

# AIA<sup>®</sup> Document A121<sup>™</sup> – 2014

## **Standard Form of Master Agreement Between Owner and Contractor** where work is provided under multiple Work Orders

**AGREEMENT** made as of the  day of  in the year 2018  
(In words, indicate day, month and year.)

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

Grand Junction Regional Airport Authority  
800 Eagle Drive  
Grand Junction, CO 81506

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

for the following:  
(Insert information related to types of projects, location, facilities, or other descriptive information as appropriate.)

Construction Project(s) at the Grand Junction Regional Airport

The Owner and Contractor agree as follows.

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

This document does not contain a description of the Contractor's scope of Work or establish payment terms or the dates of commencement of the Work or Substantial Completion. This document is intended to be used in conjunction with AIA Document A221<sup>™</sup>-2014, Work Order for use with Master Agreement Between Owner and Contractor

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### ARTICLE 1 MASTER AGREEMENT TERM AND PARTY REPRESENTATIVES

§ 1.1 This Master Agreement shall be effective for one year after the date first written above ("Date of this Master Agreement").

§ 1.2 This Master Agreement shall apply to all Work Orders agreed to within the term of this Master Agreement until completion of the Work Order. In the event of a conflict between the terms and conditions of this Master Agreement and a Work Order, the terms of the Work Order shall take precedence for the Work provided pursuant to the Work Order.

§ 1.3 This Master Agreement will renew on an annual basis, on the day and month of the Date of this Master Agreement, unless either party provides notice of their intent not to renew this Master Agreement. Notice must be provided at least 60 days prior to the renewal date. In the event either party elects not to renew this Master Agreement, the terms of this Master Agreement shall remain applicable until all Work Orders executed under this Master Agreement are completed or terminated.

§ 1.4 The Owner identifies the following representative authorized to act on the Owner's behalf with respect to this Master Agreement:

Mr. Eric Trinklein, Planning and Development Manager  
Grand Junction Regional Airport Authority  
800 Eagle Drive  
Grand Junction, CO 81506

§ 1.4.1 In each Work Order, the Owner will identify a representative authorized to act on the Owner's behalf with respect to the Work Order.

§ 1.5 The Contractor identifies the following representative authorized to act on the Contractor's behalf with respect to this Master Agreement:

TBD  
TBD  
TBD  
TBD

§ 1.5.1 In each Work Order, the Contractor will identify a representative authorized to act on behalf of the Contractor with respect to the Work Order.

## ARTICLE 2 THE WORK

§ 2.1 The Contractor shall execute the Work set forth in each agreed upon Work Order, consisting of AIA Document A221-2014, Work Order, or such other document as the Owner and Contractor may mutually agree upon. Each Work Order shall state the name, location and detailed description of the Project; identify the Architect; state the Contract Time; state the Contract Sum; describe the Work; and enumerate the Contract Documents.

§ 2.2 The Contractor may refuse to agree to any Work Order issued by the Owner.

## ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds in accordance with each individual Contract.

§ 3.2 Where the Contract Sum is based on the Cost of the Work under Section 3.3 or 3.4 of the Work Order, the Cost of the Work is defined in Exhibit A, Determination of the Cost of the Work.

## ARTICLE 4 PAYMENT

### § 4.1 Progress Payments

§ 4.1.1 Based upon Applications for Payment for individual Contracts submitted to the Architect by the Contractor, and Certificates for Payment issued by the Architect, the Owner shall make progress payments based on approved amounts on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

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

§ 4.1.3 Provided that an Application for Payment is received by the Owner and the Architect not later than the last day of a month, the Owner shall make payment of the approved and certified amount to the Contractor not later than the first day of the next month. If an Application for Payment is received by the Owner or Architect after the date fixed

above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives and Owner approves the Application for Payment.  
(Federal, state or local laws may require payment within a certain period of time.)

§ 4.1.4 Retainage, if any, shall be withheld as follows:

ten percent (10%)

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

% six 6% per annum

## § 4.2 Final Payment

§ 4.2.1 Final payment for individual ~~Contracts, Contracts or Work Orders~~, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Work except for the Contractor's responsibility to correct Work as provided in Section 17.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a guaranteed maximum price; and
- .3 a final Certificate for Payment has been issued by the Architect.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

## ARTICLE 5 DISPUTE RESOLUTION

### § 5.1 Binding Dispute Resolution

In the event that the parties to this Agreement are unable to resolve a dispute, and prior to further dispute resolution procedures, officers or senior management of the parties, not directly involved in the day-to-day operation of the project shall meet in person and attempt to resolve disputes. If the parties are unable to resolve disputes within two (2) weeks, or such other time as mutually agreed to, negotiations will cease and claims subject to dispute resolution will be resolved as provided for herein. For any claim subject to, but not resolved by, mediation pursuant to Section 20.3, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Contractor 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 in a court of competent jurisdiction.)*

- Arbitration pursuant to Section 20.4 of this Master Agreement
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

## ARTICLE 6 GENERAL PROVISIONS

### § 6.1 The Work

The term "Work" means the construction and services required by the Contract Documents enumerated in a Work Order, 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 under the Work Order and related Contract. The Work may constitute the whole or a part of the Project identified in a particular Work Order. The Contractor shall undertake and complete the Work as an independent Contractor and not as an agent of the Owner to the complete satisfaction of the Owner. Contractor shall faithfully and diligently perform and complete the Work and its obligations under this Contract in strict compliance with and subject to each of the provisions of the Contract

Documents to the fullest extent that such provisions are applicable to the Work. Any Work performed by the Contractor that is not part of the Work as described in the Contract Documents will be at the sole risk and expense of the Contractor, unless such additional Work is approved in writing through a Change Order.

## § 6.2 The Contract Documents

The Contract Documents are enumerated in each Work Order and consist of this Master Agreement; the Work Order executed by the Owner and Contractor (including, if applicable, Supplementary and other Conditions applicable to the Work Order); all Drawings, Specifications, and Addenda issued in connection with the Work Order; other documents listed in the Work Order; and Modifications issued after execution of the Work Order. 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. 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 to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

## § 6.3 The Contract

The Contract Documents for each Work Order form a separate Contract for construction of the Work ("The Contract"). The Contract represents the entire and integrated agreement between the parties hereto for construction of the Work and supersedes prior negotiations, representations or agreements, either written or oral. A 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 between any persons or entities other than the Owner and the Contractor.

## § 6.4 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, digital models, and other similar materials.

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

~~§ 6.5.1 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 will retain all common law, statutory and other reserved rights, including copyrights. Specifications. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment 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 a Project is not to be construed as publication in derogation of the Owner's, Architect's or Architect's consultants' reserved rights.~~

§ 6.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them 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 material or equipment suppliers may not use the Instruments of Service on other projects or for additions to a Project outside the scope of a Contract without the specific written consent of the Owner, Architect and the Architect's consultants.

## § 6.6 Transmission of Data in Digital Form

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmission. Unless otherwise agreed, the Parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

## ARTICLE 7 OWNER

§ 7.1 The Owner is not required to issue any Work Orders under this Master Agreement.

## § 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish all necessary surveys and a legal description of sites referenced in a Work Order.

§ 7.2.2 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.

**§ 7.2.3** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 8.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

### **§ 7.3 Owner's Right to Stop the Work**

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, or fails to correct non-conforming Work within a reasonable time after receiving notice thereof, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is 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.

### **§ 7.4 Owner's Right to Carry Out the Work and Other Remedies**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner, without prejudice to any other remedy the Owner may have, may correct such deficiencies and, subject to Section 14.2.5, may deduct the reasonable cost thereof, including Owner's expenses and compensation for the Architect's services made necessary thereby, from the payment then or thereafter due the Contractor. The Contractor shall be liable for all impacts related to delays resulting from a stop work order issued by the Owner based on the Contractor's failure to perform under this section. The exercise of Owner's right to stop Work pursuant to this Section 7.4 shall not result in any extensions to the Contract Time.

**§ 7.4.1** Each of the following shall constitute a default or an event of default by the Contractor:

- .1 The Contractor fails or refuses to comply with or perform, in whole or in part, any terms or conditions of the Agreement or the Contract Documents.
- .2 The Contractor fails to pay or cause to be paid (as applicable) any of its Subcontractors, supervisory staff or work force or any materials, labor, equipment or other expenses incurred in the performance of the Work, when such payments are due in accordance with the agreements requiring such payment and all applicable laws.
- .3 The Contractor becomes insolvent, makes an assignment for the benefit of creditors, or commences any proceeding in bankruptcy, or any such proceedings are commenced against it and are not discharged within thirty days.
- .4 The Contractor abandons the Work, or reduces its management, supervisory staff or work force to a level that may not allow the Contractor to maintain the accurate progress of the services or the Work for the timely completion of the Project as determined by the Owner (including services during pre-construction as well as during construction), and including Work being performed prior to Substantial Completion as well as following Substantial Completion, until all punch list items are complete and the Project achieves Final Completion.
- .5 Contractor is otherwise in material breach of the terms of the Contract Documents.

**§ 7.4.2** If the Contractor is in default or an event of default exists the Owner may elect to:

- .1 Direct the Contractor to comply with the terms of the Contract Agreement and/or Contract Documents.
- .2 Direct the Contractor to remove any defective or hazardous material or work, which Contractor shall do at its sole cost.
- .3 Accept any non-conforming work or materials, in which event Owner shall be entitled to a reduction in the Contract Sum for the reduced value thereof.
- .4 Immediately complete portions of or all of the Work in accordance with the Contract Documents.
- .5 Make payments directly to Subcontractors to satisfy the Contractor's obligations relating to the Work in accordance with the Contract Documents.
- .6 Withhold payments to Contractor or to any Subcontractor until the cause for the default or the event of default is cured to the satisfaction of the Owner, or in conformance with the Contract Documents.
- .7 Subject to the notice and cure period provided in Section 7.4 terminate the Contract pursuant to Section 19.1.2 and finish the Work by whatever method Owner deems expedient.

.8 Have any other remedy to which Owner may be entitled under the Contract Documents, at law or in equity.

§ 7.4.3 The Owner's choice of a remedy shall not obligate the Owner to waive any other rights or remedies provided under the Contract Documents, or by law, against Contractor or its surety. Owner, at its option, may choose more than one remedy or choose one or more particular remedies at different times, without prejudice to any other remedies, and Owner may exercise any remedies in any sequence or combination.

§ 7.4.4 Contractor shall pay, immediately upon demand, all costs, losses, damages and expenses, including, without limitation, all costs and expenses incurred by Owner in Section 7.4.2 above, and all administrative, management, and overhead and other expenses and loss, including reasonable attorney's fees and expenses (herein sometimes collectively called "Costs"), incurred by the Owner in connection with any default by Contractor or exercise of any right or remedy upon Contractor's default. If Contractor does not pay the Costs immediately, the Owner may deduct all Costs from any unpaid portion of the Contract Sum. The liability of Contractor shall extend to include, without limitation, the full amount of Costs incurred, and obligations assumed in good faith under the reasonable belief that such Costs or obligations were necessary or required whether or not they were in fact necessary or required. An itemized statement of such obligations and payment shall be prima-facie evidence of Contractor's liability.

## **ARTICLE 8 CONTRACTOR**

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

§ 8.1.1 Execution of a Work Order by the Contractor is a representation that the Contractor has visited the relevant 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. Familiarity with local conditions includes but is not limited to climatic, geographical and topographic conditions, as applicable to the Work Order. Execution of each Work Order is confirmation that the Contractor has assessed and is satisfied with the qualifications, suitability and availability of potential Subcontractors and labor, material and equipment suitability and availability to satisfy the requirements of the Contract Documents.

§ 8.1.2 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 7.2.1, 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. The Contractor shall conduct detailed reviews with Subcontractors, to continue to uncover any errors, omissions or inconsistencies. The Contractor and their Subcontractors 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. The Contractor shall notify the Owner in writing immediately and in any event within three (3) days after discovering any discrepancies between the information provided by the Owner and the actual conditions on the site. 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.

§ 8.1.3 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.

### **§ 8.2 Supervision and Construction Procedures**

§ 8.2.1 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 a Contract, unless the Contract Documents give other specific instructions concerning these matters.

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

§ 8.2.3 The Contractor shall not assign a proposed project manager(s) to Work Orders to whom the Owner has made reasonable and timely objection. The Contractor shall not change the project manager without the Owner's prior written consent, unless the project manager is no longer employed by the Contractor. Contractor shall provide resumes of multiple replacement project manager and the Owner reserves the right to interview and accept any proposed changes in project manager(s).

### **§ 8.3 Labor and Materials**

§ 8.3.1 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.

§ 8.3.2 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 skilled in tasks assigned to them. The Contractor shall remove, at the Owner's request, any of Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors from the Project that are unacceptable to the Owner.

§ 8.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification.

### **§ 8.4 Warranty**

The Contractor warrants to the Owner and Architect that materials and equipment furnished under a 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 under normal usage.

§ 8.4.1 Manufacturer's warranties and subcontractor's warranties shall not relieve the Contractor of any of its warranty obligations under the Contract Documents.

§ 8.4.2 The Warranty shall be for the duration of time stipulated within the Contract Documents. In the event that a specific duration is not identified in the Contract Documents the warranty period shall be one year from Owner occupancy or substantial completion, whichever occurs first. If there is a conflict within the Contract Documents for the warranty period, the longest duration of time stated shall govern. As Work required on warranty is the complete, rework, repair or replacement of Work not properly performed, or the result of defective material or workmanship, the Owner will not compensate the Contractor or Subcontractors and material and equipment suppliers for the warranty Work.

§ 8.4.3 All warranty items are the responsibility of the Contractor. When warranty items occur, the Owner will notify the Contractor or appropriate Subcontractor. The Contractor shall cause Work to commence on any warranty items within seven (7) days. If the warranty item(s) are impacting safety or rendering the Project or a portion of the Project unfit for its intended use, the Contractor shall take any and all measures to resolve the warranty item(s) immediately. This shall include the acceleration of labor, material and equipment, all to implement the resolution, regardless of cost. All costs associated with the resolution of the warranty issue(s) shall remain the responsibility of the Contractor.

### **§ 8.5 Taxes**

The Contractor shall pay sales, consumer, use and other similar taxes that are legally enacted when bids are received or negotiations concluded for an individual Contract, whether or not yet effective or merely scheduled to go into effect. Contractor shall pay unemployment and social security taxes, or other taxes imposed by local, city, state or federal government and upon request, shall certify to Owner that prior taxes due were paid before payment is made to Contractor. The Contractor's obligation for taxes extends beyond the final close-out of the Project and continues for the applicable limitations period.



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

**§ 8.6.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as 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 a Contract and legally required at the time bids are received or negotiations concluded.

**§ 8.6.2** 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. 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.

## **§ 8.7 Allowances**

The Contractor shall include in the Contract Sum for each Work Order all allowances stated in the Contract Documents for that Work Order. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Allowance amounts shall not include the Contractor's costs for unloading and handling at the site, labor, installation, overhead, and profit. Allowances shall be clearly tracked in a separate report and updated on a monthly basis to Owner and Architect. The Contractor shall separately track, on no less than a monthly basis, all materials and equipment provided under allowances including, but not limited to, (i) a description of the allowance; (ii) amounts actually spent for each allowance; and (iii) variances between allowance amounts in the Contract Sum and amounts actually spent

## **§ 8.8 Contractor's Construction Schedules**

**§ 8.8.1** ~~The Contractor, promptly after executing a Work Order, shall prepare and submit~~ In conjunction with execution of a Work Order, the Contractor has prepared and submitted for the Owner's and Architect's information a Contractor's construction schedule for the Work described in that Work Order ("Construction Schedule"). The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Construction Schedule must incorporate the logic for the preparation, submittal and approval of shop drawings and submittals in a timely manner that allows adequate review, fabrication and delivery to the site. The Construction Schedule must also incorporate the sequencing and interrelationship between each of the trades. Under no circumstance shall the Contract Time be adjusted without an executed Change Order.

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

### **§ 8.8.3 Monthly Construction Report**

For Work Orders that extend longer than one month, the Contractor shall prepare and update monthly a Monthly Construction Report, in a format as requested by the Owner, including Construction Photographs. Construction Photographs must be sufficient digital photographs (four per page) to indicate the monthly progress of the Work.

**§ 8.8.4** For Work Orders that extend longer than one month, the Construction Schedule shall be revised by the Contractor at least monthly or when directed to do so more frequently by the Owner. All revised Construction Schedules must demonstrate updates and or changes from the previously approved Construction Schedule. In the event that the Contractor ever presents a schedule that does not provide for Substantial Completion to be achieved by the Contract Time, the Contractor shall also present a recovery plan that will allow the Contractor to achieve Substantial Completion by the Contract Time. The Owner will determine if the recovery plan or the revised schedule shall be accepted. If the Owner elects to accept the revised schedule in writing, it shall become the approved Construction Schedule that the Owner will rely upon to make commitments and obligations. Receiving revised schedules at the weekly Owner/Architect/Contractor (O/A/C) meeting or in another format shall not be construed as an acceptance by the Owner. Any revision to the approved Construction Schedule requires the Owner's written approval.

**§ 8.8.5** The Contractor shall also prepare a three (3) week look ahead schedule each week for review at the O/A/C meetings, focusing on the in-depth detail of the upcoming weeks activities in a manner that reflects the planned

day-to-day activities in the field. The detail shall be adequate to allow tracking of daily progress through field observation walks and reports.

### **§ 8.9 Submittals**

**§ 8.9.1** The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. 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. The Work shall be in accordance with approved submittals.

**§ 8.9.2** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

### **§ 8.9.3 Requests for Information (RFI)**

All Requests for Information (RFI) shall be submitted to the Architect and the Owner for review. The Owner, at its sole discretion, may agree with the Architect's response, amend the response, or prepare its own superseding response. If the timely response is critical to maintaining the Construction Schedule, it is the responsibility of the Contractor to annotate such on the RFI submittal a "provide a response no later than" date. The Owner may reply directly to the RFI if, in the judgement of the Owner, this is necessary to maintain the Construction Schedule.

**§ 8.9.3.1** RFI requests shall be submitted in a timely manner, well in advance of related work, and allow sufficient time for the resolution of issues relating to the request for interpretation or clarification. Contractor shall schedule the submission of RFI so as to moderate and manage the flow of RFI requests. RFI's shall be submitted in a manner consistent with the schedule and progress of the Work and shall not be submitted in a sporadic and/or excessive manner.

**§ 8.9.3.2** RFI requests shall be numbered in a sequential manner and contain a detailed description of the areas of Work requiring interpretation or clarification. Include drawing and specification references, sketches, technical data, brochures, or other supporting data as deemed necessary by the Architect, for the Architect to provide the interpretations and clarifications requested. The Contractor shall include a "proposed solution" to the issue requiring interpretation or clarification.

**§ 8.9.3.3** RFI's submitted to the Contractor by Subcontractors, suppliers, or other parties to the Work shall be reviewed by the Contractor prior to submission to the Architect. If the Architect deems that such RFI requests have not been adequately reviewed by the Contractor, such requests will be returned to the Contractor for further action. Subcontractor's RFI shall contain a "Proposed Solution".

**§ 8.9.3.4** RFI requests shall not contain submittals, substitutions requests, routine communications, correspondence, memos, claims, or any information required by other areas of the Contract Documents. RFI requests containing such information will be returned to the Contractor without action by the Architect.

**§ 8.9.3.5** RFI requests are limited to a request for interpretation or clarification of the requirements of the Contract Documents. Interpretations provided by the Architect shall not change the requirements of the Contract or the Contract Documents.

**§ 8.9.3.6** If the Contractor determines that the Architect's response to an RFI gives cause for a change in the Contract or the Contract Documents, the Contractor shall promptly, within five (5) days, give written notice to the Architect of request for adjustments. Requests for adjustments to the Contract shall be submitted in a manner consistent with the terms and conditions of the Contract Documents.

**§ 8.9.3.7** If the Architect, after review, determines that any RFI has been submitted in an incomplete manner, is unnecessary, or does not otherwise comply with the requirements of this Section, the RFI will be returned without action to the Contractor. The Contractor shall delete the original submittal date from the RFI log and enter a new submittal date at the time of re-submittal.

## **§ 8.10 Use of Site**

The Contractor shall confine operations at the site(s) 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(s) with materials or equipment. Contractor acknowledges that there may be unique site considerations applicable to the development and construction of the Project including, without limitation, (i) the necessity to perform the work in areas adjacent to existing services and buildings; (ii) limited availability of space within the project site for on-site storage of materials, parking, and for other than essential construction operations; and (iii) the need for careful scheduling of construction services to minimize to the greatest extent possible or eliminate any disruption to the surrounding facilities.

**§ 8.10.1** The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the Project Site, which are not to be removed and which do not unreasonably interfere with the Work required.

**§ 8.10.2** The Contractor shall protect from damaging all existing improvements and utilities at or near the Work site and on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this specification or failure to exercise reasonable care in performing the Work. If the Contractor fails or refuses to repair the damage promptly, the Owner may have the necessary Work performed and charge the cost to the Contractor.

**§ 8.10.3** The Contractor shall provide temporary protection against damage for portions of existing equipment and systems where work is to be done, materials handled, and equipment moved and/or relocated. The interior of existing structures shall be protected at all times, from damage, dust and weather inclemency. Wherever Work is performed, floor surfaces that are to remain in place shall be adequately protected prior to starting Work, and this protection shall be maintained intact until all Work in the area is completed.

**§ 8.10.4** Should the Contractor perform any work in an occupied building or space, or an area surrounding an occupied building or space, the Contractor shall cooperate in good faith to schedule and conduct its work in a manner that will minimize any disruption and inconvenience to the organization, employees and its visitors. The Owner reserves the right to immediately stop the Contractor's operation if in the sole discretion of the Owner, the Contractor's Work is unreasonably and adversely affecting the foregoing's operations.

**§ 8.10.5** Should the Contractor's operations require the removal of any exterior walls or windows, the Contractor shall take all necessary precautions to protect the building from materially adverse weather conditions, as well as do whatever is reasonable to reduce any unnecessary loss of cooling or heating.

## **§ 8.11 Cutting and Patching**

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

## **§ 8.12 Cleaning Up**

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under a Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus material from and about the Project. Project on a daily basis. The Owner may direct the Contractor to provide immediate clean-up of the site and the Contractor shall comply at no additional cost to the Owner.

## **§ 8.13 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 such 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 the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

## § 8.14 Access to Work

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

## § 8.15 Indemnification

§ 8.15.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 8.15.1.

§ 8.15.2 In claims against any person or entity indemnified under this Section 8.15 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 8.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## ARTICLE 9 ARCHITECT

§ 9.1 The Owner shall retain an Architect to perform the services enumerated in this Article 9 and as described elsewhere in this Master Agreement. If an Architect is not required by law, or otherwise not engaged on the Project, the Owner shall perform such services.

§ 9.2 The Architect listed on each Work Order will provide administration of the Contract and will be an Owner's representative during construction, until the date the Architect issues the final Certificate for Payment for the Contract. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 9.3 The Architect will visit the site at intervals appropriate to the stage of the construction 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 safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 9.4 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 report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) 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.

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

§ 9.6 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 9.7 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.

§ 9.8 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

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

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

## ARTICLE 10 SUBCONTRACTORS

§ 10.1 A Subcontractor is a person or entity that has a direct contract with the Contractor to perform a portion of the Work at a Project site. The terms "Subcontractor" or "Sub-subcontractor" may also include all material and equipment suppliers retained, as applicable.

§ 10.2 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after execution of a Work Order, shall furnish in writing to the Owner through the Architect the names of the Subcontractors or suppliers for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. 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. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 10.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the 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, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner.

## ARTICLE 11 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 11.1 The Owner reserves the right to perform construction or operations related to a Project with the Owner's own forces, and to award separate contracts in connection with other portions of a Project or other construction or operations on the site under conditions of the contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make a claim as provided in Article 20.

§ 11.2 The Contractor shall afford the Owner and the Owner's 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 activities with theirs as required by the Contract Documents. Contractor agrees to allow access to the Project site and all areas of the Work as may be reasonably necessary for the performance of work by others, including, without limitation, storage of materials and equipment, use of vertical transportation and connection to utilities and services. Such parties shall abide by all safety program requirements of Contractor.

§ 11.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

## ARTICLE 12 CHANGES IN THE WORK

§ 12.1 By appropriate Modification, changes in the Work may be accomplished after execution of a Work Order. The Owner, without invalidating this Master Agreement or a Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the

Owner, Contractor and Architect, or by written Construction Change Directive signed by the Owner and Architect. A Change Order is a written instrument prepared by the Contractor and signed by the Owner, Contractor, and Architect stating 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.

Changes in the Work may be made without notice to the Contractor's surety and absence of such notice shall not relieve such sureties of any obligations to the Owner. Notice of changes in the Work to surety companies is the responsibility of the Contractor. Contract Sum and Contract Time cannot be adjusted without a properly executed Change Order.

**§ 12.2** Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties and may include a lump sum proposal, time and materials with a not-to-exceed amount, cost of the work plus a fee, unit pricing, or other mutually agreed to methodology or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order. All Change Orders shall be supported by adequate detail and documentation, as the Owner may require.

**§ 12.3** The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

**§ 12.4** If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed.

**§ 12.5** A field directives or field orders shall not be recognized as having any impact upon the Contract Sum or the Contract Time and Contractor shall have no claim therefore unless Contractor notifies Architect and Owner in writing, prior to complying with same and in no event later than ten (10) business days from the date such direction or order was given, that Contractor intends to submit a change proposal relating thereto. Following such notice to Architect and Owner, Contractor shall prepare and submit to the Architect and Owner for Owner's written approval its change proposal within ten (10) business days following the issuance of the field directive or field order, taking into account the nature and extent of the change to the Work required thereby.

**§ 12.6** When submitting its change proposal, the Contractor shall include and set forth, in clear and precise detail, breakdowns of labor, materials and all mark-ups for all trades involved and the estimated impact on the Construction Schedule. Contractor shall furnish spreadsheets from which the breakdowns were prepared, plus spreadsheets if requested of any Subcontractors and detailed breakdown from Subcontractors.

## **ARTICLE 13 TIME**

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

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

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

**§ 13.4** The date of Substantial Completion is the date certified by the Architect in accordance with Section 14.4.3.

§ 13.5 If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine, subject to the provisions of Article 20.

## ARTICLE 14 PAYMENTS AND COMPLETION

### § 14.1 Applications for Payment

§ 14.1.1 Applications for Payment will be submitted individually for each Contract.

§ 14.1.2 Where a Contract is based on a Stipulated Sum or the Cost of the Work plus a Contractor's fee with or without a Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values, allocating the entire Contract Sum to the various portions of the Work, 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, Architect or Owner, shall be used in reviewing the Contractor's Applications for Payment.

§ 14.1.3 With each Application for Payment based upon the Cost of the Work, or the Cost of the Work plus a Contractor's fee with or without a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required or requested by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor, less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 14.1.4 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 stored, and protected from damage, off the site at a location agreed upon in writing.

§ 14.1.5 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 other encumbrances adverse to the Owner's interests.

### § 14.2 Certificates for Payment

§ 14.2.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 14.2.3.

§ 14.2.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. 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. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. 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 material 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.

§ 14.2.3 Subject to Section 14.2.5, 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 14.2.2 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 14.2.1. If the Contractor and the 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 8.2.2, 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 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.

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

§ 14.2.5 The Architect may not withhold a Certificate for Payment in whole or in part, and the Owner shall not withhold payment to the Contractor to impose a penalty or liquidated damages on the Contractor, unless the Contractor agrees or has been found liable for the amounts in a binding dispute resolution proceeding. In any event, the Architect may not withhold a Certificate for Payment in whole or in part, and the Owner shall not withhold payments to the Contractor, pertaining to one Contract to offset amounts in dispute under a separate Contract.

### § 14.3 Progress Payments

§ 14.3.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment, 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 similar manner.

§ 14.3.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 14.3.3 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.

§ 14.3.4 Before the Contractor shall become entitled to any progress or final payments, the Contractor must first submit wavers of liens, on a form approved by the Owner. The required wavers of liens are required from the Contractor and all Subcontractors and Sub-subcontractors with each application for payment in the following manner:

- .1 Partial Conditional wavers of liens are required from the Contractor and all Subcontractors and material suppliers for whom the Contractor is requesting disbursement within the current Application for Payment.
- .2 Partial Unconditional wavers of liens are required from the Contractor and all Subcontractors and material suppliers for which Contractor previously received payment.
- .3 Final Conditional wavers of liens are required from the Contractor and all Subcontractors and material suppliers for whom the Contractor is requesting disbursement within the current Application for Payment.
- .4 Final Unconditional wavers of liens are required from the Contractor and all Subcontractors and material suppliers for which Contractor previously received final payments. Final Unconditional wavers of liens are due within fourteen (14) days of receipt of final payment to the Contractor or Subcontractors or material suppliers. Failure to comply shall constitute a default by Contractor.

§ 14.3.5 Failure to provide the proper wavers of liens as described in Section 14.3.4 shall result in payments or partial payment being withheld until such wavers have been properly provided to the Owner.



§ 14.3.6 The Contractor shall include in every Subcontractor and major supplier agreement the requirements of waivers of liens prior to award of a subcontract or purchase order.

§ 14.3.7 Contractor must provide a monthly report to the Owner notifying Owner of any lien waivers that have not been provided.

#### **§ 14.4 Substantial Completion**

**§ 14.4.1** 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.

**§ 14.4.2** 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.

**§ 14.4.3** 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. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which 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.

**§ 14.4.4** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted ~~for~~ to a value of up to three hundred percent (300%) of the value of Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### **§ 14.5 Final Completion and Final Payment**

**§ 14.5.1** 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 and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue written notice to the Owner including 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 terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 14.5.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 14.5.2** Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of the Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien 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 such lien, including costs and reasonable attorneys' fees.

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

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of ~~special~~ warranties required by the Contract Documents.

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

## ARTICLE 15 PROTECTION OF PERSONS AND PROPERTY

### § 15.1 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 a Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

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

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 and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property 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 15.1.2 and 15.1.3, except for damage or loss attributable to acts or omissions of the Owner or Architect 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 8.15.

§ 15.2 The Owner or the Owner's inspectors may stop the Work until a condition deemed unsafe to persons is corrected. Should this occurrence delay the Work, the Contractor shall be responsible for any excess costs associated with the work stoppage and shall not be allowed an extension of time in which to perform. This provision does not relieve Contractor of its exclusive responsibility for safe Work practices nor impose upon the Owner any obligation to supervise Contractor's work practices.

§ 15.3 The Owner's may conduct a weekly inspection of the Project site. Such inspection may require the Contractor to take additional measures than those that the Contractor has in place, and all costs associated with such measures shall be borne by the Contractor, without reimbursement by Owner.

### § 15.2 Hazardous Materials

**§ 15.2.1** The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials. 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 report the condition to the Owner and Architect in writing. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay and start-up.

**§ 15.2.2** 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 15.2.1 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.

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

**ARTICLE 16 INSURANCE AND BONDS**

**§ 16.1** The Contractor shall purchase from, and maintain in, a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance for protection from (1) claims under workers' compensation acts and other employee benefit acts which are applicable; (2) claims for damages because of bodily injury, including death; and (3) claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations and completed operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified in Section 16.1.2, or as specified in a Work Order or elsewhere in the Contract Documents, or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations under Section 8.15. Certificates of Insurance, acceptable to the Owner, evidencing required coverages, shall be filed with the Owner prior to commencement of the Work. The Contractor shall cause the commercial liability coverage to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

**§ 16.1.1** The Contractor shall furnish bonds covering faithful performance of a Contract and payment of obligations thereunder as specified in Section 16.1.2, or as specified in a Work Order or elsewhere in the Contract Documents, or required by law, whichever coverage is greater. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under a Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**§ 16.1.2** The Contractor shall purchase and maintain insurance of the types and with the limits set forth below, and provide bonds as set forth below, for each Contract created pursuant to this Master Agreement.  
*(State bonding requirements, if any, and limits of liability for insurance required.)*

<u>Type of insurance or bond</u>	<u>Limit of liability or bond amount (% of Contract Sum)</u>
<u>Commercial General Liability</u>	<u>\$2,000,000 Each Occurrence</u> <u>Damage to Rented Premises \$100,000</u> <u>Med Exp (Any One Person) \$10,000</u> <u>Personal and Adv. Injury \$1,000,000</u> <u>General Aggregate \$2,000,000</u> <u>Products – Comp Op Aggregate \$2,000,000</u>
<u>Automobile Liability</u>	Combined Single Limit \$1,000,000
<u>Umbrella / Excess Liability</u>	Each Occurrence \$10,000,000 Aggregate \$10,000,000
<u>Workers Compensation</u>	Each Accident \$1,000,000 Disease – Each Employee \$1,000,000
<u>Employers Liability</u>	Each Accident - \$1,000,000 Each Employee - \$1,000,000 Policy Limit - \$1,000,000
<u>Pollution Liability</u>	Per Claim - \$1,000,000 Aggregate - \$1,000,000
<u>Professional Liability</u>	Per Claim - \$1,000,000 Aggregate - \$1,000,000
<u>Asbestos Abatement Liability Insurance</u>	Per Claim - \$1,000,000 Aggregate - \$1,000,000
<u>Bond</u>	Contract Sum of each Project Work Order

Additional Insured Status on a Primary and Non-Contributory Basis will be provided to Owner by Contractor. Thirty day notice of cancellation for any reason shall be provided to Owner by Contractor.

**§ 16.1.3** The Contractor shall provide written notification to the Owner of the cancellation or expiration of any of the insurance required by this Section 16.1. The Contractor shall provide such written notice within five (5) business days of the date the Contractor is first aware of the cancellation or expiration or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

**§ 16.1.4** Deductibles for insurance shall be the responsibility of the party who purchases the policy. However, if the cause of the claim is the result of actions or lack of action by the Contractor or others under the responsibility of the Contractor, the Contractor shall be responsible for the deductible for the insurance, which costs shall not be a reimbursable Cost of the Work.

### **§ 16.2 Owner's Liability Insurance**

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

### **§ 16.3 Property Insurance**

**§ 16.3.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance on an "all-risk" or equivalent policy form, including builder's risk, in the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied and installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 14.5 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 16.3.1 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

**§ 16.3.2** The Owner shall file a copy of each policy with the Contractor before an exposure to loss may occur. The Owner shall provide written notification to the Contractor of the cancellation or expiration of any insurance required by Section 16.2 and 16.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

**§ 16.3.3** 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, and (2) the Architect, Architect's consultants, separate contractors described in Article 11, 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 covered by property insurance obtained pursuant to Section 16.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 11, if any, and the subcontractors, sub-subcontractors, 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. 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, and whether or not the person or entity had an insurable interest in the property damaged.

**§ 16.3.4** A loss insured under the Owner's property insurance 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 the Contract Documents. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their sub-subcontractors in similar manner.

## **ARTICLE 17 CORRECTION OF WORK**

**§ 17.1** The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after 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, unless compensable under Section A.2.7.3 in Exhibit A, Determination of the Cost of the Work.

**§ 17.2** In addition to the Contractor's obligations under Section 8.4, 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 14.4.3, or by terms of an 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 written 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.

**§ 17.3** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.4.

**§ 17.4** 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.

**§ 17.5** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 17.

## **ARTICLE 18 MISCELLANEOUS PROVISIONS**

### **§ 18.1 Assignment of Contract**

Neither party to a Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### **§ 18.2 Governing Law**

A Contract shall be governed by the law of the place where the Project described in the Contract is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 20.4.

**§ 18.2.1** Owner is subject to and bound by the Colorado Open Records Act, § 24-72-101 et seq. C.R.S. Any and all documents the Contractor prepares pursuant to this Contract may be subject to production and/or reproduction pursuant to those statutes, irrespective of any copyrights held by Contractor. Contractor hereby waives any claims of any kind whatsoever against the Owner for Owner's compliance or attempted compliance with the provisions of the Open Records Act.

**§ 18.2.2** The Parties acknowledge and understand that the Owner is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Contract. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Owner are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Contract's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Owner payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the Owner, and other applicable law. Upon the failure to appropriate such funds, this Contract shall be terminated without penalty.

### **§ 18.2.3 Employment of or Contracting with Illegal Aliens**

**§ 18.2.3.1** As used in this Agreement, the following words or phrases shall have the following meanings:

- a. E-Verify Program means the electronic employment verification program created in Public Law 104-208, as amended and expanded in Public Law 108-156, as amended and jointly administered by the

United States Department of Homeland Security and the Social Security Administration, or its successor program.

- b. Department Program means the employment verification program established pursuant to Section 8-17.5-102(5)(c), C.R.S.

**§ 18.2.3.2 Contractor shall not:**

- a. Knowingly employ or contract with an illegal alien who will perform work under this Contract; or  
b. Enter into a contract with a subcontractor that fails to certify to the Owner that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

**§ 18.2.3.3 Contractor certifies that it does not knowingly employ or contract with an illegal alien who will perform work under this public contract for services, and that the Contractor will participate in the E-Verify Program or Department Program in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services. Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services through participation in either the E-Verify Program or the Department Program. Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this public contract for services is being performed.**

**§ 18.2.3.4 If Contractor obtains actual knowledge that a subcontractor performing work under this public contract for services knowingly employs or Contracts with an illegal alien, Contractor shall:**

- a. Notify the subcontractor and the Owner within three days that the Contractor has actual knowledge that the subcontractor is employing or Contracting with an illegal alien; and  
b. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to subparagraph (1) of this paragraph 15.4 the subcontractor does not stop employing or contracting with the illegal alien, except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or Contracted with an illegal alien.

Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment ("Department") made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-101, et seq.

If Contractor violates this provision, the Owner may terminate the Contract for breach of the Contract. If so terminated, the Contractor shall be liable to the Owner for actual and consequential damages.

**§ 18.3 Tests and Inspections**

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating the costs to the Contractor.

**§ 18.4 Commencement of Statutory Limitation Period**

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to a Contract in accordance with the requirements of the final dispute resolution method selected in this Master Agreement 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 18.4.

**§ 18.5 Title**

Unless otherwise provided in the Contract, the title and right to the use of all water, the title to all water, the title to all soil, stone, gravel, sand, minerals, timber and all other materials or objects of whatsoever kind or nature developed or obtained in the excavation or other operations by the Contractor or any of its Subcontractors, or any of their representatives or employees, and the rights to use or dispose of the same are hereby expressly reserved in the Owner

and neither the Contractor nor any of its subcontractors, nor any of their representatives or employees shall have any right, title or interest in or to any part thereof; neither shall they, nor any of them, assert or make any claim thereto. The Contractor will, as determined by Owner, be permitted to use in its work, without charge, any such materials which meet the requirements of the Contract and as to which the Owner shall have the right to use and consume without payment to a third party.

## **ARTICLE 19 TERMINATION**

### **§ 19.1 Termination of a Contract**

A Contract may be terminated in accordance with this Article 19. Termination of a Contract under this Article 19 shall not be deemed a termination of any other Contract created pursuant to this Master Agreement.

#### **§ 19.1.1 Termination by the Contractor**

If the Architect fails to certify payment as provided in Section 14.2.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work ~~executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages executed up and until the date of termination.~~

#### **§ 19.1.2 Termination by the Owner for Cause**

**§ 19.1.2.1** The Owner may terminate a Contract if the Contractor

- .1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .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.

**§ 19.1.2.2** When any of the above reasons exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' written notice, terminate a Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon 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.

**§ 19.1.2.3** When the Owner terminates a Contract for one of the reasons stated in Section 19.1.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 19.1.2.4** 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 Architect, upon application, and this obligation for payment shall survive termination of the Contract.

**§ 19.1.2.5** In the event that a Termination by the Owner for Cause should subsequently be determined to be wrongful, such termination for cause shall automatically be converted to a Termination by the Owner for Convenience and the provisions of Section 19.1.3 shall apply.

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

The Owner may, at any time, terminate a Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work ~~executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.~~executed up and until the date of termination.

## **ARTICLE 20 CLAIMS AND DISPUTES**

**§ 20.1** Claims, disputes and other matters in question arising out of or relating to a Contract executed pursuant to this Master Agreement, including those alleging an error or omission by the Architect but excluding those arising under Section 15.2, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for

in Section 20.8 and Sections 14.5.3 and 14.5.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution.

**§ 20.2** If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

**§ 20.3** The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the ~~American Arbitration Association in accordance with their Construction Industry Mediation Procedures~~ Judicial Arbitrator Group (JAG) in accordance with their guiding Rules of Civil Procedure and Rules of Evidence in effect on the date of this Master Agreement. A request for mediation shall be made in writing, delivered to the other party to this Master Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution 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, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 20.4** If the parties have selected arbitration as the method for binding dispute resolution in this Master Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the ~~American Arbitration Association, in accordance with the Construction Industry Arbitration Rules~~ Judicial Arbitrator Group (JAG), in accordance with the guiding Rules of Civil Procedure and Rules of Evidence in effect on the date of this Master Agreement. Demand for arbitration shall be made in writing, delivered to the other party to this Master Agreement, and filed with the person or entity administering the arbitration. 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.

**§ 20.5** Either party, at its sole discretion, may consolidate an arbitration conducted under this Master 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).

**§ 20.6** Any party to an arbitration 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 a Claim not described in the written Consent.

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

### **§ 20.8 Claims for Consequential Damages**

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to any Contracts formed pursuant to this Master Agreement. 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 19. Nothing contained in this Section 20.8 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

## **ARTICLE 21 SCOPE OF THIS MASTER AGREEMENT**

**§ 21.1** This Master Agreement represents the entire and integrated Master Agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Master Agreement may be amended only by written instrument signed by both Owner and Contractor.



§ 21.2 This Master Agreement is comprised of the following documents listed below:

- .1 Exhibit A, Determination of the Cost of the Work, if applicable.
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the ~~following~~:following:(Not Used at this Time)

- .3 Other documents:  
(List other documents incorporated into this Master Agreement.)

Attachment A- Fee Matrices;  
Attachment B - Labor Burden Rates; and  
Attachment C - Contractors Rental Equipment Rates

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

\_\_\_\_\_  
**OWNER** (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
**CONTRACTOR** (Signature)

\_\_\_\_\_  
(Printed name and title)

