

BOARD PACKET

GRAND JUNCTION REGIONAL AIRPORT AUTHORITY

April 6, 2021

Grand Junction Regional Airport Authority



Date: April 6, 2021

Location:

Join Electronic Zoom Meeting

Link: <https://us02web.zoom.us/j/81008276463>

Meeting ID: 810 0827 6463

Time: 5:15 PM

SPECIAL BOARD MEETING AGENDA

- I. Call to Order**
- II. National Anthem**
- III. Approval of Agenda**
- IV. Commissioner Comments**
- V. Citizens Comments**

The Grand Junction Regional Airport Authority welcomes respectful public comments at its meetings. The Citizens Comment section is open to all individuals that would like to comment. If you wish to speak under the Citizens Comment portion of the agenda, please e-mail your comment to the Board Clerk (boardclerk@gjairport.com) 15 minutes prior to the meeting. Comments not related to specific agenda items will be addressed during the citizen comment section of the agenda. Citizen comments related to a specific action item will be addressed during the discussion of that action item. The Board Chair will indicate when you may come forward and comment. Please state your name for the record. Presentations are limited to **three minutes** and yielding time to others is not permitted. Speakers are to address the Chair, not each other or the audience, and are expected to conduct themselves in an appropriate manner. The use of abusive or profane language shall not be allowed. No debate or argument between speakers and/or members of the audience shall be permitted.

VI. Consent Agenda

- A. Elevator and Escalator Repair and Maintenance Service Contract _____ 1
 - Accept staff's recommendation to select Thyssenkrupp Elevator Corporation to provide elevator and escalator repair and maintenance services at the Airport; approve the proposed contract from Thyssenkrupp and authorize the Executive Director to sign the contract.

VII. Action Items

A. FCI Construction Contract - Rental Car Facility and Terminal Improvement Projects 2

- Approve the proposed contract with FCI Constructors, Inc. to make rental car facility improvements and terminal improvements for a gross maximum contract price of \$1,323,827, approve a budgeted owner contingency of \$100,173 for the project, and authorize the Executive Director to sign the contract and authorize change orders within the budgeted contingency amount and in accordance with the Purchasing and Procurement Policy.

VIII. Discussion

A. Airport Development Project Update

IX. Any other business which may come before the Board

X. Adjournment

Grand Junction Regional Airport Authority
Agenda Item Summary

TOPIC:	Elevator and Escalator Repair and Maintenance Service Contract		
PURPOSE:	Information <input type="checkbox"/>	Guidance <input type="checkbox"/>	Decision <input checked="" type="checkbox"/>
RECOMMENDATION:	Accept staff's recommendation to select Thyssenkrupp Elevator Corporation to provide elevator and escalator repair and maintenance services at the Airport; approve the proposed contract from Thyssenkrupp and authorize the Executive Director to sign the contract.		
SUMMARY	<p>GJRAA is required to use a licensed conveyance maintenance company to provide maintenance and repair services on the elevators and escalators in the Terminal and the Air Traffic Control Tower (ATCT). The contract includes monthly inspections, maintenance, and ware part replacements on the conveyance devices in the terminal and a quarterly lube and maintenance check on the elevator in the ATCT. The existing contract for maintenance and repair services expired at the end of 2019 and the airport has been paying based on actual services rendered since.</p> <p>Staff wishes to establish another service contract and therefore a Request for Proposal was published on January 21, 2021 and closed February 19, 2021 for firms to provide maintenance and repair services on the elevators and escalators at the Airport. Two different firms submitted proposals. We had an evaluation committee of three staff review the proposals and score them based on:</p> <ol style="list-style-type: none">1.) Experience on similar contracts2.) Understanding of the services requested3.) Proposed personnel qualifications4.) Project Approach/Methodology/responses to questions in statement of qualifications5.) Pricing <p>Based on the evaluations of the committee, staff recommends Thyssenkrupp to provide elevator/escalator maintenance and repair services at the Airport.</p> <p>The term of the proposed contract with Thyssenkrupp will begin upon execution by the Airport and expire 36 months thereafter and will include two (2), two (2) year extension options. The first year of the contract will have a monthly cost of \$2,865 and future years will have price increases limited to changes in Union rate increases published by the Independent Union of Elevator Contractors or 3%, whichever is lower.</p>		
REVIEWED BY:	Executive Director and Legal Counsel		
FISCAL IMPACT:	Estimated annual costs \$34,380 2021 Budget: \$37,400		
ATTACHMENTS:	Proposed Contract from Thyssenkrupp Elevator Corporation		
STAFF CONTACT:	Sarah Menge Email: smenge@gairport.com Phone: (970) 248-8581		

Blended Coverage Agreement



March 19, 2021

Purchaser: Grand Junction Regional Airport Authority Location:
 Address: 2828 Walker Field Dr Address: 2828 Walker Field Dr
 Grand Junction, CO 81506 Grand Junction, CO 81506

thyssenkrupp Elevator Corporation ("thyssenkrupp Elevator Corporation," "thyssenkrupp Elevator," thyssenkrupp," "we," "us," and "our"), agrees with the Grand Junction Regional Airport Authority ("Purchaser," "you," and "your"), to maintain the equipment described below in accordance with the terms and conditions of this agreement ("the Agreement") with the goal of maximizing its performance, safety, and life span. thyssenkrupp Elevator and Purchaser may hereinafter be referred to individually as a "Party" or collectively as the "Parties."

Equipment to be Maintained

This Agreement covers the units described in the table below (individually a "Unit" or collectively the "Units") which groups the Units according to their applicable coverage type (i.e. Gold Coverage, Platinum Coverage, etc.). A description of those terms and conditions specifically applicable to each coverage type appears in the sections of this Agreement entitled "Parts Repair and Replacement," and "Service Requests and Overtime Service Requests." The remaining terms and conditions apply to all coverage types.

Platinum Coverage

Equipment Type	Nickname	Legal ID	OEM Serial #	Stops	Controller Manufacturer	MAX Eligible
Escalator / Moving Walk	Down Escalator	657652	657652		Otis	No
Escalator / Moving Walk	Up Escalator	657653	657653		Otis	No
Hydraulic	Passenger	C74028	C74028	3	Otis	No
Hydraulic	Service	C74029	C74029	3	Montgomery	No

Bronze Coverage

Equipment Type	Nickname	Legal ID	OEM Serial #	Stops	Controller Manufacturer	MAX Eligible
Geared(Traction)	Tower Elevator	BBP357	BBP357	6	thyssenkrupp Elevator	Yes

Scope of Work

Notwithstanding any provision herein to the contrary, thyssenkrupp shall provide the services set forth in the Purchaser's RFP, attached hereto as Exhibit A, in accordance with the associated standards of care, terms, and conditions set forth therein. All preventive maintenance service provided under this Agreement shall be performed during regular working days and hours as set by the IUEC local. If Purchaser requests service outside of these regular days and hours, then normal overtime rates shall apply. Modernization shall be as defined by the elevator industry wherein the controller is replaced.

Service Visits

thyssenkrupp Elevator will visit the Units described above to examine, maintain, adjust and lubricate the equipment covered by this Agreement as necessary to promote the proper operation of those Units and will repair or replace any covered components if the repair or replacement is, in thyssenkrupp's reasonable opinion, necessitated by normal wear and tear or is not otherwise excluded by this Agreement ("Service Visits"). These Service Visits will be performed Monday to Friday, 8:00 AM to 4:30 PM except during federal holidays ("Regular Time"). All work performed before or after Regular Time shall be considered overtime ("Overtime").

thyssenkrupp Elevator will examine covered parts and components of the Unit(s) including:

- Control and landing positioning systems
- Signal fixtures
- Machines, Drives, Power units, pumps, valves, and above-ground jacks

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- Car and hoistway door operating devices and door protection equipment
- Loadweighers
- Wire Ropes
- Escalator power unit
- Controller parts, electrical switches, wiring
- Governors, brakes
- Handrails
- Chains, rollers, sprockets, bearings
- Steps and step treads
- Comb plates
- Safety mechanisms

In order to ensure optimum operation, thyssenkrupp Elevator will also:

- Lubricate covered parts and components for smooth and efficient performance
- Adjust covered parts and components to promote safe operation

Service Visits Include thyssenkrupp Elevator's Maintenance Control Program

thyssenkrupp Elevator performs all work covered by this Agreement in accordance with the version of ASME A17.1 that is, according to the relevant authority having jurisdiction, applicable to the Unit(s) at the time the Agreement is first fully executed by both Parties. Section 8.6 of that code currently requires Unit owners to have a Maintenance Control Program ("MCP"). thyssenkrupp Elevator's MCP meets or exceeds section 8.6 of that code. Our MCP incorporates thyssenkrupp Elevator's Basic Elevator and Escalator Procedures Manual listing the processes we follow when performing those maintenance, repair, replacement and testing services that are specifically described as included in this Agreement. Our MCP also includes thyssenkrupp Elevator's Maintenance Tasks & Records documentation to record the performance of those tasks. This Agreement does not include any work mandated as a consequence of changes to that code after this Agreement is executed.

Parts Repair and Replacement

The following applies only to Unit(s) designated for Platinum Premier Coverage, Platinum Coverage, or Gold Coverage:

thyssenkrupp Elevator will repair or replace any covered components if the repair or replacement is, in thyssenkrupp's reasonable opinion, necessitated by normal wear and tear or is not otherwise excluded by this Agreement.

The following applies only to Unit(s) designated for Bronze Coverage:

We will not repair or replace any component of your Unit(s). All such work is outside the Scope of Services and will be the subject of separate billing by thyssenkrupp to you. We will, however, furnish the necessary lubricants (other than hydraulic fluid) and cleaning materials at no additional charge.

Service Requests and Overtime Service Requests

A "Service Request" is the dispatching of a thyssenkrupp Elevator technician to address minor adjustments to and the release of any entrapped passengers from a Unit during Regular Time. Service Requests may be made from one or more of the following: you or your representative, the building or building's representative, emergency personnel, and/or passengers through the Unit's communication device and/or from any applicable remote monitoring device attached to the Unit if monitored by thyssenkrupp Elevator. Service Requests performed in whole or in part before or after Regular Time are considered overtime service requests ("Overtime Service Requests").

The following applies only to Unit(s) designated for Platinum Coverage:

Service Requests are included in the Scope of Services at no additional charge. On Overtime Service Requests thyssenkrupp Elevator will absorb Regular Time costs for labor and you will be responsible for the difference between the Regular Time costs and Overtime costs for labor which will be the subject of separate billing by thyssenkrupp. Labor costs are defined to include travel expenses and time spent on the job ("Labor Costs").

The following applies only to Unit(s) designated for Bronze Coverage:

Neither Service Requests nor Overtime Service Requests are included and they will be the subject of separate billing by thyssenkrupp for both materials and Labor Costs .

Testing

Equipment Testing

This Agreement includes only the following tests:

- those annual and five (5) year safety tests for your traction Units covered by this Agreement

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- those annual and five (5) year safety tests for your hydraulic Units covered by this Agreement
- those annual safety tests for your escalator Units covered by this Agreement

Should your Unit(s) require any additional type of equipment testing as required by any applicable law and/or code, we will provide you with a separate written estimate that includes the cost of any associated labor and/or material(s).

Within 10 business days of the commencement date of this Agreement, the parties shall jointly conduct an inspection of all Unit(s) covered under this Agreement to determine the existing condition thereof. During the inspection, thyssenkrupp shall render its opinion as to (a) whether the Unit(s) require any repairs now or in the near future, and (b) whether any component or part requiring replacement, if any, is no longer in stock and readily available from the Original Equipment Manufacturer ("OEM"). The results of such inspection shall be documented in a form satisfactory to both parties.

Notwithstanding the foregoing, should your Unit(s) require any safety tests as mandated by any applicable law and/or code on the commencement date of this Agreement, thyssenkrupp Elevator assumes no responsibility for the day-to-day operation of the governor or safeties on applicable traction elevators, or the hydraulic system on applicable hydraulic elevators under the terms of this Agreement until the test has been completed and the Unit has passed. Should the respective Unit fail any of those tests, it shall be solely your responsibility to make necessary repairs and place the Units in a condition that we deem acceptable for further coverage under the terms of this Agreement. Because the performance of any safety test places the Unit under extreme conditions that are outside of the Unit's normal operating parameters, you agree that thyssenkrupp Elevator shall not be liable for any damage to the building structure or the Unit(s) resulting from the performance of any safety tests we perform at any time under this Agreement, provided that such tests are performed in accordance with industry standards and such damage is not a result of thyssenkrupp's negligence or willful misconduct.

Should your jurisdiction require the presence of either the applicable authority having jurisdiction or a third party witness at the time of testing, you agree to pay for any costs of that individual along with any inspection/coordination fees.

Firefighters' Service Testing

Should your Unit(s) be equipped with a phase I and phase II firefighters' service feature, all testing, record-keeping and record storage obligations associated with that feature that are required by any applicable law or code are expressly excluded from this Agreement and shall remain solely your responsibility to satisfy. The first time that your testing of that feature following the full execution of this Agreement reveals that it is not operating properly, you shall immediately remove the Unit from operation, immediately notify thyssenkrupp Elevator of the condition, and agree to remain responsible for all costs associated with any repairs necessary to return that feature to full and proper operation in accordance with any applicable law or code.

Exclusions

Service Visits, Service Requests, and Overtime Service Requests do not include: the removal or retrieval of items unrelated to the operation of the Unit(s) from the pit, machine room, or hoistway; the dispatching of any technician that results in the discovery by that technician that the Unit is either functioning on independent service or firefighters' service or that the Unit is operating properly but the stop button or stop function has been engaged by an entity or individual other than Purchaser; any request or obligation to address any condition associated with a part or component specifically excluded or not covered elsewhere in this Agreement; and/or any request or obligation to service, repair, replace any components or address any condition caused in whole or in part by any one or more of the following: anyone's abuse, misuse and/or vandalism of the equipment; anyone's negligence in connection with the use or operation of the equipment; excessive dust or debris; any loss of power, power fluctuations, power failure, or power surges that in any way affect the operation of the equipment; oxidization, rust, or other conditions caused in whole or in part by the environment in which the affected component is located; fire, smoke, explosions, water, storms, wind, and/or lightning; any acts of God; acts of civil or military authorities, strikes, lockouts, other labor disputes, riot, civil commotion, war, malicious mischief, or theft; or any other reason or cause beyond our control that affects the use or operation of the Unit ("Billable Work"). On all Billable Work you will be solely responsible for the cost of all parts or materials along with all labor invoiced at thyssenkrupp Elevator's standard billing rates (whether Regular Time or Overtime depending on when the Billable Work is performed) including Labor Costs.

In addition to the Billable Work described above, we also do not cover (A) the examination, maintenance, adjustment, refinishing, repair or replacement of the following components and/or systems, unless the need for such repair or replacement is caused by thyssenkrupp: any cosmetic, construction, or ancillary components of the elevator or escalator system, including the cab enclosure, ceiling frames, panels, and/or fixtures, hoistway door panels, door frames, swing door hinges and closing devices, sills, car flooring, floor covering, lighting fixtures, ceiling light bulbs and tubes, balustrades, and wellway enclosures; any electrical components including main line power switches, breaker(s) or feeders to controller; sealed machine bearings; any below-ground or partially unexposed components of any hydraulic elevator system including, but not limited to, jack/cylinder, piston, PVC and/or other protective material of any type or kind; any below-ground or partially unexposed piping of any type or kind; any signage of any type or kind including but

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not limited to, signs, placards, and/or braille; any fire-suppression or fire-detection equipment of any type or kind including, but not limited to, smoke detectors, fire sensors, and/or sprinklers and associated piping; any communication, security, entertainment, and/or advertising devices including, but not limited to, kiosks or touchscreen displays and/or card readers; any batteries for emergency lighting and emergency lowering; or any environmental control devices including, but not limited to, air conditioners, heaters, ventilation fans, humidifiers, de-humidifiers, and/or pit or sump pumps; or (B) the repair, refurbishing, rebuilding, and/or replacement of any motor generators; or (C) the replacement or alignment of elevator guide rails; or (D) any other items or tasks specifically excluded elsewhere in this Agreement.

With the passage of time, equipment technology and designs will change. If (1) any part or component of your equipment covered under this Agreement cannot, in thyssenkrupp's reasonable opinion, be safely repaired, and (2) a brand-new direct replacement is no longer in stock and readily available from the Original Equipment Manufacturer ("OEM"), then thyssenkrupp shall provide written notification of the same to Purchaser and the Purchaser shall make a determination as to whether and/or how to proceed with any repairs.

In addition, we will not be required to make any changes or recommendations in the existing design or function of the Unit(s) nor will we be obligated to install new attachments or parts upon the equipment as recommended or directed by insurance companies, governmental agencies or authorities, or any other third party.

Digital Customer Experience

MAX - Digital Maintenance

MAX is a cloud-based Internet of Things ("IOT") platform that we, at our election, may connect to your Unit(s) by installing a remote-monitoring device (a "Device"). Purchaser consents and authorizes thyssenkrupp Elevator to (1) access Purchaser's premises to install a Device to the Unit(s) and thereafter maintain and/or repair the Device(s) and (2) to collect, store, maintain, own, use, delete, and/or destroy any or all of the data generated by the Device(s). Any Device, once installed, is not intended, nor should it be considered, as a fixture. Instead, thyssenkrupp Elevator shall retain the right to remove the Device from any Unit(s) and/or cease any data collection and/or analysis at any time at its sole discretion. Moreover, thyssenkrupp Elevator shall retain the exclusive right and ability to, at its sole discretion, remove, delete and/or destroy all associated data generated from the Device(s). Because the Device contains trade secrets belonging to thyssenkrupp Elevator and is being installed for the sole use and benefit of our personnel, Purchaser agrees not to permit Purchaser's own personnel or any third parties to use, access, tamper with, relocate, copy, alter, destroy, disassemble or reverse engineer the Device or its data. The installation of any Device on a Unit shall not confer any rights or operate as an assignment or license to you of any patents, copyrights or trade secrets with respect to the Device and/or any software contained or embedded therein or that it utilizes/utilized in connection with the collection, monitoring and/or analysis of data.

With a MAX device connected to your equipment, at no additional charge, information obtained via machine learning may be sent to our technicians to promote early diagnosis, faster fixes and reduced downtime.

thyssenkrupp Elevator offers an additional menu of services available as outlined in the attached MAX Exhibit for your consideration and acceptance at an additional fee. The services you select will be governed by the terms and conditions of this Agreement to the extent that they do not conflict with the terms and conditions of the MAX Exhibit. In the event of a conflict, the terms and conditions of the MAX Exhibit will exclusively govern the subject matter of those terms and conditions.

Customer Web Portal and Mobile App

thyssenkrupp Elevator provides a web-based customer portal (the "CP") and mobile application (the "App") which, following the effective date of this Agreement, may contain certain maintenance and service call data associated with the Unit(s). To the extent applicable, thyssenkrupp Elevator will provide Purchaser with a user name and password to access the CP and App platforms.

Purchaser shall, at its sole cost, provide and ensure the functioning integrity of its own hardware, software and internet connection necessary to access the CP and App. To the extent applicable, thyssenkrupp Elevator reserves the right to restrict Purchaser's access to the CP and App if any of Purchaser's accounts with thyssenkrupp Elevator has an outstanding unpaid balance greater than 30 days or in the event of anticipated or pending litigation of any kind. thyssenkrupp Elevator reserves the right to discontinue the CP and App altogether at its sole discretion and without notice to Purchaser and Purchaser expressly agrees to release thyssenkrupp Elevator from any and all claims of any type or kind arising out of or related to that discontinuation.

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You may supplement this Agreement with an additional suite of services through our thyssenkrupp Communications® call center at an additional fee contingent upon your agreement to all of the terms and conditions as set forth in the attached exhibit entitled "thyssenkrupp Communications Services." These additional available services involve the provision of 24/7/365 monitoring of your Units' code-compliant and compatible emergency telephone and in-cab video and text communication equipment (the "Communication

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Equipment”), the dispatch of a thyssenkrupp Elevator technician or emergency personnel under certain circumstances, the provision of a cellular connection for that Communication Equipment, and limited repair/replacement coverage for that Communication Equipment which is otherwise excluded from this Agreement.

Contract Term, Price, Available Discounts & Payment

Term

This Agreement is effective for 36 months starting on the date of Purchaser’s execution of the Agreement. To ensure continuous service, this Agreement will be automatically renewed for two, successive 24-month periods unless either Party timely serves written notice on the other Party of its intention to cancel at least 90-Days before the end of the initial 36-month period or at least 90-Days before the end of any subsequent 24-month renewal period. Upon the expiration of the two, successive 24-month renewal periods, this Agreement shall automatically renew on a month-to-month basis, cancellable by either party upon 14-days notice. Notice shall be sent by certified mail, return receipt requested to the thyssenkrupp Elevator office address found in this Agreement. Time is of the essence.

Price

The price for the Scheduled Service as stated in this Agreement shall be \$2,865.00 per month, inclusive of all applicable sales and use taxes, payable quarterly in advance. The monthly price is subject to annual increases on the anniversary date of the agreement. TK Elevator will cap the annual price increase at 3% or the standard IUEC labor rate adjustment, whichever is lower, annually.

Payment

Payments are due upon receipt of each of your thyssenkrupp Elevator invoices. If you do not timely pay any sum due to thyssenkrupp Elevator related to your Units described in this Agreement, regardless of whether it is billed pursuant to this Agreement or any other agreement with us, within the stipulated payment term calculated from the billing date, we may also choose to do one or more of the following:

- deem that you have permanently forfeited any discounts you may be entitled to associated with your payment plan/billing frequency for this Agreement, and/or
- suspend all services until all amounts due have been paid in full, and/or
- declare all sums for the unexpired term of this Agreement due immediately as liquidated damages and terminate our obligations under this Agreement

A service charge of the highest rate allowed by law shall apply to all overdue accounts you have with thyssenkrupp Elevator that are in any way related to any of the Unit(s) described in this Agreement. If thyssenkrupp Elevator elects to suspend service as a result of non-payment by Purchaser, we shall not be responsible for personal injury, death, damage to property (including damage to the Units) or losses of any other type or kind that is in any way related to thyssenkrupp Elevator’s suspension of service. Upon resumption of service, you will be responsible for payment to thyssenkrupp Elevator for all costs we incur that result from our suspension of service and to remedy any damage caused to your equipment during that time. Time is of the essence.

If, through no fault of thyssenkrupp, this Agreement is terminated prior to the end of the current term, a condition of such termination shall be that you agree to pay us the full amount of the any discount you received during the initial and any subsequent term. This is in addition to and not in lieu of any other rights or remedies we may have under this Agreement and the law.

Purchaser's Responsibilities

You agree to instruct or warn passengers in the proper use of the Unit(s) and to keep them under continued surveillance by competent personnel to detect irregularities between our examinations. You agree to report, as soon as reasonably practicable, any discovered condition that may indicate the need for correction before the next regular examination. You agree to shut down, as soon as reasonably practicable, the Unit(s) upon manifestation of any discovered irregularities in either the operation or the appearance of the Unit(s), to notify us thereafter, and to keep the Unit(s) shut down until the completion of any repairs. Under those circumstances you agree not to re-set the mainline disconnect. In the event of a Service Request where our technician finds that the mainline disconnect has been reset, you agree that you will be responsible for all Labor Costs associated with that Service Request invoiced at thyssenkrupp Elevator’s standard billing rates (whether Regular Time or Overtime depending on when we respond to that Service Request). You agree to give us immediate verbal notice and written notice within ten (10) days after any accident in or about the Unit(s). You agree to provide our personnel with a safe place to work. You agree to provide a suitable machine room, including secured doors, waterproofing, lighting, ventilation, and appropriate air temperature control to maintain that room at a temperature between 50°F and 90°F. You agree to provide properly maintained and functioning mainline disconnect(s). You agree to maintain the elevator pit in a dry condition at all times. Should water or other liquids become present, you are responsible for the cost associated with the removal and the proper handling of such liquids. You agree that if thyssenkrupp Elevator’s inspection of a Unit serviced under this Agreement reveals an

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operational problem which, in thyssenkrupp Elevator's reasonable judgment, jeopardizes the safety of the riding public, thyssenkrupp Elevator may shut down the Unit until such time as the operational problem is resolved. In that event, thyssenkrupp Elevator will immediately advise you in writing of such action, the reason for such action, and whether any proposed solution is covered by the terms of this Agreement.

thyssenkrupp Elevator assumes no responsibility for any part of the Unit(s) except that upon which work has been performed under this Agreement. No work, service, examination or liability on the part of thyssenkrupp Elevator other than that specifically mentioned herein is included or intended. It is agreed that thyssenkrupp Elevator does not assume possession or control of any part of the Unit(s) and that such remains Purchaser's exclusively as owner, lessor, lessee, possessor, or manager thereof.

We reserve the right to discontinue work in the building whenever, in our sole opinion, our personnel do not have a safe place to work. For safety reasons, you agree not to permit others to make alterations, additions, adjustments, or repairs or replace any component or part of the Unit(s) during the term of this Agreement. You agree to accept our judgment as to the means and methods employed by us for any corrective work under this Agreement, provided that such means and methods are in accordance with industry standards.

Upon the commencement of this Agreement and as a condition of thyssenkrupp Elevator's performance of its obligations, Purchaser shall provide any wiring diagrams, manuals, special tools, monitoring devices, software, hardware or any other items designed to work with, diagnose, service, or repair the Unit(s) (1) as originally supplied by the OEM with the installation or (2) solely available to Purchaser from the OEM.

Some equipment covered by this Agreement may be encoded with serialized onboard diagnostics or other closely held diagnostic intelligence. In the event that the cause of a shutdown or other equipment issue cannot be diagnosed and/or resolved without enlisting the OEM's assistance, Purchaser agrees to obtain the assistance of the OEM and thyssenkrupp Elevator agrees to reimburse you for that expense, provided that it does not exceed the total monthly service fee divided by the number of Units covered under this Agreement. Any fees in excess of that figure shall be exclusively the Purchaser's responsibility.

Since thyssenkrupp Elevator's top priority is the satisfaction of its customers, if you should have any concern(s) with our performance or the means and methods used to meet our obligations under this Agreement, you agree to provide us with written notice of that concern and give us thirty (30) days to respond either in writing or commence action to appropriately resolve it.

In the event of the sale, lease or other transfer of the ownership of the premises in which the Unit(s) described herein are located, you agree to see that such transferee is made aware of this Agreement and agrees to assume and/or be bound by the conditions hereof for the balance of the unexpired term of this Agreement. Should the transferee fail to assume this Agreement, you shall remain liable for all unpaid amounts, including those owed for the balance of the current unexpired term of this Agreement.

Unless this Agreement expressly includes, or is later amended to include, thyssenkrupp Communications Phone Monitoring Service or Multimedia Monitoring Service as described in the exhibit hereto, this Agreement expressly excludes any materials, labor and/or services involving or related to either the monitoring of or provision of a response to any communications initiated from any Communication Equipment installed within the Unit(s) and Purchaser remains solely responsible for contracting with a separate vendor to monitor and respond to such communications in accordance with all applicable codes, statutes and/or laws.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THYSSENKRUPP ELEVATOR EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO ANY OR ALL OF THE PARTS, PLATFORMS (INCLUDING BUT NOT LIMITED TO CP, APP AND MAX) AND/OR SERVICES CONTEMPLATED BY THIS AGREEMENT INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, THYSSENKRUPP ELEVATOR PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE PARTS CONTEMPLATED BY THIS AGREEMENT WILL BE ACCESSIBLE TO CUSTOMER, OPERATE WITHOUT INTERRUPTION, OR BE ERROR FREE.

Thyssenkrupp's insurance: Prior to beginning work activities on Airport property, Contractor shall possess, at a minimum, the insurance coverages set forth in the attached RFP. Thyssenkrupp shall add the required parties to its insurance policies (with the exception of Worker's Compensation insurance) as additional insured parties, to be evidenced by thyssenkrupp's manuscript Additional Insured endorsement, subject to the limitations as hereafter set forth. Such additional insured coverage shall only apply to the extent any damages covered by the policy are determined to be caused by thyssenkrupp's acts, actions, omissions or neglects, and shall not apply to the extent caused by the additional insured's own acts, actions, omissions, or neglects, or for bare allegations. Thyssenkrupp's Certificate of Insurance shall only contain standard ACORD cancellation language. Aggregates shall be per policy and not per project. Copies of thyssenkrupp's insurance policies shall be furnished only in the event of a claim and pursuant to proper

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discovery request.

Liability: thyssenkrupp hereby covenants and agrees to indemnify, save, and hold harmless Purchaser, its officers, employees, and agents from any and all liability, loss, costs, charges, obligations, expenses, attorneys' fees, litigation, judgments, damages, claims, and demands of any kind whatsoever arising from or out of any negligent act or omission or other tortious conduct of thyssenkrupp its officers, employees, or agents in the performance or nonperformance of its obligations under this Agreement, but only to the extent caused by the negligent acts or omissions or tortious conduct of thyssenkrupp or anyone for whose acts it may be liable. For the avoidance of doubt, thyssenkrupp's indemnification obligations shall be limited to property damage and bodily injury claims only.

In no event shall either party to this Agreement be liable for claims for consequential, special or indirect damages arising out of the performance of this Agreement, provided that such damages were not caused as a result of the negligence or willful misconduct of the offending party.

Termination: TK Elevator's top priority is the satisfaction of its customers, if you should have any concern(s) with our performance or the means and methods used to meet our obligations under this Agreement, you agree to provide us with written notice of that concern and give us thirty (30) days to respond either in writing or commence action to appropriately resolve it. If you have satisfied those conditions and we do not respond in writing or commence action to appropriately resolve your concern within that thirty (30) day period you shall then have the right to terminate this Agreement after providing our local branch manager with an additional thirty (30) days written notice via certified mail, return receipt requested, recognizing that time is of the essence with respect to this provision.

- Upon receipt of the notice of termination, except as explicitly directed by Purchaser, thyssenkrupp must immediately discontinue all services affected.
- Upon termination of this Agreement, thyssenkrupp must deliver to Purchaser all service records, and other documents and materials prepared by thyssenkrupp under this Agreement, whether complete or partially complete
- Purchaser agrees to pay thyssenkrupp for satisfactory work completed up through the date thyssenkrupp receives the termination notice and deemed acceptable by Purchaser, in its reasonable discretion. Compensation will not include anticipated profit on non-performed services.

Thyssenkrupp may terminate this Agreement in whole or in part, if Purchaser: (a) defaults on its obligations under this Agreement; or (b) fails to make payment to thyssenkrupp in accordance with the terms of this Agreement.

- Thyssenkrupp must provide Purchaser seven (7) days advance written notice of its intent to terminate this Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- Upon receipt of a notice of termination from thyssenkrupp, Purchaser agrees to cooperate with thyssenkrupp for the purpose of terminating this Agreement or portion thereof, by mutual consent. If the parties cannot reach mutual agreement on the termination settlement, thyssenkrupp may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon Purchaser's breach of this Agreement.
- In the event of termination due to Purchaser breach, thyssenkrupp is entitled to invoice Purchaser and to receive full payment for all services performed or furnished in accordance with this Agreement through the effective date of termination action.

In the event an attorney is retained to enforce, construe or defend any of the terms and conditions of this Agreement or to collect any monies due hereunder the prevailing Party shall be entitled to recover all costs and reasonable attorney's fees.

The parties hereby waive trial by jury. This Agreement shall be deemed to have been made in, and shall be construed in accordance with the laws of the State of Colorado. Any lawsuit related to or arising out of disputes under this Agreement shall be commenced and tried in Mesa County, Colorado. Prior to, and as a condition of seeking judicial relief, thyssenkrupp shall submit a written petition to the Airport Executive Director identifying the specific dispute and thyssenkrupp's position, and the Airport Executive Director shall thereafter make a timely finding and proposed resolution of the dispute.

In the event any portion of this Agreement is deemed invalid or unenforceable by a court of law, public policy or statute, such finding shall not affect the validity or enforceability of any other portion of this Agreement.

Our rights under this Agreement shall be cumulative and our failure to exercise any rights given hereunder shall not operate to forfeit or waive any of said rights and any extension, indulgence or change by us in the method, mode or manner of payment or any of its other rights shall not be construed as a waiver of any of its rights under this Agreement.

Assignment and Subcontracting: thyssenkrupp shall not assign or subcontract any part of this Agreement without the prior approval of Purchaser.

Blended Coverage Agreement



Subordination: This Agreement shall be subordinate to the provisions of any existing or future agreements between Purchaser and the United States, relative to the development or improvement of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. This Agreement further shall be subordinate to the terms and conditions of the Authority Bond Resolution and, in the event of a conflict between this Agreement and the Bond Resolution, the Bond Resolution shall control.

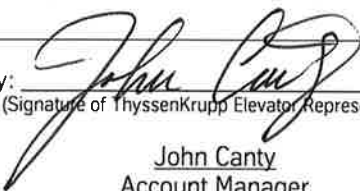
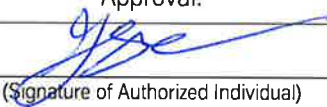
Governmental Immunity Act: No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.

Colorado Open Records Act: thyssenkrupp acknowledges that Purchaser is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §24-72-201 et seq., and thyssenkrupp agrees that it will fully cooperate with Purchaser in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which thyssenkrupp asserts is confidential and exempt from disclosure. Any other provision of this Agreement notwithstanding, including exhibits, attachments, and other documents incorporated into this Agreement by reference, all materials, records, and information provided by thyssenkrupp to the Purchaser shall be considered confidential by Purchaser only to the extent provided in the Colorado Open Records Act, and thyssenkrupp agrees that any disclosure of information by Purchaser consistent with the provisions of the Colorado Open Records Act shall result in no liability of Purchaser. To the extent not prohibited by federal law, this Agreement is subject to public release through the Colorado Open Records Act.

Federal Contract Provisions: The Federal Contract Provisions of the attached Exhibit B, Standard Contract Provisions, are incorporated by reference as if fully set forth in the body of this Agreement. In the event of conflict between the terms and conditions of Exhibit B and the body of this Agreement, the terms and conditions of Exhibit B shall control. In the event that the FAA changes any of the Federal Contract Provisions, the parties shall incorporate the change in an amendment hereto.

Acceptance

Until executed by both Parties this Agreement is a proposal that shall only remain available for acceptance for a period of sixty (60) calendar days from the date appearing on the first page of this document unless revoked by thyssenkrupp Elevator earlier in writing to Purchaser. Your acceptance of this Agreement and its approval by an authorized manager of thyssenkrupp Elevator will constitute exclusively and entirely the agreement for the services herein described. All other prior representations or agreements, whether written or verbal, will be deemed to be merged herein and no other changes in or additions to this Agreement will be recognized unless made in writing and properly executed by both Parties. Should your acceptance be in the form of a purchase order or other similar document, the provisions of this Agreement will exclusively govern the Parties' responsibilities. No agent or employee of thyssenkrupp Elevator shall have the authority to waive or modify any of the terms of this Agreement without the express prior written approval of an authorized thyssenkrupp Elevator manager.

ThyssenKrupp Elevator Corporation:	Grand Junction Regional Airport Authority:	ThyssenKrupp Elevator Corporation Approval:
By:  (Signature of ThyssenKrupp Elevator Representative) <u>John Canty</u> <u>Account Manager</u> <u>970.309.3342</u> <u>4-2-21</u> (Date)	By: _____ (Signature of Authorized Individual) _____ (Print or Type Name) _____ (Print or Type Title) _____ (Date of Approval)	By:  (Signature of Authorized Individual) <u>Greg Rao</u> <u>Branch Manager</u> <u>614.214.3841</u> <u>4/2/21</u> (Date of Approval)

Blended Coverage Agreement



thyssenkrupp Communications®

thyssenkrupp Elevator offers an additional suite of services through our thyssenkrupp Communications® call center separate and apart from those services included with your Agreement. We have notated below each additional thyssenkrupp Communications Service that you have selected for each of the Units covered under your Agreement and the corresponding total price of those services per Unit.

Building Name	Equipment Type	Nickname	Phone Monitoring	Elevator Telephone #
Grand Junction Regional Airport	Escalator / Moving Walk	Up Escalator		
Grand Junction Regional Airport	Escalator / Moving Walk	Down Escalator		
Grand Junction Regional Airport	Hydraulic	Passenger	<i>Current Selection</i>	
Grand Junction Regional Airport	Hydraulic	Service	<i>Current Selection</i>	
Grand Junction Regional Airport - Tower Elevator	Geared(Traction)	Tower Elevator	<i>Current Selection</i>	

A description of each available thyssenkrupp Communications service and the additional applicable terms and conditions follow.

Phone Monitoring Service

If “Phone Monitoring” is selected for specific Units in the chart above then we will provide 7 days per week, 24 hours per day, 365 days per year dispatching service, through its centralized thyssenkrupp Communications call center, for those specified units. The dispatching service will be provided for calls placed by Purchaser outside of Regular Time to the local thyssenkrupp Elevator branch office. We will also include telephone monitoring on all Units maintained under this Agreement that have operational telephone equipment capable of placing a call to that call center. Depending on the nature of the call and circumstances, thyssenkrupp Elevator's operators can call one or more of the following: Purchaser's Designated Contacts set forth below; Local Emergency Services at phone numbers provided by Purchaser below; and/or a local thyssenkrupp Elevator service technician to be dispatched to the location of the equipment. Calls cannot be placed to “9-1-1” as the centralized thyssenkrupp Communications call center does not have dialing access to local “9-1-1” numbers.

This Phone Monitoring Service specifically excludes any maintenance, repair or replacement of any type or kind of the Purchaser's telephone or other communication equipment. The Purchaser retains exclusive possession and control of its telephone and other communication equipment and is solely responsible for ensuring uninterrupted operation of that equipment so that it is continuously capable of placing a call to thyssenkrupp Communication's call center.

Terms and Conditions

Any of the services mentioned in this Exhibit shall be governed by both the terms and conditions of the Agreement covering the Unit(s) described in that Agreement and the terms and conditions of this Exhibit and in the event that those terms conflict, the terms and conditions of this Exhibit will exclusively govern the subject matter of those terms and conditions. Should the Agreement covering the Unit(s) be terminated for any reason by either Party then this Exhibit shall also be automatically terminated. In the event that this Exhibit is terminated for whatever reason, Purchaser agrees to immediately both transfer the connection of the communication equipment to an appropriate telephone service provider and also make arrangements with its replacement elevator service vendor to reprogram the communication equipment to initiate contact with a replacement call center.

Price and Term

In light of the modifications to Agreement set forth above, you agree to an additional price of \$0 per month which will be billed to you separately from the price of the Agreement (the “thyssenkrupp Communications Services Charge”). The cost of your selected thyssenkrupp Communications Services is not subject to any discounts. Due to the changing nature of technology, thyssenkrupp Elevator reserves the right to annually increase the thyssenkrupp Communications Services Charge with such an annual increase not to exceed a total of five percent (5%) of the prior year's thyssenkrupp Communications Services Charge.

thyssenkrupp Communications Contact Information - To Be Completed by Purchaser

Purchaser hereby acknowledges that as a condition precedent to thyssenkrupp Elevator's placement of calls to Purchaser's Designated Contacts and any Local Emergency Services under this Agreement, Purchaser must first complete all sections of the thyssenkrupp
2021-2-1041032 | ACIA-1TA6KXG | SCV1201001 | March 19, 2021

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thyssenkrupp

communications Contact Information section below. Purchaser further acknowledges that it is Purchaser's sole responsibility to advise thyssenkrupp Elevator immediately in writing of any changes to the information contained in this exhibit during the term of this Agreement. Purchaser acknowledges that no revision to that information will be made without thyssenkrupp Elevator first receiving such request in writing from Purchaser's authorized representative.

Under those circumstances where thyssenkrupp Elevator is unable to reach Purchaser's Designated Contacts, Purchaser hereby gives thyssenkrupp Elevator express permission to dispatch a thyssenkrupp Elevator service technician to the location of the equipment at Purchaser's expense in accordance with thyssenkrupp Elevator's applicable billing rates. Purchaser further agrees that thyssenkrupp Elevator does not assume any duty or responsibility to advise any caller, regardless of his or her location within or outside the elevator, to take or not take any specific action resulting from a medical or other emergency or any other situation including, but not limited to, entrapment of persons, evacuation, repair or return to service of any equipment.

In the event of an emergency, or perceived emergency, one or more of the following are to be Purchaser's Designated Contacts:

Contact Name	Title	Primary Telephone #	Secondary Telephone #

In the event of an Emergency or perceived emergency, thyssenkrupp has the express permission to contact one or more of the following (911 is not sufficient, local phone numbers are required):

Police Department: () -

Fire Department: () -

Special instructions/remarks:

In the event that a thyssenkrupp Elevator call center operator perceives that a call from within the elevator constitutes a medical or other emergency, Purchaser hereby gives thyssenkrupp Elevator the express permission to call Local Emergency Services at the telephone numbers provided above at thyssenkrupp Elevator's sole discretion. Under those circumstances, Purchaser agrees to pay all related charges for services provided by any Local Emergency Services in response to that call. Purchaser agrees that thyssenkrupp Elevator shall not be responsible for ensuring an appropriate (or any) response by Local Emergency Services to that call.



thyssenkrupp

Customer Portal & Mobile App setup form

Name:	Ben Peck		
Address: (if different from contract)			
City:			
State:			
Zip Code:			
Phone:			
Email:	bpeck@gjairport.com		
Subscribe to email notifications:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Grand Junction Regional Airport Authority
Agenda Item Summary

TOPIC:	FCI Construction Contract - Rental Car Facility and Terminal Improvement Projects
PURPOSE:	Information <input type="checkbox"/> Guidance <input type="checkbox"/> Decision <input checked="" type="checkbox"/>
RECOMMENDATION:	Approve the proposed contract with FCI Constructors, Inc. to make rental car facility improvements and terminal improvements for a gross maximum contract price of \$1,323,827, approve a budgeted owner contingency of \$100,173 for the project, and authorize the Executive Director to sign the contract and authorize change orders within the budgeted contingency amount and in accordance with the Purchasing and Procurement Policy.
SUMMARY:	<p>When preparing the 2021 budget, airport staff included the following projects:</p> <ul style="list-style-type: none">• Improvements to the Rental Car (RAC) facilities to be funded with CFC reserves,• Structural repairs recommended by Knott Laboratories in 2020• TSA checkpoint modifications that were originally budgeted in 2020 and postponed due to the pandemic• Replacement/Supplementing the Heating and Cooling Unit for the boarding area <p>The board approved a design and preconstruction task order with FCI in November 2020 to design the listed projects and obtain cost estimates for the project. FCI and airport staff also identified other complimentary projects to be completed at the same time including upgrading the Air Traffic Control Tower Fire Alarm System and additional structural repairs and those have been included in the proposed project.</p> <p>The proposed contract with FCI is a gross maximum price of \$1,323,827 and is within approximately \$10,000 of the budgeted non-AIP project costs for 2021. Staff recommend approval of the construction contract and recommend approving an owner contingency budget of \$100,173 (approximately 7.5% of the total contract). The owner contingency is in addition to the 5% contractor contingency included in the GMP contract.</p>
REVIEWED BY:	Executive Director and Legal Counsel
FISCAL IMPACT:	Total \$1,424,000 CFC Funded portion – approximately \$602,000 Funded from Unrestricted Cash – approximately \$722,000 Funding as needed for Owner Contingency (CFC or Unrestricted) - \$100,000
ATTACHMENTS:	FCI Contract
STAFF CONTACT:	Angela Padalecki apadalecki@gjairport.com Office: 970-248-8588

AIA[®] Document A201[®] – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Airport Facility Upgrades
Grand Junction Regional Airport
2828 Walker Field Drive
Grand Junction, CO 81506

THE OWNER:

(Name, legal status and address)

Grand Junction Regional Airport
2828 Walker Field Drive
Grand Junction, CO 81506

THE ARCHITECT:

(Name, legal status and address)

Blythe Group + Co.
622 Rood Ave
Grand Junction, CO 81501

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
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- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT

ADDITIONS AND DELETIONS:

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

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

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

Init.

15 CLAIMS AND DISPUTES

Init.

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User Notes:

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

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

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent

consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

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

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

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

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

§ 1.8 Building Information Models Use and Reliance

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

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The term "Owner" means the Owner or the Owner's authorized representative.

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

(Paragraphs Deleted)

§ 2.3 Information and Services Required of the Owner

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

(Paragraphs Deleted)

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

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

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary

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to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Owner's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

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

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

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

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite

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safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner, and shall propose alternative means, methods, techniques, sequences, or procedures. The Owner shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Owner objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

§ 3.4 Labor and Materials

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

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

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

§ 3.5 Warranty

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

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

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

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

§ 3.7.4 Concealed or Unknown Conditions

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

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 Superintendent

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

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

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

§ 3.10 Contractor's Construction and Submittal Schedules

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

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

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

§ 3.11 Documents and Samples at the Site

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

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field

measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

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

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

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

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

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

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

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

withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

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

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

(Paragraphs Deleted)

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

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

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

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

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

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity,

the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 Mutual Responsibility

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

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

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

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

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.2 Change Orders

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

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

(Paragraphs Deleted)

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

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

(Paragraph Deleted)

Init.

§ 8.3 Delays and Extensions of Time
(Paragraph Deleted)

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

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

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

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

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

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

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

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

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

(Paragraphs Deleted)

§ 9.6 Progress Payments

§ 9.6.1 Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Contractor.

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

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. The Owner shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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

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

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

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

§ 9.7 Failure of Payment

If the owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents, then the Contractor may, upon seven (7) additional days' notice to the Owner, stop the work until payment of the amount owing has been received. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay, and start-up, plus interest as provided for in the Contract Documents.

Init.

§ 9.8 Substantial Completion

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

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

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

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

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

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will promptly issue a final Certificate for Payment stating that to the best of the Owner's knowledge, information and belief, and on the basis of the Owner's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and

payable. The Owner's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

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

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor will promptly reply to the Owner in writing stating whether the Contractor has reasonable objection to the persons or entities proposed by the Owner. If the Contractor has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

(Paragraph Deleted)

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The

Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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

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

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

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

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

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

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

§ 11.2 Owner's Insurance

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

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

insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

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

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against each other and their consultants and employees for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement, except such rights as they may have to proceeds of such insurance. The subrogation waiver is limited to the rights and claims of the Owner and Contractor that may be brought against each other, exclusively, and shall only be effective in the context. The Owner and Contractor do not waive and specifically maintain their subrogation rights, including all rights and remedies available at law and equity, against: (1) the Owner and Owner's consultants, agents, and employees; and (2) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit the waiver of subrogation by and between the Owner and Contractor. The waiver of subrogation by and between the Owner and Contractor shall be effective as to a person or entity: (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise; (2) even though that person or entity did not pay the insurance premium directly or indirectly; or (3) whether or not the person or entity had an insurable interest in the damaged property.

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

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

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

§ 11.5 Adjustment and Settlement of Insured Loss

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

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter,

if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

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

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

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

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for

correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the State of Colorado Any lawsuit related to or arising out of disputes under this Agreement shall be commenced and tried in Mesa County, Colorado.

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

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

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

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

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

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

§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

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

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

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

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

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

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

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by

applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

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

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

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

§ 15.1.6 Claims for Additional Time

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

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

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

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

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Owner will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been

rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

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

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

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

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

§ 15.3 Mediation

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

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending

mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

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

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

§

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Airport Facility Upgrades
Grand Junction Regional Airport
2828 Walker Field Drive
Grand Junction, CO 81506

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Grand Junction Regional Airport
2828 Walker Field Drive
Grand Junction, CO 81506

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THE ARCHITECT:

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Blythe Group + Co.
622 Rood Ave
Grand Junction, CO 81501

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ARTICLE 1 GENERAL PROVISIONS

...

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

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

...

§ 2.2 Evidence of the Owner's Financial Arrangements

...

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

...

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

...

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

...

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

...

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

...

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

PAGE 13

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

actions of the ~~Owner or the Architect-Owner~~, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

...

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

...

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

...

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

...

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

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

...

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

...

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

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

...

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

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

...

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

...

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

...

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

...

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

...

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

...

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

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

...

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

...

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

...

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

...

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

...

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

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

...

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

...

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, ~~Architect, Architect's Owner's~~ consultants, and agents and employees of any of them from and against claims,

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

...

ARTICLE 4 ARCHITECT

...

§ 4.1 General

...

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

...

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

...

§ 4.2 Administration of the Contract

...

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

...

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

...

~~§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the~~

~~Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.~~

...

§ 4.2.4 Communications

...

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

...

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

...

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

...

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

...

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

...

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

...

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

...

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

...

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

...

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

...

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

PAGE 19

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

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

...

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

...

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

...

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

...

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

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

...

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

PAGE 21

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

...

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

...

§ 7.3 Construction Change Directives

...

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

...

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

...

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

...

~~.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;~~

...

~~.2 Unit prices stated in the Contract Documents or subsequently agreed upon;~~

...

~~.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or~~

...

~~.4 As provided in Section 7.3.4.~~

...

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

...

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

...

~~.2—Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;~~

...

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

...

~~.4—Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and~~

...

~~.5—Costs of supervision and field office personnel directly attributable to the change.~~

...

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

...

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

...

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

...

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

...

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

...

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

...

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

...

§ 8.3 Delays and Extensions of Time

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§ 8.3 Delays and Extensions of Time

...

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

...

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

...

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

...

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

...

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

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§ 9.4 Certificates for Payment

...

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

...

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the

Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

...

§ 9.5 Decisions to Withhold Certification

...

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

...

~~.1~~ —defective Work not remedied;

...

~~.2~~ —third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;

...

~~.3~~ —failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

...

~~.4~~ —reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

...

~~.5~~ —damage to the Owner or a Separate Contractor;

...

~~.6~~ —reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

...

~~.7~~ —repeated failure to carry out the Work in accordance with the Contract Documents.

...

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

...

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

...

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

...

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

...

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

...

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

...

~~If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner~~owner does not pay the Contractor within seven (7) days after the date established in the Contract Documents, ~~the amount certified by the Architect or awarded by binding dispute resolution,~~ then the Contractor may, upon seven (7) additional days' notice to the ~~Owner and Architect,~~stop the work ~~Owner,~~ stop the work until payment of the amount owing has been received. The Contract Time shall be extended ~~appropriately~~appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, ~~delay~~delay, and start-up, plus interest as provided for in the Contract Documents.

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~~§ 9.8.2~~ When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the ~~Architect~~Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such

list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

...

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

...

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

...

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

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

...

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the ~~Architect-Owner~~ (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may

be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

...

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

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

...

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

...

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

...

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor ~~and Architect~~ the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor ~~and the Architect~~ will promptly reply to the Owner in writing stating whether ~~or not either the Contractor~~ has reasonable objection to the persons or entities proposed by the Owner. If ~~either the Contractor or Architect~~ has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor ~~and the Architect~~ has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area

shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

...

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

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

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

...

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

...

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

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

...

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

...

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

...

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

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The Contract shall be governed by the law of the ~~place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ State of Colorado Any lawsuit related to or arising out of disputes under this Agreement shall be commenced and tried in Mesa County, Colorado.

...

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

...

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

...

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

...

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

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

...

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

...

- 3 Because the ~~Architect~~ Owner has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

...

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

...

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

days' notice to the ~~Owner and the Architect, Owner,~~ terminate the Contract and recover from the Owner as provided in Section 14.1.3.

...

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

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

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

...

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

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

...

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

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

...

§15.4 Arbitration

PAGE Error! Bookmark not defined.

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

...

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

...

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

...

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

...

§ 15.4.4 Consolidation or Joinder

...

§ 15.4.4.1 ~~Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations~~

~~to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

...

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

...

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

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Shane Haas, President, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:45:09 ET on 04/02/2021 under Order No. 3194021459 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed) 

(Title) President

(Dated) 4/2/21



AIA[®] Document A133[™] – 2019

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

AGREEMENT made as of the 6th day of April in the year 2021.
(In words, indicate day, month, and year.)

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

Grand Junction Regional Airport
2828 Walker Field Drive
Grand Junction, CO 81506

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

FCI Constructors, Inc.
P.O. Box 1767
Grand Junction, CO 81502

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

Airport Facility Upgrades
Grand Junction Regional Airport
2828 Walker Field Drive
Grand Junction, CO 81506

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

Blythe Group + Co.
622 Rood Ave
Grand Junction, CO 81501

The Owner and Construction Manager agree as follows.

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

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

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

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- EXHIBIT B INSURANCE AND BONDS**

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

See Exhibit H: FCI Preconstruction Proposal 10/13/2020.

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

Interior renovation and structural repairs at rental car counter and TSA checkpoints.

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

See Exhibit E: CD GMP Estimate 03/12/2021.

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

.1 Design phase milestone dates, if any:

Completed in Preconstruction, see Exhibit H: FCI Preconstruction Proposal 10/13/2020.

.2 Construction commencement date:

04/07/2021

.3 Substantial Completion date or dates:

See Exhibit D: Clarifications & Assumptions 03/25/2020 and Exhibit F: Schedule Draft 03/02/2021.

.4 Other milestone dates:

Both lanes at TSA Check Point must be operational before 05/28/2021.

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

(Identify any requirements for fast-track scheduling or phased construction.)

To commence on 04/07/2021 and Phased per Exhibit F: Schedule Draft 03.02.2021

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

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

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

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere.)

N/A

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

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

Angela Padalecki – GJRA Executive Director
2828 Walker Field Drive
Grand Junction, CO 81506
apadalecki@gjairport.com
(O) 970-244-9100

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

(List name, address and other contact information.)

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

.1 Geotechnical Engineer:

N/A

.2 Civil Engineer:

N/A

.3 Other, if any:

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

N/A

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

Mariah Magill – Project Architect
622 Rood Ave
Grand Junction, CO 81501
mmagill@bgco.com
(O) 970-242-1058 (D) 970-986-4710

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

Dave Ash – Project Manager
(C) 970-261-5721
Brad Alexander – Superintendent (C) 970-261-2627
P.O. Box 1767
Grand Junction, CO 81502
dash@fciol.com
(O) 970-434-9093, (F) 970-434-7583

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

N/A

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

At the request of the Owner, the solicitation time for the Invitation for Bids was consistent with solicitation time requirements in the Owners Procurement Policy in Exhibit I and was advertised consistent with the Owner's procurement process.

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

N/A

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's

Init.

compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

§ 3.1.3 Consultation

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

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

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

§ 3.1.4 Project Schedule

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

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

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

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

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

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

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

§ 3.1.11 Subcontractors and Suppliers

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

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

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

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

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

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

See Exhibit H: FCI Preconstruction Proposal 10/13/2020.

§ 3.2 Guaranteed Maximum Price Proposal

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

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

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

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

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

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

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

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

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

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

§ 3.3 Construction Phase

§ 3.3.1 General

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

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties.

The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

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

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

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

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

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

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

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

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

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

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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

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

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

§ 4.2 Owner's Designated Representative

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

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

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

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

(Under separate contract) In accordance with GJRAA FCI Master Agreement effective November 2018.

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

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

(Under separate contract) In accordance with GJRAA FCI Master Agreement effective November 2018.

Individual or Position

Rate

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

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within Three (3) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

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

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

8 % per annum

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

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

Cost of the work, plus 7%

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

Cost plus 7%

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

Subcontractors limited to 15% markup for overhead and profit on changes to the scope of the work.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed Ninety percent (90.00%) of the standard rental rate paid at the place of the Project. See Exhibit G: Rental Rate Sheet.

(Paragraphs Deleted)

§ 6.1.6 Other:

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

N/A

Init.

§ 6.2 Guaranteed Maximum Price

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

§ 6.3 Changes in the Work

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

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

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

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

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

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

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

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

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

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

§ 7.2 Labor Costs

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

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

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

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

N/A

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

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3. This labor burden is equal to sixty-eight (68%) and applies only to FCI-furnished labor.

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

§ 7.3 Subcontract Costs

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

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

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

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

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

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

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

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

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

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

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

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

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

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

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

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

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

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

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

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

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

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence

of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

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

§ 7.8 Related Party Transactions

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

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

§ 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

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

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

§ 11.1.3 Provided that an Application for Payment is received by the Owner not later than the First day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the Twenty-fifth day of the same month. If an Application for Payment is received by the Owner after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Thirty (30) days after the Owner receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to

demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

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

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

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

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

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

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

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

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

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Owner has previously withheld a Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

- .4 For Work performed or defects discovered since the last payment application, any amount for which the Owner may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

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

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

5%

§ 11.1.8.1.1 The following items are not subject to retainage:

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

N/A

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

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

N/A

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

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

Upon completion of the Owner’s audit and reconciliation, upon substantial completion.

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

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

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

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

§ 11.2 Final Payment

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

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

(Paragraph Deleted)

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

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

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

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

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Construction Manager's final Pay Application for Payment.

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

§ 11.3 Interest

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

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

8 % per annum

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

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

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

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

N/A

§ 12.2 Binding Dispute Resolution

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

(Check the appropriate box.)

(Paragraph Deleted)

Litigation in a court of competent jurisdiction

(Paragraph Deleted)

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

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

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

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

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

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

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

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

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

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

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

§ 13.2.3 Termination by the Owner for Convenience

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

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

N/A

§ 13.3 Suspension

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

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

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

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

§ 14.3.1.1 Commercial General Liability with policy limits of not less than One Million Dollars and Zero Cents (\$1,000,000.00) for each occurrence and Two Million Dollars and Zero Cents (\$2,000,000.00) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than One Million Dollars and Zero Cents (\$1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

Init.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than One Million Dollars and Zero Cents (\$1,000,000.00) each accident, One Million Dollars and Zero Cents (\$1,000,000.00) each employee, and One Million Dollars and Zero Cents (\$1,000,000.00) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars and Zero Cents (\$1,000,000.00) per claim and Two Million Dollars and Zero Cents (\$2,000,000.00) in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
N/A	

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

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

§ 14.3.2 Construction Phase

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

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

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

N/A

§ 14.5 Other provisions:

1. Small Tools, Consumables and FCI Rental Rates – Construction Manager will provide to the Project a full stock of most commonly used small tools (tools worth less than \$1000; drills, saws, screw guns, brooms, wheel barrows, shovels, etc.). These tools will be furnished at no cost to the Project but should one need replaced, it will be a direct cost to the Project. Consumables such as drill bits, saw blades, powder actuated loads, winter fuel fittings and hose, oxygen, acetylene, etc. will be a direct cost to the Project. Construction Manager specialty tools and tools over \$1000 in value will be rented out to the Project at a rate at least ten percent (10%) less than any available rental source (see attached FCI Constructors, Inc. Standardized Rental Rates). Tool rent is only to be charged for the time the tool is in use and reasonably required on the job site. Construction Manager tool rental is subject to Owner audit at any time.
2. Removed – Per Owner Request.
3. The Construction Manager agrees to provide submittals consisting of samples, colors, product

specifications and details; the Construction Manager is not responsible to provide architectural or engineering design details not indicated in the Contract Documents except to demonstrate compliance with current design or to support the Architect in resolving details.

4. The Owner agrees to be responsible for applying for utility installations and for clarifying and modifying the Construction Documents as required by all approving authorities. The Construction Manager agrees to aid the Owner in coordinating with the public utility companies for the timely installation of all utility installations. Delays in issuance of utility permits caused by the Owner, public utility provider, or other approving authorities shall be treated in accordance with Section 8.3.1 of A201-2017.
5. Sensitive Security Information: In performing the Work, Construction Manager may have access to certain information called Sensitive Security Information ("SSI"), which is protected by federal statutes and regulations. Construction Manager may also create and maintain records that contain SSI. Construction Manager and subcontractors assigned to work under this Agreement are subject to the duties and requirements imposed by 49 C.F.R. Part 1520, entitled "Protection of Sensitive Security Information." As such, Construction Manager may not publicly disclose SSI in any context, including during litigation or pursuant to a state open records act request, without the advance approval of the Transportation Security Administration ("TSA"), as provided in 49 C.F.R. Part 1520. Construction Manager shall take all appropriate measures to protect such information that may come into its possession as a result of this Agreement.
6. Colorado Open Records Act: Construction Manager acknowledges that the Owner is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §24-72-201 et seq., and Construction Manager agrees that it will fully cooperate with the Owner in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which Construction Manager asserts is confidential and exempt from disclosure. Any other provision of this Agreement notwithstanding, including exhibits, attachments, and other documents incorporated into this Agreement by reference, all materials, records, and information provided by Construction Manager to the Owner shall be considered confidential by Construction Manager only to the extent provided in the Colorado Open Records Act, and Construction Manager agrees that any disclosure of information by the Owner consistent with the provisions of the Colorado Open Records Act shall result in no liability of the Owner. To the extent not prohibited by federal law, this Agreement is subject to public release through the Colorado Open Records Act.
7. Governmental Immunity Act: No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.
8. Subordination: This Agreement shall be subordinate to the provisions of any existing or future agreements between the Owner and the United States, relative to the development or improvement of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. This Agreement further shall be subordinate to the terms and conditions of the Grand Junction Regional Airport Authority Bond Resolution and, in the event of a conflict between this Agreement and the Bond Resolution, the Bond Resolution shall control.
9. Federal Contract Provisions: In addition to the clauses set forth herein, the Federal Contract Provisions of the annexed Exhibit C are incorporated by reference as if full set forth in the body of this Agreement. The terms "Contractor", "Offeror", "Applicant" and "Successful Bidder" as used in Exhibit C shall refer to the Construction Manager. In the event of conflict between the terms and conditions of Exhibit C and the body of this Agreement, the term and conditions of Exhibit C shall control. In the event the Federal Aviation Administration changes any of the Federal Contract Provisions, the Parties shall incorporate the change in an amendment hereto.

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed

- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

N/A

- .6 Other Exhibits:
(Check all boxes that apply.)

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

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

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

Exhibit C: Required Federal Contract Provisions
 Exhibit D: Clarification & Assumptions 3.25.2021
 Exhibit E: CD GMP Estimate 03.12.2021
 Exhibit F: Schedule Draft 03.02.2021
 Exhibit G: Rental Rate Sheet
 Exhibit H: FCI Preconstruction Proposal 10.13.2020
 Exhibit I: Purchasing and Procurement Policy 08.20.2019

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

 OWNER (Signature)

 (Printed name and title)


 CONSTRUCTION MANAGER (Signature)

Shane Haas, President
 (Printed name and title)

Additions and Deletions Report for AIA® Document A133™ – 2019

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:55:35 ET on 04/02/2021.

PAGE 1

AGREEMENT made as of the 6th day of April in the year 2021.

...

Grand Junction Regional Airport
2828 Walker Field Drive
Grand Junction, CO 81506

...

FCI Constructors, Inc.
P.O. Box 1767
Grand Junction, CO 81502

...

Airport Facility Upgrades
Grand Junction Regional Airport
2828 Walker Field Drive
Grand Junction, CO 81506

...

Blythe Group + Co.
622 Rood Ave
Grand Junction, CO 81501

PAGE 2

TABLE OF ARTICLES

...

See Exhibit H: FCI Preconstruction Proposal 10/13/2020.

...

Interior renovation and structural repairs at rental car counter and TSA checkpoints.

PAGE 3

See Exhibit E: CD GMP Estimate 03/12/2021.

...

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

...

Completed in Preconstruction, see Exhibit H: FCI Preconstruction Proposal 10/13/2020.

...

~~2~~ 2 Construction commencement date:

...

04/07/2021

...

See Exhibit D: Clarifications & Assumptions 03/25/2020 and Exhibit F: Schedule Draft 03/02/2021.

...

Both lanes at TSA Check Point must be operational before 05/28/2021.

...

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

...

To commence on 04/07/2021 and Phased per Exhibit F: Schedule Draft 03.02.2021

...

N/A

...

N/A

...

Angela Padalecki – GJRA Executive Director
2828 Walker Field Drive
Grand Junction, CO 81506
apadalecki@gjairport.com
(O) 970-244-9100

PAGE 4

N/A

...

N/A

...

N/A

...

Mariah Magill – Project Architect
622 Rood Ave
Grand Junction, CO 81501
mmagill@bgco.com
(O) 970-242-1058 (D) 970-986-4710

...

Dave Ash – Project Manager
(C) 970-261-5721
Brad Alexander – Superintendent (C) 970-261-2627
P.O. Box 1767
Grand Junction, CO 81502
dash@fciol.com
(O) 970-434-9093, (F) 970-434-7583

...

N/A

...

At the request of the Owner, the solicitation time for the Invitation for Bids was consistent with solicitation time requirements in the Owners Procurement Policy in Exhibit I and was advertised consistent with the Owner's procurement process.

...

N/A

PAGE 7

See Exhibit H: FCI Preconstruction Proposal 10/13/2020.

PAGE 10

(Under separate contract) In accordance with GJRAA FCI Master Agreement effective November 2018.

PAGE 11

(Under separate contract) In accordance with GJRAA FCI Master Agreement effective November 2018.

...

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within Three (3) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

...

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

...

8 % per annum

...

Cost of the work, plus 7%

...

Cost plus 7%

...

Subcontractors limited to 15% markup for overhead and profit on changes to the scope of the work.

...

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed Ninety percent (90.00%) of the standard rental rate paid at the place of the Project. See Exhibit G: Rental Rate Sheet.

...

~~§ 6.1.6 Liquidated damages, if any:~~

...

(Insert terms and conditions for liquidated damages, if any.)

...

~~§ 6.1.7~~ 6.1.6 Other:

...

N/A

PAGE 13

N/A

...

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3. This labor burden is equal to sixty-eight (68%) and applies only to FCI-furnished labor.

PAGE 14

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

PAGE 16

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

...

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

...

~~§ 11.1.3~~ Provided that an Application for Payment is received by the ~~Architect-Owner~~ not later than the First day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the Twenty-fifth day of the same month. If an Application for Payment is received by the ~~Architect-Owner~~ after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Thirty (30) days after the ~~Architect-Owner~~ receives the Application for Payment.

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

...

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

...

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

...

- .2 The amount, if any, for Work that remains uncorrected and for which the ~~Architect-Owner~~ has previously withheld a ~~Certificate for Payment~~ as provided in Article 9 of AIA Document A201-2017;

PAGE 18

- 4 For Work performed or defects discovered since the last payment application, any amount for which the ~~Architect-Owner~~ may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017;

...

5%

...

N/A

...

N/A

...

Upon completion of the Owner's audit and reconciliation, upon substantial completion.

PAGE 19

- 2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for ~~Payment; and~~ Payment.

...

- ~~3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.~~

...

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the ~~Architect's final Certificate for Payment, or as follows:~~ Construction Manager's final Pay Application for Payment.

...

8 % per annum

PAGE 20

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

...

N/A

...

~~[] Arbitration pursuant to Article 15 of AIA Document A201-2017~~

...

Litigation in a court of competent jurisdiction

...

Other: *(Specify)*

PAGE 22

N/A

...

§ 14.3.1.1 Commercial General Liability with policy limits of not less than One Million Dollars and Zero Cents (\$1,000,000.00) for each occurrence and Two Million Dollars and Zero Cents (\$2,000,000.00) in the aggregate for bodily injury and property damage.

...

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than One Million Dollars and Zero Cents (\$1,000,000.00) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

PAGE 23

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than ~~(\$)~~ each accident, (\$than One Million Dollars and Zero Cents (\$1,000,000.00) each accident, One Million Dollars and Zero Cents (\$1,000,000.00) each employee, and One Million Dollars and Zero Cents (\$1,000,000.00) policy limit.

...

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than One Million Dollars and Zero Cents (\$1,000,000.00) per claim and Two Million Dollars and Zero Cents (\$2,000,000.00) in the aggregate.

...

N/A

...

N/A

1. Small Tools, Consumables and FCI Rental Rates – Construction Manager will provide to the Project a full stock of most commonly used small tools (tools worth less than \$1000; drills, saws, screw guns, brooms, wheel barrows, shovels, etc.). These tools will be furnished at no cost to the Project but should one need replaced, it will be a direct cost to the Project. Consumables such as drill bits, saw blades, powder actuated loads, winter fuel fittings and hose, oxygen, acetylene, etc. will be a direct cost to the Project. Construction Manager specialty tools and tools over \$1000 in value will be rented out to the Project at a rate at least ten percent (10%) less than any available rental source (see attached FCI Constructors, Inc. Standardized Rental Rates). Tool rent is only to be charged for the time the tool is in use and reasonably required on the job site. Construction Manager tool rental is subject to Owner audit at any time.
2. Removed – Per Owner Request.
3. The Construction Manager agrees to provide submittals consisting of samples, colors, product specifications and details; the Construction Manager is not responsible to provide architectural or

- engineering design details not indicated in the Contract Documents except to demonstrate compliance with current design or to support the Architect in resolving details.
4. The Owner agrees to be responsible for applying for utility installations and for clarifying and modifying the Construction Documents as required by all approving authorities. The Construction Manager agrees to aid the Owner in coordinating with the public utility companies for the timely installation of all utility installations. Delays in issuance of utility permits caused by the Owner, public utility provider, or other approving authorities shall be treated in accordance with Section 8.3.1 of A201-2017.
 5. Sensitive Security Information: In performing the Work, Construction Manager may have access to certain information called Sensitive Security Information ("SSI"), which is protected by federal statutes and regulations. Construction Manager may also create and maintain records that contain SSI. Construction Manager and subcontractors assigned to work under this Agreement are subject to the duties and requirements imposed by 49 C.F.R. Part 1520, entitled "Protection of Sensitive Security Information." As such, Construction Manager may not publicly disclose SSI in any context, including during litigation or pursuant to a state open records act request, without the advance approval of the Transportation Security Administration ("TSA"), as provided in 49 C.F.R. Part 1520. Construction Manager shall take all appropriate measures to protect such information that may come into its possession as a result of this Agreement.
 6. Colorado Open Records Act: Construction Manager acknowledges that the Owner is subject to the provisions of the Colorado Open Records Act, Colorado Revised Statutes §24-72-201 et seq., and Construction Manager agrees that it will fully cooperate with the Owner in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which Construction Manager asserts is confidential and exempt from disclosure. Any other provision of this Agreement notwithstanding, including exhibits, attachments, and other documents incorporated into this Agreement by reference, all materials, records, and information provided by Construction Manager to the Owner shall be considered confidential by Construction Manager only to the extent provided in the Colorado Open Records Act, and Construction Manager agrees that any disclosure of information by the Owner consistent with the provisions of the Colorado Open Records Act shall result in no liability of the Owner. To the extent not prohibited by federal law, this Agreement is subject to public release through the Colorado Open Records Act.
 7. Governmental Immunity Act: No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.
 8. Subordination: This Agreement shall be subordinate to the provisions of any existing or future agreements between the Owner and the United States, relative to the development or improvement of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. This Agreement further shall be subordinate to the terms and conditions of the Grand Junction Regional Airport Authority Bond Resolution and, in the event of a conflict between this Agreement and the Bond Resolution, the Bond Resolution shall control.
 9. Federal Contract Provisions: In addition to the clauses set forth herein, the Federal Contract Provisions of the annexed Exhibit C are incorporated by reference as if full set forth in the body of this Agreement. The terms "Contractor", "Offeror", "Applicant" and "Successful Bidder" as used in Exhibit C shall refer to the Construction Manager. In the event of conflict between the terms and conditions of Exhibit C and the body of this Agreement, the term and conditions of Exhibit C shall control. In the event the Federal Aviation Administration changes any of the Federal Contract Provisions, the Parties shall incorporate the change in an amendment hereto.

PAGE 25

N/A

...

Exhibit C: Required Federal Contract Provisions

...

Exhibit D: Clarification & Assumptions 3.25.2021

...

Exhibit E: CD GMP Estimate 03.12.2021

...

Exhibit F: Schedule Draft 03.02.2021

...

Exhibit G: Rental Rate Sheet

...

Exhibit H: FCI Preconstruction Proposal 10.13.2020

...

Exhibit I: Purchasing and Procurement Policy 08.20.2019

...

Shane Haas, President

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Shane Haas, President, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:55:35 ET on 04/02/2021 under Order No. 3194021459 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ - 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.


(Signed)

President
(Title)

4/2/21
(Dated)



Document A133™ – 2019 Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the 6th day of April in the year 2021, is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the 12th day of March in the year 2021. (the "Agreement")

(In words, indicate day, month, and year.)

for the following **PROJECT:**

(Name and address or location)

Airport Facility Upgrades
Grand Junction Regional Airport
2828 Walker Field Drive
Grand Junction, CO 81506

THE OWNER:

(Name, legal status, and address)

Grand Junction Regional Airport
2828 Walker Field Drive
Grand Junction, CO 81506

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

FCI Constructors, Inc.
P.O. Box 1767
Grand Junction, CO 81502

TABLE OF ARTICLES

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

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed One Million Three Hundred Twenty-three Thousand Eight Hundred Twenty-Seven Dollars and Zero Cents (\$1,323,827.00), subject to additions and deductions by Change Order as provided in the Contract Documents.

ADDITIONS AND DELETIONS:

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

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

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

§ A.1.1.2 **Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.
(Provide itemized statement below or reference an attachment.)

See Exhibit E: CD GMP Estimate 03.12.2021.

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

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

§ A.1.1.5 **Alternates**

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

Item	Price
N/A	

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
N/A		

§ A.1.1.6 Unit prices, if any:

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

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

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

The date of execution of this Amendment.

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

04/07/2021.

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

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

§ A.2.3 **Substantial Completion**

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

Not later than () calendar days from the date of commencement of the Work.

[X] By the following date: 07/28/2021

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

Portion of Work	Substantial Completion Date
TSA Check Point	05/28/2021

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

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

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

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

Document	Title	Date	Pages
Huddleston-Berry Engineering & Testing, LLC.	2012 Soils Report – Admin Building East of Terminal.	10/01/2012	44
Knott Laboratory, LLC.	17937.Trinklein – GJRA Structural Conditions Assessment.	06/10/2020	30

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

Stamped Drawings 03/15/2021 provided by Blythe Group +co.

Section	Title	Date	Pages
---------	-------	------	-------

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

Stamped Drawings 03/15/2021 provided by Blythe Group +co.

Number	Title	Date
--------	-------	------

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

Title	Date	Pages
Exhibit D: Clarifications & Assumptions	03/25/2021	4

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:

(Identify each allowance.)

Item	Price
See Exhibit D: Clarifications & Assumptions 03/25/2021, Page 3, Item 13: An allowance of \$100 has been included for signage to identify the cuspidor and its use.	\$100.00

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

See Exhibit D: Clarifications & Assumptions 03/25/2021

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

- Exhibit D: Clarification & Assumptions 3.25.2021
- Exhibit E: CD GMP Estimate 03.12.2021
- Exhibit F: Schedule Draft 03.02.2021
- Exhibit G: Rental Rate Sheet
- Exhibit H: FCI Preconstruction Proposal 10.13.2020
- Exhibit I: Purchasing and Procurement Policy 08.20.2019
- Stamped Drawings 03/15/2021 provided by Blythe Group +co.
- Knott Laboratory, LLC - 17937.Trinklein – GJRA Structural Conditions Assessment 06.10.2020

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

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

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

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

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

Shane Haas, President
(Printed name and title)

Additions and Deletions Report for AIA® Document A133™ – 2019 Exhibit A

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:11:02 ET on 04/02/2021.

PAGE 1

This Amendment dated the 6th day of April in the year 2021, is incorporated into the accompanying AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the 12th day of March in the year 2021. (the "Agreement")

...

Airport Facility Upgrades
Grand Junction Regional Airport
2828 Walker Field Drive
Grand Junction, CO 81506

...

Grand Junction Regional Airport
2828 Walker Field Drive
Grand Junction, CO 81506

...

FCI Constructors, Inc.
P.O. Box 1767
Grand Junction, CO 81502

...

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed (~~\$—~~), One Million Three Hundred Twenty-three Thousand Eight Hundred Twenty-Seven Dollars and Zero Cents (\$1,323,827.00), subject to additions and deductions by Change Order as provided in the Contract Documents.

PAGE 2

See Exhibit E: CD GMP Estimate 03.12.2021.

...

N/A

...

N/A

...

N/A

...

[X] Established as follows:

...

04/07/2021.

PAGE 3

[X] By the following date: 07/28/2021

...

TSA Check Point 05/28/2021

...

<u>Huddleston-Berry</u>	<u>2012 Soils Report –</u>	<u>10/01/2012</u>	<u>44</u>
<u>Engineering & Testing,</u>	<u>Admin Building East of</u>		
<u>LLC.</u>	<u>Terminal.</u>		
<u>Knott Laboratory, LLC.</u>	<u>17937.Trinklein – GJRA</u>	<u>06/10/2020</u>	<u>30</u>
	<u>Structural Conditions</u>		
	<u>Assessment.</u>		

...

Stamped Drawings 03/15/2021 provided by Blythe Group +co.

...

Stamped Drawings 03/15/2021 provided by Blythe Group +co.

...

Exhibit D: Clarifications & Assumptions 03/25/2021 4

PAGE 4

See Exhibit D: Clarifications & Assumptions 03/25/2021, Page 3, Item 13: An allowance of \$100 has been included for signage to identify the cuspidor and its use. \$100.00

...

See Exhibit D: Clarifications & Assumptions 03/25/2021

...

Exhibit D: Clarification & Assumptions 3.25.2021
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Knott Laboratory, LLC - 17937.Trinklein – GJRA Structural Conditions Assessment 06.10.2020

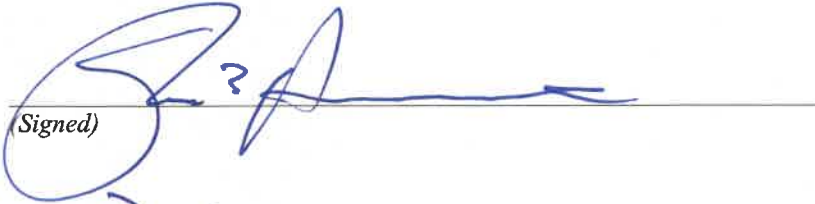
...

Shane Haas, President

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Shane Haas, President, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:11:02 ET on 04/02/2021 under Order No. 3194021459 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019 Exhibit A, Guaranteed Maximum Price Amendment, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.


(Signed)

President
(Title)

4/2/21
(Dated)