,242.78

CONTRACTOR Hamm, Inc.



DOUGLAS COUNTY, KANSAS
PROJECT NO. 2019-20
BID # 19-F-0017

CONTRACT

THIS CONTRACT, made and entered into this 24th day of July, 2019, by and between the BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS, Party of the First Part, hereinafter referred to as the COUNTY, and Hamm Inc., Party of the Second Part, hereinafter referred to as the CONTRACTOR.

WITNESSETH:

Article 1: It is hereby mutually agreed, that for and in consideration of the sum or sums to be paid the Contractor by the County as set forth in the General Clauses, the said Contractor shall furnish all labor, equipment, accessories and materials (except materials salvaged or otherwise furnished as specified) and shall perform all work necessary to construct and complete the improvements in a good, substantial and workmanlike manner, ready for use, and in strict accordance with the Specifications and Contract Drawings as approved and filed pursuant to law in the Office of the County Clerk of Douglas County, Kansas.

Article 2: It is hereby further agreed, that, in consideration of the faithful performance of the work by the Contractor, the County shall pay the Contractor the sum or sums due him by reason of said faithful performance of the work, at stated intervals and in amounts certified by the Engineer, in accordance with the Specifications and Contract Documents, and set forth in the Proposal as accepted by the County, subject to compliance with K.S.A 68, Article 11.

Article 3: It is hereby further agreed that Contractor will, for a period of twelve (12) months following the County's acceptance of the Contractor's work, at the request of County, correct any defects in the work due to faulty or defective materials or workmanship, without additional cost to the County; provided that neither final payment by the County nor the acceptance of the Contractor's work shall relieve Contractor, or its surety under the Performance and Maintenance Bond, from such obligation to cure any such defects.

Article 4: It is hereby further agreed that, at the completion of the work, and its acceptance by the County, all sums due the Contractor by reason of his faithful completion of the work, taking into consideration additions to or deductions from the contract price by reasons of alterations or modifications of the original contract or by reasons of "Force Account" work authorized under the Contract in accordance with the provisions of the General Clauses, will be paid the Contractor by the County within sixty (60) days after said completion and acceptance.

Article 5: It is hereby further agreed, that the "he" or "him" wherever used herein as referring to the Contractor shall be deemed to referring to the Contractor, his-her-theirs heirs, executors, administrators, successors, or assigns.

DOUGLAS COUNTY, KANSAS
PROJECT NO. 2019-20
BID # 19-F-0017

CONTRACT (continued)

Article 6: It is hereby further agreed that any reference herein to the "Contract Documents" shall include all "Contract Documents" as specifically set out in the Specifications and are hereby made a part of this Contract as fully as if set out in length herein.

IN WITNESS WHEREOF, the Party of the First Part and Party of the Second Part, respectively, have caused this agreement to be duly executed the day and year first hereinwritten, in quadruplicate, all copies of which to all intents and purposes shall be considered as the original.

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF
DOUGLAS COUNTY, KANSAS

County Clerk

Chairman

Date

Commissioner

Commissioner

Approved as to Legality:

Douglas County Counselor

Name of Organization

Date

By: _____

Title of Signature

BOND NO. _____

DOUGLAS COUNTY, KANSAS
PROJECT NO. 2019-20
BID # 19-F-0017

STATUTORY (PAYMENT) BOND

KNOW ALL MEN BY THESE PRESENTS THAT:

We, _____, as Principal, and _____, a surety company duly authorized to do business in the State of Kansas, as Surety, are held and firmly bound unto the State of Kansas in the penal sum of _____ Dollars (\$_____) (the current amount of the contract price between Principal and Owner) lawful money of the United States of America, for the payment of which sum well and truly to be made, bind ourselves and our respective heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT, WHEREAS, the Principal has on the _____ day of _____, 20____, entered into a written Agreement with the Board of County Commissioners of Douglas County, Kansas, hereinafter called the Owner, for furnishing labor, equipment, material, and supplies used or consumed in connection with the installation, construction of, or in making such improvements, equipment, and services described in said Agreement, all in accordance with the plans, specifications and other Contract Documents described therein and as supplemented and otherwise changed during the project (the "Undertaking"). The Agreement (including but not limited to the plans, specifications and other Contract Documents) is by reference made a part hereof, and is hereinafter called the Contract.

NOW, THEREFORE, if the Principal or any Subcontractor or Subcontractors of the Principal shall pay all indebtedness incurred for the Undertaking as required under the Contract, then this obligation shall become null and void; otherwise, it shall remain in full force and effect. If the Principal or any Subcontractor or Subcontractors of the Principal fails to duly pay all indebtedness incurred for the Undertaking as required under the Contract, then the Surety shall pay the same in any amount not exceeding the amount of this obligation, together with any interest and attorneys' fees as provided by law.

PROVIDED, FURTHER, that the Surety hereby stipulates and agrees, for value received, that no change, extension of time, modification, supplement, alteration or addition to the undertakings, covenants, terms or conditions of the Contract or the Undertaking, shall in any way affect its obligations on this bond. The Surety does hereby waive notice of any change, extension of time, modification, supplement, alteration or addition to the terms or conditions of the Contract or Undertaking. The Surety stipulates and agrees that the penal sum of this bond shall be automatically increased or decreased by any change order(s) to the Contract as approved by the Owner.

Nonpayment of the bond premium will not invalidate this bond nor shall the Owner be obligated for the payment of any bond premium.

The Surety and Principal agree that any persons interested shall have a direct right of action hereunder against the Principal and Surety.

IN WITNESS WHEREOF, the Principal and Surety have caused this bond to be duly signed this ____ day of _____, 20__.

Principal

By _____

(Official Title)

Surety Company

By: _____
(Attorney-In-Fact)

By: _____
(Kansas Agent)

(A certified copy of the Attorney-in-Fact's Power of Attorney from the Surety, to include the date and amount of the bond, must be attached to this bond).

BOND NO. _____

DOUGLAS COUNTY, KANSAS

PROJECT NO. 2019-20

BID # 19-F-0017

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS THAT:

We, _____, as Principal, and _____, a surety company duly authorized to do business in the State of Kansas, as Surety, are held and firmly bound unto the Board of County Commissioners of Douglas County, Kansas, as Obligee, in the penal sum of _____ Dollars (\$_____) (the current amount of the contract price between Principal and Obligee), lawful money of the United States of America, for the payment of which sum well and truly to be made, bind ourselves, and our respective heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT, WHEREAS, the Principal has, on _____, 20____, entered into a written Agreement with the Obligee for furnishing labor, equipment, material, and supplies in connection with the installation, construction of or in making such improvements, equipment, and services described in said Agreement, all in accordance with the plans, specifications and other Contract Documents described therein and as supplemented and otherwise changed during the project. The Agreement (including but not limited to the plans, specifications and other Contract Documents) is by reference made a part hereof, and is hereinafter called the Contract.

NOW, THEREFORE, if the Principal shall and will, in all particulars, well, duly and faithfully observe, perform and abide by each and every covenant, condition, obligation and part of the Contract, according to the true intent and meaning in each case, and hold the Obligee harmless against all claims, loss or damage which it may sustain or suffer by reason of any breach of said Contract by said Principal or by reason of any injury to persons or property occasioned by the action of said Principal or its employees, and if said Principal maintains the improvement, equipment, and service as provided for in said Contract and make good all defects in materials and workmanship as required under the Contract, then this obligation shall be and become null and void; otherwise, it shall remain in full force and effect. Whenever the Principal is, and is declared by the Obligee to be, in default under the Contract, the Surety shall remedy the default at its expense by promptly (a) completing the Contract in accordance with its terms and conditions, through its agents or independent contractors; or (b) obtaining a bid or bids for completing the Contract in accordance with its terms and conditions, and, upon determination by the Obligee of the lowest and best bid, arrange for an agreement between such bidder and the Obligee, secured by payment and performance bonds, and pay to Obligee the final cost of such agreements less the balance of the Contract Price, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof as the same may be increased by change order(s) to the Contract as approved by the Obligee; or (c) work out such other arrangements as are accepted by Obligee in writing. The term "balance of the Contract Price," as used herein, shall mean the total amount payable by the Obligee to the Principal under the Contract, and any amendments thereto, less the amount paid by the Obligee to the Principal.

PROVIDED, FURTHER, that the Surety hereby stipulates and agrees, for value received, that no change, extension of time, modification, supplement, alteration or addition to the undertakings, covenants, terms or conditions of the Contract or the Undertaking, shall in any way affect its obligations on this bond. The Surety does hereby waive notice of any change, extension of time, modification, supplement, alteration or addition to the terms or conditions of the Contract or Undertaking. The Surety stipulates and agrees that the penal sum of this bond shall be automatically increased or decreased by any change order(s) to the Contract as approved by the Obligee. Principal and Surety further stipulate and agree that acceptance, approval or certification of completion of work under the Contract and/or payment (final or otherwise) by Obligee shall not relieve the Principal or Surety from any liability for any failure to fully perform the Contract or any other obligation on this bond.

Nonpayment of the bond premium will not invalidate this bond nor shall the Obligee be obligated for the payment of any bond premium.

IN WITNESS WHEREOF, the Principal and Surety have caused this bond to be duly signed this ____ day of _____, 20 ____.

Principal

By _____

(Official Title)

Surety Company

By: _____
(Attorney-In-Fact)

By: _____
(Kansas Agent)

(A certified copy of the Attorney-in-Fact's Power of Attorney from the Surety, to include the date and amount of the bond, must be attached to this bond).

Sufficiency of the Bond Approved by:

Chairperson of Board of County Commissioners

Date: _____

Attest:

County Clerk

Date: _____

Form and Amount of Bond Approved By:

County Counselor

Date: _____

NOTE:

1. Date of bond must not be prior to date of Agreement.
2. If Principal is a partnership, all partners should execute bond.
3. Surety companies executing bonds must appear on the U.S. Department of the Treasury's most current listing of approved sureties (Department Circular 570, as amended), and be authorized to transact business in the State of Kansas.
4. Accompany this bond with Attorney-in-Fact's authority from the Surety certified to include the date of the bond.

SPECIAL PROVISIONS
TO THE
STANDARD SPECIFICATIONS
EDITION OF 2015

NOTE: Whenever this special provision conflicts with the Plans, Supplemental Specifications or Standard Specifications, this Special Provision shall govern.

SALES TAX EXEMPTION

In accordance with the provisions of K.S.A. 79-3606 (b), this Douglas County Project qualifies for Sales Tax Exemption. A sales tax exemption certificate number will be furnished to the Contractor following award of the Contract. The Contractor shall furnish to the Engineer copies of invoices on all materials incorporated in this project.

SPECIAL PROVISIONS
TO THE
STANDARD SPECIFICATIONS
EDITION OF 2015

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DOUGLAS COUNTY
CONTRACTUAL PROVISIONS ATTACHMENT

- (a) Terms Herein Controlling Provisions: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting position in any other document relating to and a part of the contract in which this attachment is incorporated. As used herein, the term "Douglas County" shall refer to Douglas County and any of its agencies, offices, and departments entering into the contract.
- (b) Agreement With Kansas Law: All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
- (c) Termination Due to Lack of Funding Appropriation: If, in the judgment of the County Administrator, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, Douglas County may terminate this agreement at the end of its current fiscal year. Douglas County agrees to give written notice of termination to vendor/contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in the contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Vendor/contractor shall have the right, at the end of such fiscal year, to take possession of any unpaid equipment provided Douglas County under the contract. Douglas County will pay to the vendor/contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination, of the agreement by Douglas County, title to any such unpaid equipment shall revert to vendor/contractor at the end of Douglas County's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to Douglas County or the vendor/contractor.
- (d) Disclaimer of Liability: Douglas County shall not hold harmless or indemnify any vendor/contractor beyond that liability under the Kansas Tort Claims Act (K.S.A 75-6101 et seq.).
- (e) Arbitration, Payment Due, Interest, Warranties: Notwithstanding any language to the contrary, no interpretation shall be allowed to find Douglas County has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency.

Payment from Douglas County to vendor/contractor shall not be due sooner than 30 days after the delivery of an invoice from vendor/contractor to Douglas County. Further, Douglas County does not agree to pay attorney fees or late payment charges beyond those available under K.S.A. 16-201, and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

- (f) Representative's Authority To Contract: By signing this contract, the representative of the vendor/contractor hereby represents that such person is duly authorized by the vendor/contractor to execute this contract on behalf of the vendor/contractor and that the vendor/contractor agrees to be bound by the provisions thereof.
- (g) Responsibility For Taxes: Douglas County shall not be responsible for, nor indemnify vendor/contractor for, any federal, state, or local taxes which may be imposed or levied upon the subject matter of this contract.
- (h) Anti-Discrimination Clause: The vendor/contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the vendor/contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by Douglas County; (f) if it is determined that the vendor/contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part by Douglas County.

Parties to this contract understand that the provisions of this paragraph (h) (with the exception of those provisions relating to the ADA) are not applicable to a vendor/contractor who employs fewer than four employees during the term of such contract or whose contracts with Douglas County cumulatively total \$5,000 or less during the fiscal year of Douglas County.

SPECIAL PROVISIONS
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STANDARD SPECIFICATIONS
EDITION OF 2015

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GENERAL DESCRIPTION:

Douglas County Project 2019-20 consists of installing a grated area inlet, RCP outlet pipe with end section, grading, aggregate base, Geogrid placement, HMA base & surface asphalt, milling, erosion control blanket, temporary erosion control, seeding, aggregate shouldering, aggregate surfacing, and Traffic Control.

Douglas County Project 2019-20 is located at the intersection of N1200 and E2200 Roads 1 mile south of Eudora, Kansas.

SPECIAL PROVISIONS
TO THE
STANDARD SPECIFICATIONS
EDITION OF 2015

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PLANS: The following plans accompany and supplement the Specifications:

<u>Sheet No.</u>	<u>Sheet Title</u>
1	COVER SHEET
2	GENERAL NOTES AND QUANTITIES
3	TYPICAL SECTION AND MISC. DETAILS
4	GENERAL LAYOUT AND SURVEY CONTROL
5	ROAD PLAN AND PROFILE
6	PIPE PLAN AND PROFILE
7	INTERSECTION GEOMETRY
8	RCP END SECTION DETAILS
9	EROSION CONTROL MAT DETAILS
10	PERMENANT SEEDING
11-14	TEMPORARY EROSION AND POLLUTION CONTROL
15	ROUTE 1061 CROSS SECTIONS
16	N1200 ROAD CROSS SECTIONS
17-18	TRAFFIC CONTROL PLANS
19	PAVEMENT MARKING AND PERMANENT SIGN PLAN

SPECIAL PROVISIONS
TO THE
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EDITION OF 2015

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ENGINEER:

For the performance of work under this Contract, Douglas County, Kansas will perform the duties of the Engineer, as defined in the Specifications and hereinafter is referred to as the Engineer.

SPECIAL PROVISIONS
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STANDARD SPECIFICATIONS
EDITION OF 2015

NOTE: Whenever this special provision conflicts with the Plans, Supplemental Specifications or Standard Specifications, this Special Provision shall govern.

OPERATIONS OF OTHERS:

The right is reserved by the County to have other work performed by other Contractors and to permit public utility companies and others to do work during the construction of and within the limits of or adjacent to the Project. The Contractor shall conduct his operations and cooperate with such other parties so that interference with such other work will be reduced to a minimum. The Contractor shall agree, and hereby does agree, to make no claims against the County for additional compensation due to delays or other conditions created by the operations of other such parties. Should a difference of opinion arise as to the rights of the Contractor and others working within the limits of or adjacent to the Project, the Engineer will decide as to the respective rights of the various parties involved in order to assure the completion of the work in general harmony and in a satisfactory manner and his decision shall be final and binding upon the Contractor.

To expedite the completion of the over-all Project, it will be necessary for the work under this Contract to be coordinated with the construction under other contracts and by others. As far as possible, each Contractor shall so plan and conduct his operations and dispose of his materials as not to interfere with the operations of or damage the work of others engaged upon the construction of the overall Project. The Contractor shall perform his work in proper sequence with relation to that of the other Contractors and as the Engineer may direct. Each Contractor starting work while construction under other Contracts is in progress within the limits of the Project shall begin his work at certain locations which the Engineer may designate or approve and thereafter shall prosecute the work at such locations and in such order as the Engineer may from time to time prescribe or approve.

SPECIAL PROVISIONS
TO THE
STANDARD SPECIFICATIONS
EDITION OF 2015

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INSPECTION:

The Contractor shall furnish access to all parts of the Project for inspection by the Engineer or authorized representative of the Engineer. The Contractor shall notify the Engineer twenty-four (24) hours in advance of beginning work which requires inspection.

SPECIAL PROVISIONS
TO THE
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EDITION OF 2015

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RIGHT-OF-WAY:

The right-of-way will be available for use by the Contractor for access roads and storage space; provided that such use does not interfere with the permanent construction of the overall Project under this or any other contract and shall be subject to similar use by other Contractors working on various parts of the Project. Such use shall not impair the safety of the traveling public. Right-of-way shall be restored by the Contractor to its original condition before final payment will be made.

SPECIAL PROVISIONS
TO THE
STANDARD SPECIFICATIONS
EDITION OF 2015

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SPECIFICATIONS:

The bidder and/or Contractor(s) are required to furnish their own copies of the Standard Specifications for State Road and Bridge Construction of the Kansas Department of Transportation, Edition of 2015.

<http://www.ksdot.org/bureaus/burConsMain/specprov/2015specprov.asp>

SPECIAL PROVISIONS
TO THE
STANDARD SPECIFICATIONS
EDITION OF 2015

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INDEMNITY PROVISION:

The Contractor hereby agrees to indemnify and hold harmless the County for any liability resulting from the injury or death of any person, including Contractor's employees, arising from unsafe conditions at the work site. "Unsafe" shall mean a failure by the Contractor to adhere to any applicable federal, state or local government standards established to protect the health, safety and welfare of the Contractor's employee, other persons at the work site, and the public in general.

SPECIAL PROVISIONS
TO THE
STANDARD SPECIFICATIONS
EDITION OF 2015

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SECTION 804
MAINTENANCE AND RESTORATION
OF HAUL ROADS

SUBSECTION 804.1, DESCRIPTION, Page 800-11, Delete the second paragraph and replace with the following:

For the purpose of this specification and when the bid item is included in the contract items, a haul road is any public road in Kansas, excluding State highways, over which 2,000 tons or more material is hauled for the construction of the project. Such material includes both commercial delivery and Contractor production.

(Note: The following sentence has been deleted from Subsection 804.1: "The most direct route to the nearest state highway that is used for hauling commercial material into or from a commercially established plant site is not designated as part of the haul road. Roads into and from quarries are not designated as part of the haul road.")

SUBSECTION 804.4, MEASUREMENT AND PAYMENT, Page 800-11, Delete the first paragraph and replace with the following:

If the Contractor is obligated to perform maintenance and restoration as stated within Section 804, with exception of dust control, the Engineer will Measure and Pay "Maintenance and Restoration of Haul Roads (Set)" as a lump sum.

Labor, Equipment, Materials and incidentals necessary to reduce dust on active haul roads including return routes, in pits and staging areas, and on the project will not be measured directly but shall be considered subsidiary to other items in the contract.

SPECIAL PROVISIONS
TO THE
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EDITION OF 2015

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PRICE ADJUSTMENT FOR ASPHALT MATERIALS

Prices quoted for asphalt material (HMA – Commercial Grade (Class A)) will be based on the Computed Monthly Asphalt Material Index as listed @ <http://www.ksdot.org/burconsmain/ppreq/AsphaltPriceIndex.asp>. Hot mix asphalt provided/placed will be adjusted in subsequent months \$0.50/ton for each \$10.00 increase/decrease in the Computed Monthly Asphalt Material Index, based on the initial price index shown for June, 2019 (505).

The adjusted unit cost will apply until all work is complete. If contract time expires, no additional increases will be allowed, but if the asphalt price decreases during this time the revised unit costs will reflect this change.

Example:

Change in Price of Asphalt Oil/Ton	Adjustment in the Bid Price of Asphalt Mat'l
\$0.00 - \$9.99	\$0.00
\$10.00 - \$19.99	\$0.50
\$20.00 - \$29.99	\$1.00
\$30.00 - \$39.99	\$1.50

SECTION 305

AGGREGATE BASE AND AGGREGATE SHOULDERS

305.1 DESCRIPTION

Construct aggregate base and aggregate shoulders on prepared subgrade as shown in the Contract Documents.

BID ITEMS

Aggregate Base (*)(**)
Aggregate Shoulder (*)(**)
Calcium Chloride
Water (Aggregate Base) (Set Price)
Water (Aggregate Shoulders) (Set Price)
*Type of Aggregate
**Thickness

UNITS

Square Yard
Square Yard
Ton
M Gallon
M Gallon

305.2 MATERIALS

Provide materials that comply with the applicable requirements.

Aggregate for Aggregate Base	DIVISION 1100
Aggregate for Shoulder	DIVISION 1100
Calcium Chloride	DIVISION 1700
Water for Aggregate Base and Aggregate Shoulder	DIVISION 2400

305.3 CONSTRUCTION REQUIREMENTS

a. Subgrade Preparation. Unless other subgrade preparation is included in the Contract Documents, water, scarify, blade and compact the roadway and shoulder subgrade to obtain the lines and grades shown in the Contract Documents. Remove all vegetation before shaping and rolling. Remove and dispose of any excess material. If additional embankment material is needed, obtain the material from locations shown in the Contract Documents or as directed by the Engineer.

Excavate the subgrade as shown in the Contract Documents. If existing pavements or bridges are encountered, excavate the subgrade at all control points to a depth that will allow placement of the required thickness, flush with the existing surface. Use a transition (from normal to special section) of sufficient length to prevent an abrupt or noticeable change in grade. Remove and dispose of the excavated subgrade. Compact the excavated areas to a depth of 6 inches, according to the Contract Documents. When subgrade compaction is not specified in the Contract Documents, compact the excavated areas to a depth of 6 inches, according to Type B, MR-90, **SECTION 205**.

b. Mixing. The mixing methods are:

- Central Plant Method. Use a stationary mechanical mixing plant to uniformly mix the water and aggregate.
- Road Mix Method. After the aggregate is placed in a uniform windrow, use a motor grader, or other equipment approved by the Engineer, to uniformly mix the water and the aggregate.

Mix the aggregate with sufficient water to allow compaction of the mixture to the specified density. If the aggregate is predominantly limestone, use the central plant. Use a central plant or road mix method to mix types of granular aggregate other than limestone, or to mix any type of aggregate if the original contract quantity is less than 15,000 square yards.

When shown in the Contract Documents, mix calcium chloride with the aggregate at the specified rate. Add the calcium chloride (in solution, flakes, pellets or granular) at the same time the water is mixed with the aggregate.

c. Placing, Compacting and Finishing. Immediately after mixing the aggregate and water, use an aggregate spreader to place the mixture full-lane or full-shoulder width. Do not place the mixed material on the prepared subgrade when conditions are such that the hauling and placing will damage the prepared subgrade. Do not dump or mix the aggregate on any paved surface.

The maximum compacted thickness of any layer of aggregate base or shoulder is 6 inches. If the thickness is greater than 6 inches, spread and compact the aggregate base in multiple lifts of equal thickness with a maximum lift thickness of 6 inches. The maximum compacted thickness of any layer may be increased to 8 inches when vibrating compaction equipment or other compaction equipment is approved by the Engineer. On aggregate course projects without shoulders, construct all lifts, regardless of thickness, with an edge slope of 1:1 or flatter. If the aggregate base or shoulder is constructed in more than 1 layer, allow sufficient time for the initial layer to cure to prevent any rutting or surface distortion from equipment being used to place the succeeding layers.

Spread and compact the aggregate base or shoulders as specified in the Contract Documents. Compact the aggregate base to a minimum uniform density of 95% of the standard density. Compact the aggregate shoulders until no further consolidation is gained by additional blading and rolling. The Engineer will visually verify compaction of the aggregate shoulders.

After compacting the aggregate base, trim the surface to the specified lines and grades. On projects having more than 20,000 square yards of aggregate base, use automatic grade controlled equipment to trim the compacted aggregate base. In irregular areas, trim the aggregate base by wetting, blading and rolling. Compact the trimmed surface of the aggregate base with a smooth-wheel or a pneumatic-tire roller. When necessary, lightly scarify and blade the surface to eliminate equipment imprints while performing final rolling.

d. Curing and Maintenance of Aggregate Base. Cure the compacted layer to develop sufficient stability to resist wheel truck rutting before vehicular hauling or heavy equipment is permitted on the base. When Contract Documents call for a PGAB or cutback asphalt prime coat on the aggregate base, cure the compacted layer to maximum moisture content of 60% of optimum moisture content for AB-1, AB-2, & AB-4 and 70% for AB-3, prior to the construction of the Asphalt Prime Coat. The Engineer will perform testing to determine when the cure of the aggregate base is complete. The Engineer may require that the surface of the aggregate base be kept moist during the curing period to prevent loss of surface material.

Do not apply surfacing until the aggregate base is cured. Maintain the base until the surfacing is applied.

e. Shoulders, Entrances and Side Roads. When shoulder construction is not included in the Contract Documents, re-construct, compact and shape the existing shoulder from the top of the completed aggregate base to the shoulder line. Shape the shoulders to provide a uniform shoulder line.

Raise the grade of entrances and side roads to meet the edge of the completed aggregate base. Construct, compact and shape the entrances and side roads full width with shoulders and shoulder radii adjacent to the shoulders of the roadway.

Obtain additional embankment material for shoulders, entrances and side roads from adjacent slopes and ditches. Dispose of excess material from shoulders, entrances and side roads on adjacent backslopes.

305.4 MEASUREMENT AND PAYMENT

The Engineer will measure aggregate base and aggregate shoulder by the square yard.

The Engineer will measure the water used on the finished surface during the curing period by the M Gallon using calibrated tanks or distributors. The Engineer will not measure water in the mixture. This shall be subsidiary to Aggregate Base. The Engineer will not measure water used for subgrade preparation or construction of earthen shoulders, entrances and side roads. The Engineer will not measure water used for dust control or water wasted through the Contractor's negligence.

The Engineer will measure Grade 2 calcium chloride (concentrated calcium chloride or equivalent) used in the mixture by the ton. If Grade 1 calcium chloride (regular) is used, 1.2 tons of Grade 1 is the equivalent of 1 ton of Grade 2. The Engineer will not measure the wedges at the pavement edge.

Payment for "Aggregate Base", "Aggregate Shoulders" and "Calcium Chloride" at the contract unit prices and "Water (Aggregate Base) (Set Price)" and "Water (Aggregate Shoulders) (Set Price)" at the contract set unit prices is full compensation for the specified work.

SPECIAL PROVISIONS
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STANDARD SPECIFICATIONS
EDITION OF 2015

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SECTION 611

HOT MIX ASPHALT (HMA) – COMMERCIAL GRADE

SUBSECTION 611.1 DESCRIPTION, Add the following Bid Items:

<u>BID ITEMS</u>	<u>UNIT</u>
HMA – COMMERCIAL GRADE (CLASS A) (SM-12.5A) (SURFACE)	TON
HMA – COMMERCIAL GRADE (CLASS A) (SM-12.5A) (BASE)	TON

SUBSECTION 611.2 MATERIALS,

b. Asphalt. ADD- Provide Emulsified Asphalt (SS-1HP) for tack.

Provide asphalt for tack (SS-1HP) as approved by the Engineer.

Tack oil shall be placed at a rate of 0.08-0.10 gal/SY on milled surfaces and 0.05-0.07 gals/SY on un-milled surfaces, or as directed by the Engineer.

c. Mix Design.

(1) Table 611-1,

NO RAP or RAS will be permitted in the mix design.

Change the Binder requirement to PG 76-28

Delete note (1) shown below table 611-1.

**d. Process Control. Replace – “KDOT” with “Douglas County” and
“Contractor’s lab” with “Douglas County’s lab”**

KDOT will perform tests at the Contractor’s lab or at a location agreed to by the Engineer and Contractor.

Replace - “24 hours” with “48 hours”.

Testing will be completed and the results reported to the Contractor within 24 hours.

SUBSECTION 611.3 CONSTRUCTION REQUIREMENTS, (a) General, Add the following:

When placing HMA – Commercial Grade (Class A) (Surface), remix the material transferred from the hauling unit, prior to placement, utilizing a Material Transfer Device, as described in Division 155.5. If, in the opinion of the Engineer, the Material Transfer Device may damage the base asphalt the Material Transfer Device may not be used. A Material Transfer Device is not required when placing HMA for side roads and entrances, or as directed by the Engineer. Paver hopper inserts shall be required when using a Material Transfer Device.

If the Engineer removes the Material Transfer Device and/or Paver Hopper Insert:

Do not raise (dump) the wings of the paver receiving hopper at any time during the paving operation. The Engineer may waive this requirement if it is determined that raising (dumping) the wings will not produce detrimental segregation. If segregation or irregularities in the pavement surface or density are noted, review the plant, hauling and paving operations and take corrective action.

Spread the HMA and finish to the specified crown and grade using an automatically controlled HMA paver. Operate the paver at a speed which shall provide a uniform rate of placement without undue interruption. At all times, keep the paver hopper sufficiently full to prevent non-uniform flow of the HMA to the augers and screed.

Achieve grade control by use of 1 or more of the following grade reference devices. Approval of any of these devices will be based upon satisfactory performance.

- (a) Traveling Stringline. Attach a traveling stringline or ski type attachment, a minimum length of 30 feet, to the paver and operate parallel with its line of travel.
- (b) Reference Shoe. Attach a short reference shoe or joint matching device to the paver for control in matching surface grades along longitudinal joints of a newly placed mat.
- (c) Erect Stringline. Use an erected stringline consisting of a tightly stretched wire or string offset from and parallel to the pavement edge on 1 or both sides. Erect the stringline parallel to the established pavement surface grade and support at intervals as necessary to maintain the established grade and alignment.
- (d) Stringless Paving. Control line, grade and pavement cross-section as shown in the Contract Documents. Use electronic guidance systems that meet the requirements and tolerances listed in **SECTION 802**. Horizontal control is guided by GPS. Vertical control is guided by Total Stations. GPS will not be allowed for Vertical control.

c. Pavement Smoothness. No Pavement Smoothness will be required.

**KANSAS DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION TO THE
STANDARD SPECIFICATIONS, 2015 EDITION**

SECTION 901

STORMWATER POLLUTION MANAGEMENT

901.1 DESCRIPTION

Design, implement, inspect and maintain appropriate best management practices to minimize or eliminate erosion, sediment and other pollutants in stormwater runoff from the project.

BID ITEMS

SWPPP Design

SWPPP Inspection

Water Pollution Control Manager

Stormwater Compliance Disincentive Assessment

UNITS

Lump Sum

Each

Each

Lump Sum

901.2 MATERIALS

None Required.

901.3 CONSTRUCTION REQUIREMENTS

a. Permits.

(1) Projects requiring permit coverage:

(a) KDOT with 1.0 acre or more of erodible surface:

KDOT will submit the Notice of Intent (NOI) for authorization to discharge stormwater runoff from construction activities in accordance with the Kansas Water Pollution Control General Permit. This authorization does not cover Contractor plant sites and Contractor-Furnished borrow and waste sites outside the project limits.

The Contractor shall accept full responsibility, coverage, and liability for the permit, along with KDOT. Within 10 business days after notice of the award of contract, or within any time extension the Bureau Chief of Construction and Materials has granted for completion of documents required in the Bidding Proposal Form, complete, sign and return to KDOT the KDHE form "REQUEST FOR JOINT OWNER/OPERATOR" (RJOO). A blank copy of the form is attached. The Secretary will not sign the contract until the Contractor has returned the completed, signed RJOO. If the Contractor fails to complete, sign, and return the RJOO within the required time, the Secretary will cancel the award of contract as provided in **SECTION 103**. KDOT will submit the completed form to KDHE for authorization. After approved by KDHE, copies will be distributed to KDOT and the Contractor.

(b) Local Public Authority with 1.0 acre or more of erodible surface:

The local governmental agency will submit the Notice of Intent (NOI) for authorization to discharge stormwater runoff from construction activities in accordance with the Kansas Water Pollution Control General Permit. This authorization does not cover Contractor plant sites and Contractor-Furnished borrow and waste sites outside the project limits.

(2) Projects not requiring permit coverage: The Contractor is required to comply with **subsection 901.3b.** and use appropriate Best Management Practices (BMPs) to minimize stormwater pollution.

Select Contractor-furnished borrow or plant sites from which runoff will not significantly impact the same surface waters and stream segments that receive runoff from the project site. Selecting a site which does significantly impact the same surface waters may result in the project requiring permit coverage.

A Storm Water Pollution Prevention Plan (SWPPP) (**subsection 901.3c.**) is not required.

A Water Pollution Control Manager (**subsection 901.3d.**) is not required.

Inspection and Maintenance Reports (**subsection 901.3e.**) are not required.

Stormwater Erosion Control Conferences (**subsection 901.3f.**) are not required.

b. General. When Contractor-furnished borrow or plant sites are outside the project limits, obtain all required permits and clearances required for compliance, **SECTION 107.** Provide copies of all such permits and clearances to the Engineer.

Take all measures necessary to minimize or eliminate erosion, sediment and other pollutants in stormwater runoff from the project and project related borrow areas.

Assume responsibility for inspection and maintenance of all erosion and sediment control measures within the project limits, whether originally implemented by the Contractor, KDOT or a third party. Obtain information regarding the SWPPP and active Best Management Practices (BMPs) from the Area Engineer. Maintenance or removal of BMPs not installed by the Contractor may be considered Extra Work, **SECTION 104,** unless addressed by other items of the contract (e.g. sediment removal).

Install devices to establish a perimeter control of the project in areas where it is anticipated that stormwater runoff will leave the project. Install perimeter control devices prior to or simultaneously with the clearing and grubbing operations. Do not perform grading until perimeter control devices are in place and approved by the Engineer.

Unless requested in writing from the Contractor, and approved in writing by the Engineer, or specified otherwise in the Contract Documents, do not exceed 750,000 square feet of surface area of erodible earth material per equipment spread at one time. The Engineer will limit the surface area of erodible earth material exposed by clearing and grubbing, excavation, borrow (within right-of-way) and embankment operations. Limit the exposed erodible earth material according to the capability and progress, and in keeping with the approved schedule.

Areas will not count toward the 750,000 square feet limit, when the following conditions are met:

For areas that will not be disturbed again due to project phasing:

- Finish grade the completed area;
- Stabilize and maintain stabilization according to **SECTION 902;** and
- Do not disturb the area again without a written request from the Contractor and written approval from the Engineer;

For areas that will be disturbed again due to project phasing:

- Rough grade; and
- Stabilize and maintain stabilization according to **SECTION 902.**

DO NOT clear and grub areas unless meaningful work toward the completion of the project will actively be performed in the exposed area (or portions of the exposed area) within 7 calendar days on exposed steep slope areas (40% or greater) or within 14 calendar days for all other exposed areas.

If areas are cleared and grubbed and not finish graded, not part of project phasing and no meaningful work toward the completion of the project is performed within the exposed area (or portions of the exposed area) for 7 calendar days on exposed steep slope areas (40% or greater) or 14 calendar days for all other exposed areas, stabilize and maintain stabilization of the exposed areas according to **SECTION 902** at no cost to KDOT.

If on-site or state-furnished off-site borrow areas are to be excavated below the ground water elevation, construct a temporary berm around the borrow area to prevent stormwater runoff from entering the excavated area.

Do not ford live streams with construction equipment.

Restrict construction operations in rivers, streams and other water impoundments to those areas that must be entered for the construction of temporary or permanent structures. Only use clean aggregate fill for temporary crossing, work platforms, etc. When no longer required, promptly remove all falsework, piling, temporary crossings and other obstructions caused by the construction.

Do not store equipment or materials (including soil stockpiles) within 50 feet of rivers, streams or other surface waters. Avoid storing equipment or materials (including soil stockpiles) in flowlines of ditches or other drainage courses. Where such storage is necessary, obtain the Area or Metro Engineer's written approval and include in the project SWPPP appropriate best management practices for the storage area.

Immediately initiate placement of appropriate erosion control Best Management Practices (BMPs) in any exposed steep slope areas (40% or greater) where construction activities have permanently or temporarily ceased, and will not resume for a period exceeding 7 calendar days. For vegetative cover areas, in addition to seeding, watering, mulching, and any other required activities related to the planting and establishment of vegetation, utilize other appropriate erosion control practices such as geotextiles or erosion control mats. Divert stormwater flows around steep slopes or install slope drains where feasible.

Immediately initiate temporary stabilization on areas that have been disturbed after construction activities have permanently ceased on that portion of the project site. Immediately initiate temporary stabilization measures on areas that have been disturbed after construction activities have temporarily ceased on that portion of the project site if construction activities will not resume for a period exceeding 14 calendar days. Temporary stabilization may include temporary seeding, geotextiles, mulches or other techniques to reduce or eliminate erosion until either final stabilization can be achieved or until further construction activities take place to re-disturb the area.

Stabilization is initiated when physical work on the project to install stabilizing BMPs has begun. "Immediately" in the context of the above provisions is defined to mean as soon as practicable, but no later than the end of the next work day, following the day when the earth-disturbing activities have temporarily or permanently ceased. Prosecute stabilization work continuously and diligently until completed.

Install and maintain temporary erosion and pollution control devices as shown in the Contract Documents, **SECTION 902**, the SWPPP and as directed by the Engineer.

Provide and implement Best Management Practices (BMPs) that, at a minimum, are designed, installed and maintained to:

- Control stormwater volume and velocity within the site to minimize soil erosion;
- Control stormwater discharges to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points;
- Minimize sediment discharges from the site;
- Provide and maintain natural buffers around Waters of the United States, direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges where feasible;

- Prevent contamination of adjacent streams or other watercourses, lakes, ponds or other areas of water impoundment;
- Coordinate temporary BMPs with the construction of permanent erosion control features to provide continuous erosion control;
- Schedule the construction of drainage structures as soon as practicable; and
- Schedule construction of permanent erosion control features as soon as practicable;

Notify the Engineer in writing within 24 hours of any chemical, sewage or other material spill which is required to be reported to the KDHE under part 10 of the NPDES permit. The notification shall include at a minimum the material spilled, location of the spill, and a description of containment or remediation actions taken. This notice to the Engineer does not relieve the Contractor of responsibility to report to the KDHE or to any other agency.

If temporary erosion and pollution control is not implemented and maintained according to this specification, the approved SWPPP, or the NPDES permit, the Area/Metro Engineer may suspend all or part of the work on the project until conditions are brought into compliance, as determined by the Area/Metro Engineer.

KDOT will not issue the Notice of Acceptance, **SECTION 105**, until all necessary maintenance, corrective actions, removal of unnecessary devices and temporary stabilization is completed for the project. Failure to complete this work within the contract time may result in liquidated damages, **SECTION 108**.

All SWPPP related documentation including the original SWPPP, all revisions/amendments, and inspection reports shall be retained by the Engineer upon Acceptance of the project.

c. SWPPP Design. Before the preconstruction conference, submit to the Field Engineer a minimum of 3 original copies of the SWPPP. No physical work on the project may begin until the Area/Metro Engineer has approved the SWPPP.

Design the SWPPP to comply with the NPDES permit for the project. At a minimum, the submittal shall include:

- A copy of the Project Notice of Intent Form (NOI) for Stormwater Runoff from Construction Activities. (obtained from KDOT);
- A copy of the "Request for Joint Owner/Operator" form signed by the Contractor and the Area/Metro Engineer (if applicable);
- The planned sequence of major construction activities;
- The Contractor's Erosion Control Site Plan or Plans accounting for project phasing;
- Current training certification(s) for the designated WPCM (subsection 901.3d);
- Current training certification(s) for Contractor's Environmental Inspector (subsection 901.3e);
- The SWPPP Contractor Certification Form 246. The Contractor and all subcontractors are required to certify that they understand the terms and conditions of the general NPDES permit. The Engineer will provide the SWPPP Certification Form (Form No. 246), or it can be found on the KDOT Internet;
- An acknowledgement that State and Local requirements have been included in the SWPPP. Review all applicable permits (Corps of Engineers, Department of Agriculture, etc.) for special conditions affecting stormwater pollution control. Include relevant permit documents with the SWPPP;
- A detailed description of Best Management Practices (BMPs) which will be used one or more times at the site for erosion and sediment control. In

addition to the requirements of **subsection 901.3.b**, design, install and maintain BMPs to:

- Minimize the amount of soil exposed during construction activity;
- Minimize the disturbance of steep slopes (slopes of 40% or greater);
- Control discharges from sediment or soil stockpiles;
- Minimize the generation of dust;
- Minimize off-site tracking of soils;
- Provide storm drain inlet protection for inlets down gradient of disturbed project areas not fully stabilized or where construction will soon be started;
- A description of site management BMPs which minimize or eliminate contamination of stormwater runoff. Design, install and maintain such BMPs to:
 - Minimize discharge of pollutants from equipment and vehicle washing;
 - Minimize the exposure of construction waste, trash, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater;
 - Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures;
 - BMPs in this category include but are not limited to:
 - Waste management including trash containers and regular site cleanup for proper disposal of solid waste such as scrap material, product/material shipping waste, food containers and cups;
 - Containers and proper disposal for waste paints, solvents, and cleaning compounds;
 - Portable toilets for proper disposal of sanitary waste;
 - Storage for construction materials away from drainage courses and low areas;
 - Procedures and practices to eliminate the potential to discharge wash and/or rinse waters from concrete mixing equipment including ready-mix concrete trucks.

Update the erosion control site plan as work progresses to show changes due to revisions in work schedules or sequence of construction, or as directed by the Engineer. Update the site map to reflect BMPs that have been installed or removed.

Maintain a complete and updated copy of the project SWPPP on the project site or at the location approved by the Area/Metro Engineer. At a minimum, the complete project SWPPP shall include:

- The approved Contractor's submittal as detailed above;
- KDOT Form 219, Approval of Storm Water Pollution Prevention Plan (SWPPP) completed by the Area or Metro Engineer;
- KDOT Form 248, Checklist for Contractor's Stormwater Pollution Prevention Plan (SWPPP) completed by the Area or Metro Engineer;
- Current training certifications for KDOT, LPA or Consultant inspectors;
- SWPPP Inspection and Maintenance Report Form 247;
- Complete copy of the NPDES permit for the project;
- Reference Contract Documents pertaining to temporary erosion and water pollution control.

d. Water Pollution Control Manager. Designate a Water Pollution Control Manager (WPCM) who shall visit the project during normal work hours on a frequent basis and at least once per week until all physical work is complete and the Engineer issues the Notice of Acceptance or a partial Notice of Acceptance. The required 180-day observation period for pavement markings is not considered to be physical work. The WPCM shall thoroughly review the project and SWPPP documentation during the

weekly site visits to verify the Contractor's compliance with this specification and with the NPDES permit. In addition, the WPCM shall:

- Have the authority to supervise all work performed by the Contractor and subcontractors that involves stormwater requirements or affects stormwater compliance;
- Have the responsibility and authority to order Contractor employees and subcontractors to take appropriate action to comply with stormwater requirements, including requiring any such person to cease or correct a violation of stormwater requirements and to order or recommend such other actions or sanctions as necessary to meet stormwater requirements;
- Be familiar with the Project SWPPP;
- Ensure BMPs are properly installed and maintained as necessary to maintain compliance;
- Be responsible for updating the Project SWPPP and site maps to accurately reflect the BMPs in use on the project;
- Be the point of contact for KDOT regarding stormwater compliance;
- Have completed and maintain current certification in either:
 - KDOT's Environmental Inspector Training (EIT) and Environmental Manager Training (EMT) programs or
 - KDOT's Construction Stormwater (CSW) training.
- Review and sign SWPPP inspection reports within 3 days after receiving such reports, acknowledging awareness of any deficiencies and ensuring the correction of all deficiencies.
- Maintain and monitor an active email account capable of receiving electronic communications including inspection reports, photos and other documents relevant to stormwater compliance.

The WPCM may, when approved by the Engineer, perform SWPPP Inspections according to **subsection 901.3e**.

Immediately notify the Engineer in writing if the designated WPCM is replaced. The replacement WPCM shall comply with the above requirements. The notification shall include training certificates and contact information for the replacement WPCM.

Failure to adequately perform the required duties may result in disqualification of the WPCM in accordance with the procedures outlined in the KDOT Policy and Procedure Manual for The Certified Inspection and Testing Training (CIT) Program.

e. SWPPP Inspections. The Contractor's Environmental Inspector shall have completed either KDOT's Environmental Inspector Training (EIT) or Construction Stormwater (CSW) training and maintain a current certification while performing SWPPP Inspections.

KDOT's Inspector and the Contractor's Environmental Inspector shall perform joint inspections of the project in compliance with the NPDES permit. Continue inspections as required until all physical work is complete and the Engineer issues the Notice of Acceptance or a partial Notice of Acceptance. The required 180-day observation period for pavement markings is not considered to be physical work.

Inspect the entire construction site and all BMPs according to the requirements in part 7.2.10 of the permit.

Complete post-rainfall SWPPP Inspections no later than the end of the next business day following the occurrence of a qualifying rainfall event. Determine the need for a post-rainfall SWPPP Inspection according to the following:

- Determine rainfall totals from local weather station reports of daily rainfall totals or from regularly scheduled on-site rain gauge monitoring.

- Observe and record rainfall totals on each business day at a minimum. Rainfall occurring on non-business days may be collected and measured on the subsequent business day.
- A SWPPP inspection is required whenever a rainfall total of 0.5 inches or greater is recorded for a single observation.
- A SWPPP inspection is required whenever a rainfall total of 0.5 inches or greater is recorded over two consecutive observations if the first is less than 0.5 inches.

Schedule routine SWPPP Inspections such that a minimum of one Inspection (either routine or post-rainfall) is performed within every 14-day period.

Perform additional SWPPP inspections if directed by the Engineer.

Document the SWPPP inspections on KDOT Form 247, (SWPPP Inspection and Maintenance Report). KDOT and Contractor Inspectors shall each sign the report.

Include in the inspection report any maintenance or corrective actions necessary to remedy deficiencies in maintenance, operation, effectiveness, adequacy or coverage extent of all BMPs installed or required to be installed on the project. Deficiencies to be documented include any required maintenance, corrective action, documentation updates, or any other item requiring action necessary to maintain permit compliance.

Remedy any deficiencies noted during a SWPPP Inspection within 7 days of the inspection despite weather conditions that make it difficult (but not impossible) to perform corrections. No additional time shall be granted to remedy deficiencies on the basis of weather unless it is infeasible due to flooding or frozen ground conditions for the Contractor to complete the remedy within the 7 days allowed. No additional time will be granted to remedy deficiencies unless approved by the Douglas County Engineer.

Submit completed copies of KDOT Form 247 to the Area/Metro Engineer and the Contractor's WPCM within 24 hours after an inspection has been made.

The WPCM shall review and sign the report within 3 calendar days of receiving the completed inspection report. The WPCM's signature acknowledges awareness of all reported deficiencies and actions required to be taken within 7 calendar days of the inspection.

The Contractor Inspector's signature acknowledges awareness of all reported deficiencies and actions required to be taken within 7 calendar days of the inspection.

The obligation to conduct formal inspections and complete an associated report does not limit or otherwise modify the Contractor's obligation to monitor and maintain temporary erosion and pollution control devices daily.

Failure to adequately perform the required duties may result in disqualification of the Contractor's Environmental Inspector in accordance with the procedures outlined in

the KDOT Policy and Procedure Manual for The Certified Inspection and Testing Training (CIT) Program.

f. Stormwater Erosion Control Conferences. Each project shall have a stormwater erosion control pre-construction conference before the start of construction activities.

KDOT and the Contractor shall also hold stormwater erosion control conferences before the start of each major phase of construction and before the winter shutdown period begins.

These conferences shall be attended by the KDOT Area/Metro Engineer, the WPCM, and Environmental Inspector(s) for the Project, and any erosion control subcontractor(s). The attendance sheet and minutes of the conference will be kept in the SWPPP notebook.

g. Stormwater Compliance Disincentive Assessment. If the Contractor's Environmental Inspector fails to perform a SWPPP Inspection as required according to **subsection 901.3e**, the Contractor shall be liable for a disincentive assessment. The disincentive assessment charged and owing shall be determined using **TABLE 901-1**. Failure to participate in the joint inspection does not relieve the Contractor of the responsibility to correct deficiencies noted by KDOT's Inspector.

If deficiencies noted during SWPPP inspections performed according to **subsection 901.3e**, are not corrected within 7 calendar days of the inspection, or within a time extension approved by the Stormwater Compliance Engineer, the Contractor shall be liable for a disincentive assessment. The disincentive assessment charged and owing shall be determined using **TABLE 901-1**.

Should it be infeasible to perform corrections within the allowed time, notify the Area/Metro Engineer and the Stormwater Compliance Engineer immediately. Within 3 days of the notification, submit in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; and a schedule for implementation of any measures to be taken to prevent or mitigate the delay. Include with the submittal any relevant documentation supporting the claim of infeasibility and that best efforts were made to complete the required corrections and to minimize any delay to the extent possible. No additional time will be granted to submit the required information unless approved in writing by the Stormwater Compliance Engineer.

The Engineer will deduct and withhold from contract funds the Stormwater Compliance Disincentive Assessment under **subsection 901.3g**. The assessments are to be computed in the same manner as damages under **SECTION 108** (Liquidated Damages and Disincentive Assessments) except calendar days include Sundays, Holidays and the Winter Holiday Period. If contract funds are insufficient, the Contractor shall pay KDOT the balance owed. If the Contractor fails to pay KDOT the amount owed within 10 days after demand from KDOT, the Contractor shall be considered in breach of contract under **SECTION 108**.

The disincentive assessments under **subsection 901.3g**, are in addition to federal and state statutory penalties and fines that are allowed against the Contractor under the Clean Water Act and other environmental laws for violations of those laws. See also **subsection 901.3h**.

TABLE 901-1: TABLE OF STORMWATER COMPLIANCE DISINCENTIVES			
Original Contract Amount Range		Each SWPPP Inspection not performed according to 901.3e	Each deficiency per day not corrected within allowable time
\$0	\$1,000.0	\$250.0	\$250.00
\$1,000,000	\$2,500.0	\$500.0	\$500.00
\$2,500,000	\$5,000.0	\$750.0	\$500.00
\$5,000,000	\$10,000.0	\$1,000	\$500.0
Over		\$1,500	\$500.0

h. Penalties and Fines. Nothing in **SECTION 901** prevents KDHE, EPA or both from assessing penalties and fines against the Contractor because of the Contractor's failure to comply with applicable laws, regulations, ordinances, NPDES permit, other permits, the SWPPP, governmental administrative compliance orders or corrective orders for the Project, or a combination thereof.

Nothing in this **SECTION 901** prevents KDHE, EPA, or both from assessing penalties and fines against the Contractor because of the Contractor's failure to comply with an administrative claims settlement or consent decree that governs KDOT projects and that is included in the Proposal Form or that is added "Extra Work", **SECTION 104**.

Understand that penalties/fines may be imposed against KDOT, the Contractor, or both because of "shared" responsibility/liability under applicable environmental law, regulations, ordinances; the NPDES permit, other permits, the SWPPP, administrative corrective action orders, administrative claims settlements, consent decrees, legal judgments or a combination thereof. The Contractor shall have no claim that such shared responsibility/liability voids the Contractor's liability for disincentive assessments under **subsection 901.3g**. or for penalties/fines under **subsection 901.3h**.

901.4 MEASUREMENT AND PAYMENT

The Engineer will measure each SWPPP inspection performed in compliance with this specification.

The Engineer will not measure each Water Pollution Control Manager (WPCM). All duties of the WPCM shall be subsidiary to other bid items. Each is defined as each calendar week (Sunday-Saturday) that the Contractor provides a WPCM according to **subsection 901.3.d**. Each week will be measured only once, regardless of the number of site visits or time spent performing WPCM duties for that week.

The Engineer will not measure SWPPP design for payment as a lump sum upon the Area Engineer's approval. All revisions or updates to the SWPPP shall be subsidiary.

The Engineer will assess disincentives under the bid item "Stormwater Compliance Disincentive Assessment" by the Lump Sum.

09-28-17 (C&M) (JVN)
Feb-18 Letting



DOUGLAS COUNTY PUBLIC WORKS

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Keith A. Browning, P.E.
Director of Public Works/County Engineer

MEMORANDUM

To : Board of County Commissioners

From : Keith A. Browning, P.E., Director of Public Works/County Engineer *KAB*

Date : July 12, 2019

Re : Consent Agenda authorization to purchase pipe culvert liners
Scenic River Road culverts 20.08N-08.54E & 20.32N-07.90E
DGCO Project No. 2017-66

We plan to line two corroded, 60" diameter metal pipe culverts under N 2050 Road, a.k.a. Scenic River Road, with Snap-Tite pipe liners. Lining these pipes in lieu of replacing them will significantly reduce road closure durations and project costs.

Snap-Tite liners have the strength to allow direct burying, which will allow us to extend the length of the culverts somewhat to slightly flatten roadside slopes. In this area, we are constrained by railroad right-of-way, so significant road safety improvements are not feasible.

The cost of the liners is \$53,148.16 plus an estimated freight cost of \$7,800. There are adequate funds allocated in the CIP for this purchase.

Action Required: Consent Agenda authorization to purchase Snap-Tite pipe liners for culvert numbers 20.08N-08.54E and 20.32N-07.90E at a cost of \$53,148.16 plus shipping costs.



DOUGLAS COUNTY PUBLIC WORKS

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Keith A. Browning, P.E.
Director of Public Works/County Engineer

MEMORANDUM

To : Board of County Commissioners

From : Keith A. Browning, P.E., Director of Public Works/County Engineer *KAB*

Date : July 18, 2019

Re : Herbicide use at Lone Star Lake for treatment of riprap shore lining and for treatment of Eurasian Watermilfoil

A member of the public emailed concerns of overuse of herbicides killing approximately 20 trees on the west side of Lone Star Lake south of the west boat ramp. These trees are situated above a riprap-lined shoreline. We treat this riprap every other year with an herbicide called Ecomazapyr, which is essentially a ground sterilizer that is meant for aquatic use. The intent is to keep the riprap free of vegetation. We last treated this area in 2018.

We contacted the KSU Extension office, and arranged to meet Tom Buller, KSU Extension horticulturalist, at the site of the dead and dying trees. His educated opinion is that herbicides did affect these trees. In order to know for sure, samples of the trees could be sent to an out-of-state lab and tested for the presence of herbicides. He thinks that prolonged periods of high water levels in Lone Star Lake this year may have caused deeper migration of the herbicide such that it contacted tree roots. He said the herbicide can be passed from tree to tree via contacting tree roots. This herbicide has been used in past years in this and other locations at Lone Star Lake with no effects on trees.

We will no longer use this herbicide in this location or similar locations at Lone Star Lake. We still plan to use it on the upstream face of the dam. We plan to remove the dead trees. Some of the affected trees are showing some leafing, and Tom Buller recommends we leave those trees to see if they survive.

Regarding Eurasian Watermilfoil (EWM), a recent survey of the lake with KDWPT fisheries biologist Richard Sanders revealed approximately 23 acres of EWM infestation. This is a larger infestation than found last year. EWM is a non-native plant that threatens native aquatic plants and lake ecology. Richard Sanders recommends treating the EWM with an herbicide called Navigate. We have used this herbicide in the past to treat EWM. Treating EWM with an herbicide is recommended over manual cutting and removal because cutting the plants simply tears up the plant causing it to spread at a faster rate.

The Navigate herbicide is in granular form. It sinks quickly to the lake bottom. Restrictions for this herbicide include prohibiting swimming for 24 hours within 250 feet of treated areas after application. While the herbicide has no restrictions for watering livestock, we will encourage park visitors and residents to keep their pets out of the treated portions of the lake for 24 hours after treatment. Fishing or other restrictions are not needed following this herbicide treatment.

We have ordered enough Navigate herbicide for this treatment, and plan to treat the EWM infestations in early-August unless directed otherwise.

Action Required: Discuss herbicide use at Lone Star Lake and provide direction, as appropriate.



DOUGLAS COUNTY ADMINISTRATIVE SERVICES

Division of Purchasing

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MEMO TO: The Board of County Commissioners
Sarah Plinsky, Interim County Administrator

FROM: Jackie Waggoner, Purchasing Director

SUBJECT: Consider Remodel Contract for 1006 New Hampshire

DATE: July 17, 2019

In April the Commissioners approved an agreement to lease 1006 New Hampshire. After exploring a couple options it has been determined Community Corrections and a few Administrative staff would be best suited for this space.

As staff has looked at the space, there are modification that need to be made to accommodate staff's needs. Mar Lan Construction provided a base bid of 67,516 for the scope of work required. The County considered an alternate for conventional walls versus DIRT (movable/customizable walls). The conventional walls is an alternate with Mar Lan that would be an additional \$43,816; whereas, the DIRT solution is \$68,954. Staff recommends proceeding with the alternate conventional walls making Mar Lan's total cost \$111,332. Funds are in available in the Special Building Fund for this project.

While the total cost listed above is a not-to-exceed amount, to cover any unknown expenses or change orders, we are asking you to provide the Interim County Administrator with the authority to approve change orders up to 10% (\$11,133) of the total cost.

Staff approached the landlord of 1006 New Hampshire about the remodel changes and expenses. The landlord has offered to absorb \$60,000 of our remodel expenses if the County modified their lease term from 36 months to 60.

For your consideration, there will be additional expenses as a part of this move that staff will bring to you in the near future. Pam Weigand and I will be available at the meeting to discuss this contract and our lease option.

RECOMMENDATION: The Board of County Commissioners approves a contract with Mar Lan Construction for construction services in the amount of \$111,332, and authorizes the Interim County Administrator to approve change orders up to 10% of that amount. Additionally, the Board provides staff direction on modifying our lease terms and accepting offer made by the landlord.