



BOARD OF TRUSTEES

Regular Session Agenda

Monday, September 16, 2024

5:00 p.m.

**HPLD Administration & Support Services Building
2650 W. 29th Street, Greeley, CO 80631**

This is also streamed virtually by GoToMeeting.

The meeting can be viewed from your computer, tablet, or smartphone.

<https://www.mylibrary.us/hpldboardmeetings>. To view the Board meeting online, use this link and select the date of the meeting you want to join. If you have public comments, you may submit questions at the time of signing up for the meeting. All participants will be muted.

New to GoToMeeting? Get the app now and be ready when your first meeting starts:

<https://global.gotomeeting.com/install/399313765>

If you wish to address the Board via Public Comment, please attend the meeting in person. If you are unable to attend in person, you can submit public comments to the Board prior to the Board meeting via Formstack: https://hpld.formstack.com/forms/board_questions

The High Plains Library District Board may take action on any of the following agenda items as presented or modified prior to or during the meeting, and items necessary or convenient to effectuate the agenda items.

1.0 OPENING OF MEETING

- 1.1 Roll Call and Pledge of Allegiance
- 1.2 Approval of Agenda
- 1.3 Approval of Consent Agenda
 - a. August 19, 2024 Regular and Executive Session Meeting Minutes
- 1.4 The Good We Do
- 1.5 Public Comment

2.0 ITEMS FOR INFORMATION/ACTION

- 2.1 Carbon Valley Regional Library Refresh Contract (Action) - Dr. Matthew Hortt, HPLD Executive Director
- 2.2 Closure of Farr and Carbon Valley Regional Libraries for Remodeling (Action) - Dr. Matthew Hortt, HPLD Executive Director
- 2.3 Owner's Rep Request from Milliken Library Project (Action) - Dr. Matthew Hortt, HPLD Executive Director & Dan Spykstra, Wember Inc.
- 2.4 New Raymer MOU/Lease (Information) - Dr. Matthew Hortt, HPLD Executive Director
- 2.5 Town of Mead IGA (Action) - Dr. Matthew Hortt, HPLD Executive Director
- 2.6 Hill-N-Park MOU (Action) - Dr. Matthew Hortt, HPLD Executive Director
- 2.7 HPLD Vision and Values (Action) - Dr. Matthew Hortt, HPLD Executive Director
- 2.8 Policy Updates – Security Cameras (Action) - Dr. Matthew Hortt, HPLD Executive Director
- 2.9 Preliminary tax revenue for 2025 (Information) - Dr. Matthew Hortt, HPLD Executive Director

3.0 DIRECTORS REPORT

- 3.1 Review Draft Agenda – Dr. Matthew Hortt, HPLD Executive Director
 - a. October 7, 2024 RS
- 3.2 District Updates – Dr. Matthew Hortt, HPLD Executive Director

4.0 BOARD COMMENTS

- 4.1 Chair Report
- 4.2 Vice-Chair
- 4.3 Secretary/Treasurer
- 4.4 Committees
- 4.5 Other Board Members

5.0 EXECUTIVE SESSION PURSUANT TO C.R.S. § 24-6-402(4)

- 5.1 C.R.S. § 24-6-402(4) (b) for the purpose of receiving advice from legal counsel regarding litigation filed by Rosa Granada.

6.0 ADJOURNMENT

Upcoming meetings:

October 7, 2024 at 5:00p.m.: HPLD Board of Directors Meeting - Regular Session
LINC Library Innovation Center, 501 8th Avenue, Greeley, CO 80631



BOARD OF TRUSTEES
DRAFT - Regular and Executive Sessions Minutes
Monday, August 19, 2024
5:00 p.m.
LINC Library Innovation Center
501 8th Avenue, Greeley, CO 80631

1.0 OPENING OF MEETING AT 5:02PM

1.1 Roll Call and Pledge of Allegiance

All Trustees were Present unless noted:

Chair Mary Heberlee

Vice-Chair Joyce Smock

Secretary/Treasurer Nick Nakamura

Trustee Deana Lemos-Garcia

Trustee Teresa Nuñez attended virtually

Trustee Gerri Holton

Trustee Michael Wailes

Quorum was established.

Also Attending were:

HPLD Staff: Dr. Matthew Hortt, Elena Rosenfeld, Megan Lowery, Natalie Wertz, Niamh Mercer, Rick Medrano, and Kim Parker

Legal Counsel William Garcia

Guests: Ryan Roth and Rand E. Morgan

Chair Heberlee read the following statement into record:

High Plains Library District is dependent on the trust of its community to successfully achieve its mission. Therefore, it is crucial that all Trustees conduct business on behalf of the High Plains Library District with the highest level of integrity, truth, and honor, avoiding any impropriety or the appearance of impropriety.

1.2 Approval of Agenda

Dr. Hortt recommended that item 2.2, *Miner's Park Urban Renewal Area Proposal*, be removed from the agenda because information on the topic was not submitted from the Town of Firestone, even though HPLD's Legal Counsel had reached out to them on April 10th, and they replied that they would provide a counter response.

MOTION to approve the agenda as amended: Vice-Chair Joyce Smock

SECOND: Secretary/Treasurer Nick Nakamura

DISCUSSION: None

VOTE: 6:0

- 1.3 Approval of Consent Agenda
a. July 15, 2024 Regular and Executive Sessions Meeting Minutes
MOTION to approve the consent agenda: Trustee Gerri Holton
SECOND: Trustee Deana Lemos-Garcia
DISCUSSION: None
VOTE: 6:0

- 1.4 The Good We Do
Dr. Hortt reported on the 11th annual Greeley Naturalization Ceremony that was held on July 25th. Twenty-eight people from seventeen countries received their U.S. citizenship. HPLD's Tim Ruth led the effort with help from the *Immigrant and Refugee Center of Northern Colorado* and staff at the *Centennial Village Museum*, and HPLD's Cindy Welsh stepped in to give the welcome in Dr. Hortt's place.

- 1.5 Public Comment
Bill Garcia reported that on August 10th, the High Plains Fencing Guild held Northern Colorado's first-ever Sanctioned USA Fencing Tournament. The event was held at LINC; and twenty-four fencers competed, with the winner getting a national ranking. He reported that the space was great and technology excellent, which was important because it was streamed live, worked great for them. He thanked Kim Parker for her help in setting up the event and Dr. Hortt for attending and helping in every way.

2.0 ITEMS FOR INFORMATION/ACTION

- 2.1 Director Appointments to Weld Library Finance Corporation (Action) - Dr. Matthew Hortt, HPLD Executive Director

Dr. Hortt introduced two candidates for open spots on the Weld Finance Corporation.

- Ryan Roth, Allo Fiber's Public Relations and Events Specialist, has a financial background and is an ambassador and very active in our communities, as is demonstrated through his volunteering with Rotary Club and the Greeley and Evans Chambers of Commerce. In fact, he has been named *Ambassador of the Year* by both Chambers.
- Rand E. Morgan is retired after leading the Weld Community Foundation for nine years as President and CEO. While there, he grew the Foundation immensely, and the community is better off for it. During his tenure, he also initiated the idea of putting a Wes Bruce exhibit in LINC; and from that, *Where Water Flows Uphill* became reality. He's a very active community member and supporter, and a visionary of what a community can be.

Staff wholeheartedly recommended both candidates for appointment to the Weld Library Finance Corporation.

MOTION to approve the appointments to the Weld Library Finance Corporation:

Secretary/Treasurer Nick Nakamura

SECOND: Vice-Chair Joyce Smock

DISCUSSION: None

VOTE: 6:0

- 2.2 HPLD Friends & Foundation MOU - (Action) Dr. Matthew Hortt, HPLD Executive Director
This Memorandum of Understanding, which describes the interaction between the two entities and works to benefit the library and community, was recently reviewed and updated with changes to give more freedom to use funds for strategic projects as they change, and clean up volunteer oversight verbiage. The Friends & Foundation Board has approved the updated MOU.
MOTION to approve the revised Friends & Foundation MOU: Secretary/Treasurer Nick Nakamura
SECOND: Trustee Michael Wailes
DISCUSSION: None
VOTE: 6:0
- 2.3 Town of Mead IGA (Action) - Dr. Matthew Hortt, HPLD Executive Director
Secretary/Treasurer Nick Nakamura recused himself at 5:25pm due to being a possible supplier to the project.
- Dr. Hortt and Legal Counsel Garcia reported that to move forward with the Mead Library project, Mountain View Fire District and HPLD need to agree on a pre-development IGA with the Town of Mead. They have been working through the details and movement is being made, but staff and legal counsel's opinions are that it is not quite where it needs to be. Therefore, they recommend that this be tabled until next month.
- MOTION** to defer any action on the proposed MOU until next month: Trustee Gerri Holton
SECOND: Trustee Deana Lemos-Garcia
DISCUSSION:
VOTE: 6:0
- 2.4 Hill-n-Park MOU (Action) - Dr. Matthew Hortt, HPLD Executive Director
Hill n' Park is an under-served neighborhood in unincorporated Weld County that was serviced in the past by HPLD's Outreach Department. They recently remodeled their community center and announced that they would work with HPLD to put in a Public Computer Center. They also requested that HPLD Outreach service them again, as they did before. Staff created an MOU and recommend that the Board approve it.
- During discussion, Trustees requested that additional financial information on the community center be provided before voting.
- MOTION** to table the proposed MOU to next month: Trustee Deana Lemos-Garcia
SECOND: Secretary/Treasurer Nick Nakamura
DISCUSSION: None
VOTE: 4:2
- 2.5 Award of Investment Advisor RFP (Action) - Dr. Matthew Hortt, HPLD Executive Director
At the July board meeting, the Board approved for staff to issue an RFP for investment advisory services. The RFP was issued, and the District received four responses. Of the four, the Finance Committee recommends awarding the contract to Public Trust Advisors, who had the contract from 2019 through 2023.

MOTION to approve entering into a contract with Public Trust Advisors for investment advisory services: Secretary/Treasurer Nick Nakamura

SECOND: Trustee Gerri Holton

DISCUSSION: None

VOTE: 6:0

- 2.6 Measuring Outreach Better (Information) - Dr. Matthew Hortt, HPLD Executive Director
Elena Rosenfield, Megan Lowery, and Rick Medrano, HPLD employees, presented information on the five-year project that is a partnership between HPLD and Colorado State Library's Library Research Service (LRS) office to assess how library efforts impact community members and how our work creates a sense of belonging. They studied the "Dare to Dream" population, and specifically new immigrants.
The project resulted in valuable conversations with people in the target group, building relationships, and learning information that will help the District serve new community members moving forward.
The project overview, action items, and slide show can be found in the [Board Packet](#).

INFORMATION ONLY, NO ACTION TO BE TAKEN

- 2.7 Proposal for Future Joint Board Meetings with Member Boards (Information) - Dr. Matthew Hortt, HPLD Executive Director
Following a recent Joint Boards meeting with the Member Libraries Directors and Boards, it has become clear that the group desires to meet more regularly to share information about things going on. It's also become apparent that it's important to do so to discuss planned projects and forecast budgeting. Dr. Hortt proposed putting together a four-part plan: (1) gather information in January through March, (2) meet to review the projects in the second quarter of the year, (3) build the budget by finalizing the project plans in July through September, and (4) initiate project planning during the fourth quarter.
Dr. Hortt presented the plan to the Member Libraries' Directors recently, and they seemed to support it. He is encouraged because they are all working together, which has not always been the case.

INFORMATION ONLY, NO ACTION TO BE TAKEN

3.0 DIRECTORS REPORT

- 3.1 Review Draft Agenda – Dr. Matthew Hortt, HPLD Executive Director
- a. September 16, 2024 RS
The action items for the Town of Mead IGA and the Hill n' Park MOU will be added, along with information on preliminary tax revenue forecasts and possibly the Minor's Park Urban Renewal Area Proposal
- 3.2 District Updates – Dr. Matthew Hortt, HPLD Executive Director
- The Colorado State Library has adopted new Public Library Standards. There's now a baseline model for smaller or rural libraries and an enhanced model for the larger districts, so HPLD and the larger systems have more to aspire to. Staff will send the new standards to the Trustees.
 - Dr. Hortt recently attended the National Coalition of Certification Centers conference, NC3, in Wisconsin, and that led to a possible partnership with Snap-on Tools and a variety of other

companies that offer certifications. NC3 is a non-profit organization that provides the certifications in a variety of different industries at no cost to the participant. Snap-on Tools offers multiple certifications, but HPLD's interest will be in Precision Measurement and Hand Tool certifications. There are also other organizations who partner with NC3 in different fields of work, such as robotics and welding. Furthermore, there is a STEM program for fifth and sixth graders that HPLD could incorporate into programming. Amazon and Airbus are examples of companies who use the STEM program. After the conference, Snap-on Tools sent staff to LINC to meet with Dr. Hortt. They suggested using HPLD as a prototype and making LINC a Center of Excellence, because offering certifications in libraries has not yet been done.

- LINC will host the Colorado Workforce Development Council, which is the Governor's conference on workforce development, on September 19th.
- Dr. Hortt sat in on Ft. Lupton interviews for their Library Director.
- Erie Community Library is advertising for their fifth annual youth art show for children ages three through eighteen. The show will run from September 21st through November 16th, with a reception on October 19th.
- Board Recruitment updates:
 - Six applications have been received for Region 1: Erie, Frederick, and Firestone. There was also an applicant from Dacono, but at an address two blocks outside of our service region so staff is letting them know that they are not eligible.
 - One application has been received for Region 5: Ault, Eaton, Pierce, and Nunn.
- *YES!fest* will be held at LINC on September 14th from 10:00am to 3:00pm, and invitations will be sent to Trustees. It is an annual youth engineering and science festival.
- Staff salary increases that were approved at the last board meeting have been processed and will be seen on this Friday's paycheck. Dr. Hortt expressed gratitude from staff.
- Governor Polis has called a special session for property taxes that will start on August 26th, and it is anticipated that there will be a reduction in both residential and commercial property taxes.

4.0 BOARD COMMENTS

- 4.1 Chair Heberlee had nothing to report
- 4.2 Vice-Chair Smock also had nothing, except to acknowledge Elena, Rick and Megan for doing a great job on the Measuring Outreach Better.
- 4.3 Secretary/Treasurer Nick Nakamura reported that the Finance Committee met and are staying on top of things, and congratulated Elena, Rick and Megan for completing the project.
- 4.4 Other Board Members
 - Trustee Deana Lemos-Garcia concurred that the M.O. Better was a great project and thanked Elena, Rick and Megan for their work on it. She announced that HPLD's Friends & Foundation luncheon will be held on October 1st at 11:30, and she invited the Trustees to attend.
 - Trustee Teresa Nuñez appreciated the Measuring Outreach project and printouts. She also said it was a great meeting with the Member Boards and that it's good to move forward with it.
 - Trustee Gerri Holton had nothing to report
 - Trustee Michael Wailes had nothing to report

Trustee Teresa Nuñez left the regular session meeting to move into the executive session meeting.

5.0 EXECUTIVE SESSION PURSUANT TO C.R.S. § 24-6-402(4)

- 5.1 C.R.S. § 24-6-402(4) (b) Receiving legal advice on specific legal questions from an attorney – SB24-233 and Urban Renewal Authorities
- 5.2 C.R.S. § 24-6-402(4) (b) Receiving legal advice on specific legal questions from an attorney – Lochbuie Claim

MOTION to adjourn from Regular Session and enter into Executive Session under C.R.S. §24-6-402(4), Pursuant to section C.R.S. § 24-6-402(4) (b), for the sole purpose of receiving legal advice on specific legal questions from an attorney on TIF Agreements and Urban Renewal Authorities, and the Lochbuie Claim: Secretary/Treasurer Nick Nakamura

SECOND: Trustee Deana Lemos-Garcia

DISCUSSION: None

VOTE: 5:0

An executive session meeting of the Board of Trustees of the High Plains Library District was convened at 7:26pm on August 19, 2024 for the sole purpose of receiving legal advice on specific legal questions from an attorney – SB24-233 and Urban Renewal Authorities, and Lochbuie Claim. Attending were Board Trustees Mary Heberlee, Joyce Smock, Nick Nakamura, Deana Lemos-Garcia, Teresa Nuñez, Gerri Holton, and Michael Wailes; Legal Counsel William Garcia; and HPLD's Dr. Matthew Hortt and Natalie Wertz. During the Executive Session, the Board conferred with an attorney and did not engage in substantive discussion of any matter not enumerated in C.R.S. § 24-6-402(4). The Board did not adopt any policy, position, resolution, rule, regulation, or take any formal action. The session was adjourned at 8:05p.m.

Trustee Teresa Nuñez left the meeting at 8:04p.m.

6.0 ADJOURNMENT AT 8:19PM

There being no further business,

MOTION to adjourn the meeting: Secretary/Treasurer Nick Nakamura

SECOND: Trustee Deana Lemos-Garcia

DISCUSSION: None

VOTE: 5:0

Upcoming meetings:

September 16, 2024 at 5:00p.m.: HPLD Board of Directors Meeting - Regular Session

HPLD Administration & Support Services Building, 2650 W. 27th Street, Greeley, CO 80631

DRAFT

HIGH PLAINS LIBRARY DISTRICT

BOARD OF TRUSTEES COMMUNICATION

Meeting date: September 16 th , 2024
Type of item: Action
Subject: Carbon Valley Refresh Contract
Presented by: Dr. Matthew Hortt, HPLD Executive Director
Recommendation: Staff Recommend the Board Approve the Refresh Contract

Background

In April 2024, the Board approved the selection of PCL as the construction firm to work on the Carbon Valley Regional Library’s remodeling project. The overall budget for the remodel is set at \$1,500,000.

Considerations

- The contract has been reviewed by staff, legal counsel, and our owner’s rep
- The Guaranteed Maximum Price (GMP) for the project is still to be set and will be brought forward for Board approval.

Recommendation

Staff Recommend the Board Approve the Refresh Contract

AIA® Document A201® - 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

« Carbon Valley Regional Library Refresh »
« 7 Park Ave, Firestone, CO 80504 »
« »

THE OWNER:

(Name, legal status and address)

« High Plains Library District » « »
« Dr. Matt Hortt »
« 2650 W 29th St »
« Greeley, CO 80631 »
« 970-506-8563 »
« »
« »

THE ARCHITECT:

(Name, legal status and address)

« VFLA Architecture + Interiors » « »
« 419 Canyon Ave #200 »
« Fort Collins, CO 80521 » « »
« (970) 498-2962 » « »
« »

ADDITIONS AND DELETIONS:

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

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

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

TABLE OF ARTICLES

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

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

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 « 15th » day of « April » in the year « 2024 »
(In words, indicate day, month, and year.)

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

« High Plains Library District » « »
« Dr. Matt Hortt »
« 2650 W 29th St »
« Greeley, CO 80631 »
« 970-506-8563 »

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

« PCL Construction » « »
« 2000 S Colorado Blvd, Ste 2-500 »
« Denver, CO 80222 »
« (303) 667-3835 »

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

« Carbon Valley Regional Library Refresh »
« 7 Park Ave, Firestone, CO 80504 »
« see Exhibit A for full scope »

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

« VFLA Architecture + Interiors » « »
« 419 Canyon Ave #200 »
« Fort Collins, CO 80521 » « »
« (970) 498-2962 »
« »
« »

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.

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

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

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

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
8	DISCOUNTS, REBATES, AND REFUNDS
9	SUBCONTRACTS AND OTHER AGREEMENTS
10	ACCOUNTING RECORDS
11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12	DISPUTE RESOLUTION
13	TERMINATION OR SUSPENSION
14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT (to be executed upon Owner approval)

EXHIBIT B INSURANCE AND BONDS

EXHIBIT C AIA A201 General Conditions

EXHIBIT D Billable Rate Schedule

EXHIBIT E Project Specific Program and Scope

EXHIBIT F CMAR RFP dated 3/2/2024, RFP Addendum 01 dated

EXHIBIT E PCL Construction Proposal dated 3/21/2023

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.)

«Refer to Exhibit F CMAR RFP »

§ 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.)

« Carbon Valley Regional Library, 7 Park Ave, Firestone, CO 80504 »

§ 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.)

« Carbon Valley Regional Library \$880,000 »

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

.1 Design phase milestone dates, if any:

« Construction documents by September 2024 »

.2 Construction commencement date:

« October-November 2024 »

.3 Substantial Completion date or dates:

« January 2025 »

.4 Other milestone dates:

« »

§ 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.)

« A phased construction schedule is necessary to allow the library to remain open to patrons during the refresh.»

§ 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.)

« »

§ 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.)

« No defined measurable criteria including LEED, Green Globes or other rating systems are anticipated. The design team will work with the owner to incorporate best practices beyond the current code requirements. »

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

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

« High Plains Library District » « »

« Dr. Matt Hortt »

« 2650 W 29th St »

« Greeley, CO 80631 »

« 970-506-8563 »

§ 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.)

«« Wember Inc. »
« 7350 East Progress Place, Suite 100 »
« Greenwood Village, Colorado 80111 »
« Brooke Kardos »
« T: (720)708-7022 »
« E: bkardos@wemberinc.com »

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

.1 TBD

« »
« »
« »
« »
« »

.2

« »
« »
« »
« »
« »

.3 Other, if any:

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

« »

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

« VFLA Architecture + Interiors »
« 419 Canyon Ave #200 »
« Fort Collins, CO 80521 »
« Aspen Zabel »
« (970) 498-2962 »

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

« PCL Construction »
« 2000 S Colorado Blvd, Ste 2-500 »
« Denver, CO 80222 »
« Taylor Kern »
« (303) 667-3835 »

§ 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.)

« Eric Pagano to be superintendent, Cameron Johnson to be project manager, Taylor Kern to be project manager, Eric Bakanowski to be pre-construction manager »

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

« per the agreement »

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

« »

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's written 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 using the A133 Exhibit A format which will include 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 shall possess relevant experience and capabilities to deliver the Work with regard to this project type. 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 Construction Manager shall perform its operations in an open book collaborative process during the Project, including Work performed through the General Conditions costs. An open book approach requires the Construction Manager to make available to the Owner, in detail, all correspondence, documentation and transactions related to the Project, in a timely manner. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified and agreed to by Owner and Construction Manager, 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.

§ 2.4 Definitions

§ 2.4.1 The Contract. The Documents that form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Documents that form the Contract shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Construction Manager

§ 2.4.2 The Work. The term “Work” means the construction and related services required to fulfill the Construction Managers obligations under the Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Construction Manager. The Work may constitute the whole or a part of the Project.

§ 2.4.3 The Project. The Project is the total design and construction of which the Work performed under the Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

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

§ 2.4.5 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Construction Manager proposes to conform to the Documents for those portions of the Work for which the Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples.

§ 2.4.6 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 2.4.7 Construction Manager. The Construction Manager is the person or entity identified as such in the Agreement and is referred to throughout the Documents as if singular in number. The term “Construction Manager” means the Construction Manager or the Construction Manager’s authorized representative

§ 2.4.8 Consultant. A Consultant is a person or entity providing professional services for the Project for all or a portion of the Work, and is referred to throughout the Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 2.4.9 Architect. The Architect is a person or entity providing design services for the Owner for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Documents as if singular in number.

§ 2.4.10 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as “confidential.”

§ 2.4.11 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Amendment for Substantial Completion of the Work.

§ 2.4.12 Day. The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

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; provided, however, that the written agreement shall set forth a description of the Work to be performed by the Construction Manager, the time in which the Work is to be performed, method of compensation, any insurance and bond requirements for the Work, and a date on which the Construction Manager may terminate this Agreement pursuant to §13.1.1. 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 those included as part of the Guaranteed Maximum Price. 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, material cost volatility, 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, pedestrian and vehicular traffic control, temporary parking, materials storage, 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. The Construction Manager shall furnish to the Owner and Architect for review and approval, a list of proposed Subcontractors and material suppliers who are to furnish materials or equipment from whom bids will be requested for each portion of the Work. The Owner and Architect will promptly reply in writing to the Construction Manager if the Owner or Architect knows of any objection to such Subcontractor or material supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed Subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed Subcontractor or supplier.

§ 3.1.11.3 Direct Work shall be defined as actual Work described in Article 6 of this Agreement that has not already been secured through the General Conditions Costs.

§ 3.1.11.4 Self-Performed Work means Direct Work performed by the Construction Managers own forces. In the event the Construction Manager prefers to perform Work for any principal portions of the Work, other than General Conditions or emergency safety activities, with its own forces, the Construction Manager must secure this Work through a competitive process approved by the Owner. Construction Manager may not perform Direct Work with its own forces unless the Owner approves in writing. The Owner shall be entitled to require the Construction Manager to obtain competitive bids from at least two (2) additional qualified and approved Subcontractors or general trades contractors. The Construction Manager shall work with the Architect to develop the appropriate bid packages to procure the work. The Construction Manager shall submit its own bid to the Owner at least one (1) day prior to the time of the Subcontractors' sealed bid deadline. The Construction Manager and Subcontractors' bids shall be opened simultaneously in the presence of the Owner and Construction Manager, who shall jointly analyze the bids for price, thoroughness, schedule, proposed staff and relevant experience. The Owner shall be

entitled to determine, in its best interest and with sole and absolute discretion, whether the Construction Managers request to self-perform Work will be authorized. Owner may require the Work to be performed by a Subcontractor regardless of whether it appears that the Construction Manager can self-perform the Work in accordance with the requirements of the Contract Documents applicable thereto. There may be scopes of Work that the Owner may approve to be self-performed by the Construction Manager that are not secured through a competitive process.

§ 3.1.11.5 Construction Manager shall administer and account for all costs, management and financial tracking of any self-performed work as though it were being performed under a separate contract. If self-performed Work is awarded to the Construction Manager through a competitive a competitive bidding process, the pricing for such Work shall be in accordance with the Construction Manager’s bid (subject to the Final Guaranteed Maximum Price). If self-performed Work is awarded to the Construction Manager without competitive bidding for limited scopes of work, such Work shall be billed at the Construction Manager’s actual direct cost, plus mutually agreed general conditions, profit, overhead and other standard markups.

§ 3.1.11.6 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, delivery, and storage 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 Notices and Compliance with Laws

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

§ 3.1.13.2 The Construction Manager 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.

§ 3.1.13.3 Unless otherwise provided in the Documents, the Construction Manager shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project, which are typically obtained by contractors after execution of the contract. If Construction Manager’s Guaranteed Maximum Price includes fees that Owner has paid or is required to pay, Construction Manager shall deduct these fees from the Contract Sum as a deductive Change Order. Construction Manager shall undertake and perform all actions required by and all actions necessary to maintain in full force and effects all permits and licenses required for the Work.

§ 3.1.13.4 “Key Notices” under this Contract are notices regarding any Contract default, contractual dispute, or termination of the Contract.

(a) Key Notices shall be given in writing and shall be deemed received if given by: (i) confirmed electronic transmission (as defined in subsection (b) below) when transmitted, if transmitted on a business day and during normal business hours of the recipient, and otherwise on the next business day following transmission; (ii) certified mail, return receipt requested, postage prepaid, three (3) business days after being deposited in the United States mail; or (iii) overnight carrier service or personal delivery, when received. For Key Notices, the parties will follow up any electronic transmission with transmittal of a hard copy of the communication by the means described in subsection (a)(ii) or (a)(iii) above within twenty-four (24) hours of the electronic transmission. All communications or notices between the parties that are not Key Notices may be done via electronic transmission. Notice shall be given to the parties at the following addresses.

OWNER:

«

High Plains Library District » « »
« Dr. Matt Hortt »
« 2650 W 29th St »
« Greeley, CO 80631 »

« 970-506-8563 »

«mhortt@highplains.us »

CONTRACTOR:

«

PCL Construction »« »

OWNER'S REPRESENTATIVE:

« Wember Inc. »

« 7350 East Progress Place, Suite 100 »

« Greenwood Village, Colorado 80111»

« Brooke Kardos »

« T: (720)708-7022 »

« E: bkardos@wemberinc.com»

»

« 2000 S Colorado Blvd, Ste 2-500 »

« Denver, CO 80222 »

« Taylor Kern »

« (303) 667-3835 »

«tmkern@pcl.com »

All Key Notices to the Owner shall include a reference to the Contract including the Contractor's name and the date of the Contract.

Electronic Transmissions. The parties agree that: (i) any notice or communication transmitted by electronic transmission, as defined below, shall be treated in all manner and respects as an original written document; (ii) any such notice or communication shall be considered to have the same binding and legal effect as an original document; and (iii) at the request of either party, any such notice or communication shall be re-delivered or re-executed, as appropriate, by the party in its original form. The parties further agree that they shall not raise the transmission of a notice or communication, except for Key Notices, by electronic transmission as a defense in any proceeding or action in which the validity of such notice or communication is at issue and hereby forever waive such defense. For purposes of this Contract, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, but specifically excluding facsimile transmissions and texts.

§ 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.)

« »

§ 3.2 Guaranteed Maximum Price Proposal and Contract Time

§ 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 in A133 Exhibit A:

- .1 Attachment A – Budget Summary, a detailed estimate stating the Fee (converted to lump sum), General Conditions costs, (as a not-to-exceed amount);
- .2 Attachment B – Detailed General Conditions costs;
- .3 Attachment C – Approved Labor Burden rates;
- .4 Attachment D – Staff Assignment Matrix;
- .5 Attachment E – List of allowances;
- .6 Attachment F – List of unit prices;

- .7 Attachment G – List of clarifications and exclusions;
- .8 Attachment H – Critical path construction schedule;
- .9 Attachment I – Insurance Certificates;
- .10 Attachment J – List of Contract Documents upon which Guaranteed Maximum Price is based;
- .11 Attachment K – List of Construction Manager provided equipment along with billable rates;

§ 3.2.4 In preparing the Construction Manager’s Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency and disclose in the GMP proposal a contingency. The Construction Manager shall not include or add any Fee to the Construction Managers Contingency in the Guaranteed Maximum Price. The Construction Managers Contingency is not available for use by the Construction Manager for mistakes that result from Self-performed Work,. At Final Completion of the Project, any unused portion of the Construction Manager’s Contingency remaining in the Guaranteed Maximum Price shall be returned to the Owner.

§ 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. If the Guaranteed Maximum Price exceeds the Owner’s Budget the Construction Manager will work with the Architect and Owner to bring the project within budget in a timely manner.

§ 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 using the AIA A133 Exhibit A format which will include the information 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.

§ 3.2.10 The Final Guaranteed Maximum Price shall be established by incorporating the Construction Manager’s General Condition cost approved as part of the GMP proposal . Construction Manager shall competitively bid all Direct work to a minimum of (3) Subcontractors for each subcontracted scope of Work unless the Owner agrees otherwise in advance writing. Once bids are received, the Construction Manager shall share the results of the bidding process with the Owner and Architect and make recommendations on the selection of the Subcontractor or material supplier based on cost, schedule, and other factors that will maximize the success of the Project. The Construction Manager shall notify the Owner in a timely fashion when it intends to conduct scope and price confirmation meetings with bidders. The Owner may at its sole discretion elect to participate in the scope confirmation meetings with the Construction Manager.

§ 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 as determined by the Construction Manager or as directed by the Owner. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 As part 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. The Owner, 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.

§ 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.

§ 4.2 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..

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.)

« \$4335.00 »

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

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

« »

Individual or Position

Rate

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

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

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within «Twelve » (« 12») 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 shall be remitted from Owner to Construction manager within 30 days of Owner's receipt of the invoice. . Interest on late payments for Construction Manager's preconstruction and construction phase work shall be 12% per annum, compounded.

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.)

« two and seven tenths ___ percent (__2.7_ %) » of the total Cost of the Work, which will be included in the Guaranteed Maximum Price. Guaranteed Maximum Price will be converted to a lump sum at the time of approval of the Guaranteed Maximum Price Amendment. »

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

«Additive Change Orders will be subject to an increase at the rate of _ two and seven tenths_ percent (_ 2.7_)% of the cost of work. To the greatest extent practical during the course of the project, the Construction Manager shall net individual additive deductive proposed changed items together into Change Orders to minimize increases to the Construction Managers lump sum fee. »

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

«The maximum allowable mark-up by the Subcontractor on its sub-contractors shall be Ten percent (10%) »

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall be as shown in the Standard Tool and Equipment Rental Pricing List to be included with GMP packet and amendment documents

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

«Time is of the essence in completing the Work. In the event of delay in the completion of the Work as specified beyond the Substantial Completion Date, the Construction Manager shall be liable for liquidated damages because of such delay. For each and every day of delay past the Substantial Completion Date (including and, as adjusted by, time extensions) of this Contract, the Construction Manager will be liable to the Owner, as liquidated damages (and not as a penalty), in the amount of \$2,000 for each and every calendar day the Construction Manager is at fault for the delay. The Owner reserves the right to deduct said liquidated damages from the remaining unpaid balance of the GMP under this Contract or if the GMP has been exceeded, then, to collect such liquidated damages directly from the Construction Manager or its surety. Such liquidated damages are the Owner's sole and exclusive remedy for unexcused delays caused by the Construction Manager and shall not, in the aggregate, exceed an amount equal to 50% of the Construction Manager's Fee.
»

§ 6.1.7 Other:

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

«All savings remaining between the actual final contract sum and the guaranteed maximum price shall revert 100% to the Owner. »

§ 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, provided a Change Order has substantive impact on the critical path of the approved project schedule. The Owner shall promptly issue Change Orders for changes and events for which Contractor is entitled to an equitable adjustment of the Contract Time or Contract Sum. Where the Contract Documents provide for adjustments to the Contract Sum, the Contractor is entitled to a corresponding adjustment to the Guaranteed Maximum Price and General Conditions Amounts.

§ 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.

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 in accordance with the approved wages, salaries or hourly billable rates reflected in Exhibit D which include all fringe benefits and labor burden. Under no circumstances shall salaried employees be compensated for overtime without the Owner’s prior written 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, in accordance with the approved wages, salaries or hourly billable rates reflected in Exhibit D which include all fringe benefits and labor burden. Under no circumstances shall salaried employees be compensated for overtime without the Owner’s prior written approval.:

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

« »

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

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

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

§ 7.3 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 required by the Contract Documents that can be directly attributable to the Contract.

§ 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, mediation and arbitration costs, including attorney's 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 written approval. Owner will not pay for relocation and temporary living unless these expenses were clearly included within the proposed General Condition costs at the time of the selection of the Construction Manager and have been approved in writing by the Owner.

§ 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. Travel expenses must be approved in writing by the Owner prior to the expense being incurred. Payment for travel shall be reimbursed at cost without mark-up. Travel expenses for the Construction Manager's Executives and Officers will not be reimbursed under any circumstances, unless they are assigned full time on site to the Project.

§ 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 and provide the Owner with Access to the 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. Notwithstanding anything to the contrary in the Contract Documents, agreed rates, lump sum amounts, unit prices and other stipulated amounts shall not be subject to audit.

§ 10.1. Audits

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. During the Work and for a period of one year following completion of all Work contemplated hereunder, the Owner and the Owner's Auditors shall, during regular business hours, be afforded access to, and shall be permitted to audit and copy the Construction Managers records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractors' proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. If any such audit reveals overpayment from Owner to Construction Manager for the Work or any portion thereof, Construction Manager shall remit payment to Owner immediately for the total amount overpaid. Failure to remit payment as required shall be considered a material breach of this agreement.

§ 10.2. Equipment

Equipment purchased and charged to the Project as a Cost of the Work shall become the property of the Owner, at discretion of Contractor. Any

lease/purchase rental arrangements must be disclosed to the Owner in a timely manner. For Construction Manager owned equipment, the Construction Manager shall maintain daily equipment usage reports. The equipment use reports shall be used by the Construction Manager to determine the most economical billing rate (hourly, weekly, monthly) to the Owner.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. The Construction Manager may apply for payment to the Owner no more frequently than every thirty (30) days for Work completed.

§ 11.1.3 Provided that an Application for Payment is received by the Architect 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 « first » day of the « following » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « thirty » (« 30 ») days after the Architect receives the Application for Payment.

(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 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 for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

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

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

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

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

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the 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 Architect has previously withheld a Certificate for 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 Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .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:

In addition to any amounts withheld from payment pursuant to any other provision in this Agreement, Owner shall retain from progress payments, until payment is due under the terms and conditions governing payment, at Substantial Completion, amounts as follows:

- .1 Owner shall retain five percent (5%) of each progress payment to a maximum of five percent (5%) of the Contract Sum.
- .2

« »

§ 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.)

«Permit fees and insurance and bond costs »

§ 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. Materials or equipment approved for advance payments shall be securely stored in locations that are bonded and insured. Construction Manager shall provide evidence of adequate property insurance satisfactory to the Owner when requesting advanced payment. Materials or equipment not delivered at the site and approved for advanced payment will pass to Owner once payment has been made. Construction Manager will provide an acceptable Bill of Sale and will cause such

materials or equipment to be marked as Owner's Property. If visual inspection is required by the Owner, then it will be provided within the Cost of the Work.

§ 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; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.
- .4 a final Certificate for Occupancy has been issued by the municipality having authority.

§ 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 60 (sixty) days after the issuance of the Architect's final Certificate for Payment, and confirmation that all items listed on the "Punch List" attached to the letter of substantial completion are confirmed complete by the Owner or Architect.

§ 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.

ARTICLE 12 CLAIMS AND DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim subject to, but not resolved by, mediation 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.

§ 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.)

Arbitration pursuant to Article 15 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other: *(Specify)*

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 (7) 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’ 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.)

« In case of such termination for the Owner’s convenience, the Construction Manager shall be entitled to receive payment for Work properly executed plus costs incurred as a result of such termination and overhead and profit. »

§ 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

After execution of the Preconstruction Agreement, 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

§ 14.3.1.7 **Additional Insured Obligations.** The Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner and the Owner’s representative, Wember, Inc. 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 under which the additional insured is a Named Insured and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance satisfactory 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 performance and payment bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.3.3 As between Owner and Construction Manager, except for Owner’s property policy, Construction Manager’s insurance shall be primary and non-contributory with respect to the required insurance policies which affords additional insured status with any other insurance available to the Owner. The Owner reserves the right to request completed copies of the Construction Managers certificates of insurance and relevant endorsements to confirm the coverage disclosed in any insurance certificates presented by the Construction Manager.

§ 14.3.4 The Construction Manager shall maintain, and shall provide subcontractor default insurance acceptable to Owner or be required to provide performance bonds and material payment bonds for each subcontractor as agreed to at the time of the guaranteed maximum price. Performance and Payment Bonds shall (a) be executed by corporate surety licensed to do business in the State, (b) be in customary form, (c) be in the amount payable to Construction Manager hereunder or to

such subcontractor pursuant to its contract with the Construction Manager and (d) be payable to the owner and € listed on the Federal Register as an acceptable corporate sureties.

§ 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.)

« »

§ 14.5 Other provisions:

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 RFP dated March 4, 2024, PCL proposal dated March 21, 2024, Fee matrix dated April 8, 2024

« »

- .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.)

« »

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

OWNER (*Signature*)

« Dr. Matt Hortt »« Executive Director »

(*Printed name and title*)

CONSTRUCTION MANAGER (*Signature*)

« Taylor Kern »« Project Manager »

(*Printed name and title*)



AIA® Document A201® - 2017

General Conditions of the Contract for Construction

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

« Carbon Valley Regional Library Refresh »
« 7 Park Ave, Firestone, CO 80504 »
« »

THE OWNER:
(Name, legal status and address)

« High Plains Library District » « »
« Dr. Matt Hortt »
« 2650 W 29th St »
« Greeley, CO 80631 »
« 970-506-8563 »
« »
« »

THE ARCHITECT:
(Name, legal status and address)

« VFLA Architecture + Interiors»« »
« 419 Canyon Ave #200 »
« Fort Collins, CO 80521 »« »
« (970) 498-2962 »« »
« »

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

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

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

TABLE OF ARTICLES

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

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

- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

Additional Time, Claims for

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

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

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

Approvals

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

3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.4.2, 15.2

Architect's Inspections

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

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

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

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

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

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

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

Building Information Models Use and Reliance

1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval
13.4.4

Certificates of Insurance
9.10.2

Change Orders

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

Change Orders, Definition of

7.2.1**CHANGES IN THE WORK**

2.2.2, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

Claims, Definition of

15.1.1

Claims, Notice of
1.6.2, 15.1.3

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4
Claims and Timely Assertion of Claims
15.4.1

Claims for Additional Cost

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**

Claims for Additional Time

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**

**Concealed or Unknown Conditions, Claims for
3.7.4**

Claims for Damages
3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration
15.4.1

Cleaning Up**3.15**, 6.3

Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**

Commencement of the Work, Definition of
8.1.2

Communications

3.9.1, **4.2.4**

Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

**COMPLETION, PAYMENTS AND
9**

Completion, Substantial
3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

Compliance with Laws

2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

Consolidation or Joinder**15.4.4****CONSTRUCTION BY OWNER OR BY
SEPARATE CONTRACTORS**

1.1.4, **6**

Construction Change Directive, Definition of
7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance**15.1.4**

Contract, Definition of

1.1.2**CONTRACT, TERMINATION OR
SUSPENSION OF THE**

5.4.1.1, 5.4.2, 11.5, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of
1.5.2, 2.3.6, 5.3

Contract Documents, Definition of

1.1.1**Contract Sum**

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, **9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**

Contract Sum, Definition of

9.1

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, **6.1.2**

Contractor's Construction and Submittal Schedules

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Contractor's Construction and Submittal Schedules

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Contractor's Employees
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6,
10.2, 10.3, 11.3, 14.1, 14.2.1.1

Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors
and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2,
9.6.7, 9.10.2, 11.2, 11.3, 11.4
Contractor's Relationship with the Architect
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,
3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2,
6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6,
10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the
Work
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
2.2.2, 9.7
Contractor's Right to Terminate the Contract
14.1
Contractor's Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2,
9.8.3, 9.9.1, 9.10.2, 9.10.3
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction
Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4,
7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.3.6, 3.11
Copyrights
1.5, **3.17**
Correction of Work
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3,
15.1.3.1, 15.1.3.2, 15.2.1

Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.4
Costs
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3,
7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6,
11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14

Cutting and Patching
3.14, 6.2.5

Damage to Construction of Owner or Separate
Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2,
11.3, 14.2.4, 15.1.7
Damages for Delay
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4,
7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2,
14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification
9.4.1, **9.5**, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance,
Rejection and Correction of
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3,
9.10.4, 12.2.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1,
6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

Delays and Extensions of Time
3.2, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**,
10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5

Digital Data Use and Transmission
1.7
Disputes
6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2

Emergencies
10.4, 14.1.1.2, **15.1.5**
Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,
10.3.3, 11.3, 14.1, 14.2.1.1
Equipment, Labor, or Materials
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3,
9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1,
3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1,
9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,
10.4, 14.3, 15.1.6, **15.2.5**

Failure of Payment
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work
(See Defective or Nonconforming Work)

Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4

GENERAL PROVISIONS

1

Governing Law

13.1
Guarantees (See Warranty)

Hazardous Materials and Substances
10.2.4, **10.3**
Identification of Subcontractors and Suppliers
5.2.1

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

Information and Services Required of the Owner
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,
9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,
14.1.1.4, 14.1.4, 15.1.4

Initial Decision

15.2

Initial Decision Maker, Definition of
1.1.8
Initial Decision Maker, Decisions
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Initial Decision Maker, Extent of Authority
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property
10.2.8, 10.4

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

Instructions to Bidders
1.1.1

Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of

1.1.7

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

11
Insurance, Notice of Cancellation or Expiration
11.1.4, 11.2.3

Insurance, Contractor's Liability

11.1
Insurance, Effective Date of
8.2.2, 14.4.2

Insurance, Owner's Liability

11.2

Insurance, Property
10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials
9.3.2

INSURANCE AND BONDS

11
Insurance Companies, Consent to Partial Occupancy
9.9.1
Insured loss, Adjustment and Settlement of
11.5
Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest

13.5

Interpretation
1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1
Interpretations, Written
4.2.11, 4.2.12
Judgment on Final Award
15.4.2

Labor and Materials, Equipment
1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,
10.2.4, 14.2.1.1, 14.2.1.2
Labor Disputes
8.3.1
Laws and Regulations
1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,
9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,
15.4
Liens
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8
Limitations, Statutes of
12.2.5, 15.1.2, 15.4.1.1
Limitations of Liability
3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,
4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,
11.3, 12.2.5, 13.3.1
Limitations of Time
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,
5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,
15.1.2, 15.1.3, 15.1.5

Materials, Hazardous
10.2.4, **10.3**
Materials, Labor, Equipment and
1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,
10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
Means, Methods, Techniques, Sequences and
Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Mediation
8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1,
15.4.1.1

Minor Changes in the Work

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

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, **12.3**

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

Notice

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

Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

Notice of Claims

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

Notice of Testing and Inspections

13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

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

OWNER

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

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

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

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

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

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

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

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

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

Partial Occupancy or Use

9.6.6, **9.9**

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

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

Payment, Certificates for

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

Payment, Failure of

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

Payment, Final

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

Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Payments, Progress

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

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

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

PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Permits, Fees, Notices and Compliance with Laws

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

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, **3.12**, 4.2.7

Progress and Completion

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

Progress Payments

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

Project, Definition of

1.1.4

Project Representatives

4.2.10

Property Insurance

10.2.5, **11.2**

Proposal Requirements

1.1.1

PROTECTION OF PERSONS AND PROPERTY

10

Regulations and Laws

1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

Rejection of Work

4.2.6, 12.2.1

Releases and Waivers of Liens

9.3.1, 9.10.2

Representations

3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field

Conditions by Contractor

3.2, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and

Samples by Contractor

3.12

Rights and Remedies

1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2, 12.2.4, **13.3**, 14, 15.4

Royalties, Patents and Copyrights

3.17

Rules and Notices for Arbitration

15.4.1

Safety of Persons and Property

10.2, 10.4

Safety Precautions and Programs

3.3.1, 4.2.2, 4.2.7, 5.3, **10.1**, 10.2, 10.4

Samples, Definition of

3.12.3

Samples, Shop Drawings, Product Data and

3.11, **3.12**, 4.2.7

Samples at the Site, Documents and

3.11

Schedule of Values

9.2, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

Separate Contractors, Definition of

6.1.1

Shop Drawings, Definition of

3.12.1

Shop Drawings, Product Data and Samples

3.11, **3.12**, 4.2.7

Site, Use of

3.13, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4

Site Visits, Architect's

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

Special Inspections and Testing

4.2.6, 12.2.1, 13.4

Specifications, Definition of

1.1.6

Specifications

1.1.1, **1.1.6**, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14

Statute of Limitations

15.1.2, 15.4.1.1

Stopping the Work

2.2.2, 2.4, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of

5.1.1

SUBCONTRACTORS

5

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of

6.1.1, **11.3**

Substances, Hazardous

10.3

Substantial Completion

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 15.1.2

Substantial Completion, Definition of

9.8.1

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

2.3.3

Substitutions of Materials
3.4.2, 3.5, 7.3.8
Sub-subcontractor, Definition of
5.1.2
Subsurface Conditions
3.7.4
Successors and Assigns
13.2
Superintendent
3.9, 10.2.6
Supervision and Construction Procedures
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4,
7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4
Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6,
9.10.5, 14.2.1
Surety
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2,
15.2.7
Surety, Consent of
9.8.5, 9.10.2, 9.10.3
Surveys
1.1.7, 2.3.4
Suspension by the Owner for Convenience
14.3
Suspension of the Work
3.7.5, 5.4.2, 14.3
Suspension or Termination of the Contract
5.4.1.1, 14
Taxes
3.6, 3.8.2.1, 7.3.4.4
Termination by the Contractor
14.1, 15.1.7
Termination by the Owner for Cause
5.4.1.1, **14.2**, 15.1.7
Termination by the Owner for Convenience
14.4
Termination of the Architect
2.3.3
Termination of the Contractor Employment
14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT
14
Tests and Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**
TIME
8
Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7,
10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2,
5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14,
15.1.2, 15.1.3, 15.4
Time Limits on Claims
3.7.4, 10.2.8, 15.1.2, 15.1.3
Title to Work
9.3.2, 9.3.3
UNCOVERING AND CORRECTION OF WORK
12
Uncovering of Work
12.1
Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3
Unit Prices
7.3.3.2, 9.1.2
Use of Documents
1.1.1, 1.5, 2.3.6, 3.12.6, 5.3
Use of Site
3.13, 6.1.1, 6.2.1
Values, Schedule of
9.2, 9.3.1
Waiver of Claims by the Architect
13.3.2
Waiver of Claims by the Contractor
9.10.5, 13.3.2, **15.1.7**
Waiver of Claims by the Owner
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**
Waiver of Consequential Damages
14.2.4, 15.1.7
Waiver of Liens
9.3, 9.10.2, 9.10.4
Waivers of Subrogation
6.1.1, **11.3**
Warranty
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2,
15.1.2
Weather Delays
8.3, 15.1.6.2
Work, Definition of
1.1.3
Written Consent
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3,
13.2, 13.3.2, 15.4.4.2
Written Interpretations
4.2.11, 4.2.12
Written Orders
1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 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 prepared by Architect or Architect's consultants. 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, by courier providing proof of delivery, or FedEx, UPS or other similar delivery with tracking verification.

§ 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. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to 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 Information and Services Required of the Owner

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

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

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

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

§ 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 or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the Work within the Contract Time, or fails to remove and discharge (within ten (10) days) any lien filed upon Owner's property, on account of work for which Contractor has received payment from Owner, by anyone claiming by, through, or under Contractor or disregards the instructions of the Owner when based on the requirements of the Contract Documents, the Owner may, after providing the Contractor written notice and reasonable opportunity to cure, issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

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

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have

express authority to bind the Contractor with respect to all matters under this Contract. The term “Contractor” means the Contractor or the Contractor’s authorized representative.

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

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

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

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

§ 3.3 Supervision and Construction Procedures

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

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor’s employees, Subcontractors and 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. It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable here from

shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

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

§ 3.3.4 The Contractor shall be responsible for contacting utilities for help in locating all existing underground installations, including Underground Utilities and their service connections, in advance of excavating or trenching, by contacting the utility owners thereof and any available ONECALL Service and prospecting, and any resulting damage from failure to do so. Contractor is not responsible for damages caused by unknown or misidentified utilities.

§ 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, required insurance and bonds, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor has the responsibility to ensure that all equipment and material suppliers and subcontractors, their agents, and employees adhere to the Contract Documents, and that they order material and equipment on time, taking into account the current market and delivery conditions, and that they provide equipment and materials on time. The Contractor shall coordinate its Work with that of all others on the Project, including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan effective and efficient methods of overall installation.

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

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

§ 3.4.4 All work necessary to be performed after regular working hours, on weekends or legal holidays, shall be performed without an increase to the Guaranteed Maximum Price unless changes by owner requires work beyond regular hours to meet the schedule.

§ 3.4.5 Unless otherwise specifically required, all materials and equipment incorporated in the Work shall be new, free of faults and defects, and shall conform to the Contract Documents. If required, the Contractor shall furnish satisfactory evidence to the type and quality of materials and equipment.

§ 3.4.6 Colorado labor shall be employed to perform the Work to the extent of not less than eighty (80%) percent of each type or class of labor in several classifications of skilled and common labor employed on such project or public works. "Colorado labor," as used in this Article, means any person who is a resident of the State of Colorado, at the time of employment, without discrimination as to race, color, religion, creed, national origin, sex, age, or handicap.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty shall be for one (1) year from Substantial Completion and excludes remedy for damage or defect caused by

abuse, design, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Materials shall conform to manufacturer's standards in effect at the date of execution of the Construction Contract and shall be installed in strict accordance with manufacturer's directions. The Contractor shall, if required by the Owner, furnish satisfactory evidence as to the kind and quality of any materials. All packaged materials shall be shipped to the site in the original containers.

§ 3.5.2 The warranty provided in this Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy required or provided by law or by the Contract Documents and (ii) notwithstanding anything to the contrary contained in the Contract Documents, this warranty shall commence on substantial completion notwithstanding any partial occupancy prior thereto). The Contractor shall promptly repair and replace, at Contractor's sole cost and expense, any materials, equipment or Work covered by this warranty which is in violation of this warranty. All warranty work shall be coordinated with Owner in order to limit the disruption of operation of the completed Project. Such warranty work shall be completed in compliance with the terms and conditions of the Contract Documents.

§ 3.5.3 Owner and Contractor agree and acknowledge that Owner is entering into this Contract in reliance on Contractor represented expertise and ability to provide Construction Management services. Contractor agrees to use its best efforts, skill, judgment, and abilities to perform the Work and to further the interests of Owner in accordance with the requirements and procedures set forth in the Contract Documents.

§ 3.5.4 Unless directed by the Owner the Contractor's duties shall not be diminished nor shall Contractor be released from any liability by any review and/or approval by Owner, it being understood that Owner's review and/or approval of Submittals shall be for informational purposes only and not for purposes of approving or determining the propriety of the documents and the Owner is ultimately relying upon the Contractor's skill and knowledge in performing the Work.

§ 3.5.5 The Contractor's warranties and obligations under the provisions of Section 13.1.12 shall survive the completion of the Work or earlier termination of the Contract.

§ 3.5.6 The Contractor warrants that it will perform the Work in a timely, accurate and complete manner in accordance the provisions of the Contract Documents. The Contractor shall guarantee the Work against defects in workmanship and materials for a period of one (1) year, commencing on the date of substantial completion of the Work (the "Warranty Period"). The Contractor shall promptly replace any materials or re-perform any portion of the Work found to be defective within the Warranty Period in accordance with this Contract and without expense to the Owner. The time allowed for such corrective action shall be mutually agreed upon by the Owner and the Contractor. If the Contractor fails to proceed promptly in accordance with these guarantees, the Owner reserves the right to place the Contractor in default of its contractual obligations and may have the Work performed at the expense of the Contractor. This provision shall survive the completion of the Work and the termination of this Order. The above guarantee does not limit any claims that the Owner may otherwise have against the Contractor. Claims on extended warranties beyond the Warranty Period shall be submitted by Owner directly to the appropriate manufacturer providing such extended warranty. The Contractor shall also assign to the Owner any longer-term guarantee of materials used by the Contractor as may be provided by the manufacturer, per the material specifications and contract documents and the Contractor shall not have any obligation to perform Warranty Work following the initial one-year Warranty period, except to help facilitate submission or warranty service requests from the Owner to the appropriate manufacturer providing any such extended warranty.

§3.5.7 At least 60 calendar days prior to the expiration of the Warranty Period, the Owner shall have the option to make an inspection to determine whether the Work has been completed in accordance with this Contract and may submit a written list of any defects to the Contractor (the "Warranty Work"). In the event the Owner chooses this option, the Contractor shall promptly correct all Warranty Work without additional cost to the Owner within the Warranty Period. If any Warranty Work cannot be corrected within the Warranty Period, the Contractor shall submit written notification to the Owner for approval requesting an extension of time to complete such item (the "Request for Extension of Warranty Work"). The Request for Extension of Warranty Work must be received by the Owner

within seven calendar days of the Contractor's receipt of the Warranty Work and shall include the Contractor's justification for the request and a schedule for completion of the Warranty.

§ 3.5.8 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

§ 3.6.1 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.

§ 3.6.2 It is understood that this project will receive tax exempt status. Owner to provide contractor with tax exempt certificate upon execution of Contract in order for Contractor to apply for a project specific tax exempt certificate from the state of Colorado. The exemption does not apply to purchases or rentals of equipment, supplies, or tools by the contractor that she or he uses to perform construction services for a tax-exempt entity. A contractor must apply for an exemption certificate prior to starting work on any tax-exempt construction project.

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

§ 3.7.6 If, in the course of the Work, the Contractor believes it has encountered human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from such suspension 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; as well as fees or any other costs for which allowances are established.
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 Superintendent

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

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

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

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, 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 Owner's and Architect's information. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

§ 3.11 Documents and Samples at the Site

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

the Architect for submittal to the Owner upon completion of the Work and as a condition precedent to Final Payment as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will

specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. If Contractor performs any design services in connection with the Work, Contractor or his design professional will meet and comply with Professional Liability insurance requirements as set forth elsewhere in this agreement in its entirety.

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

§ 3.12.11 By providing Submittals the Contractor represents to the Owner that it has (1) reviewed and check for conformance against the construction documents, (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.

§ 3.12.12 Any professional design services required of the Contractor under Contract Documents shall be expressly identified and specified in the Agreement. All such professional design services or certifications as required by the contract documents to be provided by the Contractor, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. **Owner shall be responsible for the design criteria for such portions of the Work.** The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals provided that the Owner's consultants shall remain responsible for overall coordination of the design of the Project.

§ 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, on a weekly basis minimum, and more often as needed to maintain a functional, efficient and safe construction site to the reasonable satisfaction of Owner. 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

§ 3.16.1 The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located. The Contractor shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 3.16.2 The Owner and its representatives shall at all times have access to the work. The Contractor shall provide proper facilities for access to and for inspection of the Work for the purpose of determining compliance with this Agreement and quality of workmanship and material. The Owner may order that portions of the Work be uncovered, exposed or made available for observation, inspection or testing. The Contractor shall provide all labor, tools, materials equipment and supplies necessary to comply with the request of the Owner. If any of the work is determined to be defective due to Contractor or subcontractor, the Contractor shall bear all costs involved to bring the Work into compliance with the Contract, including, without limitation, the cost to replace any materials, to re-perform or to reconstruct the Work.

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner's Representative, Owner and its officers, and employees from and against all claims, liability, damages, losses, and expenses, including reasonable attorney fees, on account of injury, loss, or damage, arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, which arise out of or are in any manner connected with performance of the Work but only to the extent caused in whole or in part by, the negligent act, omission, error, or other fault of the Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor.

If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the Owner may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

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

§ 3.18.3 Contractor shall provide Owner with immediate written notification as to any circumstances to which this Section 3.18 may give rise to an Owner indemnification promptly after Contractor becomes aware of such circumstances.

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 regularly 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 seven (7) days of receipt or within any time limits otherwise agreed upon in writing. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

§ 5.2.1 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 Owner or Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

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

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

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. 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 Architect of observed apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor’s Work. Failure of the Contractor to notify the Architect of observed 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, subject to Section 15.1.7, 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 the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.1.4 The Parties acknowledge and agree that, due to current extraordinary circumstances and market conditions, there is the potential for (i) material and equipment supply chain delays, disruption, cost increases and shortages as well as (ii) labor shortages and/or extraordinary labor cost increases, which are outside of the Parties' control. The Parties agree Contractor has not included an escalation factor or contingency specifically for these issues in the Contract Sum or Contract Time. Contractor will use reasonable efforts, without requiring the expenditure of additional cost, to mitigate cost and time for performance of the Work increase due to such material, equipment or labor cost increases, delays and/or shortages beyond Contractor's reasonable control, the Contract Sum and Contract Time shall be increased accordingly.

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

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

§ 7.3.2 A Construction Change Directive shall be used 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.

§ 7.4 Minor Changes in the Work

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

§ 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 Force Majeure as defined in paragraph 13.7; (4) by delay authorized by the Owner; (5) other causes beyond the Contractor's control; or (6) by other causes that the Contractor asserts, justify delay, then the Contract Time shall be extended for such reasonable time and reasonable direct and indirect costs associated with delays if any as the Owner may determine and only if such delay will prevent Contractor from achieving Substantial Completion by the contract time. Subject to Article 15.

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

§ 9.3 Applications for Payment

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

§ 9.3.1.1 As provided in Section 7.3.9, such applications may not include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Approved 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 or, with the agreement of the Owner, stored at an insured facility where the Owner can reasonably visually verify or receive other acceptable verification of the storage of materials. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing . Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

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

§ 9.4 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 failure to carry out the Work in accordance with the Contract Documents or unsatisfactory execution of the work.
- .8 any other reasonable basis to withhold certification. Owner shall have no liability whatsoever for interest or other charges resulting from withholding of payment for any reason stated in the Contract.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, 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 Progress Payments

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

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

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

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

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

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any

fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

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

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. As a condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within sixty (60) consecutive days or as agreed upon by the Owner and Contractor in writing. The Work shall not be considered ready for Substantial Completion if any of the following conditions exist:

- .1 Incomplete or defective work remains which would prevent or interfere with the Owner's occupancy and normal operations and intended use of the facility;
- .2 The building mechanical systems have not been tested, balanced;
- .3 The building electrical and life safety systems have not been tested;
- .4 Final clean-up is not complete to support the occupancy and intended use of the facility outside of clean-up associated with punch list items to be completed (outside of clean as an item);
- .5 Approvals and Temporary or Full Certificates of Occupancy (Whichever occurs first) by regulatory officials are not received and complete.

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

§ 9.8.3 Upon receipt of the Contractor's list, and confirmation of all inspections and regulatory approvals to allow occupancy, the Architect and Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's and 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. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

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

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

§ 9.9 Partial Occupancy or Use

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

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

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not: (1) constitute acceptance of Work not complying with the requirements of the Contract Documents, (2) relieve the Contractor from responsibility for loss or damage because of or arising out of defects in, or malfunctioning of, any Work, material or equipment, nor from any other unfulfilled obligations or responsibilities under the Contract Documents, or (3) commence any warranty period under the Contract Documents, provided that Contractor shall not be liable for damages or ordinary wear and tear resulting from such partial occupancy.

§ 9.10 Final Completion and Final Payment

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) Contractor's general warranty and documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties for the Work, 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, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 faulty or defective Work appearing after Substantial Completion;
- .4 terms of special warranties required by the Contract Documents; or
- .5 replacement of material or equipment which is rejected if found, after the date of final payment, to be defective, or inferior in quality or uniformity, to the material or equipment specified, or is not as represented to the Architect and Owner.

§ 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.

§ 10.1.1 At all times through performance of this contract, the Contractor shall be familiar with and comply with all local noise ordinances in the performance of the Work. The Contractor shall not conduct work in excess of the permissible decibel levels provided by local noise ordinances. The Contractor shall provide the Owner with prior notice of any known Work that may result in such excessive noise levels.

§ 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.2.9 Finishes, structures, utilities, service roads, landscaping located on the property not included in the contract documents shall be protected against damage or interrupted services at all times by the Contractor during the term of the Work. Adequate floor and wall protection must be provided by the Contractor during performance of the Work. The Contractor shall be responsible for repairing or replacing any and all property which is damaged by reason of the Contractor's operation on the property to satisfaction of the Owner.

§ 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner 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. 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.

§ 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 caused by 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 take reasonable action, 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. The Contractor shall notify the Owner as soon as an emergency affecting safety of persons on the property is discovered.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

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

§ 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 thirty (30) 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's insurance carrier shall provide notice to the Owner of such impending or actual cancellation or expiration. If any insurance policy required herein and maintained by Contractor does not provide advance notice to third parties then, prior to any cancellation of such insurance, Contractor shall have new insurance policies in place that meet the requirements of this Agreement. 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 Additional Named Insured

§ 11.2.1 The Owner and Wember, Inc. shall be named as an additional insured under the Contractor's Automobile, Commercial General, and Umbrella Liability coverages, and the Commercial General Liability additional insured coverage shall include products and completed operations coverage. The Contractor's Automobile, Commercial General, and Umbrella Liability additional insured coverage shall be primary with respect to claims against the Owner caused by the fault or negligence of Contractor.

§ 11.3 Builder's Risk/Commercial Property Insurance

§ 11.3.1 The Contractor shall purchase and maintain commercial property insurance upon the entire Work at the site to the full insurable value thereof. Such insurance shall be in a company rated with an AM best rating of A-VIII, or companies against which the Owner has no reasonable objection.

This insurance shall include the interests of the Owner, the Contractor in the Work as additional insureds, providing that such insurance is primary with respect to claims made by the additional insureds, and be in the form of Commercial Property insurance for physical loss or damage. If not covered under Commercial Property insurance or otherwise provided in the Contract Documents, the Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit when such portions of the Work are to be included in a Request for Payment under paragraph 9.3.2.

§ 11.3.1.1 The form of policy for this coverage shall be "Replacement Value". The coverage under this policy shall include contemplated work and work in progress.

§ 11.3.1.2 If by the terms of this insurance any mandatory deductibles are required, or if the Contractor should elect, to purchase this insurance with deductible amounts, the Contractor shall be responsible for payment of the amount of all deductibles in the event of a claim.

§ 11.4 General Requirements

§ 11.4.1 If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner, then the Contractor shall bear all reasonable costs properly attributable thereto. The Owner reserves the right to request and receive a copy of any certificates of insurance at any time, and any and all relevant endorsements to said policy.

§ 11.4.2 All insurance policies and/or certificates of insurance required under the Contract Documents shall be issued subject to the following stipulations by the Insurer:

- .1 Underwriter shall have no right of recovery or subrogation against the Owner it being the intent of the parties that the insurance policy so effected shall protect both parties and be primary coverage that afford additional insured status for any and all losses covered by the described insurance subject to the policy's terms and conditions.
- .2 The clause entitled "Other Insurance Provisions" contained in any policy including the Owner as an additional insured shall not apply to the Owner.
- .3 The insurance companies issuing the policy or policies shall have no recourse against the Owner for payment of any premiums due or for any assessments under any form of any policy.
- .4 Any and all deductibles contained in any insurance policy shall be assumed by and shall be the sole liability of the Contractor.

§ 11.4.3 With prior mutual agreement between Owner and Contractor, additional coverages or higher limits of liability may be required by the Owner should the scope or nature of the work change during the course of the Construction Contract. All Commercial General liability insurance policies required by this Article shall specifically provide that the coverage limits shall be exclusive of costs of defense, including attorneys' fees.

§ 11.4.4 The Contractor shall be solely responsible for ensuring that all subcontractors or suppliers obtain and maintain in force for the term of this Construction Contract insurance policies sufficient to meet the minimum coverages required under the Contract Documents.

§ 11.4.5 Nothing contained in this Article 11 shall be construed as limiting the extent of the Contractor's responsibility for payment of damages or liability resulting from his operations under the Construction Contract. Contractor agrees that he alone shall be completely responsible for procuring and maintaining insurance coverage to insure the Work. Any approvals of Contractor's insurance coverages by the Owner or the Project Manager shall not operate to the contrary

§ 11.4.6 The risk of loss to any property to be provided by Contractor to Owner pursuant to the Contract Documents shall be upon the Contractor until said property has been finally accepted by Owner.

§ 11.4.7 Nothing in this Article 11 shall be deemed or construed as a waiver of any of the protections to which Owner may be entitled under the Constitution of the State of Colorado or pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended.

§ 11.4.8 The Contractor shall provide the certificates of insurance and all endorsements required under the Contract Documents before commencing any Work. **It shall be an affirmative obligation of Contractor's insurance carrier to provide written notice to the Owner within thirty (30) days of the cancellation of any of the policies required herein and failure to do so shall constitute a material breach of the Contract.** If any insurance policy required herein and maintained by Contractor does not provide advance notice to third parties then, prior to any cancellation of such insurance, Contractor shall have new insurance policies in place that meet the requirements of this Agreement.

§ 11.4.9 All insurance required under the Contract Documents shall be obtained from financially responsible insurance companies with a current Best's Insurance Guide Rating of A- and Class VII or better, licensed in the State of Colorado, and approved by the Owner, and shall be maintained until the Contractor's Work is accepted by the Owner. The Contractor shall provide the certificates of insurance required under the Contract Documents prior to commencement of the Work, which approval shall not be unreasonably withheld. The Owner may, in writing, specifically indicate its approval or disapproval of each separate policy provided pursuant to the Contract Documents prior to commencement of the Work, which approval shall not be unreasonably withheld.

§ 11.4.10 All policies under the Contract Documents that are scheduled to expire prior to the time the Contractor's Work is finally accepted by the Owner shall be renewed prior to the scheduled expiration date and evidence of such renewal shall be submitted to the Owner for approval.

§ 11.4.11 Intentionally Omitted.

§ 11.4.12 All commercial general liability insurance and builder's risk/property insurance policies required by this Article shall be occurrence-based policies.

§ 11.5 Owner's Insurance

§ 11.5.1 Contractor shall provide Builders Risk insurance on a completed value basis covering the Work in its entirety and during the course of construction.

§ 11.5.2 Not Used

§ 11.5.3 Not Used

§ 11.6 Waivers of Subrogation

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

§ 11.6.2 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.

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

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

§11.7 Adjustment and Settlement of Insured Loss

§ 11.7.1 Not Used

§ 11.7.2 Not Used

§ 11.8 PERFORMANCE BOND AND PAYMENT BOND

§ 11.8.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. The Owner shall notify Contractor of whether it will require bonds within a reasonable time prior to the planned start of construction so that the Contractor has sufficient time to obtain such bonds.

§ 11.8.2 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.

§ 11.8.3 If such bonds are required by the Owner, the Contractor shall furnish, at the Contractor's expense, a separate performance bond and a labor and materials bond, for an amount not less than 100% of the Contract Price. The bonds shall be issued by a qualified corporate surety licensed to transact business in Colorado and appearing as a licensed corporate surety on the Federal Register. If at any time during performance of the Work the surety on the bonds shall be disqualified from doing business in Colorado, or shall become insolvent or otherwise impaired, the Contractor shall furnish bonds from an alternate surety acceptable to the Owner. The bonds shall remain in effect until completion of all warranty and guaranty work and shall be delivered to the Owner prior to the commencement of the Work. The Contractor shall secure an increase in the bonds in an amount equal to the cost of any additional work authorized pursuant to a duly executed change order or contract amendment.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor

shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. All such Work shall be coordinated with Owner in order to limit the disruption of operation of the completed Project. All such warranty work shall be completed in compliance with the terms and conditions of the Contract. This provision or any other provision in this Section 12.2.2 does not relieve the Contractor in any way of conforming to the requirements of the Contract or correcting items not compliant with the Contract per applicable laws, statutes or any regulations, whether they are observable, concealed or in any other condition or status.

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

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign, sublet, or transfer (by operation of law or otherwise) any interest in the Contract as a whole without written consent of the other. If either party attempts to make an assignment, sublet or transfer 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 but after providing the Contractor notice, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

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

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

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

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

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

§ 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.

§ 13.6 Mandatory Immigration Provisions

§ 13.6.1 Contractor acknowledges that, prior to executing the Agreement, Contractor has certified that it does not knowingly employ or contract with an illegal alien to perform work under the Agreement and that the Contractor has participated in the E-Verify Program (formerly known as the Basic Pilot Program1) (the "E-Verify Program") or the Colorado Department of Labor and Employment (the "Department") program established by § 8-17.5-102(5)(c), C.R.S. (the "Department Program") in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement.

§ 13.6.2 Contractor shall not: (a) Knowingly employ or contract with an illegal alien to perform work under the Agreement; or (b) Enter into a contract with a subcontractor who fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

13.6.3 The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in the E-Verify Program or the Department Program. (a) In the event the Contractor uses the Department Program for the employment verification described herein, the Contractor shall comply with the requirements mandated by § 8-17.5-102(5)(c), C.R.S. including: i. The Contractor shall comply with the provisions of § 8-17.5-102(5)(c), C.R.S.; and ii. Contractor shall notify the Owner of its determination to participate in the Department Program, and iii. The Contractor must, within twenty days after hiring an employee who is newly hired to perform work under the Agreement, affirm that the Contractor has examined the legal work status of the employee, retained file copies of the documents required by 8 U.S.C. § 1324a and not altered or falsified the identification documents for the employee, and the Contractor must provide a written, notarized copy of the affirmation of compliance with § 8-17.5-102(5)(c), C.R.S. to the Owner.

13.6.4 Contractor shall not:

(a) Knowingly employ or contract with an illegal alien to perform work under the Agreement; or

(b) Enter into a contract with a subcontractor who fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

13.6.5 The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in the E-Verify Program or the Department Program.

(a) In the event the Contractor uses the Department Program for the employment verification described herein, the Contractor shall comply with the requirements mandated by § 8-17.5-102(5)(c), C.R.S. including:

13.6.6 The Contractor shall comply with the provisions of § 8-17.5-102(5)(c), C.R.S.; and ii. Contractor shall notify the Owner of its determination to participate in the Department Program, and iii. The Contractor must, within twenty days after hiring an employee who is newly hired to perform work under the Agreement, affirm that the Contractor has examined the legal work status of the employee, retained file copies of the documents required by 8 U.S.C. § 1324a and not altered or falsified the identification documents for the employee, and the Contractor must provide a written, notarized copy of the affirmation of compliance with § 8-17.5-102(5)(c), C.R.S. to the Owner.

§ 13.7 Force Majeure. Neither the Contractor nor the Owner shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by “force majeure” except the Contractor shall be entitled to an equitable adjustment of the Contract Time, Contract Sum and GMP on account thereof. As used in this Agreement, “force majeure” means acts of God, acts of the public enemy, acts or omissions of authorities having jurisdiction over utilities, or acts of terrorism, unusually severe weather, fires, floods, epidemics, pandemics, quarantines, strikes, labor disputes, freight embargoes, and unusual delays in delivery, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

§ 13.8 Order Of Precedence

§ 13.8.1 In the case of conflicts between the Drawings and Specifications, the Drawings shall govern. In any case of conflicts, omissions or errors in figures, drawings or specifications, discovered by the Contractor, the Contractor shall immediately submit the matter to the Owner and Architect for clarification. The Architect’s clarifications are final and binding on all Parties, subject to an equitable adjustment in Contract Time or Contract Sum pursuant to Articles 7 and 8 or dispute resolution in accordance with Article 15.

§ 13.8.2 Where figures are given, they shall be preferred to scaled dimensions.

§ 13.8.3 Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in the Contract Documents, shall be interpreted in accordance with their well-known meanings.

§ 13.8.4 In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written Modifications to this Agreement; (b) Contractor's assumptions and clarifications, (c) this Agreement; (d) Drawings (large scale governing over small scale), Specifications and Addenda issued prior to the execution of this Agreement; (e) approved Submittals; (f) information furnished by the Owner; (g) other documents listed in the Agreement. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

§ 13.9 **General Consultation.** The Contractor shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 13.10 When applicable law requires that services be performed by licensed professionals, the Contractor shall provide those services through qualified, licensed professionals.

§ 13.11 The Contractor, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 13.12 Progress Reports

§ 13.12.1 The Contractor shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Contractor, the Contractor shall report information below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Contractor's compensation and Reimbursable Expenses, if any;
- .11 Additional information as agreed to by the Owner and Contractors.

§ 13.13 Key Personnel, Contractors and Suppliers

§ 13.13.1 The Contractor shall not employ personnel, or contract with Contractors or suppliers 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 and timely objection.

§ 13.13.2 If the Contractor changes any of the personnel, Contractors or suppliers identified in the Exhibit A Amendment, the Contractor shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 10 days to the Contractor in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 10 day period shall constitute notice of no reasonable objection.

§ 13.13.3 Except for those persons or entities already identified or required in the Exhibit A Amendment, the Contractor as soon as practicable after execution of the Exhibit A Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the

Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 13.13.4 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 rejected person or entity 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 person or entity'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.

§ 13.13.5 No provision of this Agreement shall be construed or interpreted: i) to directly or indirectly obligate Owner to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or iii) as a donation or grant by Owner to or in aid of any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

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

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

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

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials or equipment to complete the Work in a diligent, efficient, timely, workmanlike, skillful and careful manner;
- .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 or material breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, and reasonable opportunity to commence and continue to cure, 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, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include 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, suspend the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such suspension 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 suspension for the Owner's convenience, the Contractor shall be entitled to receive payment for Work properly executed, plus costs incurred as a result of such termination and overhead and profit thereon.

§ 14.4.4.4 The terms of this Contract are contingent upon sufficient appropriations and authorizations being made by the Owner for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the Owner, this Contract shall terminate, without penalty or expense to the Owner (except for amounts owed to Contractor for Work performed up to the date of such notice of termination), upon written notice being given by the Owner to the Contractor. Upon receipt of such notice, the Contractor shall take immediate action to mitigate any damage or additional expense. Owner shall pay Contractor amounts due and owing for Work performed up to the date of such termination together with all other costs incurred as a result of termination.

§ 14.4.5 No provision of this Agreement shall be construed or interpreted: i) to directly or indirectly obligate Owner to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or iii) as a donation or grant by Owner to or in aid of any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution. Provided that nothing herein is intended to limit the Contractor's right to payment for amounts owed under the Contract Documents.

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

§ 15.1.2.1 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.. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.2.2 The Contractor shall maintain at the site for the Client a fully accessible electronic record copy of all drawings, specifications, addenda, Change Orders and other modifications, in good order and marked currently to record all changes during construction. The record drawings will be accessible to the Owner and their representatives for review and coordination. If the record drawings are not maintained to the satisfaction of the Owner and the Contractor fails or refuses to keep these documents current, the Contractor shall not be entitled to progress payments until it makes the necessary changes to the documents to make them current.

§ 15.1.2.3 The Contractor and their subcontractors shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 15.1.2.4 The Contractor shall perform the Work in accordance with the Contract Documents. The Contractor shall not be relieved of the obligation to perform the Work in accordance with the Contract Documents by the activities, tests, inspections or approvals of the Owner.

§ 15.1.2.5 Neither the Contractor nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Contractor determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Contractor shall execute a Modification to the Contract.

§ 15.1.3 Notice of Claims

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

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

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

If the Contractor intends to make a Claim for an increase in the Contract Sum, written 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 intends 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.

§ 15.1.6.3 Notwithstanding any other provision of Article 15, all notice of claims for extensions of time shall be made in writing to the Owner within 7 days after Contractor becomes aware of the delay; otherwise, they may be disallowed.

It is expressly understood and agreed, by and between the Contractor and Owner, that the Contract Time for the completion of the Work is a reasonable time, taking into consideration the normal average climatic and economic conditions and other factors prevailing in the locality of the Work. The Contract Time anticipates "Normal" average weather and climate conditions in and around vicinity of the project site during the times of year that the construction will be carried out. Extensions of time based upon weather conditions shall be granted only if the Contractor demonstrates clearly that such conditions adversely affected the Contractor's Work and thus required additional time to complete the Work.

The following specifies the procedure for the determination of time extensions for weather delays:

(a) An actual adverse weather day must prevent Work for 50 percent or more of the Contractor's workday, delay Work critical to the timely completion of the Project, and be documented by the Contractor. The Contractor shall notify the Owner in writing if Work cannot proceed on a given date, within two calendar days of that date. The Owner will use the above written notification in determining the number of calendar days for which Work was delayed during each month.

(b) The Contractor shall track approved weather delays in the meeting minutes. If necessary, a Change Order will be executed for an increase in the Contract Time along with the issuance of substantial completion.

(c) The Contractor's Project Schedule must reflect the above-anticipated adverse weather delays on all weather-dependent activities. The Contractor shall comply with the portions of the Contract Documents relating to its Project Schedule and amendments thereto which result from the "unusually severe" weather condition.

§ 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 Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to 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. Owner is a public entity and as such is a political subdivision of the state of Colorado. The provisions of this Agreement shall be deemed to include the statutory provisions of Article 26 of Title 38, Colorado Revised Statutes, as those statutory provisions apply to political subdivisions of the state of Colorado. To the extent the provisions of this Agreement or any other Contract Document that comprises part of this Agreement conflict with the applicable statutory provisions of Article 26 of Title 38, the provisions of Article 26 of Title 38 shall control.

§ 15.3 Mediation

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

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

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

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

§ 15.3.4 Litigation

The Contract shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any dispute concerning the Contract or the Project shall be exclusively in the federal court located in Colorado or the state court located in Weld County, State of Colorado.

REQUEST FOR PROPOSAL (RFP) CONSTRUCTION MANAGER AT RISK (CM@R) SERVICES



March 4, 2024

Carbon Valley Regional Library
7 Park Avenue
Firestone, CO 80504

Farr Regional Library
1939 61st Avenue
Greeley, CO 80634

Prepared by: Brooke Kardos

Wember, Inc
2580 E Harmony Rd
Fort Collins, Colorado 80528
Project Manager: Dan Spykstra
Phone: (720) 382-3795
e-mail: dspykstra@wemberinc.com
online: www.wemberinc.com

TABLE OF CONTENTS

1.0 GENERAL INFORMATION

- 1.1 INTRODUCTION AND PROJECT DESCRIPTION
- 1.2 LOCATION
- 1.4 GENERAL CM@R SCOPE OF SERVICES
- 1.5 CONTACTS
- 1.6 SCHEDULE OF EVENTS
- 1.7 PROPOSAL INSTRUCTIONS
- 1.8 PROPOSAL REQUIREMENTS
- 1.9 QUESTIONS, INQUIRIES, AND AMENDMENTS REGARDING THIS RFQ/P
- 1.10 PROPOSING FIRMS TO FULLY INFORM THEMSELVES
- 1.11 EVALUATION & SELECTION CRITERIA
- 1.12 SELECTION PROCESS
- 1.13 RIGHT OF REJECTION
- 1.14 MODIFICATION AND WITHDRAWAL OF PROPOSAL
- 1.15 PROPOSALS TO REMAIN OPEN SUBJECT TO ACCEPTANCE
- 1.16 COST OF PROPOSALS

2.0 PROPOSAL FORM

- 2.1 PROPOSAL FORM FOR CONSTRUCTION MANAGER AT RISK (CM@R)

3.0 ATTACHMENTS

- 3.1 EXHIBIT A: PROPOSED MASTER SCHEDULE (See prelim timeline below 1.1)
- 3.2 EXHIBIT B: CM@R SCOPE & FEE MATRIX
- 3.4 EXHIBIT C: SAMPLE CONTRACT & GENERAL CONDITIONS

1.0 GENERAL INFORMATION

1.1. INTRODUCTION AND PROJECT DESCRIPTION

This Request for Proposal (“RFP”) is issued to provide the selection process for Construction Manager at Risk (CM@R) services for the Farr Regional Library located in Greeley and Carbon Valley Regional Library. Firms submitting a response to the RFP will be asked at a minimum to state their understanding/experience to the project and offer their methodology for meeting the criteria noted in this RFP as well as complete the Scope & Fee Matrix attached. Interviews will follow the submission of proposals according the schedule contained in the RFP. Planning Solutions has been contracted for design services.

PROJECT BACKGROUND

Farr Regional Library is located 1939 61st Avenue, Greeley and is 38,000 sq ft. Carbon Valley Regional Library is located at 7 Park Avenue, Firestone, and is 35,000 sq ft. High Plains Library District has selected Wember as the Owner’s Representative and is currently procuring an interior design architect. Both libraries are due for an interior refresh. refresh of paint, carpet & furniture as well as some minor interior architectural changes.

PROJECT DESCRIPTION

Both libraries are due for an interior refresh of paint, flooring & furniture as well as some minor interior architectural changes of both main circulation desks, adding a door from the main library to admin & reconfiguring admin offices to maximize available offices. Carbon Valley Regional Library would also like to add a Makers Space within the existing space, this could require some design-assist from CMAR.

BUDGET

The “Hard Cost” or construction budget for the project is identified below and includes demolition, construction, general conditions, and overhead & profit. “Soft Costs” including design & engineering, permitting, FF&E, technology, contingency, 3rd party consultant service, etc. will be in addition to the Hard Cost, and maintained by the Owner.

Carbon Valley Regional Library \$880,000
Farr Regional Library \$425,000

TIMELINE

The proposed timeline is as follows:

Design	04/2024-08/2024
Permitting/ GMP	09/2024-09/2024
Construction	10/2024-01/2025
	(subject to change)

1.2 LOCATION

The Project is located at the locations listed above for Carbon Valley Regional Library and Farr Regional Library.

1.3 GENERAL CM@R SCOPE OF SERVICES

The exact scope of services required by the Client will be set forth in the agreement between the Client and the selected CM@R. The scope of work will consist of assisting Client’s staff and consultants in completing the Pre-construction Phase of the project in preparation for final approval by the necessary municipalities and agencies. In conjunction with this approval, the CM@R will have also prepared a final Guaranteed Maximum Price (GMP). Upon approval by the Client’s Board, the contractor will enter into a pre-negotiated contract to perform the construction management and general contracting services necessary to satisfactorily complete the project in compliance with the contract documents.

The CM@R’s services during the Pre-Construction Services phase shall include, but may not be limited to, cost estimating, value engineering, scheduling, logistical planning, constructability analysis, bid package administration, bidding of trade contracts, and the submittal of a Guaranteed Maximum Price (GMP) Proposal for the Client’s optional acceptance, reflecting the entire cost, scope of work and

quality intent of the Project before any construction funds are committed. The GMP Proposal shall be supplemented with a clearly defined and detailed breakdown of costs for the entire Project. All construction costs must be clearly defined and included in the GMP Proposal. All proposed allowances included shall be approved by the Client and shall include estimated quantities and values justified by the CM@R. All clarifications, exclusions, exceptions must be identified within pricing packages and the GMP Proposal.

The CM@R's services during the Construction Services phase shall include, but may not be limited to, construction management, administration, field supervision, coordinating subcontractors, maintaining quality, meeting schedules and providing the general conditions work for the Project.

Generally, all trade contracts shall be competitively bid and assigned to the CM@R's contract; however, when circumstances warrant it, the CM@R will be allowed to self-perform work that it traditionally performs with its own forces. This work shall be competitively bid by the CM@R against other contractors performing the same scope of work.

The CM@R shall implement and maintain a project controls system with full access to the project information by all project stake holders. The CM@R shall allow for "open book" policy and facilitate review of all Project contracts, records, accounting and other documentation and information, in any form, to the Client or persons designated by the Client for auditing purposes.

The CM@R shall participate in the use of the Clients' Project Management software (Owner InSite) and it will be managed collaboratively throughout the pre-construction and construction phase of the project. This system is the Owner's Representative's online project management system which includes, but is not limited to, managing Issues, RFI's, ASI's, Shop Drawings, Site Photos, Field Reports, Meetings, etc.

A. PRE-CONSTRUCTION SERVICES FIXED FEE

The CM@R shall participate in the continuing design process as an integral member of the Project Team and shall perform Pre-Construction Services that, in general, shall include but not be limited to the following:

- 1) Attend all necessary work sessions with the Client and Design Team to gather and distribute information on the Project as required. It is anticipated that attendance of one (1) two-hour work session, every other week, for the duration of the pre-construction period would be required.
- 2) In conjunction with the Client and Design Team, immediately identify the Project requirements and prepare a comprehensive Construction Budget. CM@R to identify all project related construction costs including (but not limited to) building and site construction, infrastructure improvement costs (on-site and off-site), construction within right-of-way, permitting and other such costs that may be of consequence to Client.
- 3) Develop and continue to refine a comprehensive Project Schedule. Identify, set decision dates, and make recommendations to the Client and the Design Team on procurement of long-lead delivery items. Update and monitor the Project Schedule with the Client and the Design Team regularly to identify deviations and changes.
- 4) Provide value engineering and life-cycle costing for all materials, equipment and systems mutually agreed upon to determine the best possible value to the Client. Conduct formal value engineering work sessions with the Client and the Design Team, and recommend design detail, system and assembly alternatives.
- 5) Prepare and monitor estimates of the construction cost during each of the design phases based on detailed quantity surveys of the Drawings and Specifications. Advise the Client and the Design Team if it appears that the construction budget will not be met and make recommendations for corrective action. Prepare and update with each cost estimate a

reconciliation report comparing the previous cost estimate, the current cost estimate, and the approved budget. Provide a narrative of the changes made from the previous versions and accompanied with an updated construction billing and cash flow forecast. Provide this service at the Schematic Design (100% SDs), Design Development (100% DDs) and Construction Documents (50% CDs). In addition to providing periodic estimates, it is expected that CM@R will work cooperatively with Client and the Design Team to provide intra-phase pricing evaluations of building systems, assemblies, and component options to facilitate timely design related decision-making as required by the Client and the Design Team.

- 6) Review the drawings and specifications as they are being prepared, and recommend alternate solutions whenever design details affect budget, schedule, constructability, and consistency with local and traditional trade practice.
- 7) Review the proposed design concepts, layouts, dimensions, clearances and advise the Client and the Design Team of possible conflicts of the M/E/P building systems with the adjacent structure and finishes. CM@R to confirm accuracy of Civil Engineer's earthmoving, import and export quantity assumptions prior to providing GMP.
- 8) Recommend a strategy for bid packaging the drawings and specifications relative to the Project approach and other pertinent considerations. Administrate the various bid packages for the Project.
- 9) Recommend and prequalify subcontractors and contract suppliers to develop a bidder's list for review and approval by the Client and the Design Team. It is the Client's policy that only prequalified subcontractors and suppliers shall be invited to bid on various procurement packages on the Project and, further, that awards are then based upon the lowest responsible and conforming bids received. Minimum of three (3) bids per subcontract or subtrade, including work to be self-performed, unless otherwise agreed to by Client.
- 10) Prepare a detailed approach to phasing of the work, mobilization, logistics, quality control and safety of the public for review by the Client and the Design Team.
- 11) Prepare and submit a final Guaranteed Maximum Price (GMP) Proposal for the Client's optional acceptance reflecting the entire cost, scope of work and quality intent of the Project before any construction funds are committed. The GMP Proposal shall be supplemented with a clearly defined and detailed breakdown of costs for the entire Project. All construction costs must be clearly defined and included in the GMP Proposal. All proposed allowances included shall be approved by the Client, and shall include estimated quantities and values justified by the CM@R. All clarifications, exclusions, exceptions must be identified within your proposal.
- 12) Identify and submit proposals for long lead items for direct purchase by the Client.
- 13) Assist the Client and the Design Team as necessary in interfacing with the Building Department and other authorities having jurisdiction over the Project in order to obtain the building permit(s) on a timely basis for the construction activities.

B. CONSTRUCTION SERVICES FEE

The CM@R shall construct the work according to the construction documents and specifications within the scheduled time frame agreed to with the Client.

1. The CM@R will work with the Client's Owner's Representative Online Project Management software to track project related information including but not limited to RFI's, ASI's, Punch List, Warranty Items, O&M Manuals
2. The CM@R will be required to provide warranty and closeout assistance. Warranty on items will be for a minimum of 1 year.

Please refer to “Exhibit B:CM@R Scope & Fee Matrix” for more information and detail related to scope of services items. This matrix is an outline of the project scope as defined by the Owner’s Representative and to establish fees.

C. COST SAVINGS

To the extent the actual cost of the work may be reduced through the course of the design refinement, Procurement and Construction, the reduction in cost shall revert entirely to the benefit of the Client. There shall be no “shared savings” compensation to the CM@R.

D. CONSTRUCTION CHANGE ORDER MARK-UP

For Client approved changes to the scope of work, the CM@R shall propose a Percentage Fee for additive change orders to the Guaranteed Maximum Price (GMP) Contract amount. Deductive change orders will be credited only for the cost of the work.

E. BIDDING & CONSTRUCTION CONTINGENCY

The CM@R’S contingency shall be used to cover costs of unforeseen job conditions, omissions of the estimate (with the exception of subcontracted work), and discrepancies between subcontractor and supplier scopes of work, which are properly reimbursable as Cost of the Work but are not the basis for a change order. The CM@R’S contingency shall be used with the Client’s and the Design Team’s concurrence only, which shall not be unreasonably withheld. Requests for the use of the contingency shall be submitted by the CM@R within ten (10) calendar days of the event that caused such Cost of Work to be incurred, or as soon as the need is apparent, whichever is earlier. The CM@R’s contingency shall not be used for repairing or replacement of the Work due to the CM@R’s negligence or error. The balance of the CM@R’S contingency which has not been expended for the Project according to the procedures set forth herein shall be refunded entirely to the benefit of the Client, upon final invoicing. The CM@R shall also provide the Client and the Design Team documented status of the contingency amount on a monthly basis with each payment application.

1.5 CONTACTS

Copies of this RFP are available from the Client’s Owner Representative.

Owner’s Representative- Wember

Dan Spykstra
2580 E Harmony Rd
Fort Collins, Colorado 80528
Phone: (720) 382-3795
Email: dspykstra@wemberinc.com

(Owner/Client) – High Plains Library District

Dr. Matthew Hortt
2650 W. 29th Street
Greeley, CO 80651

Notice: Direct contact with the Client, the Board, or other related parties, may cause this candidate’s removal from the RFP process.

1.6 SCHEDULE OF EVENTS

The anticipated schedule below outlines milestones for the CM@R procurement:

DATE	TIME	EVENT
March 4, 2024		CM@R RFP Issued
March 8, 2024	11:00 AM @ Carbon Valley; 1:00 PM @ Farr	Non-mandatory site visit: 11:00 – Carbon Valley Regional Library, 7 Park Ave, Firestone, 1:00 – Farr Regional Library, 1939 61 st Avenue, Greeley
March 15, 2024	11:00 AM	Deadline for receipt of questions and inquiries
March 18, 2024		Final responses to questions, inquiries and RFP amendments
March 21, 2024	12:00 PM	Deadline for submission of proposals from CM@R candidates to
March 28, 2024		Shortlist Announced (anticipated)
April 5, 2024		Interviews of short-listed candidates
April 9, 2024		Preferred CM@R Team announced
April 2024		Selection of CM@R Firm and Negotiate Agreement

1.7 PROPOSAL INSTRUCTIONS

- A. Pages in the proposal shall be typed with the maximum number of pages of proposal information (excepting cover sheet, index sheet, blank pages, table of contents, and other supplemental proposal forms required or requested) to be limited to 30 pages numbered in sequential order.
- B. **Submit a single electronic PDF file of your proposal by the submittal date/time aforementioned**; email to the Owner's Representative, Dan Spykstra, dspykstra@wemberinc.com and Brooke Kardos, bkardos@wemberinc.com.
- C. **Hard copies of the proposal response will not be accepted.**
- D. No Proposing Firm may submit more than one proposal. Multiple submissions under different names will not be accepted from one firm, Joint Venture, or association.
- E. Each respondent must comply with the submission requirements as outlined. Submittals that fail to comply with the requirements as specified may be deemed non-responsive and such determination will result in no further consideration of that respondent or the respondent's submittals by the Client. At any stage, the Client reserves the right to terminate, suspend or modify this selection process; reject any or all submittals at any time; and waive any informalities, irregularities or omissions in submittals, as the best interests of the Client may require.

**A Fee Proposal will only be asked of the firms that are shortlisted for interviews.*

1.8 PROPOSAL REQUIREMENTS

Proposals must include, but are not limited to, the following items:

Part 1 – Cover Letter & Organization Information

- A. Brief cover letter expressing interest
- B. If your firm has multiple offices, please provide this information for all offices. Indicate which office is going to perform the bulk of the services for this project.

- C. Statement of available bonding capacity for this project.

Part 2 – Project Experience

- A. Present at least three CM@R or CM/GC projects completed in the last five years similar in size and complexity. Include:
 - 1) Project location
 - 2) Project size (square feet) of the project
 - 3) Project completed construction value
 - 4) Project construction start and completion date
 - 5) Method of construction
 - 6) Other relevant project information
 - 7) General Contractor Staff directly involved with the project. Identify teams
- B. Preconstruction Manager, Project Manager, Estimator and Superintendent at a minimum
 - 1) Client/Owner contact with telephone number
 - 2) Owner's Representative contact with telephone number
 - 3) Architect contact with telephone number

Part 3 – Project Team & Staff

- A. Resumes for:
 - 1) Pre-Construction Manager
 - 2) Estimator
 - 3) Project Manager
 - 4) Project Superintendent(s)
- B. Owner and other references (including telephone numbers and email), clearly identify which project and who the reference is in relation to. Please include relevant projects team members have worked on together.
- C. Describe current workload of proposed staff and overlapping project responsibilities.
- D. Provide an organization chart graphically indicating how your firm would staff and structure the proposed team (both in the field and in the office) during the Pre-Construction and Construction phases.

Part 4 – Organization & Management of the Project

- A. What makes your pre-construction services unique? What tools do you use to enhance the process? How will preconstruction services benefit the Client? Describe your approach.
- B. Describe your approach to the schedule, specifically describe what you believe will be most critical to the schedule and if you believe the construction timeline in Section 1.1 is achievable. Describe how you would propose scheduling the work to limit the impact on library & patrons.

Part 5 – Fee Proposal

- A. Please refer to "Exhibit B:CM@R Scope & Fee Matrix" for more information and detail related to scope of services items. This matrix is an outline of the project scope as defined by the Owner's Representative. Instructions for completing the matrix are provided within the matrix. Submit/note any conditions, clarifications, or exclusions concerning Scope of Services. Please submit in Xcel format with emailed proposal. **A Fee proposal is only requested of those firms that are shortlisted for interviews.**
- ❖ Insurance certificates naming the Client as additional insured will be required prior to work commencing, but not required as part of this submittal.

1.9 QUESTIONS, INQUIRIES, AND AMENDMENTS REGARDING THIS RFP

Questions and inquiries regarding the RFP should be directed to Dan Spykstra (dspykstra@wemberinc.com) and Brooke Kardos (bkardos@wemberinc.com) by the date aforementioned. The Client will issue a response to all questions by email. Questions should not be submitted to the Client, the Board or other parties, doing so will cause this candidate's removal from the RFP process.

1.10 PROPOSING FIRMS TO FULLY INFORM THEMSELVES

Proposers are required to fully inform themselves of all project conditions which may impact their proposal and the Client's requirements prior to submitting a proposal. Proposers should become acquainted with the nature and extent of the services to be undertaken and make all necessary examinations, investigations and inspections prior to submitting a proposal. Firms proposing are responsible for examining and determining for themselves the location and nature of the proposed work, the amount and character of the labor and materials required, and the difficulties which may be encountered. If requested in advance the Client will provide the Firm proposing access to the site to conduct such examinations as each Proposing Firm deems necessary for submission of a proposal. The Proposing Firm is to consider federal, state and local Laws and Regulations that may affect cost, progress, performance or furnishing of the Work. The Client will not consider any claims arising from failure to take such actions.

1.11 EVALUATION & SELECTION CRITERIA

The Client reserves the right to reject any or all responses to this RFP. Final selection of the short-listed CM@R candidates will be on the basis of their apparent ability to best meet the overall expectations of the Client, as determined solely by the Client.

The Client reserves the absolute right to conduct investigations as it deems necessary for the evaluation of any proposal and to establish the experience, responsibility, reliability, references, reputation, business ethics, history, qualifications and financial ability of the firm responding. The purpose of such investigation is to determine that the CM@R has the ability, experience, resources and reputation necessary to perform the work and to support all warranties in accordance with the contract documents.

A. Interview Phase:

- 1) Selected firm be invited to participate in an interview with the Selection Committee. An interview invitation will be sent out following the submission of proposals. The invitation will explain the interview format. The purpose of the interview is to ensure a full understanding of the RFP responses, and to introduce key members of the CM@R Team.

❖ Note – Although the project cost is part the selection process, other factors will also be considered. Contract may not be awarded to the firm providing the lowest proposed fee.

1.12 SELECTION PROCESS

- A. The Client will review all responses to this RFP that meet requirements and are received prior to the designated closing date and time.
- B. Following interviews, the top firm's proposal, based on qualifications and fees, will be reviewed and, if necessary, negotiations will commence.
- C. If a satisfactory agreement with the proposer cannot be reached, at a price that is determined to be fair and reasonable, negotiations with that firm shall be formally terminated. Negotiations with the second-ranked proposer may then be initiated. Failing to accord with the second-ranked proposer, the Client shall formally terminate negotiations and may then undertake negotiations with the third-ranked proposer or re-issue the RFP at their discretion.
- D. The Client will have sole determination of which proposal is in the Client's best interest.

1.13 RIGHT OF REJECTION

The Client reserves the right to accept or reject any or all responses to this RFP and to enter into discussions and/or negotiations with one or more qualified Proposing Firms, if such action is in the best interest of the Client. The Client has the right, in its sole and absolute discretion, to select the proposal or proposals that the Client determines best meets its needs.

1.14 MODIFICATION AND WITHDRAWAL OF PROPOSAL

- A. Withdrawn proposals may be resubmitted up to the time designated for the receipt of proposals due date/time provided that they are then fully in conformance with the RFP.
- B. If, within twenty-four hours after proposals are opened, any company that provides written notice to the Client and promptly thereafter demonstrates to the reasonable satisfaction of Client that there was a material and substantial mistake in the preparation of its proposal, that company may withdraw its proposal. Thereafter, that company will be disqualified from further bidding on the Work.

1.15 PROPOSALS TO REMAIN OPEN SUBJECT TO ACCEPTANCE

All proposals shall remain open for forty-five (45) days after the day of the proposal opening, but the Client may, in its sole discretion release any proposal prior to that date.

1.16 COST OF PROPOSALS

Expenses incurred in the preparation of proposals in response to this RFP are the Proposing Firm's sole responsibility. The Client assumes no responsibility for payment of any expenses incurred by any Proposing Firm as part of the RFP process.

2.0

2.1 PROPOSAL FORM FOR CONSTRUCTION MANAGER AT RISK (CM@R)

(Please use additional sheets as necessary.)

COMPANY NAME: _____

COMPANY ADDRESS: _____

PHONE: _____ FAX: _____

CONTACT PERSON NAME: _____

CONTACT PERSON PHONE: _____

CONTACT PERSON EMAIL: _____

1. I Acknowledge that the "Sample Agreement" attached to this RFQ/P (**Exhibit D**) has been reviewed and is agreed to as shown. _____(YES/NO). Do you request amendments to the "Agreement" _____(YES/NO) Please list them if yes.
2. The undersigned Proposer declares and stipulates that this proposal is made in good faith, without collusion or connection with any other person or persons bidding for the same Work, and that it is made subject to all the terms and conditions of the Request for Proposal and associated documents, all of which have been examined by the undersigned. _____(YES/NO)
3. The submission of the proposal constitutes an agreement and shall not be withdrawn after the proposal opening for a period of forty-five days.
4. Acknowledgment that the submitting agent carries (or will carry) a license in Weld County, Colorado _____(YES/NO)
5. The Proposer hereby acknowledges receipt of addenda numbers _____ through _____.
6. List of construction items that will be self-performed.

A		I	
B		J	
C		K	
D		L	
E		M	
F		N	
G		O	
H		P	

Signature: _____ Date: _____

*** End of Proposal Form ***

Addendum 01

Project Name: Carbon Valley & Farr Refresh
Wember Project Number: 2018.35
Issue Date: March 18, 2024
Purpose: RFP Addendum 01

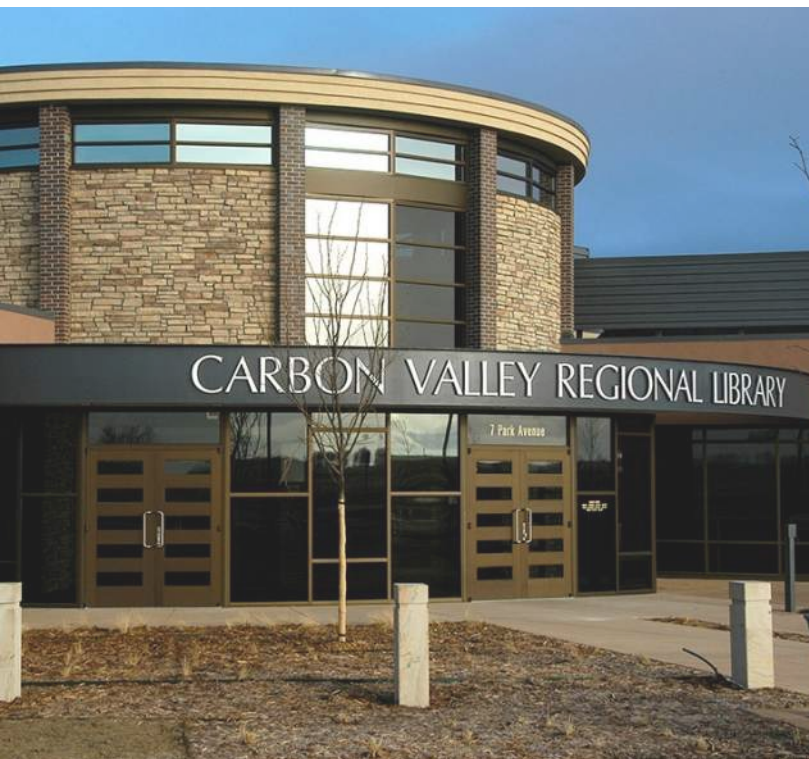
Question #1	Can you further clarify the schedule for the two projects? New dates were mentioned, specifically waiting until after the election for the Farr library and we'd like to make sure we understand your projected start dates for each library understanding that all dates are pending design, permitting, etc.
Anticipated start date would be October and we hope to phase Farr Regional Library in a way to accommodate the use of the meeting room, lobby & restrooms for the general election.	

Question #2	If possible, can you provide a sense of how much square footage may be able to be taken over at any one phase of partitioning off sections of the building for work to occur? We understand if this cannot be answered until design has progressed.
To be determined when design progresses.	

Question #3	Is there expected to be any mandated work that occurs on nights, weekends, or early mornings?
No, it is not expected to do any work outside of regular working hours.	



CARBON VALLEY REGIONAL LIBRARY FARR REGIONAL LIBRARY



CONSTRUCTION MANAGER AT RISK SERVICES RFP RESPONSE

MARCH 21, 2024

▶ TOGETHER WE BUILD SUCCESS



TABLE OF CONTENTS

PROPOSAL FORM

PART 1

Cover Letter and Organization Information

PART 2

Project Experience

PART 3

Project Team and Staff

PART 4

Organization and Management of the Project

PART 5

Fee Proposal

APPENDIX

Additional Information

Detailed estimate/Cost Log ahead of meetings.
Both-5 phases based on how design happens (carpet lines, etc)
Safety 1st
Power BI software
Marketing dept
(get resume for asst super)
Came with questions for us



PROPOSAL FORM

2.1 PROPOSAL FORM FOR CONSTRUCTION MANAGER AT RISK (CM@R)

(Please use additional sheets as necessary.)

COMPANY NAME: PCL Construction Services, Inc.

COMPANY ADDRESS: 2000 S. Colorado Blvd, Suite 2-500, Denver, CO 80222

PHONE: 303.365.6500 **FAX:** N/A

CONTACT PERSON NAME: Taylor Kern

CONTACT PERSON PHONE: 303.365.6500

CONTACT PERSON EMAIL: TMKern@pcl.com

1. I Acknowledge that the "Sample Agreement" attached to this RFQ/P (**Exhibit D**) has been reviewed and is agreed to as shown. No (YES/NO). Do you request amendments to the "Agreement" Yes (YES/NO) Please list them if yes. PCL would like to review our proposed minor modifications to your Sample Agreement, and we look forward to collaboratively reviewing these with you.
2. The undersigned Proposer declares and stipulates that this proposal is made in good faith, without collusion or connection with any other person or persons bidding for the same Work, and that it is made subject to all the terms and conditions of the Request for Proposal and associated documents, all of which have been examined by the undersigned. Yes (YES/NO)
3. The submission of the proposal constitutes an agreement and shall not be withdrawn after the proposal opening for a period of forty-five days.
4. Acknowledgment that the submitting agent carries (or will carry) a license in Weld County, Colorado Yes (YES/NO)
5. The Proposer hereby acknowledges receipt of addenda numbers 1 through 1.
6. List of construction items that will be self-performed.

A	Concrete	I	
B	Rough Carpentry	J	
C	Doors and hardware	K	
D		L	
E		M	
F		N	
G		O	
H		P	

Signature:  Date: 03/21/2024

*** End of Proposal Form ***

PART 1 ▶

COVER LETTER & ORGANIZATION INFORMATION



COVER LETTER



March 21, 2024

Dear Dan and Members of the Selection Committee:

SHARING YOUR VISION. BUILDING YOUR LEGACY.

PCL is excited to introduce our credentials to your team for the Carbon Valley Regional Library and Farr Regional Library CM@R Services. We recognize the importance that these library facilities will hold for residents in Firestone and Greeley, as well as the surrounding communities. The team presented here is wholeheartedly committed to the successful execution of this project. **Our extensive knowledge and hands-on experience with similar renovations across Colorado underscore our dedication.** Our team's expertise and successful track record make us the ideal choice for High Plains Library District to deliver a timely, cost-effective, and minimally disruptive project.

PCL believes being a great building partner is more than bricks and mortar. It is sharing a vision and ensuring that vision becomes a reality. Our partnering approach, resource capabilities, and relevant experience are just a few of our key differentiators.

PARTNERING APPROACH. PCL takes immense pride in delivering exceptional pre-construction services that enhance the planning and budgeting process. We are committed to cultivating a collaborative atmosphere between PCL, High Plains Library District, Wember, and the Design Team, to offer value engineering, cost-efficiency, and time-saving alternatives. Our approach involves in-depth system analysis, creative problem-solving, and innovative solutions to present recommendations that mitigate risks, improve constructability, and establish budget predictability while upholding the design's original intent. We provide transparent, open-book documentation that facilitates cost comparisons and tracking, allowing for prompt decision-making and offering cost certainty through precise and comprehensive estimates from day one.

CLIENT SOLUTIONS PROVIDERS. Our dedicated team brings vast experience in similar scoped projects across the Denver Metro area and in Northern Colorado. We have an unwavering commitment to the ownership team, the communities that we serve, public and jobsite safety, and collaborative, transparent teamwork with the owner, project team, and all stakeholders through the entire construction duration. We will bring a thoughtful approach, accurate budgeting and cost certainty, value engineering, and we will maximize your project funds, being your partner and client solution provider through the entire life cycle of the project.

THE BEST OF BOTH WORLDS. Through PCL's Special Projects Division, our clients get the best of both worlds: the commitment, responsiveness, and lasting relationship of a local contractor, and the expertise, innovative solutions, and purchasing power of a large construction organization.

We look forward to partnering with you and working collaboratively to deliver the Carbon Valley Regional Library and Farr Regional Library projects to your standards and expectations. Please reach out if you have any questions regarding this submittal.

Sincerely,



Taylor Kern
Manager, Special Projects

FIRM ORGANIZATION INFORMATION

ABOUT PCL CONSTRUCTION

PCL founded its US operations in Colorado in 1975 and has been helping clients define the Colorado skyline for more than 48 years, with projects ranging from Fort Collins to Pueblo, and from Steamboat Springs to Burlington. Currently, PCL has over 200 full time salaried staff in pre-construction/estimating, operations, accounting, purchasing, human resources, and marketing in conjunction with our 200+ craft workers, and shared resources with our other 30 offices throughout the United States, Canada, the Caribbean, and Australia. All PCL operations in Colorado are run by our dedicated pre-construction, operations, and support staff out of our Denver and Northern Colorado offices. All PCL operations in Colorado are run out of our Denver office, located at 2000 South Colorado Boulevard and our Northern Colorado office, located at 1613 Pelican Lakes Point in Windsor, Colorado.

The Carbon Valley and Farr Library projects will be managed out of PCL’s Northern Colorado office, and will be run by our dedicated pre-construction, operations, and operations support staff. PCL is an industry leader with a strong local presence in northern Colorado, the mountain range, and Denver areas, with long established relationships in both the local communities and subcontractor market.

PCL’s Northern Colorado office will partner with Wember and the High Plains Library District teams to successfully manage this important project as a trusted advocate and partner. Below is a highlight of a few of our successful projects in the northern Colorado area.



PCL Denver Office

2000 S. Colorado Blvd.
Denver, CO 80222

PCL Windsor Office

1613 Pelican Lakes Point
Windsor, CO 80550

SAMPLE OF PCL PROJECTS IN NORTHERN COLORADO

Many clients in Northern Colorado have entrusted PCL with constructing, renovating, and revitalizing spaces throughout the community. A sample of the projects we have successfully completed include the following:

- » Discovery Air
- » Wells Precast Headquarters and Training
- » American Legacy Academy
- » Water Valley Headquarters
- » CSU Aggie Village
- » CSU Laurel Village
- » The Ranch Pre-Construction
- » W Club Renovation
- » Raindance Maintenance Building
- » Water Valley Vaults
- » Food Safety Net Services
- » Brighton High School Auditorium Renovation
- » Tozer Elementary School Maintenance Projects



STATEMENT OF AVAILABLE BONDING CAPACITY

CHUBB[®]
 FEDERAL INSURANCE COMPANY
 PACIFIC INDEMNITY COMPANY
 VIGILANT INSURANCE COMPANY

Surety
 202B Halls Mill Road, PO Box 1650
 Whitehouse Station, NJ 08889-1650

O + 908.903.3485
 F + 908.903.3656

July 11, 2023

RE: THE PCL GROUP OF COMPANIES

To Whom It May Concern:

We at Federal Insurance Company, a Chubb Insurance Company, as lead surety, along with Travelers Casualty and Surety Company of America, Berkshire Hathaway Specialty Insurance Company, and Liberty Mutual Insurance Company advise you that we act as co-sureties on behalf of the PCL group of companies, which includes PCL Construction Services, Inc. PCL enjoys the well-deserved reputation of being one of the foremost construction entities in North America with a record for excellence, virtually unparalleled.

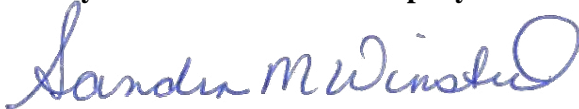
As sureties, we are among the major providers of contract surety bonds across the U.S., are each licensed to transact business in all U.S. States, and are each listed in the U.S. Department of Treasury's Circular 570 as acceptable sureties. Federal Insurance Company currently have an AM Best Rating of A++ XV. Travelers Casualty and Surety Company of America currently has an AM Best Rating of A++ XV. Berkshire Hathaway Specialty Insurance Company currently has an AM Best Rating of A++ XV. Liberty Mutual Insurance Company currently has an AM Best Rating of A XV.

Surety support has been provided to PCL on projects in the range of \$2 Billion, with a total co-surety program of \$12 Billion dollars in bonded backlog (aggregate capacity). The financial and technical capacity of the PCL group of companies is excellent and all contracts undertaken by them have been performed in a very satisfactory manner. At present, PCL is in the enviable position of benefiting from one of the highest levels of surety support of any general contractor operating in North America.

We, at Federal Insurance Company, Travelers Casualty and Surety Company of America, Berkshire Hathaway Specialty Insurance Company, and Liberty Mutual Insurance Company value our association with this fine organization and have no reservation about giving PCL Construction Services, Inc. our highest recommendation. Our consideration and issuance of bonds is a matter solely between PCL and ourselves, and we assume no liability to third parties or to you by the issuance of this letter.

Very truly yours,

Federal Insurance Company
Travelers Casualty and Surety Company of America
Berkshire Hathaway Specialty Insurance Company
Liberty Mutual Insurance Company



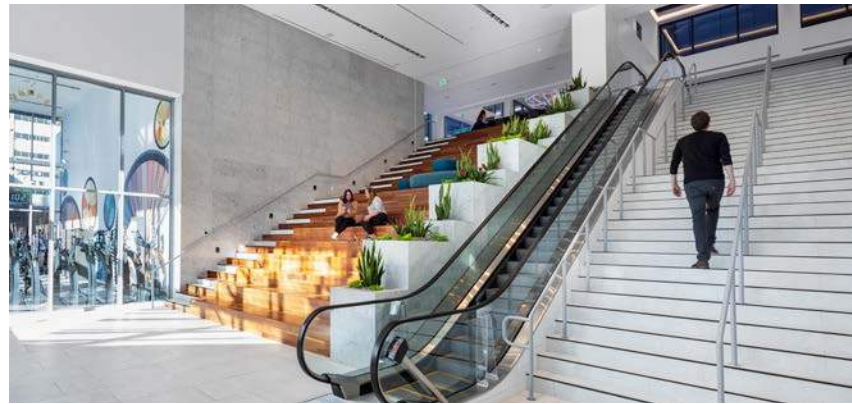
Sandra M. Winsted, Attorney-in-Fact

PART 2 ▶

PROJECT EXPERIENCE



LINCOLN CROSSING



PROJECT LOCATION: Denver, CO

PROJECT SIZE: 41,558 SF

COMPLETED CONSTRUCTION VALUE: \$13.8M

PROJECT SCHEDULE: 11/02/2020 - 12/17/2021

METHOD OF CONSTRUCTION: CM/GC

PROJECT INFORMATION: This unique renovation project extended beyond the office building footprint by 1,800 feet and raised the lobby ceilings to 30 feet, as part of this Class A rated, two-tower office property in Downtown Denver. The remodeled lobby space contains several new amenities, including a bleacher stair area with a large projection screen, storage spaces, a newly constructed plaza-level outdoor patio lounge area, a multi-function meeting space on the plaza level, a new fitness center, a bike storage area, a multipurpose room, a new pantry / kitchen area, and floor-to-ceiling glazing on one side of the lobby.

This renovation project included 27,507 SF of interior renovations, 14,051 SF of exterior facade renovations, and 10,800 SF of exterior concrete.

PROJECT TEAM: Taylor Kern, Melissa Peter

CLIENT / OWNER: Lincoln Property Company, Mickey Plotkin, 303.226.8215, mplotkin@lpc.com

ARCHITECT: Gensler, Brent Mather, 303.893.7186

PROJECT AWARD:



✓ 2022 ENR Mountain States Best Projects Award: Best in Interior / Tenant Improvement

DENVER PUBLIC SCHOOLS PROGRAM



PROJECT LOCATION: Denver, CO

PROJECT SIZE: 30,000 SF - 215,000 SF

COMPLETED CONSTRUCTION VALUE: \$1.7M - \$5.7M

PROJECT SCHEDULE: See project list below

METHOD OF CONSTRUCTION: CM@R

PROJECT INFORMATION: Our project team members have successfully completed a significant amount of new construction, additions, and renovations on active DPS school campuses/schools during the school year, including library renovations in many locations.

Listed below is a sampling of projects that PCL completed for Denver Public Schools that included a library component:

- » DPS Morey Middle School Renovation (4 months)
- » DPS Manual High School Renovation (7 months)
- » DPS Holm Elementary School Renovation (6 months)
- » DPS Lalo Delgado Campus (6 months)

PROJECT TEAM: Taylor Kern, Eric Pagano, Melissa Peter

CLIENT / OWNER: Denver Public Schools, Emma Grogan, 720.428.0902, emma_grogan@dpsk12.net

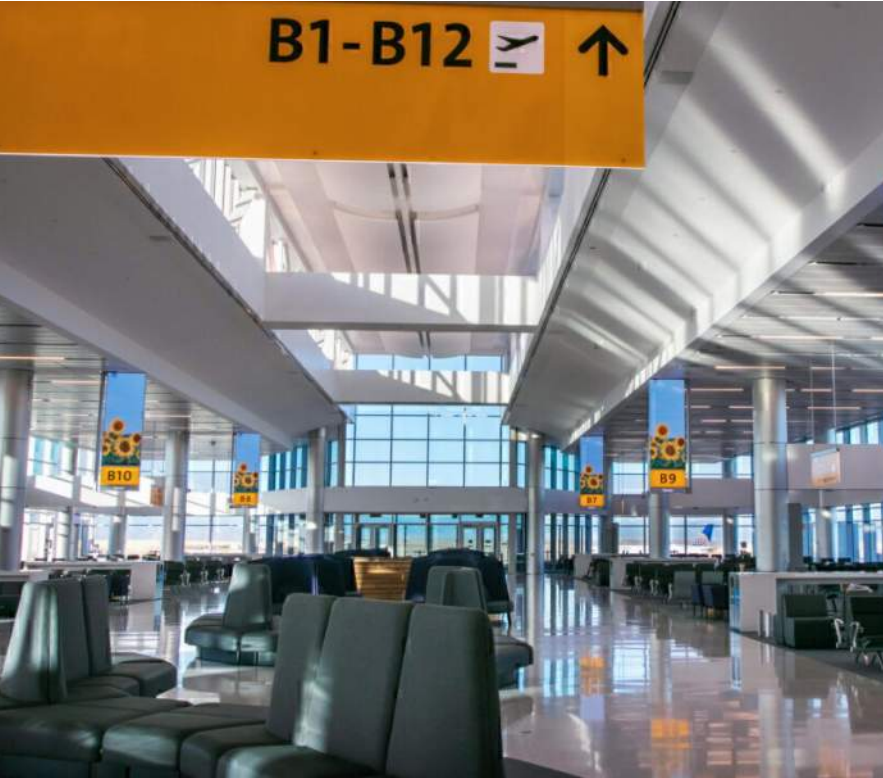
ARCHITECT: Anderson Mason Dale Architects, David Pfeifer, 303.294.9448



“It was a beautiful sight to see the school open with so many smiling faces in appreciation of the wonderful learning environment... PCL was the right choice for this very challenging project.”

— Emma Grogan, Project Manager
Denver Public Schools

UNITED AIRLINES CONCOURSE A AND B TENANT IMPROVEMENTS



PROJECT LOCATION: Denver, CO

PROJECT SIZE: Various; average 30,000 SF

COMPLETED CONSTRUCTION VALUE:

Concourse A: \$14.5M

Concourse B: \$5.5M

PROJECT SCHEDULE:

Concourse A: 08/22/2022 - 09/22/2023

Concourse B: 11/01/2021 - 11/18/2022

METHOD OF CONSTRUCTION: CM/GC

PROJECT INFORMATION: The United A West TI and B East Expansion at Denver International Airport involved tenant improvement build-outs of offices, breakrooms, conference rooms, locker rooms, storage areas, restrooms, baggage vehicle access improvements and infrastructure, and baggage handling system upgrades. PCL completed these projects and was awarded subsequent, similar scoped work for other areas of the airport, for repeat client United Airlines.

PROJECT TEAM: Taylor Kern, Cameron Johnson, Eric Pagano, Melissa Peter

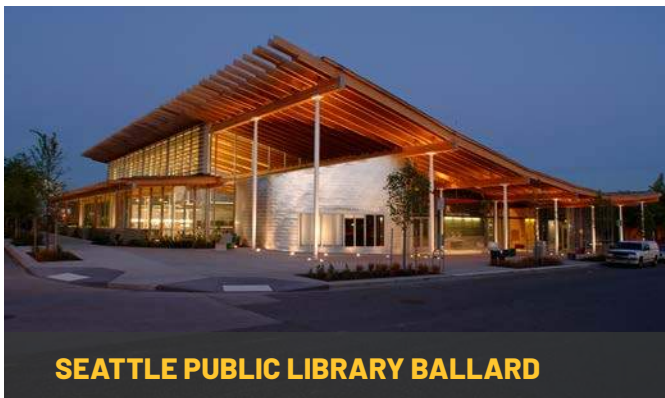
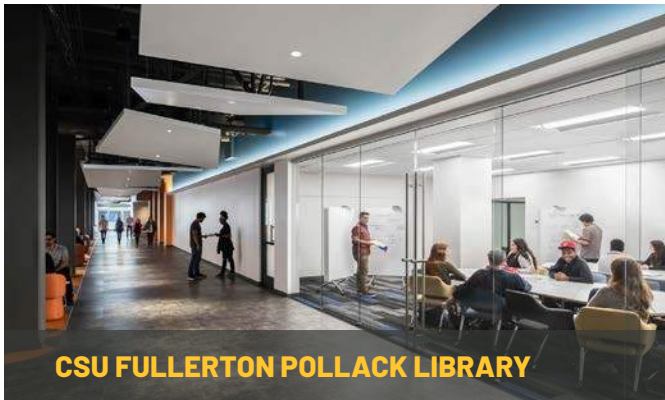
CLIENT / OWNER: United Airlines, Russell Carr, 303.210.2175, Russell.D.Carr@united.com

ARCHITECT: HNTB Corporation, John Lutz, JLutz@hntb.com



COMPANY-WIDE LIBRARY EXPERIENCE

PCL Construction has successfully completed **over 185 library projects across the company**. This deep knowledge will assist in our execution of the Carbon Valley Regional Library and Farr Regional Library renovations, with the understanding of the components and coordination necessary to delivering this project on time and on budget. Below is a sampling of our library experience.



PART 3 ▶

PROJECT TEAM AND STAFF



PROJECT TEAM QUALIFICATIONS

PCL’s project team understands the value and benefits owners receive through the CM@R delivery method. By collaborating with owners, stakeholders, and the design team early, we can provide real-time cost estimating and value-added options throughout the design phase. Through our efforts, we can ensure the final design will meet your project goals and budgetary requirements.

A project is only successful if the team building it understands the client’s vision, goals, and expectations for the project before construction begins. We are committed to providing you with the best of the best, bringing our expertise when it comes to budgeting, scheduling, and planning while being responsive and communicative throughout the life cycle of a project.

The Right Staff for your Project

PCL has assigned skilled individuals who have experience in CM/GC and CM@R delivery, working with tenant improvements, administrative spaces, and projects of similar challenges and coordination requirements. Our proposed project team was selected through careful consideration, striking a balance of bringing the right talent, experience, and personality without underestimating the project needs.

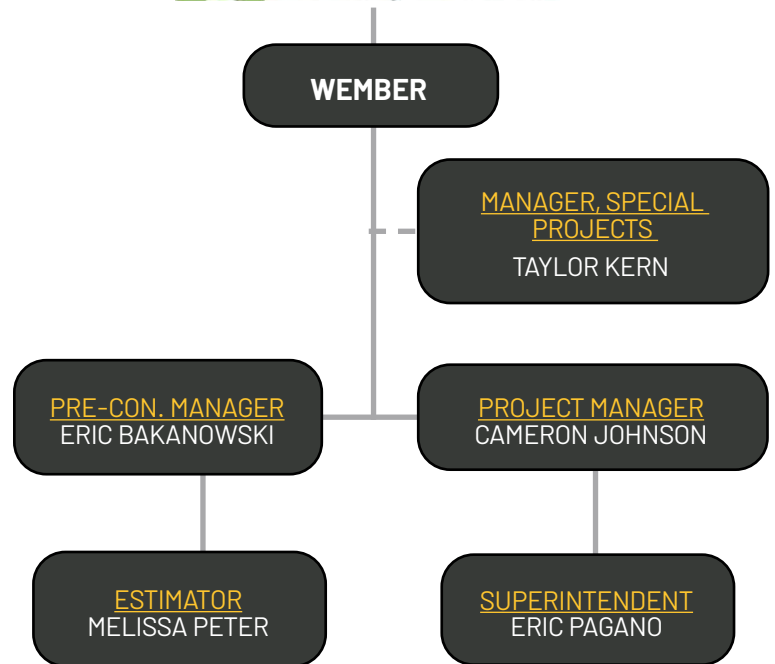
When you partner with PCL, you not only get innovative solutions, you get our fully vested team and a commitment to doing things right. Our relentless focus on success leads to smarter more collaborative building practices. PCL engages the client early with open dialogue, proactive communication, and transparency, to develop an end vision that meets or exceeds their expectations.

The Team

The PCL team’s core members bring a wealth of experience in the construction industry, with Manager, Special Projects Taylor Kern, Project Manager Cameron Johnson, Superintendent Eric Pagano, Pre-Construction Manager Eric Bakanowski, and Estimator Melissa Peter, **having over 100 years of combined construction industry experience, including many renovation projects across Colorado.**

As you will see on the following pages, our proposed team brings key success factors like past experience working with tenant improvement projects, library and administrative buildings, and experience working together on past projects, all of which will help facilitate success on the Carbon Valley and Farr Regional libraries. **All team members are available upon award and are committed to the success of both library facilities.**

Proposed Project Team Organization



“I was very impressed with PCL’s professional abilities they exhibited on this project. Because of time and budget constraints, good communication, excellent management and quick follow up were absolutely essential to the project’s success. Through great teamwork, I am proud to report the project was a great success.”

— Chris Shelton, Project Manager,
University of Denver

TEAM MEMBERS – ROLES AND QUALIFICATIONS

Our team has extensive experience in delivering renovation projects for both public and private clients, as outlined in the previous section. The table below highlights each team member’s responsibilities throughout the project’s pre-construction and construction. Taylor Kern’s oversight, combined with Eric Bakanowski’s pre-construction expertise and Cameron Johnson’s project management, ensure this team will work seamlessly to deliver your project to your expectations.

Team Member	Pre-Construction									Construction							
	Oversight	Design Reviews	Value Engineering	Constructability	Deliverables	Cost Estimating	Bid Packaging	Safety	Schedule Summit	Schedule Creation	Oversight	Project Management	Safety	Quality	Schedule Management	Field Management	Subcontractor Management
Taylor Kern	●	●			●						●	●	●	●			
Eric Bakanowski		●	●	●	●	●	●	●	●			●	●	●			●
Cameron Johnson		●	●	●	●	●	●	●	●	●		●	●	●	●	●	●
Eric Pagano		●	●	●				●	●	●	●		●	●	●	●	●
Melissa Peter		●	●	●	●	●	●					●					●



TAYLOR KERN

MANAGER, SPECIAL PROJECTS

Taylor has worked in the construction and architecture industry for 11 years. His experience includes new construction and renovation for a multitude of clients, both municipalities and private owners, in government, hospitality, commercial, residential, sports, and mission critical sectors. His background in design provides heightened attention to detail resulting in the production of high quality projects. Taylor prides himself on his ability to organize a project while developing win-win solutions to challenges through collaboration with project owners, stakeholders, subcontractors, and his PCL teammates.

SAMPLE RELEVANT EXPERIENCE

- Judi’s House **with Eric Pagano and Melissa Peter**
- American Legacy Academy
- Aspen Mountain Residences
- Meow Wolf Lounge Tenant Improvement
- PCL USHO Tower 1 Office Renovation **with Melissa Peter**
- DEN United Airlines Concourse A West TI **with Cameron Johnson, Eric Pagano, and Melissa Peter**
- DEN United Airlines Concourse B East TI and GOTF **with Melissa Peter**
- United BHS Induction Point **with Cameron Johnson and Eric Pagano**
- Aspen Square Phase II Renovation **with Cameron Johnson**
- DEN Airfield De-Icing System Facility **with Melissa Peter**
- 633 17th Street Interior Renovation **with Eric Pagano**
- Discovery Air **with Melissa Peter**
- Mile High United Way Headquarters - Denver
- Colorado Center Floors 2, 5, & 6 TI Renovations
- Denver Parks and Recreation - Multiple projects: Central Park, McWilliams Park, Kentucky & Irving Park **with Eric Pagano and Melissa Peter**
- DPS Steele Elementary **with Cameron Johnson and Melissa Peter**
- Denver Tennis Park **with Wember**



ERIC BAKANOWSKI

PRE-CONSTRUCTION MANAGER

Eric recently joined PCL, bringing over 20 years of combined experience in commercial and residential construction. He works closely with owners / developers and representatives, project managers, project superintendents, and subcontractors in the creation and management of scheduling, estimating, cost budgeting and control, progress billings, contract administration, and performing numerous tasks to assist the project flow and final completion. Eric is excellent at providing project support to manage the back-office workflow of submittals, RFIs, ASIs, and change requests in a timely and efficient manner. He is skilled at project take-offs and cost estimating procedures and adds value to all projects.

SAMPLE RELEVANT EXPERIENCE

- Columbine United Church **with Cameron Johnson**
- Samaritan House **with Cameron Johnson**
- Douglas County HHRP Administration Building Addition
- Arapahoe County DMV & Courthouse
- City of Arvada Courthouse
- Health One Denver Heart - Swedish Medical Center Suite 200 Tenant Improvement
- Strive Pharmacy Tenant Improvement
- Littleton Mixed Use Building
- Alpha Omega Collectis Phase I Warehouse / Processing Plant Tenant Improvement
- Alpha Omega Collectis Phase II Warehouse / Processing Plant Tenant Improvement
- The Hyatt House Renovation
- Auraria Campus Arts Building Renovation
- The Goddard School
- Town of Carbondale Aquatics Center **with Wember**



MELISSA PETER

ESTIMATOR

Coming from an interior design/architectural background, Melissa has the ability to anticipate and react to design changes throughout the design and pre-construction process. She is able to provide 'real time' pricing, collaborate with design teams, connect with subcontractors, and build strong relationships and repeat clients through her conceptual estimating and strong communication skills. She has a wide range of experience working and bidding on projects in various sectors of our business, including government, higher education, municipal, aviation, residential, office, and mixed-use.

SAMPLE RELEVANT EXPERIENCE

- Judī's House **with Taylor Kern and Eric Pagano**
- DEN United Airlines Concourse A West TI **with Taylor Kern, Cameron Johnson, and Eric Pagano**
- DEN United Airlines Concourse B East TI and GOTF **with Taylor Kern**
- DEN Airfield De-Icing System Facility **with Taylor Kern**
- DEN PC Air **with Cameron Johnson**
- Discovery Air **with Taylor Kern**
- Weld RE-4 Tozer Elementary **with Taylor Kern**
- DU Fisher Early Learning Center
- DPS Stedman Elementary **with Taylor Kern**
- DPS Steele Elementary **with Taylor Kern and Cameron Johnson**
- PCL USHO Tower 1 Office Renovation **with Taylor Kern**
- 250 Columbine
- Grand Colorado Peak 8
- The Lodge at Vail Renovations
- Colorado State University Aggie Village **with Taylor Kern**
- Denver Parks and Recreation - Multiple projects: Central Park, McWilliams Park, Kentucky & Irving Park **with Taylor Kern and Eric Pagano**



CAMERON JOHNSON

PROJECT MANAGER

Cameron has worked in the construction industry for the last 12 years. His experience includes airports, hospitals, education, remodels, office spaces and buildings, and multi-family residential living. His background in all positions of a General Contractor - laborer, carpenter, engineer, superintendent, and project manager - provides a well-rounded approach to all projects. Cameron prides himself on being able to overcome all obstacles to ensure a successful project delivery for all stakeholders and foster a team approach.

SAMPLE RELEVANT EXPERIENCE

- DEN United Airlines Concourse A West TI **with Taylor Kern, Eric Pagano, and Melissa Peter**
- Aspen Square Phase II Renovation **with Taylor Kern**
- DPS Steele Elementary **with Taylor Kern and Melissa Peter**
- DEN PC Air **with Melissa Peter**
- American Airlines BMU Relocate **with Taylor Kern and Eric Pagano**
- United BHS Induction Point **with Taylor Kern and Eric Pagano**
- DEN ARFF Concourse A Tower **with Taylor Kern**
- DEN Tunnel Sewer Repairs **with Eric Pagano**
- Columbine United Church **with Eric Bakanowski**
- Samaritan House **with Eric Bakanowski**
- Colorado School of Mines Spruce Hall
- DPS Bruce Randolph High School Renovations
- DPS West High School Renovations
- Jeffco Public Schools Creighton Middle School Renovations
- Jeffco Public Schools Seacrest Elementary School Renovations



ERIC PAGANO

SUPERINTENDENT

Eric brings over 35 years of construction industry experience in Denver. He is an accomplished and results-oriented superintendent, with outstanding qualifications in fast-tracked tenant-finish building projects. Eric is experienced in prioritizing goals and working under compressed deadlines without sacrificing quality. He has successfully completed projects within tight budgets while exceeding expectations. Eric directs and coordinates project planning, organization, control, integration, and completion to ensure zero disruptions to clients and ongoing operations.

SAMPLE RELEVANT EXPERIENCE

- Judi's House **with Taylor Kern and Melissa Peter**
- DEN United Airlines Concourse A West TI **with Taylor Kern, Cameron Johnson, and Melissa Peter**
- United BHS Induction Point **with Taylor Kern and Cameron Johnson**
- DEN Tunnel Sewer Repairs **with Cameron Johnson**
- DEN Tunnel Sewer Repairs **with Cameron Johnson**
- 633 17th Street Interior Renovation **with Taylor Kern**
- DPS Thomas Jefferson MEP Upgrades **with Taylor Kern**
- Denver Parks and Recreation - Multiple projects: Central Park, McWilliams Park, Kentucky & Irving Park **with Taylor Kern and Melissa Peter**
- DPS Thomas Jefferson MEP Upgrades **with Taylor Kern**
- DEN TSA Security Office Build-out
- Level 3 Communications
- Colorado Convention Center Expansion
- US Federal Courthouse Annex Renovations
- Castle View High School Expansion

OWNER REFERENCES

1 JUDI'S HOUSE
 Jessica Mayo
 Chief Executive Officer
 720.343.8474
 JessicaM@judishouse.org

Team Members Involved. Taylor Kern, Eric Pagano, Melissa Peter

3 WATER VALLEY MULTIPLE PROJECTS
 Martin Lind, President
 Water Valley Development
 970.686.5828
 MLind@watervalley.com

Team Members Involved. Taylor Kern, Melissa Peter

2 WELD RE-4 REFRIGERATOR AND TOZER KITCHEN
 Michael McCullar
 CFO, Weld RE-4
 970.686.8015
 michael.mccullar@weldre4.org

Team Members Involved. Melissa Peter

4 AMERICAN LEGACY ACADEMY
 Julie Babcock, Chairman of the Board
 American Legacy Academy
 303.960.0496
 julie.babcock@american-legacy.com

Team Members Involved. Taylor Kern



“This project is a testament to the power that comes from good people working together to make a difference for those in need. Yes - our work with PCL exceeded all our expectations. I will forever be grateful to my partners at PCL for the collaboration, synergy, shared vision, skilled execution and most importantly the commitment of heart that led us to where we are today.”

— Jessica Mayo, CEO, Judi’s House

CURRENT WORKLOAD

Team Member	Current Projects % committed	End Date
Taylor Kern Manager, Special Projects	Department Oversight	ongoing
Eric Bakanowski Pre-Construction Manager	Supporting Denver District Pre-Construction efforts	ongoing
Melissa Peter Estimator	DEN ADS Modernization Phase II (20%) DPS Bradley and Holm MEP (10%)	August 2024 August 2024
Cameron Johnson Project Manager	DPS Steele Mechanical and Electrical (75%)	August 2024
Eric Pagano Superintendent	DPS Stedman Cooling and Elevator (50%) DPS Thomas Jefferson MEP (50%)	August 2024 August 2024

PART 4 ▶

ORGANIZATION AND MANAGEMENT OF THE PROJECT



ORGANIZATION AND MANAGEMENT OF THE PROJECT

PCL’s team understands the need of a comprehensive project management system to make a good plan. We are your partners and solution providers to ensure both project sites are completed safely, on time, within budget and with the quality level expected. PCL takes a collaborative approach to our pre-construction services to provide solutions that result in the most significant opportunity to control cost, minimize redesign, and provide schedule certainty and speed to market for our clients. Essentially we become an extension of our client, focusing on your goals and expectations to produce the best possible solutions. As your partner in the Pre-Construction Phase, we make sure the project remains within budget, that long lead items are tracked and released, schedule, phasing, and logistics are coordinated, and voluntary value engineering and maximum value is built into the drawings and the final product.

Pre-Construction Services

PCL’s Pre-Construction Suite of Services

- | | |
|---|---|
|  Design Interaction & Design Review |  Key Vendor & Trade Input |
|  Design Coordination/ Constructability Reviews |  Schedule Development |
|  Building Information Modeling (BIM) |  Site Logistics Planning |
|  Cost Savings Options/ Value Management |  Cost Estimating |
|  GMP Development & Transparency | |

During pre-construction, PCL will become an extension of the High Plains Library District team, focusing on your goals and expectations to produce the best possible solutions. As a partner, PCL will take a collaborative approach to our pre-construction services to provide solutions that result in the most significant opportunity to control costs, minimize redesign, and provide schedule certainty for the Carbon Valley and Farr Regional Libraries.

Ability to Drive the Schedule

Based upon the schedule outlined in the RFP, with the pre-construction timeframe (April 2024 through September 2024), PCL has the **unique ability** to dedicate a wide array of resources to collaborate and develop approved, efficient plans, acquire the proper permits, and pre-order and pre-plan the sequence of construction to drive the pre-construction and construction schedules. Our suite of services and in-house resources outlined in this proposal will help to facilitate our team starting construction by the targeted October 2024 timeframe, and owner occupancy in January 2025.

PCL WILL PARTNER WITH YOU TO ADD THE MOST VALUE TO YOUR PROJECT WHILE ADAPTING TO THE CHANGING NEEDS AS THE PROJECT PROGRESSES.

Maximizing the High Plains Library District Team’s Project Goals

PCL’s collaborative approach to pre-construction will provide High Plains Library District and the design team with a construction partner dedicated to providing detailed constructability reviews so we can provide potential cost and time savings while limiting impact on the design team’s vision. We will ask thought-generating questions to maximize options and offer a clear understanding of the potential challenges that need to be addressed before construction starts to maximize the project’s goals.

Design Approach

PCL will participate in a continuous collaborative effort with the team to provide constructability reviews and real time cost tracking analysis of current budget expectations at each design milestone. Secondly, PCL will provide spot check reviews between design milestones to identify and avoid and potential concerns. PCL will approach any concerns recognized during design reviews with solutions that minimize impacts on the design team’s vision. At every point, providing particular attention while conducting constructability reviews, PCL will champion the cost savings mindset, looking for avenues to save cost and protect quality.

CRITICAL ITEMS TO ADDRESS DURING PRE-CONSTRUCTION

- » Identify scope and critical path activities for design, permitting, and construction
- » Implementation and continuous oversight of the project’s Quality Control program
- » Site logistics planning and coordination to incorporate traffic control and community impact
- » Cost control through reliable reporting and tracking
- » Identify High Plains Library District and design team quality hot buttons

Cost Estimating

PCL has a simple and straight forward approach to providing pre-construction services. Paramount in every task we perform is a promise to provide transparency and value. PCL takes a collaborative approach to our pre-construction services to provide solutions that result in the most significant opportunity to control cost, prevent redesign, and provide schedule certainty and speed to market for our clients. The PCL team will be an extension of the High Plains Library District team and perform our pre-construction services to ensure that value is built into the drawings and the final product.

Sample: Initial Estimate with Full Detail Assumptions

PCL Construction Services, Inc.		AC	
EROSION CONTROL			
SILT FENCE (SITE PERIMETER)	1.00 LS	0.8000%	0.0800
EROSION CONTROL MAINTENANCE	14 MO	0.0000%	0.0000
CONSTRUCTION ENTRANCE			
CONSTRUCTION ENTRANCE	1 EA	0.0000%	0.0000
EXISTING PAVEMENT PROTECTED	1 AL	0.0000%	0.0000
EROSION CONTROL			
EROSION CONTROL	1.00 LS	0.0250%	0.0250
TEMP ROADS / ACCESS / LAYDOWN			
LAYDOWN AREA	761 CY	0.0100%	0.0076
TEMP CONSTRUCTION ROAD	2,333 CY	0.0100%	0.0233
20'W @ 30' @ 12"			
MAINTAIN TEMP ROADS / ACCESS / LAYDOWN	14 MO	0.0000%	0.0000
TEMP ROADS / ACCESS / LAYDOWN			
TEMP ROADS / ACCESS / LAYDOWN	1.00 LS	0.0250%	0.0250
SITE PROTECTION			
PROTECT METLAND RESC. - NC	1 AL		
NO METLANDS ARE PRESENT			
PROTECT EXISTING TREES/SHRUBS	1 AL	0.0000%	0.0000
TREE RELLOCATION/EXCLUDED			
SITE PREPARATION			
SITE PREPARATION	28.00 AC		

the High Plains Library District team to make informed decisions from an aesthetic, first-cost and long-term cost perspective. PCL always targets a +/- 1% variance between updated sets of drawings on behalf of our clients, and would be able to provide this cost certainty for the High Plains Library District based on our extensive background and experience on similar projects. As well, complementary items like an updated risk register, long-lead items list, and updated logistics and schedule will be provided with each major design pricing milestone.

Cost Saving Options / Value Management

We focus on maximizing the High Plains Library District's dollars by improving the operational functionality and design integrity with the project's budget. Simple detail modifications, the approach to means and methods, procurement strategies, alternate equipment or alternate materials have the potential to

Sample: Opportunity Tracking and Cost Alternatives

Item	COST MANAGEMENT - Description of Work	OPPORTUNITY VALUE	RISK	STATUS OF PLAN	Decision Deadline	Approved	Planned	COMMENT
Area Development & Civil								
001	Retain Temporary Fence	\$ (52,545)						
002	Stabilized Soil to Concrete	\$ (26,167)						
003	Reinforced Soil to Asphalt	\$ (60,567)						
004	Form Concrete Footings to Masonry	\$						
005	Form Concrete Footings to Concrete	\$ (181,803)						
006	Reduce Street Spacing	\$ (77,249)						
007	Reduce Tree Spacing	\$ (81,176)						
008	Guard Slope Reduction	\$ (32,868)						
009	Custom Retain at Form Concrete	\$ (61,371)						
010	Soil Replacement Specification	\$ (76,700)						
011	Eliminate Green Wall at Courtyard	\$ (79,014)						
012	Vehicle Pavers at Form Concrete	\$ (289,210)						
013	Eliminate Wall W-105	\$						
014	Eliminate Glass at Public Coaches Gallery	\$ (507,345)						
015	Eliminate Glass at Public Coaches Gallery	\$ (507,345)						
Architectural								
016	Cabin - Bunk Bed Ladder Simplified	\$ (403,584)						
017	Cabin - Mirror Coat Reduction	\$ (1,076,000)						
018	Cabin - FCU Doors Simplified	\$ (66,310)						
019	Cabin - Window Reduction	\$ (1,303,240)						

WHEN EXECUTED PROPERLY

- Owners and Designers able to direct more efficiently where assumptions do not align with design/delivery intent
- Budget variances can be explained at all times regardless of original assumptions
- Establishes early approval of working targets and set parameters for all parties

WHEN NOT IMPLEMENTED

- No cost certainty: Entire scopes can be off base. Proformas/Programs can have holes that can never be corrected if not adjusted quickly
- Budget variances can not be explained with no basis of original assumptions
- Design teams can continue with no ability to direct / no targets given

WHEN EXECUTED PROPERLY

- Accountability for decisions can be properly managed and incorporated into contract documents
- Executive summaries more transparent and more confidence in the accuracy of budgets
- Reduces differences in designer intent vs. contractor intent

WHEN NOT IMPLEMENTED

- Communication gaps on base budget vs. potential impacts/opportunities
- Trade confusion on which document is most current
- All design and trade impacts not properly captured for changes

We first develop an initial GMP budget, based on gaining a full understanding of design intent, project goals, and project requirements. Knowing how important cost certainty is to our clients, PCL ensures that this initial cost estimate is accurate and complete by verifying all assumptions with the project team. During the 90% and 100% estimate phases, fully detailed estimates with quantity takeoffs, unit costs, productivities, and clarifications are reviewed with the entire project team. In addition, estimate comparison reports will be run, showing all major cost drivers, with any cost variances explained. This, in conjunction with a **voluntary VE log will be provided with all relevant information to allow**

enhance structural isolation, functional enhancement, visual appeal, and building systems integration while saving money for our clients.

Key Vendor & Trade Input

Getting input from key trades and suppliers throughout the design process keeps track of fluctuations in the price of materials, availability of labor and specified materials, and flexibility in options to use alternate systems and suppliers to keep pricing competitive. We are actively engaged with the trades and suppliers in Northern Colorado and have developed strong

relationships that allow us to receive preferred pricing. For this project, our team looks to engage key trades during the early stages of design for critical material and equipment input, additionally seeking schedule input on activity durations to identify and address issues and risks prior to the start of construction.

Use of Technology During Pre-Construction

PCL uses a construction management software, PM4+, to manage and maintain communication



PM4+

between all stakeholders. PCL will use PM4+ early in the project for preconstruction RFIs and submittals. Once the project transitions to construction, PM4+ will be used to set up and maintain the project’s budget, contract documents and subcontracts, site reports, submittals, and RFIs. The platform allows us to manage workflows with the City, Studio Gang, local agencies, consultants, and subcontractors; generate meeting minutes and track open actions; monitor progress and manage risks; forecast costs; and turn over documents at the completion of the project for a smooth transition to maintenance. PM4+ unites more than a century of PCL’s best practices for cost control, change management, and document control, in a modern, secure, web-based platform..

Building Information Modeling (BIM)

PCL also proposes to use BIM 360 to manage the construction plans from inception through construction. This is also a web-based platform that will allow for design comments to be entered and tracked along with construction changes to be tracked. Since this is a live web-based program, if an RFI is entered in PM4+ it can be pinned to a plan sheet so that the craft workers in the field have the most up to date plans. This process ensures that an item of work is not constructed if there is a change that needs to occur.

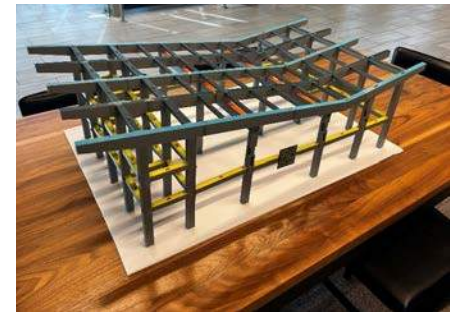
By using BIM in conjunction with PCL’s estimating, scheduling, planning, and proposed staff experience,

we ensure our pre-construction services optimize the project’s design, phasing, construction, and operation. We lead this effort, recognizing that creating an accurate model is a team exercise and should involve design team members and trade partners to produce optimal results. Our team, and any trades involved, work closely with the design team to identify constructability issues and solve them without added costs.

Additional Unique PCL Resources and Capabilities

As innovative solution providers, our teams develop and employ various techniques and approaches to add value to clients. Whether using drones to optimize the sequencing of earthwork or building 3D models for constructability reviews, technology can increase environmental protection, accelerate schedules, and decrease costs.

Sample: 3D Printing



Whether it be cost, schedule, or quality, we see virtual construction as a means of bringing enhanced value to your project. It enables project stakeholders to both visualize a project before it is complete and receive detailed as-built plans upon project completion while saving time and money in the process.

PCL’s commitment to client satisfaction drives the use of new technologies to deliver projects faster, with greater value and higher quality. Discovering new opportunities to implement the latest systems, software, and equipment requires initiative on behalf of PCL’s leadership and project.

Submitting OPCC at Required Milestones and at GMP

PCL will develop a schedule at the beginning of the project for all milestones for the Opinion of Probable Construction Costs (OPCC). Our team will work with the design team to determine the appropriate packages. The initial focus of these packages will be the enabling work, long-lead items, and phased permitting. All OPCC and Guaranteed Maximum Price (GMP) will be tracked and submitted through PM4+ and BIM 360.

PCL will use a comprehensive and transparent approach to estimating that ensures project risks are accounted for, giving the team flexibility in the level of design documents required to formally establish a GMP. The budget is continuously refined to incorporate the most current design decisions, while tracking necessary options, to offer assurance throughout the design that the budget is maintained.

“PCL continues to drive innovation in the construction industry by helping clients solve their business objectives more efficiently with passion and creativity. PCL has done an outstanding job of ensuring that projects remain on time and on budget and always deliver the highest end product. Assemble-Autodesk is always happy to partner with PCL to push and implement new technologies.”

— John Mamuscia, Assemble Systems, National Account Manager

SCHEDULE

The schedule implements and tracks the progress of the design, permitting, construction, commissioning and operating milestones to ensure the project is delivered on time. We utilize a Critical Path Method (CPM) schedule to establish a project baseline schedule, as well as capture construction sequencing and work item dependencies. PCL partners with the design team to assist in developing a design schedule that incorporates design milestones, consultant review periods, time to incorporate comments, and estimating deliverables. We also promote early involvement with the local building officials to understand the permitting and document review timelines. This partnership has proven to expedite the approval process by gaining informative guidance on lead time anticipated for permitting, inspections, and approvals.

On the following pages we have provided preliminary schedules and site logistics plans for both libraries based on the information within the RFP and our

previous success on similar projects. Upon award, PCL will immediately begin to develop a baseline schedule for the pre-construction phase, including design, permitting, and budget deliverables. Our operations staff will be involved in this process from the beginning to verify that the schedule for pre-construction and design is tracking to maintain an on-time start and finish for the construction schedule, as well as to provide planning and safety input to minimize disruptions on the day-to-day operations of the Carbon Valley and Farr Regional Libraries. Together the pre-construction and operations team will work to ensure that bid packages are released strategically to allow for adequate time to procure long-lead items while maintaining competition with subtrades thus maximizing value for the High Plains Library District. PCL is of the opinion that with proper planning and execution during the design, pre-construction, and procurement phase of the project, we can deliver this project on time and on budget.

“As an Owner’s representative, I work with a broad range of general contractors, and I can say without any doubt that working with PCL has been one of the best experiences I have had to date. Perhaps the strongest attribute of PCL is having good standards and a lot of horsepower when needed, while at the same time having the ability to be flexible and truly tailor their efforts to meet the client’s needs.”

— Conor Bancroft, Project Manager, Wember
(in support of School District 27J)

Preliminary Project Schedule - Carbon Valley Regional Library (page 1)

Activity ID	Activity Name	Original Duration	Remaining Duration	Start	Finish	2024												2025				
						Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
Carbon Valley Regional Library						24-Jan-25, Carbon Valley Regional Library																
PRECONSTRUCTION						01-Oct-24, PRECONSTRUCTION																
A2020	Schematic Design	65	65	01-Apr-24*	01-Jul-24	Schematic Design																
A2030	Design Development	22	22	02-Jul-24	01-Aug-24	Design Development																
A2040	Construction Documents	19	19	02-Aug-24	28-Aug-24	Construction Documents																
A2050	Permitting/GMP	22	22	29-Aug-24	30-Sep-24	Permitting/GMP																
A2060	CMAward	1	1	01-Oct-24	01-Oct-24	CMAward																
PROJECT MILESTONES						24-Jan-25, PROJECT MILESTONES																
A1720	*** MOBILIZE / CONSTRUCTION START ***	0	0	02-Oct-24		*** MOBILIZE / CONSTRUCTION START ***																
A1740	*** PHASE 1 COMPLETE ***	0	0		29-Oct-24	*** PHASE 1 COMPLETE ***																
A1690	*** PHASE 2 COMPLETE ***	0	0		22-Nov-24	*** PHASE 2 COMPLETE ***																
A1710	*** PHASE 3 COMPLETE ***	0	0		19-Dec-24	*** PHASE 3 COMPLETE ***																
A2930	*** PHASE 4 COMPLETE ***	0	0		16-Jan-25	*** PHASE 4 COMPLETE ***																
A1670	*** SUBSTANTIAL COMPLETION ***	0	0		23-Jan-25	*** SUBSTANTIAL COMPLETION ***																
A1680	*** FINAL COMPLETION ***	0	0		24-Jan-25	*** FINAL COMPLETION ***																
CONSTRUCTION						24-Jan-25, CONSTRUCTION																
A1590	Mobilize to Site	1	1	02-Oct-24*	02-Oct-24	Mobilize to Site																
A1610	Demobilize From Site	1	1	24-Jan-25	24-Jan-25	Demobilize From Site																
EXTERIOR ADA Ramp						11-Oct-24, EXTERIOR ADA Ramp																
A3240	Site Prep/Clearing	3	3	03-Oct-24	07-Oct-24	Site Prep/Clearing																
A3250	Excavation/Formwork/Rebar	2	2	08-Oct-24	09-Oct-24	Excavation/Formwork/Rebar																
A3260	Concrete Placement	1	1	10-Oct-24	10-Oct-24	Concrete Placement																
A3280	Final Inspections	1	1	11-Oct-24	11-Oct-24	Final Inspections																
PHASE 1						29-Oct-24, PHASE 1																
A1270	Phase 1 - Setup temp barriers	1	1	03-Oct-24	03-Oct-24	Phase 1 - Setup temp barriers																
A1280	Phase 1 - Demo Carpet/Wall Coverings	2	2	04-Oct-24	07-Oct-24	Phase 1 - Demo Carpet/Wall Coverings																
A1360	Phase 1 - Circulation Desk Upgrades	5	5	04-Oct-24	10-Oct-24	Phase 1 - Circulation Desk Upgrades																
A1290	Phase 1 - Floor/Wall Surface Prep	2	2	08-Oct-24	09-Oct-24	Phase 1 - Floor/Wall Surface Prep																
A1300	Phase 1 - Flooring install	2	2	10-Oct-24	11-Oct-24	Phase 1 - Flooring install																
A1370	Phase 1 - Install New Door	5	5	11-Oct-24	17-Oct-24	Phase 1 - Install New Door																
A1310	Phase 1 - Paint	5	5	14-Oct-24	18-Oct-24	Phase 1 - Paint																
A1380	Phase 1 - Reconfigure Admin Offices	5	5	18-Oct-24	24-Oct-24	Phase 1 - Reconfigure Admin Offices																
A1320	Phase 1 - LED Light Upgrade	2	2	21-Oct-24	22-Oct-24	Phase 1 - LED Light Upgrade																
A1350	Phase 1 - Furniture install	2	2	23-Oct-24	24-Oct-24	Phase 1 - Furniture install																
A1330	Phase 1 - Final Clean	1	1	25-Oct-24	25-Oct-24	Phase 1 - Final Clean																
A1340	Phase 1 - Punchlist	2	2	28-Oct-24	29-Oct-24	Phase 1 - Punchlist																
PHASE 2						22-Nov-24, PHASE 2																
A2960	Phase 2 - Setup temp barriers	1	1	28-Oct-24	28-Oct-24	Phase 2 - Setup temp barriers																
A2970	Phase 2 - Demo Carpet/Wall Coverings	2	2	29-Oct-24	30-Oct-24	Phase 2 - Demo Carpet/Wall Coverings																
A2980	Phase 2 - Floor/Wall Surface Prep	2	2	31-Oct-24	01-Nov-24	Phase 2 - Floor/Wall Surface Prep																
A2990	Phase 2 - Flooring install	2	2	04-Nov-24	05-Nov-24	Phase 2 - Flooring install																
A3000	Phase 2 - Paint	5	5	06-Nov-24	13-Nov-24	Phase 2 - Paint																
A3230	Phase 2 - Maker Space Install	5	5	06-Nov-24	13-Nov-24	Phase 2 - Maker Space Install																
A3010	Phase 2 - LED Light Upgrade	2	2	14-Nov-24	15-Nov-24	Phase 2 - LED Light Upgrade																



PCL Construction
Carbon Valley Regional Library

Date Date: 01-Apr-24
Print Date: 20-Mar-24
Page 1 of 2

- █ Actual Work
- █ Remaining Level of Effort
- █ Critical Remaining Work
- █ Actual Level of Effort
- █ Project Baseline
- ◆ Baseline Miles...
- ◆ Milestone
- Summary



Preliminary Project Schedule - Farr Regional Library (page 1)

Activity ID	Activity Name	Original Duration	Remaining Duration	Start	Finish	2024												2025				
						Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
Farr Regional Library						24-Jan-25, Farr Regional Library																
PRECONSTRUCTION						01-Oct-24, PRECONSTRUCTION																
A2020	Schematic Design	65	65	01-Apr-24*	01-Jul-24	Schematic Design																
A2030	Design Development	22	22	02-Jul-24	01-Aug-24	Design Development																
A2040	Construction Documents	19	19	02-Aug-24	28-Aug-24	Construction Documents																
A2050	Permitting/GMP	22	22	29-Aug-24	30-Sep-24	Permitting/GMP																
A2060	CMAward	1	1	01-Oct-24	01-Oct-24	CMAward																
PROJECT MILESTONES						24-Jan-25, PROJECT MILESTONES																
A1720	*** MOBILIZE / CONSTRUCTION START ***	0	0	02-Oct-24		*** MOBILIZE / CONSTRUCTION START ***																
A1740	*** PHASE 1 COMPLETE ***	0	0		29-Oct-24	*** PHASE 1 COMPLETE ***																
A1690	*** PHASE 2 COMPLETE ***	0	0		22-Nov-24	*** PHASE 2 COMPLETE ***																
A1710	*** PHASE 3 COMPLETE ***	0	0		19-Dec-24	*** PHASE 3 COMPLETE ***																
A2930	*** PHASE 4 COMPLETE ***	0	0		16-Jan-25	*** PHASE 4 COMPLETE ***																
A1670	*** SUBSTANTIAL COMPLETION ***	0	0		23-Jan-25	*** SUBSTANTIAL COMPLETION ***																
A1680	*** FINAL COMPLETION ***	0	0		24-Jan-25	*** FINAL COMPLETION ***																
CONSTRUCTION						24-Jan-25, CONSTRUCTION																
A1590	Mobilize to Site	1	1	02-Oct-24*	02-Oct-24	Mobilize to Site																
A1610	Demobilize From Site	1	1	24-Jan-25	24-Jan-25	Demobilize From Site																
PHASE 1						29-Oct-24, PHASE 1																
A1270	Phase 1 - Setup temp barriers	1	1	03-Oct-24	03-Oct-24	Phase 1 - Setup temp barriers																
A1280	Phase 1 - Demo Carpet/Wall Coverings	2	2	04-Oct-24	07-Oct-24	Phase 1 - Demo Carpet/Wall Coverings																
A1360	Phase 1 - Circulation Desk Upgrades	5	5	04-Oct-24	10-Oct-24	Phase 1 - Circulation Desk Upgrades																
A1290	Phase 1 - Floor/Wal Surface Prep	2	2	08-Oct-24	09-Oct-24	Phase 1 - Floor/Wal Surface Prep																
A1300	Phase 1 - Flooring install	2	2	10-Oct-24	11-Oct-24	Phase 1 - Flooring install																
A1370	Phase 1 - Install New Door	5	5	11-Oct-24	17-Oct-24	Phase 1 - Install New Door																
A1310	Phase 1 - Paint	5	5	14-Oct-24	18-Oct-24	Phase 1 - Paint																
A1380	Phase 1 - Reconfigure Admin Offices	5	5	18-Oct-24	24-Oct-24	Phase 1 - Reconfigure Admin Offices																
A1320	Phase 1 - LED Light Upgrade	2	2	21-Oct-24	22-Oct-24	Phase 1 - LED Light Upgrade																
A1350	Phase 1 - Furniture install	2	2	23-Oct-24	24-Oct-24	Phase 1 - Furniture install																
A1330	Phase 1 - Final Clean	1	1	25-Oct-24	25-Oct-24	Phase 1 - Final Clean																
A1340	Phase 1 - Punchlist	2	2	28-Oct-24	29-Oct-24	Phase 1 - Punchlist																
PHASE 2						22-Nov-24, PHASE 2																
A2960	Phase 2 - Setup temp barriers	1	1	28-Oct-24	28-Oct-24	Phase 2 - Setup temp barriers																
A2970	Phase 2 - Demo Carpet/Wall Coverings	2	2	29-Oct-24	30-Oct-24	Phase 2 - Demo Carpet/Wall Coverings																
A2980	Phase 2 - Floor/Wal Surface Prep	2	2	31-Oct-24	01-Nov-24	Phase 2 - Floor/Wal Surface Prep																
A2990	Phase 2 - Flooring install	2	2	04-Nov-24	05-Nov-24	Phase 2 - Flooring install																
A3000	Phase 2 - Paint	5	5	06-Nov-24	13-Nov-24	Phase 2 - Paint																
A3010	Phase 2 - LED Light Upgrade	2	2	14-Nov-24	15-Nov-24	Phase 2 - LED Light Upgrade																
A3200	Phase 2 - Furniture install	2	2	18-Nov-24	19-Nov-24	Phase 2 - Furniture install																
A3020	Phase 2 - Final Clean	1	1	20-Nov-24	20-Nov-24	Phase 2 - Final Clean																
A3030	Phase 2 - Punchlist	2	2	21-Nov-24	22-Nov-24	Phase 2 - Punchlist																
PHASE 3						19-Dec-24, PHASE 3																
A3040	Phase 3 - Setup temp barriers	1	1	21-Nov-24	21-Nov-24	Phase 3 - Setup temp barriers																
A3050	Phase 3 - Demo Carpet/Wall Coverings	2	2	22-Nov-24	25-Nov-24	Phase 3 - Demo Carpet/Wall Coverings																

PCL Construction
Farr Regional Library

Data Date: 01-Apr-24
Print Date: 20-Mar-24
Page 1 of 2

- Actual Work
- Remaining Level of Effort
- Remaining Work
- Actual Level of Effort
- Critical Remaining Work
- Project Baseline
- ◆ Baseline Miles...
- ◆ Milestone
- ▬ Summary



Preliminary Project Schedule - Farr Regional Library (page 2)

Activity ID	Activity Name	Original Duration	Remaining Duration	Start	Finish	2024												2025				
						Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
A3060	Phase 3 - Floor/Wall Surface Prep	2	2	26-Nov-24	27-Nov-24	Phase 3 - Floor/Wall Surface Prep																
A3070	Phase 3 - Flooring install	2	2	02-Dec-24	03-Dec-24	Phase 3 - Flooring install																
A3080	Phase 3 - Paint	5	5	04-Dec-24	10-Dec-24	Phase 3 - Paint																
A3090	Phase 3 - LED Light Upgrade	2	2	11-Dec-24	12-Dec-24	Phase 3 - LED Light Upgrade																
A3210	Phase 3 - Furniture install	2	2	13-Dec-24	16-Dec-24	Phase 3 - Furniture install																
A3100	Phase 3 - Final Clean	1	1	17-Dec-24	17-Dec-24	Phase 3 - Final Clean																
A3110	Phase 3 - Punchlist	2	2	18-Dec-24	19-Dec-24	Phase 3 - Punchlist																
PHASE 4		19	19	18-Dec-24	16-Jan-25	16-Jan-25, PHASE 4																
A3120	Phase 4 - Setup temp barriers	1	1	18-Dec-24	18-Dec-24	Phase 4 - Setup temp barriers																
A3130	Phase 4 - Demo Carpet/Wall Coverings	2	2	19-Dec-24	20-Dec-24	Phase 4 - Demo Carpet/Wall Coverings																
A3140	Phase 4 - Floor/Wall Surface Prep	2	2	23-Dec-24	24-Dec-24	Phase 4 - Floor/Wall Surface Prep																
A3150	Phase 4 - Flooring install	2	2	27-Dec-24	30-Dec-24	Phase 4 - Flooring install																
A3160	Phase 4 - Paint	5	5	31-Dec-24	07-Jan-25	Phase 4 - Paint																
A3170	Phase 4 - LED Light Upgrade	2	2	08-Jan-25	09-Jan-25	Phase 4 - LED Light Upgrade																
A3220	Phase 4 - Furniture install	2	2	10-Jan-25	13-Jan-25	Phase 4 - Furniture install																
A3180	Phase 4 - Final Clean	1	1	14-Jan-25	14-Jan-25	Phase 4 - Final Clean																
A3190	Phase 4 - Punchlist	2	2	15-Jan-25	16-Jan-25	Phase 4 - Punchlist																
PROJECT CLOSE OUT		10	10	10-Jan-25	24-Jan-25	24-Jan-25, PROJECT CLOSE OUT																
A2620	Start Up / Commissioning of LED Lights	2	2	10-Jan-25	13-Jan-25	Start Up / Commissioning of LED Lights																
A2660	Final Punch List	3	3	17-Jan-25	22-Jan-25	Final Punch List																
A2940	Final Inspection / TCO	1	1	23-Jan-25	23-Jan-25	Final Inspection / TCO																
A2820	Owner Move In	1	1	24-Jan-25	24-Jan-25	Owner Move In																

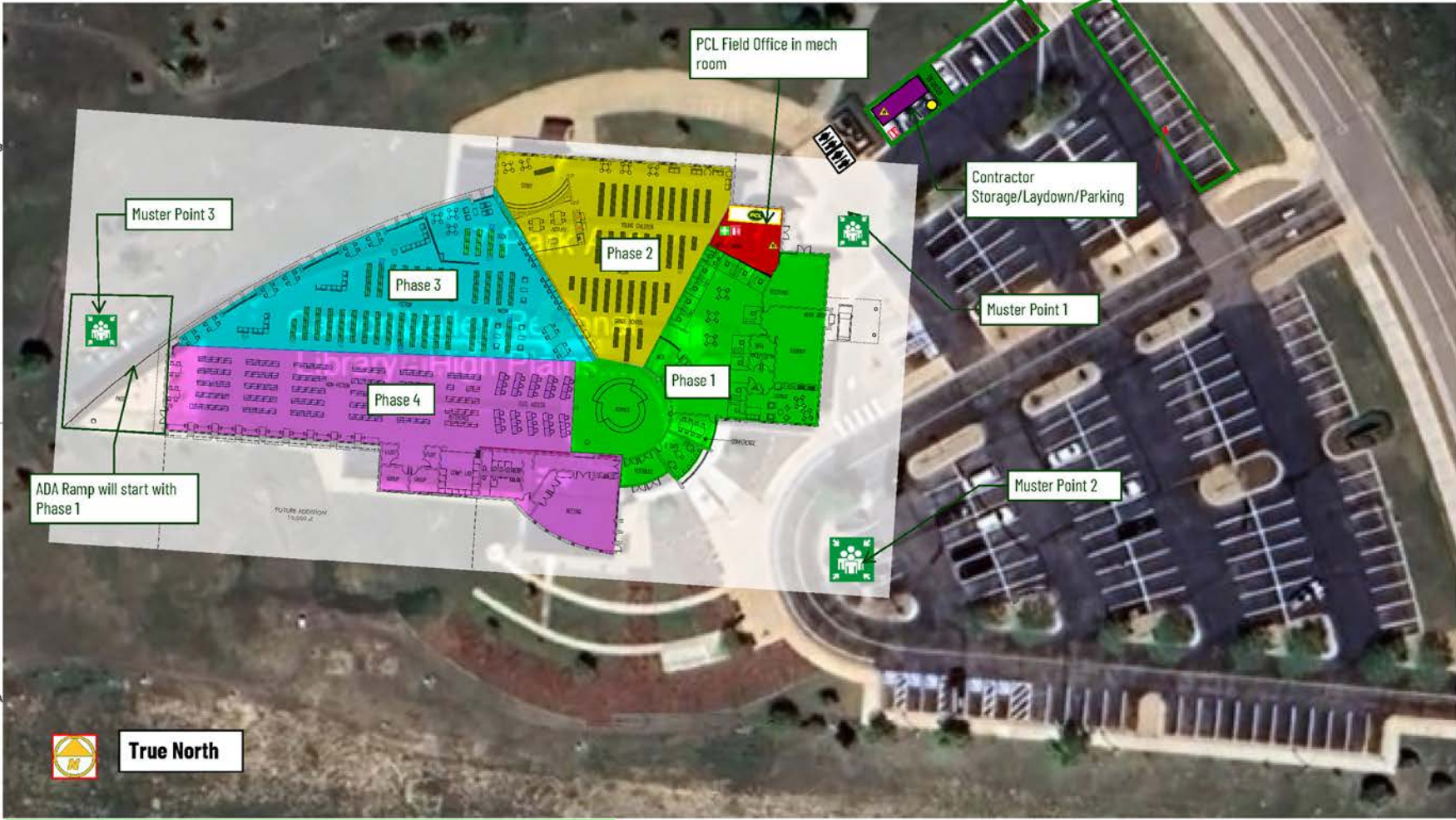
PCL Construction
Farr Regional Library

Data Date: 01-Apr-24
Print Date: 20-Mar-24
Page 2 of 2

■ Actual Work	■ Remaining Level of Effort	◆ Milestone	◆ Baseline Miles...
■ Critical Remaining Work	■ Project Baseline	◆ Milestone	▾ Summary

Preliminary Site Logistics Plan - Carbon Valley Regional Library

Carbon Valley Regional Library - SITE LOGISTICS PLAN



CONSTRUCTION

THIS DRAWING IS FOR THE SOLE USE OF ANY PCL OPERATING COMPANY, OR ANY PCL JOINT VENTURE COMPANY. IT IS NOT TO BE USED, ALTERED OR REPRODUCED WITHOUT THE WRITTEN PERMISSION OF THE PCL FAMILY OF COMPANIES.

KEY

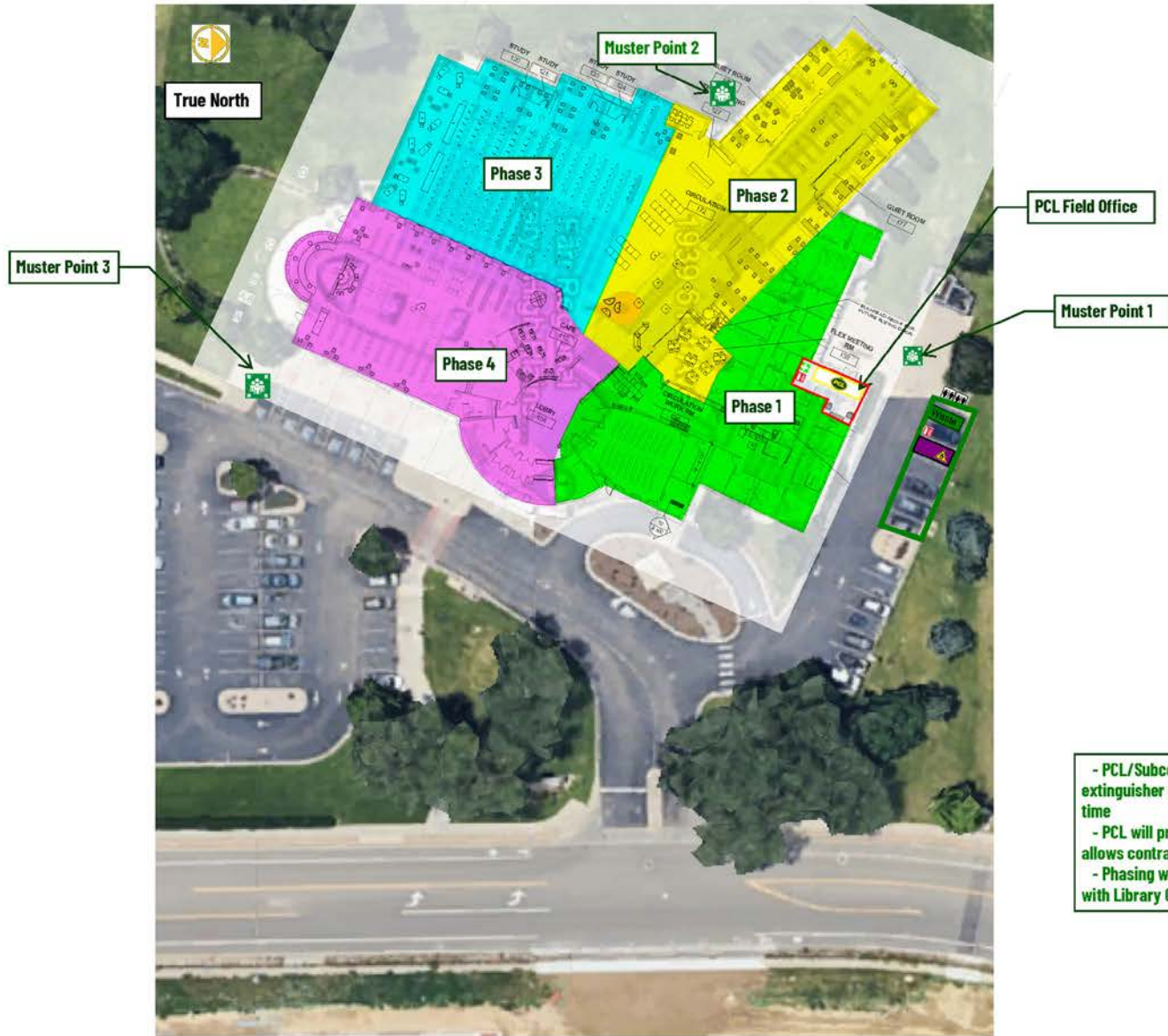
- Toilets
- Spill Kit
- Dumpster
- Muster Point
- First Aid/AED
- PCL Field Office
- Flammable Storage Area
- Fire Extinguisher
- Contractor Laydown
- Storage Connex
- True North

* Most project scope occurs within the office building
 - PCL/Subcontractors to always have fire extinguisher at working location at any given time
 - PCL will provide site toilets unless Library allows contractor use
 - Phasing will be updated as coordination with Library Continues

SCALE:	NTS
DATE:	3/19/24
DESIGN BY:	SK
DRAWN BY:	SK
CHECKED BY:	

Carbon Valley Regional Library

Farr Regional Library - SITE LOGISTICS PLAN



- PCL/Subcontractors to always have fire extinguisher at working location at any given time
 - PCL will provide site toilets unless Library allows contractor use
 - Phasing will be updated as coordination with Library Continues



CONSTRUCTION

THIS DRAWING IS FOR THE SOLE USE OF ANY PCL OPERATING COMPANY, OR ANY PCL JOINT VENTURE COMPANY. IT IS NOT TO BE USED, ALTERED OR REPRODUCED WITHOUT THE WRITTEN PERMISSION OF THE PCL FAMILY OF COMPANIES.

KEY

- Toilets
- Spill Kit
- Dumpster
- Muster Point
- First Aid/AED
- PCL Field Office
- Flammable Storage Area
- Fire Extinguisher
- Contractor Laydown
- Storage Connex
- True North

SCALE:	NTS
DATE:	3/19/24
DESIGN BY:	SK
DRAWN BY:	SK
CHECKED BY:	

Farr Regional Library

PART 5 ▶

FEE PROPOSAL



FEE PROPOSAL



PCL has reviewed the CM@R Scope and Fee Matrix provided by Wember with the Request for Proposal. We are prepared to provide a completed matrix upon request as part of the next phase in the award process.

APPENDIX ▶

ADDITIONAL INFORMATION



COMMUNITY IS A PCL CORE VALUE

COMMITMENT TO COMMUNITY

PCL’s involvement within the local community has helped us build strong relationships with community organizations across Colorado. PCL’s guiding principle of social responsibility focuses our philanthropic efforts in the areas of community development, education, environment, and health. Through these efforts, our employees have been able to serve many worthy causes while striving to make a positive and lasting impression within our communities. PCL’s Denver region employees contribute more than 2,000 hours annually to our community. PCL supports more than a dozen local community organizations. Since the 1960’s, PCL has partnered with the United Way to help transform lives of those in the community and provide support to families and individuals living in poverty. Employees, together with PCL’s corporate-matched charitable contributions, raise millions of dollars for United Way and member organizations throughout North America.

PCL DENVER EMPLOYEES CONTRIBUTE MORE THAN 2,000 VOLUNTEER HOURS ANNUALLY.

“ Everything we had hoped and dreamed of in the design and construction of our building has come true because of the extraordinary partnership with PCL. We are still in awe of your ability to listen to our vision, to understand the community and its residents and to balance many stakeholders. The end result was something that exceeded all expectations and remains a source of deep pride for all of us. ”

Christine Benero, President & CEO, Mile High United Way

PCL: PART OF NORTHERN COLORADO’S QUILT

The PCL family lives, works, plays and goes to school in Northern Colorado. It is our honor to give back to our community. As an example, our team contributes to the Colorado Eagles and affiliates annual “Pot of Gold Fundraiser” The community fundraising program, centered around the St. Patrick’s Day holiday, helps change the luck of a local family in need. Since the inception of the “Pot of Gold” night, the organization has raised nearly \$400,000 for families faced with the financial hardships that come with caring for a sick child. PCL Construction is delighted to be involved in this event and donate to the “Pot of Gold” in support of the Weld County community. The PCL team also participates in NoCo Unify events and the Northern Colorado Youth for Christ Golf Tournament, among others.

In 2023, we held our first annual Cajun Classic Golf Tournament, benefiting the Windsor Booster Club. The event was a huge success and something our team, and our clients and subcontractors, will look forward to for years to come.



Colorado Eagles Pot of Gold



Colorado Youth Outdoors Maverick Event



Cajun Classic Charity Golf Tournament

PCL GIVES BACK TO LARIMER COUNTY YOUTH

PCL had the opportunity to give back to several youth that put in countless hours raising their Larimer County animals in August 2023 at the Junior Livestock Sale.





CONSTRUCTION

**CM@R SERVICES
CARBON VALLEY REGIONAL LIBRARY
FARR REGIONAL LIBRARY**

REQUEST FOR PROPOSAL

▶ **TOGETHER WE BUILD SUCCESS**

- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,
10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

Additional Time, Claims for

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

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

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

Approvals

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

3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,
13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and
Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2,
4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4,
9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,
7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,
13.4.2, 15.2

Architect's Inspections

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

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,
3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,
3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

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

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

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

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,
15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

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

Building Information Models Use and Reliance

1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval
13.4.4

Certificates of Insurance
9.10.2

Change Orders

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

2.2.2, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

Claims, Definition of

15.1.1

Claims, Notice of
1.6.2, 15.1.3

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4
Claims and Timely Assertion of Claims
15.4.1

Claims for Additional Cost

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**

Claims for Additional Time

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**

Concealed or Unknown Conditions, Claims for 3.7.4

Claims for Damages
3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration
15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**

Commencement of the Work, Definition of
8.1.2

Communications

3.9.1, **4.2.4**

Completion, Conditions Relating to
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

COMPLETION, PAYMENTS AND 9

Completion, Substantial
3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

Compliance with Laws

2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

Consolidation or Joinder

15.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, **6**

Construction Change Directive, Definition of
7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.4

Contract, Definition of

1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 5.4.2, 11.5, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of
1.5.2, 2.3.6, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, **9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**

Contract Sum, Definition of

9.1

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

Contract Time, Definition of

8.1.1

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, **6.1.2**

Contractor's Construction and Submittal Schedules

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Contractor's Employees
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6,
10.2, 10.3, 11.3, 14.1, 14.2.1.1

Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors
and Owner's Forces
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4
Contractor's Relationship with Subcontractors
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2,
9.6.7, 9.10.2, 11.2, 11.3, 11.4
Contractor's Relationship with the Architect
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,
3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2,
6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6,
10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1
Contractor's Representations
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the
Work
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
2.2.2, 9.7
Contractor's Right to Terminate the Contract
14.1
Contractor's Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2,
9.8.3, 9.9.1, 9.10.2, 9.10.3
Contractor's Superintendent
3.9, 10.2.6
Contractor's Supervision and Construction
Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4,
7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4
Coordination and Correlation
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
1.5, 2.3.6, 3.11
Copyrights
1.5, **3.17**
Correction of Work
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3,
15.1.3.1, 15.1.3.2, 15.2.1

Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.4
Costs
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3,
7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6,
11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14

Cutting and Patching
3.14, 6.2.5

Damage to Construction of Owner or Separate
Contractors
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damage to the Work
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damages, Claims for
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2,
11.3, 14.2.4, 15.1.7
Damages for Delay
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4,
7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2,
14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification
9.4.1, **9.5**, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance,
Rejection and Correction of
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3,
9.10.4, 12.2.1
Definitions
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1,
6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1

Delays and Extensions of Time
3.2, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**,
10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5

Digital Data Use and Transmission
1.7
Disputes
6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2

Emergencies
10.4, 14.1.1.2, **15.1.5**
Employees, Contractor's
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,
10.3.3, 11.3, 14.1, 14.2.1.1
Equipment, Labor, or Materials
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3,
9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1,
3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1,
9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,
10.4, 14.3, 15.1.6, **15.2.5**

Failure of Payment
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work
(See Defective or Nonconforming Work)

Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4

GENERAL PROVISIONS

1

Governing Law

13.1
Guarantees (See Warranty)

Hazardous Materials and Substances
10.2.4, **10.3**
Identification of Subcontractors and Suppliers
5.2.1

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

Information and Services Required of the Owner
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,
9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,
14.1.1.4, 14.1.4, 15.1.4

Initial Decision

15.2

Initial Decision Maker, Definition of
1.1.8
Initial Decision Maker, Decisions
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Initial Decision Maker, Extent of Authority
14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property
10.2.8, 10.4

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

Instructions to Bidders
1.1.1

Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

Instruments of Service, Definition of

1.1.7

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

11
Insurance, Notice of Cancellation or Expiration
11.1.4, 11.2.3

Insurance, Contractor's Liability

11.1
Insurance, Effective Date of
8.2.2, 14.4.2

Insurance, Owner's Liability

11.2

Insurance, Property
10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials
9.3.2

INSURANCE AND BONDS

11
Insurance Companies, Consent to Partial Occupancy
9.9.1
Insured loss, Adjustment and Settlement of
11.5
Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13

Interest

13.5

Interpretation
1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1
Interpretations, Written
4.2.11, 4.2.12
Judgment on Final Award
15.4.2

Labor and Materials, Equipment
1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,
10.2.4, 14.2.1.1, 14.2.1.2
Labor Disputes
8.3.1
Laws and Regulations
1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,
9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,
15.4
Liens
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8
Limitations, Statutes of
12.2.5, 15.1.2, 15.4.1.1
Limitations of Liability
3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,
4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,
11.3, 12.2.5, 13.3.1
Limitations of Time
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,
5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,
15.1.2, 15.1.3, 15.1.5

Materials, Hazardous
10.2.4, **10.3**
Materials, Labor, Equipment and
1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,
10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
Means, Methods, Techniques, Sequences and
Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Mediation
8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1,
15.4.1.1

Minor Changes in the Work

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

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, **12.3**

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

Notice

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

Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

Notice of Claims

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

Notice of Testing and Inspections

13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

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

OWNER

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

Owner's Authority

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

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

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

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

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

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

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

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

Partial Occupancy or Use

9.6.6, **9.9**

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

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

Payment, Certificates for

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

Payment, Failure of

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

Payment, Final

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

Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Payments, Progress

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

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

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

PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

Permits, Fees, Notices and Compliance with Laws

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

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, **3.12**, 4.2.7

Progress and Completion

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

Progress Payments

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

Project, Definition of

1.1.4

Project Representatives

4.2.10

Property Insurance

10.2.5, **11.2**

Proposal Requirements

1.1.1

PROTECTION OF PERSONS AND PROPERTY

10

Regulations and Laws

1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

Rejection of Work

4.2.6, 12.2.1

Releases and Waivers of Liens

9.3.1, 9.10.2

Representations

3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field

Conditions by Contractor

3.2, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and

Samples by Contractor

3.12

Rights and Remedies

1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2, 12.2.4, **13.3**, 14, 15.4

Royalties, Patents and Copyrights

3.17

Rules and Notices for Arbitration

15.4.1

Safety of Persons and Property

10.2, 10.4

Safety Precautions and Programs

3.3.1, 4.2.2, 4.2.7, 5.3, **10.1**, 10.2, 10.4

Samples, Definition of

3.12.3

Samples, Shop Drawings, Product Data and

3.11, **3.12**, 4.2.7

Samples at the Site, Documents and

3.11

Schedule of Values

9.2, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

Separate Contractors, Definition of

6.1.1

Shop Drawings, Definition of

3.12.1

Shop Drawings, Product Data and Samples

3.11, **3.12**, 4.2.7

Site, Use of

3.13, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4

Site Visits, Architect's

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

Special Inspections and Testing

4.2.6, 12.2.1, 13.4

Specifications, Definition of

1.1.6

Specifications

1.1.1, **1.1.6**, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14

Statute of Limitations

15.1.2, 15.4.1.1

Stopping the Work

2.2.2, 2.4, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of

5.1.1

SUBCONTRACTORS

5

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of

6.1.1, **11.3**

Substances, Hazardous

10.3

Substantial Completion

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 15.1.2

Substantial Completion, Definition of

9.8.1

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

2.3.3

Substitutions of Materials
3.4.2, 3.5, 7.3.8
Sub-subcontractor, Definition of
5.1.2
Subsurface Conditions
3.7.4
Successors and Assigns
13.2
Superintendent
3.9, 10.2.6
Supervision and Construction Procedures
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4,
7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4
Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6,
9.10.5, 14.2.1
Surety
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2,
15.2.7
Surety, Consent of
9.8.5, 9.10.2, 9.10.3
Surveys
1.1.7, 2.3.4
Suspension by the Owner for Convenience
14.3
Suspension of the Work
3.7.5, 5.4.2, 14.3
Suspension or Termination of the Contract
5.4.1.1, 14
Taxes
3.6, 3.8.2.1, 7.3.4.4
Termination by the Contractor
14.1, 15.1.7
Termination by the Owner for Cause
5.4.1.1, **14.2**, 15.1.7
Termination by the Owner for Convenience
14.4
Termination of the Architect
2.3.3
Termination of the Contractor Employment
14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT
14
Tests and Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**
TIME
8
Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7,
10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2,
5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14,
15.1.2, 15.1.3, 15.4
Time Limits on Claims
3.7.4, 10.2.8, 15.1.2, 15.1.3
Title to Work
9.3.2, 9.3.3
UNCOVERING AND CORRECTION OF WORK
12
Uncovering of Work
12.1
Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3
Unit Prices
7.3.3.2, 9.1.2
Use of Documents
1.1.1, 1.5, 2.3.6, 3.12.6, 5.3
Use of Site
3.13, 6.1.1, 6.2.1
Values, Schedule of
9.2, 9.3.1
Waiver of Claims by the Architect
13.3.2
Waiver of Claims by the Contractor
9.10.5, 13.3.2, **15.1.7**
Waiver of Claims by the Owner
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**
Waiver of Consequential Damages
14.2.4, 15.1.7
Waiver of Liens
9.3, 9.10.2, 9.10.4
Waivers of Subrogation
6.1.1, **11.3**
Warranty
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2,
15.1.2
Weather Delays
8.3, 15.1.6.2
Work, Definition of
1.1.3
Written Consent
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3,
13.2, 13.3.2, 15.4.4.2
Written Interpretations
4.2.11, 4.2.12
Written Orders
1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 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 prepared by Architect or Architect's consultants. 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, by courier providing proof of delivery, or FedEx, UPS or other similar delivery with tracking verification.

§ 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. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to 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 Information and Services Required of the Owner

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

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

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

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

§ 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 or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the Work within the Contract Time, or fails to remove and discharge (within ten (10) days) any lien filed upon Owner's property, on account of work for which Contractor has received payment from Owner, by anyone claiming by, through, or under Contractor or disregards the instructions of the Owner when based on the requirements of the Contract Documents, the Owner may, after providing the Contractor written notice and reasonable opportunity to cure, issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

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

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have

express authority to bind the Contractor with respect to all matters under this Contract. The term “Contractor” means the Contractor or the Contractor’s authorized representative.

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

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

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

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

§ 3.3 Supervision and Construction Procedures

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

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor’s employees, Subcontractors and 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. It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable here from

shall be deemed or construed to (1) make Contractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status as described herein.

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

§ 3.3.4 The Contractor shall be responsible for contacting utilities for help in locating all existing underground installations, including Underground Utilities and their service connections, in advance of excavating or trenching, by contacting the utility owners thereof and any available ONECALL Service and prospecting, and any resulting damage from failure to do so. Contractor is not responsible for damages caused by unknown or misidentified utilities.

§ 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, required insurance and bonds, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor has the responsibility to ensure that all equipment and material suppliers and subcontractors, their agents, and employees adhere to the Contract Documents, and that they order material and equipment on time, taking into account the current market and delivery conditions, and that they provide equipment and materials on time. The Contractor shall coordinate its Work with that of all others on the Project, including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved, before installation, to plan effective and efficient methods of overall installation.

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

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

§ 3.4.4 All work necessary to be performed after regular working hours, on weekends or legal holidays, shall be performed without an increase to the Guaranteed Maximum Price unless changes by owner requires work beyond regular hours to meet the schedule.

§ 3.4.5 Unless otherwise specifically required, all materials and equipment incorporated in the Work shall be new, free of faults and defects, and shall conform to the Contract Documents. If required, the Contractor shall furnish satisfactory evidence to the type and quality of materials and equipment.

§ 3.4.6 Colorado labor shall be employed to perform the Work to the extent of not less than eighty (80%) percent of each type or class of labor in several classifications of skilled and common labor employed on such project or public works. "Colorado labor," as used in this Article, means any person who is a resident of the State of Colorado, at the time of employment, without discrimination as to race, color, religion, creed, national origin, sex, age, or handicap.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty shall be for one (1) year from Substantial Completion and excludes remedy for damage or defect caused by

abuse, design, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Materials shall conform to manufacturer's standards in effect at the date of execution of the Construction Contract and shall be installed in strict accordance with manufacturer's directions. The Contractor shall, if required by the Owner, furnish satisfactory evidence as to the kind and quality of any materials. All packaged materials shall be shipped to the site in the original containers.

§ 3.5.2 The warranty provided in this Section 3.5 shall be in addition to and not in limitation of any other warranty or remedy required or provided by law or by the Contract Documents and (ii) notwithstanding anything to the contrary contained in the Contract Documents, this warranty shall commence on substantial completion notwithstanding any partial occupancy prior thereto). The Contractor shall promptly repair and replace, at Contractor's sole cost and expense, any materials, equipment or Work covered by this warranty which is in violation of this warranty. All warranty work shall be coordinated with Owner in order to limit the disruption of operation of the completed Project. Such warranty work shall be completed in compliance with the terms and conditions of the Contract Documents.

§ 3.5.3 Owner and Contractor agree and acknowledge that Owner is entering into this Contract in reliance on Contractor represented expertise and ability to provide Construction Management services. Contractor agrees to use its best efforts, skill, judgment, and abilities to perform the Work and to further the interests of Owner in accordance with the requirements and procedures set forth in the Contract Documents.

§ 3.5.4 Unless directed by the Owner the Contractor's duties shall not be diminished nor shall Contractor be released from any liability by any review and/or approval by Owner, it being understood that Owner's review and/or approval of Submittals shall be for informational purposes only and not for purposes of approving or determining the propriety of the documents and the Owner is ultimately relying upon the Contractor's skill and knowledge in performing the Work.

§ 3.5.5 The Contractor's warranties and obligations under the provisions of Section 13.1.12 shall survive the completion of the Work or earlier termination of the Contract.

§ 3.5.6 The Contractor warrants that it will perform the Work in a timely, accurate and complete manner in accordance the provisions of the Contract Documents. The Contractor shall guarantee the Work against defects in workmanship and materials for a period of one (1) year, commencing on the date of substantial completion of the Work (the "Warranty Period"). The Contractor shall promptly replace any materials or re-perform any portion of the Work found to be defective within the Warranty Period in accordance with this Contract and without expense to the Owner. The time allowed for such corrective action shall be mutually agreed upon by the Owner and the Contractor. If the Contractor fails to proceed promptly in accordance with these guarantees, the Owner reserves the right to place the Contractor in default of its contractual obligations and may have the Work performed at the expense of the Contractor. This provision shall survive the completion of the Work and the termination of this Order. The above guarantee does not limit any claims that the Owner may otherwise have against the Contractor. Claims on extended warranties beyond the Warranty Period shall be submitted by Owner directly to the appropriate manufacturer providing such extended warranty. The Contractor shall also assign to the Owner any longer-term guarantee of materials used by the Contractor as may be provided by the manufacturer, per the material specifications and contract documents and the Contractor shall not have any obligation to perform Warranty Work following the initial one-year Warranty period, except to help facilitate submission or warranty service requests from the Owner to the appropriate manufacturer providing any such extended warranty.

§3.5.7 At least 60 calendar days prior to the expiration of the Warranty Period, the Owner shall have the option to make an inspection to determine whether the Work has been completed in accordance with this Contract and may submit a written list of any defects to the Contractor (the "Warranty Work"). In the event the Owner chooses this option, the Contractor shall promptly correct all Warranty Work without additional cost to the Owner within the Warranty Period. If any Warranty Work cannot be corrected within the Warranty Period, the Contractor shall submit written notification to the Owner for approval requesting an extension of time to complete such item (the "Request for Extension of Warranty Work"). The Request for Extension of Warranty Work must be received by the Owner

within seven calendar days of the Contractor's receipt of the Warranty Work and shall include the Contractor's justification for the request and a schedule for completion of the Warranty.

§ 3.5.8 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

§ 3.6.1 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.

§ 3.6.2 It is understood that this project will receive tax exempt status. Owner to provide contractor with tax exempt certificate upon execution of Contract in order for Contractor to apply for a project specific tax exempt certificate from the state of Colorado. The exemption does not apply to purchases or rentals of equipment, supplies, or tools by the contractor that she or he uses to perform construction services for a tax-exempt entity. A contractor must apply for an exemption certificate prior to starting work on any tax-exempt construction project.

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

§ 3.7.6 If, in the course of the Work, the Contractor believes it has encountered human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from such suspension 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; as well as fees or any other costs for which allowances are established.
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 Superintendent

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

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

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

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, 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 Owner's and Architect's information. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

§ 3.11 Documents and Samples at the Site

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

the Architect for submittal to the Owner upon completion of the Work and as a condition precedent to Final Payment as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will

specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. If Contractor performs any design services in connection with the Work, Contractor or his design professional will meet and comply with Professional Liability insurance requirements as set forth elsewhere in this agreement in its entirety.

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

§ 3.12.11 By providing Submittals the Contractor represents to the Owner that it has (1) reviewed and check for conformance against the construction documents, (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.

§ 3.12.12 Any professional design services required of the Contractor under Contract Documents shall be expressly identified and specified in the Agreement. All such professional design services or certifications as required by the contract documents to be provided by the Contractor, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. **Owner shall be responsible for the design criteria for such portions of the Work.** The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals provided that the Owner's consultants shall remain responsible for overall coordination of the design of the Project.

§ 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, on a weekly basis minimum, and more often as needed to maintain a functional, efficient and safe construction site to the reasonable satisfaction of Owner. 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

§ 3.16.1 The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located. The Contractor shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 3.16.2 The Owner and its representatives shall at all times have access to the work. The Contractor shall provide proper facilities for access to and for inspection of the Work for the purpose of determining compliance with this Agreement and quality of workmanship and material. The Owner may order that portions of the Work be uncovered, exposed or made available for observation, inspection or testing. The Contractor shall provide all labor, tools, materials equipment and supplies necessary to comply with the request of the Owner. If any of the work is determined to be defective due to Contractor or subcontractor, the Contractor shall bear all costs involved to bring the Work into compliance with the Contract, including, without limitation, the cost to replace any materials, to re-perform or to reconstruct the Work.

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and its officers, and employees from and against all claims, liability, damages, losses, and expenses, including reasonable attorney fees, on account of injury, loss, or damage, arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, which arise out of or are in any manner connected with performance of the Work but only to the extent caused in whole or in part by, the negligent act, omission, error, or other fault of the Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor.

If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the Owner may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

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

§ 3.18.3 Contractor shall provide Owner with immediate written notification as to any circumstances to which this Section 3.18 may give rise to an Owner indemnification promptly after Contractor becomes aware of such circumstances.

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 regularly 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 seven (7) days of receipt or within any time limits otherwise agreed upon in writing. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

§ 5.2.1 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 Owner or Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

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

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

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. 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 Architect of observed apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor’s Work. Failure of the Contractor to notify the Architect of observed 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, subject to Section 15.1.7, 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 the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.1.4 The Parties acknowledge and agree that, due to current extraordinary circumstances and market conditions, there is the potential for (i) material and equipment supply chain delays, disruption, cost increases and shortages as well as (ii) labor shortages and/or extraordinary labor cost increases, which are outside of the Parties' control. The Parties agree Contractor has not included an escalation factor or contingency specifically for these issues in the Contract Sum or Contract Time. Contractor will use reasonable efforts, without requiring the expenditure of additional cost, to mitigate cost and time for performance of the Work increase due to such material, equipment or labor cost increases, delays and/or shortages beyond Contractor's reasonable control, the Contract Sum and Contract Time shall be increased accordingly.

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

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

§ 7.3.2 A Construction Change Directive shall be used 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.

§ 7.4 Minor Changes in the Work

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

§ 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 Force Majeure as defined in paragraph 13.7; (4) by delay authorized by the Owner; (5) other causes beyond the Contractor's control; or (6) by other causes that the Contractor asserts, justify delay, then the Contract Time shall be extended for such reasonable time and reasonable direct and indirect costs associated with delays if any as the Owner may determine and only if such delay will prevent Contractor from achieving Substantial Completion by the contract time. Subject to Article 15.

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

§ 9.3 Applications for Payment

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

§ 9.3.1.1 As provided in Section 7.3.9, such applications may not include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Approved 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 or, with the agreement of the Owner, stored at an insured facility where the Owner can reasonably visually verify or receive other acceptable verification of the storage of materials. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing . Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

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

§ 9.4 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 failure to carry out the Work in accordance with the Contract Documents or unsatisfactory execution of the work.
- .8 any other reasonable basis to withhold certification. Owner shall have no liability whatsoever for interest or other charges resulting from withholding of payment for any reason stated in the Contract.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, 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 Progress Payments

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

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

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

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

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

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any

fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

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

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. As a condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within sixty (60) consecutive days or as agreed upon by the Owner and Contractor in writing. The Work shall not be considered ready for Substantial Completion if any of the following conditions exist:

- .1 Incomplete or defective work remains which would prevent or interfere with the Owner's occupancy and normal operations and intended use of the facility;
- .2 The building mechanical systems have not been tested, balanced;
- .3 The building electrical and life safety systems have not been tested;
- .4 Final clean-up is not complete to support the occupancy and intended use of the facility outside of clean-up associated with punch list items to be completed (outside of clean as an item);
- .5 Approvals and Temporary or Full Certificates of Occupancy (Whichever occurs first) by regulatory officials are not received and complete.

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

§ 9.8.3 Upon receipt of the Contractor's list, and confirmation of all inspections and regulatory approvals to allow occupancy, the Architect and Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's and 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. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

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

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

§ 9.9 Partial Occupancy or Use

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

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

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not: (1) constitute acceptance of Work not complying with the requirements of the Contract Documents, (2) relieve the Contractor from responsibility for loss or damage because of or arising out of defects in, or malfunctioning of, any Work, material or equipment, nor from any other unfulfilled obligations or responsibilities under the Contract Documents, or (3) commence any warranty period under the Contract Documents, provided that Contractor shall not be liable for damages or ordinary wear and tear resulting from such partial occupancy.

§ 9.10 Final Completion and Final Payment

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) Contractor's general warranty and documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties for the Work, 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, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 faulty or defective Work appearing after Substantial Completion;
- .4 terms of special warranties required by the Contract Documents; or
- .5 replacement of material or equipment which is rejected if found, after the date of final payment, to be defective, or inferior in quality or uniformity, to the material or equipment specified, or is not as represented to the Architect and Owner.

§ 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.

§ 10.1.1 At all times through performance of this contract, the Contractor shall be familiar with and comply with all local noise ordinances in the performance of the Work. The Contractor shall not conduct work in excess of the permissible decibel levels provided by local noise ordinances. The Contractor shall provide the Owner with prior notice of any known Work that may result in such excessive noise levels.

§ 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.2.9 Finishes, structures, utilities, service roads, landscaping located on the property not included in the contract documents shall be protected against damage or interrupted services at all times by the Contractor during the term of the Work. Adequate floor and wall protection must be provided by the Contractor during performance of the Work. The Contractor shall be responsible for repairing or replacing any and all property which is damaged by reason of the Contractor's operation on the property to satisfaction of the Owner.

§ 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner 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. 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.

§ 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 requires by the Contract Documents, except to the extent caused by 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 take reasonable action, 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. The Contractor shall notify the Owner as soon as an emergency affecting safety of persons on the property is discovered.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

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

§ 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 thirty (30) 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's insurance carrier shall provide notice to the Owner of such impending or actual cancellation or expiration. If any insurance policy required herein and maintained by Contractor does not provide advance notice to third parties then, prior to any cancellation of such insurance, Contractor shall have new insurance policies in place that meet the requirements of this Agreement. 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 Additional Named Insured

§ 11.2.1 The Owner and Wember, Inc. shall be named as an additional insured under the Contractor's Automobile, Commercial General, and Umbrella Liability coverages, and the Commercial General Liability additional insured coverage shall include products and completed operations coverage. The Contractor's Automobile, Commercial General, and Umbrella Liability additional insured coverage shall be primary with respect to claims against the Owner caused by the fault or negligence of Contractor.

§ 11.3 Builder's Risk/Commercial Property Insurance

§ 11.3.1 The Contractor shall purchase and maintain commercial property insurance upon the entire Work at the site to the full insurable value thereof. Such insurance shall be in a company rated with an AM best rating of A-VIII, or companies against which the Owner has no reasonable objection.

This insurance shall include the interests of the Owner, the Contractor in the Work as additional insureds, providing that such insurance is primary with respect to claims made by the additional insureds, and be in the form of Commercial Property insurance for physical loss or damage. If not covered under Commercial Property insurance or otherwise provided in the Contract Documents, the Contractor shall effect and maintain similar property insurance on portions of the Work stored off the site or in transit when such portions of the Work are to be included in a Request for Payment under paragraph 9.3.2.

§ 11.3.1.1 The form of policy for this coverage shall be "Replacement Value". The coverage under this policy shall include contemplated work and work in progress.

§ 11.3.1.2 If by the terms of this insurance any mandatory deductibles are required, or if the Contractor should elect, to purchase this insurance with deductible amounts, the Contractor shall be responsible for payment of the amount of all deductibles in the event of a claim.

§ 11.4 General Requirements

§ 11.4.1 If the Owner is damaged by the failure of the Contractor to maintain such insurance and to so notify the Owner, then the Contractor shall bear all reasonable costs properly attributable thereto. The Owner reserves the right to request and receive a copy of any certificates of insurance at any time, and any and all relevant endorsements to said policy.

§ 11.4.2 All insurance policies and/or certificates of insurance required under the Contract Documents shall be issued subject to the following stipulations by the Insurer:

- .1 Underwriter shall have no right of recovery or subrogation against the Owner it being the intent of the parties that the insurance policy so effected shall protect both parties and be primary coverage that afford additional insured status for any and all losses covered by the described insurance subject to the policy's terms and conditions.
- .2 The clause entitled "Other Insurance Provisions" contained in any policy including the Owner as an additional insured shall not apply to the Owner.
- .3 The insurance companies issuing the policy or policies shall have no recourse against the Owner for payment of any premiums due or for any assessments under any form of any policy.
- .4 Any and all deductibles contained in any insurance policy shall be assumed by and shall be the sole liability of the Contractor.

§ 11.4.3 With prior mutual agreement between Owner and Contractor, additional coverages or higher limits of liability may be required by the Owner should the scope or nature of the work change during the course of the Construction Contract. All Commercial General liability insurance policies required by this Article shall specifically provide that the coverage limits shall be exclusive of costs of defense, including attorneys' fees.

§ 11.4.4 The Contractor shall be solely responsible for ensuring that all subcontractors or suppliers obtain and maintain in force for the term of this Construction Contract insurance policies sufficient to meet the minimum coverages required under the Contract Documents.

§ 11.4.5 Nothing contained in this Article 11 shall be construed as limiting the extent of the Contractor's responsibility for payment of damages or liability resulting from his operations under the Construction Contract. Contractor agrees that he alone shall be completely responsible for procuring and maintaining insurance coverage to insure the Work. Any approvals of Contractor's insurance coverages by the Owner or the Project Manager shall not operate to the contrary

§ 11.4.6 The risk of loss to any property to be provided by Contractor to Owner pursuant to the Contract Documents shall be upon the Contractor until said property has been finally accepted by Owner.

§ 11.4.7 Nothing in this Article 11 shall be deemed or construed as a waiver of any of the protections to which Owner may be entitled under the Constitution of the State of Colorado or pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended.

§ 11.4.8 The Contractor shall provide the certificates of insurance and all endorsements required under the Contract Documents before commencing any Work. **It shall be an affirmative obligation of Contractor's insurance carrier to provide written notice to the Owner within thirty (30) days of the cancellation of any of the policies required herein and failure to do so shall constitute a material breach of the Contract.** If any insurance policy required herein and maintained by Contractor does not provide advance notice to third parties then, prior to any cancellation of such insurance, Contractor shall have new insurance policies in place that meet the requirements of this Agreement.

§ 11.4.9 All insurance required under the Contract Documents shall be obtained from financially responsible insurance companies with a current Best's Insurance Guide Rating of A- and Class VII or better, licensed in the State of Colorado, and approved by the Owner, and shall be maintained until the Contractor's Work is accepted by the Owner. The Contractor shall provide the certificates of insurance required under the Contract Documents prior to commencement of the Work, which approval shall not be unreasonably withheld. The Owner may, in writing, specifically indicate its approval or disapproval of each separate policy provided pursuant to the Contract Documents prior to commencement of the Work, which approval shall not be unreasonably withheld.

§ 11.4.10 All policies under the Contract Documents that are scheduled to expire prior to the time the Contractor's Work is finally accepted by the Owner shall be renewed prior to the scheduled expiration date and evidence of such renewal shall be submitted to the Owner for approval.

§ 11.4.11 **Intentionally Omitted.**

§ 11.4.12 All commercial general liability insurance and builder's risk/property insurance policies required by this Article shall be occurrence-based policies.

§ 11.5 Owner's Insurance

§ 11.5.1 Contractor shall provide Builders Risk insurance on a completed value basis covering the Work in its entirety and during the course of construction.

§ 11.5.2 Not Used

§ 11.5.3 Not Used

§ 11.6 Waivers of Subrogation

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

§ 11.6.2 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.

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

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

§11.7 Adjustment and Settlement of Insured Loss

§ 11.7.1 Not Used

§ 11.7.2 Not Used

§ 11.8 PERFORMANCE BOND AND PAYMENT BOND

§ 11.8.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. The Owner shall notify Contractor of whether it will require bonds within a reasonable time prior to the planned start of construction so that the Contractor has sufficient time to obtain such bonds.

§ 11.8.2 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.

§ 11.8.3 If such bonds are required by the Owner, the Contractor shall furnish, at the Contractor's expense, a separate performance bond and a labor and materials bond, for an amount not less than 100% of the Contract Price. The bonds shall be issued by a qualified corporate surety licensed to transact business in Colorado and appearing as a licensed corporate surety on the Federal Register. If at any time during performance of the Work the surety on the bonds shall be disqualified from doing business in Colorado, or shall become insolvent or otherwise impaired, the Contractor shall furnish bonds from an alternate surety acceptable to the Owner. The bonds shall remain in effect until completion of all warranty and guaranty work and shall be delivered to the Owner prior to the commencement of the Work. The Contractor shall secure an increase in the bonds in an amount equal to the cost of any additional work authorized pursuant to a duly executed change order or contract amendment.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor

shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5. All such Work shall be coordinated with Owner in order to limit the disruption of operation of the completed Project. All such warranty work shall be completed in compliance with the terms and conditions of the Contract. This provision or any other provision in this Section 12.2.2 does not relieve the Contractor in any way of conforming to the requirements of the Contract or correcting items not compliant with the Contract per applicable laws, statutes or any regulations, whether they are observable, concealed or in any other condition or status.

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

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign, sublet, or transfer (by operation of law or otherwise) any interest in the Contract as a whole without written consent of the other. If either party attempts to make an assignment, sublet or transfer 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 but after providing the Contractor notice, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

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

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

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

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

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

§ 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.

§ 13.6 Mandatory Immigration Provisions

§ 13.6.1 Contractor acknowledges that, prior to executing the Agreement, Contractor has certified that it does not knowingly employ or contract with an illegal alien to perform work under the Agreement and that the Contractor has participated in the E-Verify Program (formerly known as the Basic Pilot Program1) (the "E-Verify Program") or the Colorado Department of Labor and Employment (the "Department") program established by § 8-17.5-102(5)(c), C.R.S. (the "Department Program") in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement.

§ 13.6.2 Contractor shall not: (a) Knowingly employ or contract with an illegal alien to perform work under the Agreement; or (b) Enter into a contract with a subcontractor who fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

13.6.3 The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in the E-Verify Program or the Department Program. (a) In the event the Contractor uses the Department Program for the employment verification described herein, the Contractor shall comply with the requirements mandated by § 8-17.5-102(5)(c), C.R.S. including: i. The Contractor shall comply with the provisions of § 8-17.5-102(5)(c), C.R.S.; and ii. Contractor shall notify the Owner of its determination to participate in the Department Program, and iii. The Contractor must, within twenty days after hiring an employee who is newly hired to perform work under the Agreement, affirm that the Contractor has examined the legal work status of the employee, retained file copies of the documents required by 8 U.S.C. § 1324a and not altered or falsified the identification documents for the employee, and the Contractor must provide a written, notarized copy of the affirmation of compliance with § 8-17.5-102(5)(c), C.R.S. to the Owner.

13.6.4 Contractor shall not:

(a) Knowingly employ or contract with an illegal alien to perform work under the Agreement; or

(b) Enter into a contract with a subcontractor who fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

13.6.5 The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in the E-Verify Program or the Department Program.

(a) In the event the Contractor uses the Department Program for the employment verification described herein, the Contractor shall comply with the requirements mandated by § 8-17.5-102(5)(c), C.R.S. including:

13.6.6 The Contractor shall comply with the provisions of § 8-17.5-102(5)(c), C.R.S.; and ii. Contractor shall notify the Owner of its determination to participate in the Department Program, and iii. The Contractor must, within twenty days after hiring an employee who is newly hired to perform work under the Agreement, affirm that the Contractor has examined the legal work status of the employee, retained file copies of the documents required by 8 U.S.C. § 1324a and not altered or falsified the identification documents for the employee, and the Contractor must provide a written, notarized copy of the affirmation of compliance with § 8-17.5-102(5)(c), C.R.S. to the Owner.

§ 13.7 Force Majeure. Neither the Contractor nor the Owner shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by “force majeure” except the Contractor shall be entitled to an equitable adjustment of the Contract Time, Contract Sum and GMP on account thereof. As used in this Agreement, “force majeure” means acts of God, acts of the public enemy, acts or omissions of authorities having jurisdiction over utilities, or acts of terrorism, unusually severe weather, fires, floods, epidemics, pandemics, quarantines, strikes, labor disputes, freight embargoes, and unusual delays in delivery, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

§ 13.8 Order Of Precedence

§ 13.8.1 In the case of conflicts between the Drawings and Specifications, the Drawings shall govern. In any case of conflicts, omissions or errors in figures, drawings or specifications, discovered by the Contractor, the Contractor shall immediately submit the matter to the Owner and Architect for clarification. The Architect’s clarifications are final and binding on all Parties, subject to an equitable adjustment in Contract Time or Contract Sum pursuant to Articles 7 and 8 or dispute resolution in accordance with Article 15.

§ 13.8.2 Where figures are given, they shall be preferred to scaled dimensions.

§ 13.8.3 Any terms that have well-known technical or trade meanings, unless otherwise specifically defined in the Contract Documents, shall be interpreted in accordance with their well-known meanings.

§ 13.8.4 In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written Modifications to this Agreement; (b) Contractor's assumptions and clarifications, (c) this Agreement; (d) Drawings (large scale governing over small scale), Specifications and Addenda issued prior to the execution of this Agreement; (e) approved Submittals; (f) information furnished by the Owner; (g) other documents listed in the Agreement. Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

§ 13.9 **General Consultation.** The Contractor shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 13.10 When applicable law requires that services be performed by licensed professionals, the Contractor shall provide those services through qualified, licensed professionals.

§ 13.11 The Contractor, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 13.12 **Progress Reports**

§ 13.12.1 The Contractor shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Contractor, the Contractor shall report information below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Contractor's compensation and Reimbursable Expenses, if any;
- .11 Additional information as agreed to by the Owner and Contractors.

§ 13.13 **Key Personnel, Contractors and Suppliers**

§ 13.13.1 The Contractor shall not employ personnel, or contract with Contractors or suppliers 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 and timely objection.

§ 13.13.2 If the Contractor changes any of the personnel, Contractors or suppliers identified in the Exhibit A Amendment, the Contractor shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 10 days to the Contractor in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 10 day period shall constitute notice of no reasonable objection.

§ 13.13.3 Except for those persons or entities already identified or required in the Exhibit A Amendment, the Contractor as soon as practicable after execution of the Exhibit A Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the

Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 13.13.4 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 rejected person or entity 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 person or entity'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.

§ 13.13.5 No provision of this Agreement shall be construed or interpreted: i) to directly or indirectly obligate Owner to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or iii) as a donation or grant by Owner to or in aid of any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

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

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

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

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials or equipment to complete the Work in a diligent, efficient, timely, workmanlike, skillful and careful manner;
- .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 or material breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, and reasonable opportunity to commence and continue to cure, 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, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include 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 Contractor shall be entitled to receive payment for Work properly executed , plus costs incurred as a result of such termination and overhead and profit thereon.

§ 14.4.4.4 The terms of this Contract are contingent upon sufficient appropriations and authorizations being made by the Owner for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the Owner, this Contract shall terminate, without penalty or expense to the Owner (except for amounts owed to Contractor for Work performed up to the date of such notice of termination), upon written notice being given by the Owner to the Contractor. Upon receipt of such notice, the Contractor shall take immediate action to mitigate any damage or additional expense. Owner shall pay Contractor amounts due and owing for Work performed up to the date of such termination together with all other costs incurred as a result of termination.

§ 14.4.5 No provision of this Agreement shall be construed or interpreted: i) to directly or indirectly obligate Owner to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or iii) as a donation or grant by Owner to or in aid of any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution. Provided that nothing herein is intended to limit the Contractor's right to payment for amounts owed under the Contract Documents.

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

§ 15.1.2.1 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.. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.2.2 The Contractor shall maintain at the site for the Client a fully accessible electronic record copy of all drawings, specifications, addenda, Change Orders and other modifications, in good order and marked currently to record all changes during construction. The record drawings will be accessible to the Owner and their representatives for review and coordination. If the record drawings are not maintained to the satisfaction of the Owner and the Contractor fails or refuses to keep these documents current, the Contractor shall not be entitled to progress payments until it makes the necessary changes to the documents to make them current.

§ 15.1.2.3 The Contractor and their subcontractors shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 15.1.2.4 The Contractor shall perform the Work in accordance with the Contract Documents. The Contractor shall not be relieved of the obligation to perform the Work in accordance with the Contract Documents by the activities, tests, inspections or approvals of the Owner.

§ 15.1.2.5 Neither the Contractor nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Contractor determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Contractor shall execute a Modification to the Contract.

§ 15.1.3 Notice of Claims

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

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

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

If the Contractor intends to make a Claim for an increase in the Contract Sum, written 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 intends 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.

§ 15.1.6.3 Notwithstanding any other provision of Article 15, all notice of claims for extensions of time shall be made in writing to the Owner within 7 days after Contractor becomes aware of the delay; otherwise, they may be disallowed.

It is expressly understood and agreed, by and between the Contractor and Owner, that the Contract Time for the completion of the Work is a reasonable time, taking into consideration the normal average climatic and economic conditions and other factors prevailing in the locality of the Work. The Contract Time anticipates "Normal" average weather and climate conditions in and around vicinity of the project site during the times of year that the construction will be carried out. Extensions of time based upon weather conditions shall be granted only if the Contractor demonstrates clearly that such conditions adversely affected the Contractor's Work and thus required additional time to complete the Work.

The following specifies the procedure for the determination of time extensions for weather delays:

(a) An actual adverse weather day must prevent Work for 50 percent or more of the Contractor's workday, delay Work critical to the timely completion of the Project, and be documented by the Contractor. The Contractor shall notify the Owner in writing if Work cannot proceed on a given date, within two calendar days of that date. The Owner will use the above written notification in determining the number of calendar days for which Work was delayed during each month.

(b) The Contractor shall track approved weather delays in the meeting minutes. If necessary, a Change Order will be executed for an increase in the Contract Time along with the issuance of substantial completion.

(c) The Contractor's Project Schedule must reflect the above-anticipated adverse weather delays on all weather-dependent activities. The Contractor shall comply with the portions of the Contract Documents relating to its Project Schedule and amendments thereto which result from the "unusually severe" weather condition.

§ 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 Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to 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. Owner is a public entity and as such is a political subdivision of the state of Colorado. The provisions of this Agreement shall be deemed to include the statutory provisions of Article 26 of Title 38, Colorado Revised Statutes, as those statutory provisions apply to political subdivisions of the state of Colorado. To the extent the provisions of this Agreement or any other Contract Document that comprises part of this Agreement conflict with the applicable statutory provisions of Article 26 of Title 38, the provisions of Article 26 of Title 38 shall control.

§ 15.3 Mediation

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

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

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

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

§ 15.3.4 Litigation

The Contract shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any dispute concerning the Contract or the Project shall be exclusively in the federal court located in Colorado or the state court located in Weld, County, State of Colorado.

HIGH PLAINS LIBRARY DISTRICT

BOARD OF TRUSTEES COMMUNICATION

Meeting date: September 16 th , 2024
Type of item: Action
Subject: Closure of Farr and Carbon Valley Regional Libraries for Remodeling
Presented by: Dr. Matthew Hортt, HPLD Executive Director
Recommendation: Staff Recommend the Board Approve the closure of both Carbon Valley & Farr Regional Libraries for up to 3 weeks during construction

Background

In January 2023, the Board approved the closure of the Centennial Park Library for 2 ½ weeks during construction. This decision allowed for a shorter construction schedule and limited costs. The design and construction teams have discussed the possibility of taking similar actions for the Carbon Valley and Farr refresh projects.

Considerations

- The design and construction teams recommend considering closing both facilities for up to 3 weeks
- The closures would limit the phasing that will need to be done on the projects and result in cost savings
- By approving up to 3 weeks, this will give the construction teams flexibility to work with subcontractors for the most efficient use of resources
- Library staff will offer curbside pickup during the closures

Recommendation

Staff Recommend the Board Approve the Refresh Contract

HIGH PLAINS LIBRARY DISTRICT

BOARD OF TRUSTEES COMMUNICATION

Meeting date: September 16 th , 2024
Type of item: Action
Subject: Owner’s Rep Request from Milliken Library Project
Presented by: Dr. Matthew Hottt, Executive Director
Staff Recommendation: Staff recommend that the Board accept and approve the Owner’s Rep Task Order for the project and renew the approval of the Hudson Library’s Owner’s Rep Task order from 2024

Background

On June 17th, 2019, following a discussion on construction costs, the Board gave staff direction to recommend guidelines for Member Libraries’ use of contracted Owner’s Representative services. On September 16th, 2019, the Board approved the Owner’s Rep Guidelines. The Glenn A Jones Memorial Library has been evaluating a possible construction project in Milliken. Glenn A Jones Memorial Library is planning on using Wember Inc as an Owner’s Rep and have requested the Board approve the task order. The project budget has yet to be determined, however based on the planned square footage (7,000) the cost would be over \$1,000,000.

In September 2023, the Board approved the Hudson Public Library’s use of Wember Inc for an Owner’s Rep for a possible project in either Keenesburg or Lochbuie in 2024. The approved funds have yet to be used, however staff recommend they be rolled over to 2025.

Considerations

Owner’s Rep Guidelines

1. Member Library construction project must be presented, and Owner’s Rep Task Order approved by the HPLD board prior to any fees being paid. This must be done in time for budget process for the year that the fees are expected to be paid – by mid-August the year prior to when the fees will be paid.
2. Project limit on a 9% scale of the total expected project cost with a maximum of \$100,000 limit per project.
3. Limit of 1 project per 2-year cycle
4. Owners Rep fees will be paid by the member library and a request submitted to HPLD for reimbursement with copies of the invoices.
5. Each project will require that the Member Library submit for grants and reimburse HPLD if grants are received.

Glenn A. Jones Memorial Library

Project Budget: \$ TBD
Wember Inc Fee: up to \$100,000

Hudson Public Library

Project Budget: \$1,755,431.00
Wember Inc Fee: \$99,000

Options

1. **Accept and approve the Owner's Rep Task Oder**
2. **Accept and approve the Owner's Rep Task Order with amendments**
3. **Provide Staff with additional direction**

Staff Recommendation

Staff recommend that the Board accept and approve the Owner's Rep Task Order for the Milliken project and renew the approval of the Hudson Library's Owner's Rep Task order from 2024

High Plains Library District, On-Call Task Order

Project Name: HOC-GJM-Glenn A Jones M.D. Memorial Library
Issue Date: Milliken location August 27, 2024
Purpose: Proposal and Work Order Contract

High Plains Library District
 Dr. Matthew Hortt, Executive Director
 2650 W 29th St.
 Greeley, CO 80631

Glenn A Jones MD Memorial Library
 Kristi Plumb, Director
 400 South Parish Avenue
 Johnstown, CO 80534

Dr. Hortt and Ms. Plumb:

Wember is issuing this proposal and project plan as a follow-up to your request to have Wember provide Owner’s Representation Services for approximately 9,000 SF of floor space of the current Milliken Middle School Building to renovate into the new Milliken Branch Library. This proposal outlines the items that the work order will include.

The proposed scope and schedule will remain unknown until the agreement with the school district is finalized and the construction scope of work is defined.

Professional Service Fees, Task Order Contract Amount:

1. Wember - Owner’s Representation Max of \$100.000

OWNER:
 High Plains Library District
 2650 W 29th St
 Greeley, CO 80631

CONSULTANT:
 Wember, Inc., a Colorado Corporation
 7350 E Progress Pl #100
 Greenwood Village, CO 80111

By: _____
 Dr Matt Hortt, Executive Director Date

By: _____
 Dan W. Spykstra, Vice President Date

OWNER:
 Glenn A Jones Library
 400 S Parish Ave
 Johnstown, CO 80534

By: _____
 Kristi Plumb, Director Date

EXHIBIT A
Scope of Services

General

1. Set up and manage Project Management Online Software including shared documents, contacts and schedules.
2. Establish Owner's Representative as the central point of contact for coordinating all project activities including process for approvals, maintenance of project records, responses to inquiries from consultants, suppliers and contractors, transfer of information to decision makers, coordination of project information flow and progress reports to the Owner.
3. Be available to give monthly presentations to staff and the board of directors.
4. Provide oversight and coordination of the project from Owner's perspective to effectively balance costs, time and quality.
5. Work with the team to refine the scope of work to be within Owner's budget. Upon Owner's approval of the design schematics and budget, the design team will prepare the necessary architectural and other design development documents. Consultant will review design with respect to compliance with agreed-upon project objectives.
6. Represent the Owner at regular project meetings and provide advice that will help facilitate economical, efficient and desirable development and construction procedures. Track project related issues, assign responsibility and track follow-through.
7. Act as liaison between the project team members and assist in the obtaining of building permits, other governmental approvals, authorizations and sign-offs as necessary for the design, construction and operations of the project.
8. Develop a communication plan and decision making structure
9. Develop and track a master project budget including soft costs and construction costs. Manage updates to a master budget to be tracked from start to completion of the project. Assist the Owner with monitoring, identify cost savings and design options/products.
10. Generate, monitor and update master schedule milestones for all design phases, design review, bidding activities, purchase of major equipment, lead times for fixtures and equipment, coordination of activities outside construction, and coordination of key points with Owner staff.
11. Establish a process by which all changes can be priced, submitted, reviewed and added or subtracted from the project cost. Review and submit, with recommendations, all requests for payment under vendor agreements, provided that all such payments shall be subject to Owner approval. Coordinate with Owner's finance and accounting departments on related budget and financial matters.
12. Coordinate with fire departments, cable, power and phone companies to progress design and construction.
13. Submit to the Owner suggestions or changes that could improve the design or reduce costs.
14. Develop a communication organization chart for communication flow and decision making.
15. Maintain electronic files for Owner.
16. Review the options for project delivery methods based on program needs and recommend an approach.

Procurement

1. Manage architectural and general contractor selection process including generating RFPs, checking references, analyzing fees, managing the interview process and attending interviews.
2. Review contracts for the architect and general contractor in conjunction with the Owner's legal representation.
3. Manage the procurement of the surveyor for a meets and bounds survey, if needed.
4. Manage the procurement of the geotechnical engineering firm, if needed.
5. Manage the procurement of the material testing firm, if needed.
6. Monitor the procurement process, led by the design team, of procurement of the FF&E required for the project.
7. Assist the Owner with developing/implementing and coordinating AV/Security/technology needs of the project. Assist with the selection of consultants and vendors led by the ownership IT department or architect consultant
8. Assist the design team and owner with the procurement of FF&E.
9. Manage the receipt of W-9 and insurance documents from procured team members

Design and Planning

1. Serve as the main Owner contact for the design team
2. Provide interpretation of plans and specifications.
3. Review existing documentation and data, manage existing data and new project data
4. Discuss project with the Owner to review the critical information gathered related to the project and analyze strategies for the project's success
5. Meet with the design team related to project progress and design decisions required
6. Work with team to establish proper project quality controls during construction phase
7. Work with team to refine scope to be within the owners budget.
8. Analyze existing site for issues related to construction implementation and logistics
9. Review the drawings and plans on behalf of the Owner. Provide comments from ownership team to design team and track to completion.
10. Work with the design team and General Contractor to assist in obtaining building permits, other governmental approvals, authorizations and sign-offs as necessary for the design and construction of the project.
11. Work with utility providers (gas, electric, internet) and design team to ensure services are delivered to the site
12. Work with design team estimator or General Contractor to track estimates and cost saving options to align with the project budget.
13. Utilize the help of furniture vendors for layout and space plan confirmation.

Bidding and Permitting

1. Confirm that the permit process is completed prior to start of construction.
2. Coordinate and review any modifications to pricing with the Owner.
3. Review insurance and bonding requirements.
4. Review subcontractor bids and bidding process and confirm that a competitive process has been followed in obtaining bids from subcontractors, assist in the review of bids and subcontractor selection, and take necessary action such that subcontractors are properly insured.
5. Issue final approval of Guaranteed Maximum Price award.

Construction Administration

1. Serve as the main Owner contact for the general contractor.
2. Verify the contractor has a safety plan for the construction site.
3. Work with the General Contractor on schedule and logistics plan.
4. Advise the Owner on issues including construction costs, schedule, coordination, and owner occupancy.
5. Assist with planning for the placement of construction trailers, fences, signage, staging areas, and construction traffic zones.
6. Monitor construction costs.
7. Review and monitor preliminary and final construction schedules.
8. Attend weekly construction meetings.
9. Observe construction activities. Minimum of once a week anticipated. Document weekly site observations. Monitor design team reports and follow up and close out quality related issues.
10. Monitor inspections and testing reports take place as required. Review reports to take necessary action such that deficiencies are addressed.
11. Monitor the construction phase activities of the design and engineering firm(s), including the following:
 - i. Technical review and approval of materials submittals and samples
 - ii. Resolution of technical questions that may arise during construction
 - iii. Review and opinion on change orders subject to Owner approval
12. Monitor progress of construction work to determine compliance with the drawings and specifications. Photograph construction progress. Provide observations regarding quality of workmanship, conformity to plans and specs. Address corrective measures to mitigate and correct non-conforming workmanship per the Contract Documents as identified by the Architect or Contractor. Notify the Owner of non-conforming work with the Contract Documents and methods to resolve the issues.
13. Resolve questions asked of Owner that may arise during construction.
14. Maintain Owner's record copies and permanent project files of necessary design and construction related communications. Includes periodic construction progress photographs.
15. Report to and advise Owner on issues of construction cost, schedule and Owner-related items.
16. Review progress payment requests of contractor and provide payment recommendations to Owner.
17. Monitor design team's construction-phase performance with respect to timeliness of documentation, type and frequency of contractually agreed-to project reporting and other documentation relied upon by Owner and Owner's Representative.

Close-Out and Post-Construction

1. Coordinate the moving of new/old/stored furnishings and equipment into the completed facility.
2. Monitor the creation of the design team punch list monitor progress and completion of corrective work identified on punch list.
3. Recommend to the Owner the approval of the issuance of the Certificate of Substantial Completion.
4. Provide recommendation to Owner regarding final acceptance of project and release of final payment to contractor(s).
5. Monitor the turnover of stock supplies of materials as specified by the contract documents.
6. Monitor the preparation of operations, maintenance manuals and as-built plans and specifications on behalf of the Owner.
7. Facilitate contractor's training of appropriate, Owner selected facilities staff members on subjects of operations and maintenance. Facilitate post-occupancy evaluation following approximately 11 months.

Warranty Period (scope below will be invoiced hourly)

1. Assist the Owner with determining the warranty period. If an extended warranty is considered, assist the Owner with understanding the cost and value associated with extended warranties to evaluate if the Owner wants to consider for additional cost.
2. Schedule the 11 month warranty walk through with the design team if the warranty is minimum of 1 year.
3. Assist the Owner with coordination with the contractor if needed for building issues/complaints and determine necessary steps to take to address these items. Address warranty items to confirm the requirements of the warranty are met.

Schedule

- To be determined

REIMBURSABLE EXPENSES

1. Reimbursable Expenses are included in the Fee.
2. They exclude: Printing large format drawings, owner requested meals and requested trips outside of the region (including lodging, travel and meals)

Anticipated Reimbursables\$ In Fee

Hourly Rates, 2025: (For reference as project is lump sum. rates increase 5% annually starting in 2026)

Owner’s Representative – Principal	\$ 196/Hour
Owner’s Representative – Senior Project Manager	\$ 159/Hour
Owner’s Representative – Project Manager	\$ 140/Hour
Owner’s Representative – Assistant Project Manager	\$ 90/Hour

Clarifications:

- Fees are based on the scope of services included in this proposal
- Fees are based on schedule as outlined in scope
- Wember Inc. Fees do not include detailed cost estimating, but do include estimate review & validation, as well and change order review.
- The warranty phase will be billed hourly and the transition from monthly billing to hourly will commence at the time the final letter of substantial completion is issued to the General Contractor

Excluded but Available Services:

- Project is not anticipated to be LEED Certified and has not been included in this fee proposal.

HIGH PLAINS LIBRARY DISTRICT

BOARD OF TRUSTEES COMMUNICATION

Meeting date: September 16 th , 2024
Type of item: Information
Subject: Friends of Raymer MOU/Lease
Presented by: Dr. Matthew Hорт, HPLD Executive Director
Recommendation: Information only, no action to be taken

Background

The Friends of Raymer have been working on converting a Mercantile Building in New Raymer into a Local History Center. This has been an ongoing project since the District was first approached about the project in 2021. Initial discussion on this project included the library working with the Friends of Raymer to include a Public Computing Center (PCC) in the Local History Center. The PCC would be very similar to the one which we installed in the Briggsdale Community Library.

In April, staff were contacted by the Friends of Raymer regarding the project. The Friends of Raymer are near completion of the project. During the April 2024 HPLD Board Meeting, the Trustees approved a Library Support Fund for the Raymer Project and directed Staff to negotiate an MOU. Staff have been working with the Friends of Raymer and our legal counsel on the MOU. The agreement is based on the existing MOU with the Briggsdale Community Library and includes verbiage on the Library Support Fund. In May 2024, the HPLD Board approved the MOU as did the Friends of Raymer. In mid-August, staff were contacted by the Friends of Raymer because they have been informed that their insurance on the building will be canceled due to a lack of a lease between the Friends of Raymer and HPLD. The Friends of Raymer have asked if HPLD will consider entering into a lease for use of the space.

Considerations

- Lease terms will mirror the MOU terms and be set at the rate of the Library Support Fund
- Lease would give HPLD more control of the facility than apparent in the MOU
- Legal Counsel recommends the use of a gross commercial lease

Staff Recommendation

Information only, no action to be taken

HIGH PLAINS LIBRARY DISTRICT

BOARD OF TRUSTEES COMMUNICATION

Meeting date: September 16 th , 2024
Type of item: Action
Subject: Town of Mead IGA
Presented by: Dr. Matthew Hорт, Executive Director
Recommendation: Staff recommend that the Board approve the IGA with the Town of Mead

Background

The development of the overall site for the Mead Library is being jointly developed by the High Plains Library District and the Mountain View Fire District. In order to move forward with the project, both entities need to enter into a Pre-development IGA with the Town of Mead. Both districts have been in negotiations with the Town. Legal counsel from all three entities have drafted the agreement and staff on all sides are recommending the approval of the IGA.

Considerations

- Three final points needed to be addressed and have been resolved
- 2.b.ii temporary landscaping -we received additional details on this point
- 5.b deleted the off-street parking oversizing and agreement requirement. Was accepted by the town of Mead
- 6.d.i If reverter and over 90% complete, then they get the credit of 225K, over 50% complete, credit \$135K. This was an area of concern, but with adjustments it ends up favoring the districts

Recommendation

Staff recommend that the Board approve the IGA with the Town of Mead

**PRE-DEVELOPMENT INTERGOVERNMENTAL AGREEMENT
FOR TRACT B - LIBERTY RANCH**

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is made and entered into as of the date of the last signature below (the "Effective Date"), by and between the Town of Mead, Colorado, a municipal corporation of the State of Colorado ("Mead" or the "Town"), Mountain View Fire Protection District, a political subdivision of the State of Colorado and a fire protection district organized and existing pursuant to C.R.S. §§ 32-1-101, *et seq.* (the "Fire District"), and High Plains Library District, a political subdivision of the State of Colorado and a library district organized and existing pursuant to Colorado Revised Statutes (C.R.S.) §§ 24-90-101, *et seq.* (the "Library District"). Mead, the Fire District, and the Library District are sometimes referred to individually as a "Party" and collectively as the "Parties." The Fire District and the Library District are sometimes referred to individually as a "District" and collectively as the "Districts."

RECITALS

WHEREAS, pursuant to C.R.S. §§ 32-1-101, *et seq.*, the Fire District is authorized to provide fire protection services to all areas within its boundaries; and

WHEREAS, pursuant to C.R.S. §§ 24-90-101, *et seq.*, the Library District is authorized to provide library services to all areas within its boundaries; and

WHEREAS, Mead is located within the boundaries of the Fire District and the Library District; and

WHEREAS, the Board of Trustees of the Town (the "Town Board") and the Board of ~~Directors~~Trustees of the Fire District agree that locating a fire station within the boundaries of the Town will further the Town and Fire District's common interest that fire protection services be provided to existing and future residents of the Town; and

WHEREAS, the Town Board and the Board of Trustees of the Library District agree that locating a library within the boundaries of the Town will further the Town and Library District's common interest that a library be provided to existing and future residents of the Town; and

WHEREAS, Mead owns approximately 32.69 acres of land in the Town of Mead legally described as Tract B, Liberty Ranch Filing No. 2, Second Amendment, recorded with the County of Weld Clerk and Recorder, State of Colorado at Reception No. 3996323 (the "Property"); and

WHEREAS, on July 10, 2023, the Town Board approved Resolution No. 44-R-2023 ("Resolution 44"), Approving the Liberty Ranch, Tract B, Municipal Facilities Master Site Plan (the "Master Plan"); and

WHEREAS, the Master Plan contemplates the future use of the Property for a fire station,

library, police station, and recreational fields with concession buildings; and

WHEREAS, the Master Plan also depicts two active oil and gas wells located within the northeastern and southwestern portions of the Property (as generally shown on the Master Plan, the “O&G Wells”); and

WHEREAS, the Fire District desires to acquire land within the Property (as defined in Subsection 2.a), the “Fire Lot”) and to construct a fire station on the Fire Lot; and

WHEREAS, the Library District desires to acquire land within the Property (as defined in Subsection 2.a), the “Library Lot”) and to construct a library on the Library Lot; and

WHEREAS, the Town has determined it is in the best interests of the Town and its residents that the Town enter into this Agreement to facilitate the funding, design, and construction of the Project (defined below); and

WHEREAS, the Town desires to facilitate and support the construction of a fire station and library within the Property in accordance with the terms of this Agreement by conveying, for nominal consideration, the Fire Lot and Library Lot to the Fire District and Library District, respectively, contributing land for off-site public improvements, contributing Town staff time, and waiving certain Town fees and costs; and

WHEREAS, the construction and installation of public improvements, including roadway, bicycle, on-street parking, landscaping, and sidewalk improvements and sanitary sewer, storm water, water, and irrigation improvements, within and adjacent to the Property are needed to serve the desired fire station and library and facilitate development of the Property as contemplated by the Master Plan (as further defined in Subsection 2.b), the “Public Improvements”); and

WHEREAS, the Parties desire to memorialize in this Agreement their agreements and understandings related to subdividing the Property, site planning for the Fire Lot and Library Lot, and the funding, design, and construction of the Public Improvements (collectively, the “Project”), and each Party’s respective role and responsibilities with respect to the same; and

WHEREAS, Resolution 44 authorized the Town Attorney and Town Manager to negotiate this Agreement with the Fire District and Library District, conditioned on this Agreement being brought to the Town Board for final review and approval; and

WHEREAS, the Parties are authorized to enter into this Agreement by Colorado Revised Statutes (C.R.S.) Section 29-1-203 and the Colorado Constitution Article XIV, Section 18(2).

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

- 1. INCORPORATION OF RECITALS.** The Recitals set forth above are incorporated and made a part of this Agreement.

2. DESCRIPTION OF THE PROJECT.

- a) **Subdivision of the Property.** The Fire District shall be responsible for the preparation and submission of a minor subdivision to divide the Property into six (6) lots and rights-of-way in accordance with the Town's minor subdivision process (the "Plat"). The Plat shall create a 3.0-acre lot for future conveyance to the Fire District (the "Fire Lot"), a 3.0-acre lot for future conveyance to the Library District (the "Library Lot"), 4.75-acre and 6.75-acre lots for the O&G Wells, a 3.0-acre lot for a future Town police station, and an 8.37-acre lot for Town recreational uses. The Parties agree that the foregoing acreages are approximate and that final acreages shall be determined during the minor subdivision process. The Public Improvements required by this Agreement and the rights-of-way and easements shown on **Exhibit A** and **Exhibit B** to this Agreement shall be shown on the Plat. Without limiting the foregoing, the Fire District shall be responsible for the engagement and oversight of third-party contractors and payment of all fees and costs related to the Plat, and the Library District shall be responsible for reimbursing the Fire District the Library District's share of such fees and costs as set forth in a separate agreement between the Fire District and Library District.
- b) **Public Improvements.** The Fire District shall be responsible for designing, permitting, and constructing the following public improvements (collectively, the "Public Improvements").
- i. Irrigation, sanitary sewer, water, and storm water improvements as shown on the Master Utility Plan for Liberty Ranch Filing No. 2, 3rd Amendment attached as **Exhibit A** to this Agreement (as may be amended during the minor subdivision process, the "Master Utility Plan").
 - ii. The new roadway to be named "Chaparral Street" at the general location shown on the Master Utility Plan. Chaparral Street shall be constructed in compliance with the Road Section Details for Liberty Ranch Filing No. 2, 3rd Amendment attached as **Exhibit B** to this Agreement (as may be amended during the minor subdivision process, the "Road Section Details"). Traffic calming improvements consistent with those shown on the Road Section Details shall be constructed where Chaparral Street connects with Birdle Drive in the Liberty Ranch neighborhood. Landscaping meeting the Mead Municipal Code (the "Town Code") requirements shall be installed along the western side of Chaparral Street (*i.e.*, the Library Lot frontage). However, only interim landscaping shall be installed along the eastern side of Chaparral Street (*i.e.*, the frontage along the northeastern O&G Well). Detailed landscaping requirements shall be determined during the minor subdivision process.
 - iii. The new roadway to be named "Liberty Drive" at the general location shown on the Master Utility Plan. Liberty Drive shall be constructed in compliance with the Road Section Details. Landscaping meeting the requirements of the Town Code shall be installed along the southern side of Liberty Drive (*i.e.*, the Fire Lot frontage). However, only interim landscaping shall be installed along

Commented [1]: Town still reviewing Master Utility Plan and Road Section Details; Town will provide comments end of next week with plat comments.

the northern side of Liberty Drive (*i.e.*, the frontage along the northeastern O&G Well). Detailed landscaping requirements shall be determined during the minor subdivision process.

- iv. Installation of emergency-vehicle traffic control signal at the intersection of the driveway for the Fire Lot and WCR 7.
- v. Widening of the west side of Weld County Road (“WCR”) 7 between the Liberty Drive and WCR 7 intersection and the emergency driveway from the Fire Lot onto WCR 7. WCR 7 shall be widened in compliance with the Road Section Details; except that the Fire District shall not be responsible for installing the 10-foot trail shown in the Road Section Details (the “Town Trail”). Rather, the Fire District shall construct a tie-in for the Town Trail at the Liberty Drive and WCR 7 intersection and dedicate an easement for the Town Trail to the Town either, at the Town’s discretion, by reservation to the Town in the Plat or dedication to the Town by separate agreement of the Town and Fire District.
- vi. If required by the traffic study for the Project, construction of auxiliary lanes along WCR 7, such as: a deceleration along the west side of WCR 7 into Liberty Drive; a left turn from WCR 7 into Liberty Drive; and/or an acceleration lane from Liberty Drive heading south on CR 7.

If the drainage plan for the Project complies with the Liberty Ranch Filing No. 2 drainage report and any associated amendments, a separate storm water detention facility will not be required for the Project.

Without limiting the foregoing, the Fire District shall be responsible for the engagement and oversight of third-party contractors and payment of all fees and costs related to the Public Improvements, and the Library District shall be responsible for reimbursing the Fire District the Library District’s share of such fees and costs as set forth in a separate agreement between the Fire District and Library District.

- c) **Site Planning.** The Fire District and Library District shall each be responsible for, at each Party’s sole cost, preparing and obtaining Town approval of the site plan for the Fire Lot and the site plan for the Library Lot, respectively. The Fire District site plan and construction of the fire station shall accommodate the Town’s design and construction plans for the Town Trail.

3. OTHER AGREEMENTS; TOWN FEES AND COSTS.

- a) **Minor subdivision and site plans.** As part of the minor subdivision and site plan processes, the Districts shall be required to enter into a subdivision improvement agreement and a site plan agreement in accordance with Sections 16-4-130 and 16-4-100 of the Town Code, respectively; provided, however, if a District submits its site plan contemporaneously with the Plat, the subdivision improvement agreement may be combined with the site plan agreement. As part of the minor subdivision and site plan processes, the Districts shall also be required to enter into an agreement for payment of review and development expenses incurred by the Town in accordance with Sections

16-4-80 and 16-4-100 of the Town Code; provided however, that the Town shall waive the Town's application fees and the costs associated with Town staff's review of the Plat and the Districts' site plans. The Districts shall remain responsible for the cost of review by the Town's outside consultants, including (without limitation) traffic engineering review, drainage engineering review, review by the Town's engineering firm (currently, JVA, Incorporated), and legal review.

- b) **Development impact fees.** The Fire District and Library District shall be responsible for payment of development impact fees imposed by the Town in accordance with Article VI of Chapter 4 of the Town Code. The fees shall be paid prior to issuance of a building permit for development occurring on each of the Fire Lot and Library Lot and shall be calculated based on the then-current rate imposed for the Office & Institutional development type.
 - c) **Building permit fees.** The Town shall waive the Town's application fees for Town building permits.
 - d) **Town inspection fees.** The Town shall waive the cost of inspections by Town staff. The Districts shall remain responsible for the cost of inspections by the Town's outside consultants.
4. **NEIGHBORHOOD MEETING.** The Fire District shall be responsible, at its cost (subject to reimbursement from the Library District per a separate agreement between the Districts), for scheduling, holding, and conducting at least one neighborhood meeting with the Liberty Ranch neighborhood located immediately west of the Property. The Parties anticipate that the meeting will be held at the current fire station and facilitated by the Project architect (Oz Architecture). Town staff shall attend and be available to answer questions during the neighborhood meeting. The Town shall waive costs for Town staff time related to the neighborhood meeting.

5. **STANDARDS.**

- a) The Project shall be designed and constructed in compliance with all applicable federal, state, and local laws, rules, and regulations, including (without limitation) the Americans with Disabilities Act, as amended.

b) The Fire Lot and Library Lot shall include off street parking in an amount equal to at least 125% of the off street parking spaces required by the Town Code, with the actual amount to be determined during the site plan processes for the Fire Lot and Library Lot. The Parties shall endeavor in good faith to enter into shared parking agreement(s) as part of the site plan processes. Easements for public use of excess off street parking spaces shall be provided to the Town as conditions of site plan approvals.

Formatted: Highlight

e)b) If the Town proposes to amend the Town Code by adding a public use zoning district, and proposes to rezone the Property to said district, the Town agrees that no such rezoning shall impact the use of the Property by the Fire District and Library

Formatted: Highlight

District Districts agree to not oppose the text amendment or rezoning.

Commented [2]: Town anticipates creating a public use zoning district in the future which likely would be applied to the Property. Town requested this language in the IGA.

6. **CONVEYANCE OF LOTS.** The Town agrees to convey, and the Fire District and Library District agree to acquire, the Fire Lot and Library Lot, respectively, upon the terms and conditions of this Section 6.

a) **Consideration.** The consideration for the Fire Lot and Library Lot shall be \$10 for each of said lots plus the Districts' performance of their obligations in this Agreement.

b) **No Warranties.** The Fire District and Library District acknowledge and agree that they are acquiring their respective lots "AS IS," "WHERE IS," "WITH ALL FAULTS," and "WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED," including, without limitation, the physical condition of the lots.

c) **Closings.**

i. The Town shall convey the Fire Lot to the Fire District by bargain and sale deed upon the Town approval of the site plan for the Fire Lot and execution by the Town and the Fire District of the corresponding site plan agreement.

ii. The Town shall convey the Library Lot to the Library District by bargain and sale deed upon the Town approval of the site plan for the Library Lot and execution by the Town and the Library District of the corresponding site plan agreement.

d) **Town's Reversionary Interests.**

i. The deed for the Fire Lot shall include a right of re-entry in the Town if the Fire District: (1) fails to pull a building permit for vertical construction of the fire station within two (2) years of the Effective Date of this Agreement (the "Fire BP Condition"), or (2) fails to obtain a temporary certificate of occupancy ("TCO") for the fire station within two (2) years of the issuance of the initial building permit for vertical construction of the fire station (the "Fire TCO Condition"). The deed shall include language that if the Fire District fails to cure the Fire BP Condition within thirty (30) days after receipt by the Fire District of written notice from the Town or the Fire TCO Condition within ninety (90) days after receipt by the Fire District of written notice from the Town, then the Town shall be entitled to a reconveyance of the Fire Lot by bargain and sale deed and the delivery of exclusive possession thereto. In addition, the deed shall state that if the right of re-entry is the result of a failure of the Fire TCO Condition, then the Town's right to a reconveyance of the Fire Lot shall be subject to payment to the Fire District of the documented costs incurred by the Fire District for the vertical improvements. If a reconveyance is triggered by the failure of the Fire TCO Condition and the vertical improvements are more than 50% complete, the purchase price for the cost of

Commented [3]: I've added: cure periods for a failure of these conditions subsequent to conveyance; language providing for Districts to recoup costs less an agreed-to value for the land if TCO Condition not met; and automatic termination of this right once BP and TCO conditions met.

the vertical improvements shall be reduced based on the level of development as set forth below:

- o Vertical Development is over 90% complete: less \$225,000.00
- o Vertical Development is over 50% complete: less \$135,000

i. (i.e., the approximate value of the Fire Lot as of the Effective Date):

- ii. The deed for the Library Lot shall include a right of re-entry in the Town if the Library District: (1) fails to pull a building permit for vertical construction of the library within two (2) years of the Effective Date of this Agreement (the "Library BP Condition"), or (2) fails to obtain a TCO for the library within two (2) years of the issuance of the initial building permit for vertical construction of the library (the "Library TCO Condition"). The deed shall include language that if the Library District fails to cure the Library BP Condition within thirty (30) days after receipt by the Library District of written notice from the Town or the Library TCO Condition within ninety (90) days after receipt by the Library District of written notice from the Town, then the Town shall be entitled to a reconveyance of the Library Lot by bargain and sale deed and the delivery of exclusive possession thereto. In addition, the deed shall state that if the right of re-entry is the result of a failure of the Library TCO Condition, then the Town's right to a reconveyance of the Library Lot shall be subject to payment to the Library District of the documented costs incurred by the Library District for the vertical improvements less \$225,000.00 (i.e., the approximate value of the Library Lot as of the Effective Date).
- iii. The deeds for the Fire Lot and Library Lot shall also state that the Town's right of re-entry shall expire automatically upon issuance of a TCO. In addition, following the issuance of a TCO, the Town agrees to execute and record a notice of release of its right of re-entry upon request of the applicable District.

e) **Costs and fees.** The Fire District shall pay recording costs related to the closing of the Fire Lot, and the Library District shall pay recording costs related to the closing of the Library Lot. In addition, premiums for any title insurance policy obtained by a District, including the cost of any affirmative coverages or endorsements, shall be borne by the applicable District.

7. **RIGHT OF FIRST REFUSAL.** If at any time the Fire District as to the Fire Lot or the Library District as to the Library Lot receives a bona fide offer to purchase in whole or in part, said lot or to lease the entirety of said lot for a lease term (including extension periods) of more than twenty-five (25) years, the applicable District shall send the Town a copy of the proposed offer and notify the Town of the District's intention to accept the same. The Town shall have the right within sixty (60) days to accept the terms of said offer in writing and within sixty (60) days thereafter to purchase or lease, as applicable, the subject lot for the price and on the terms specified in said offer. If the Town does not so elect within said sixty (60) day period, the applicable District may then sell or lease, as applicable, the subject lot to the offeror provided the sale or lease is on the terms and conditions and for

Formatted: Font: 12 pt
Formatted: Normal, Indent: Left: 1.5", No bullets or numbering

Commented [4]: ROFR provision was briefly discussed during call with Districts' attorneys.

the price set forth in the written offer sent to the Town. This right of first refusal shall in no way restrict a District's right, power, or authority to mortgage or encumber, including lease back financing, grant easements affecting, or grant a lease or leases with a lease term (including extension periods) equal to or less than twenty-five (25) years on, the subject lot. Nor shall this right of first refusal in any way restrict or prohibit transfers of the subject lot by operation of law or transfers of the subject lot between the Fire District and the Town or the Library District and the Town. This right of first refusal shall terminate and be null and void as to the Fire Lot or Library Lot upon the consummation of a sale or conveyance in fee simple or a lease of more than twenty-five (25) years to a third party of said lot after full compliance with the terms of this right of first refusal; provided, however, if there is a sale or conveyance in fee simple of only a portion of a lot, then this right of first refusal shall remain in place for the remainder of said lot. The Town may record a memorandum of this right of first refusal against the applicable lots.

8. TERMINATION OF AGREEMENT. The term of this Agreement shall commence on the Effective Date and shall terminate upon the date that all obligations of the Parties under this Agreement have been satisfied, unless:

- a) This Agreement is terminated earlier by mutual written agreement of the Parties.
- b) This Agreement is terminated by the Fire District or Library District within One Hundred Twenty~~twenty-one~~ (120~~21~~) days of the Effective Date based on the District's determination that title to or environmental condition of the Fire Lot or Library Lot, as applicable, is not acceptable to the District. The terminating District shall provide written notice to the other Parties of such termination on or before the expiration of said 120~~21~~-day period. The Districts shall be solely responsible for obtaining current title commitments for title insurance policies for their subject lots and copies of instruments and documents referenced in such commitments.
- c) The Plat and the associated subdivision improvement agreement and the site plans and the associated site plan agreements for the Fire Lot and Library Lot are not approved by the Town and fully executed within one (1) year of the Effective Date. Upon such an event, the Parties shall meet to discuss the potential termination or amendment of this Agreement. Unless this Agreement is otherwise amended by the Parties, if the Plat and the associated subdivision improvement agreement and the site plans and the associated site plan agreements for the Fire Lot and Library Lot are not approved by the Town and fully executed within eighteen (18) months of the Effective Date, the Town shall have the right to terminate this Agreement with thirty (30) days' prior written notice to the Districts.

Formatted: Highlight

In the event the Parties seek to terminate this Agreement with respect to only one District under Subsection a) above, or if only one District seeks to terminate this Agreement under Subsection b) above, or if the Town seeks to terminate this Agreement with respect to only one District under Subsection c) above, the Town and the remaining District shall work cooperatively and in good faith to amend this Agreement as needed to address the public improvements needed to serve the remaining District's development.

9. **ENTIRE AGREEMENT; AMENDMENTS.** This Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the Parties and supersedes all prior contracts, proposals, representations, negotiations, letters of intent, whether written or oral, pertaining to the subject matter of this Agreement. No changes, alterations, or modifications to any of the provisions of this Agreement shall be effective unless contained in a written agreement signed by the Parties.
10. **FORCE MAJEURE.** The Fire District and Library District shall not be liable for any delays or failures in the performance of any of their obligations hereunder due to causes beyond their reasonable control, after written notice to the Town of such cause and exercise of such Party's best efforts to perform such obligations, including, but not limited to, fire, strike, war, riots, acts of civil or military authority, acts of God, judicial action, unavailability or shortages of materials, equipment or personnel, failures or delays in delivery from vendors and suppliers, or delays in transportation.
11. **ASSIGNMENT.** A Party shall not assign this Agreement or any rights or obligations of such Party under this Agreement without the prior written consent of the other Parties.
12. **BINDING AGREEMENT.** This Agreement shall be binding upon and shall be for the benefit of the Parties, their successors and assigns.
13. **NO THIRD-PARTY BENEFICIARIES.** This Agreement shall not confer any rights or remedies upon any person other than the Fire District, Library District, and Mead and their respect successors and assigns.
14. **CHOICE OF LAW; VENUE.** This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute between the Parties, the exclusive venue for dispute resolution shall be the District Court for and in Weld County, Colorado.
15. **SEVERABILITY.** If any term or condition of this Agreement shall be held to be invalid, illegal, or unenforceable, this Agreement shall be construed and enforced without such provision to the extent that this Agreement is then capable of execution within the original intent of the Parties.
16. **NOTICES.** All notices or demands desired or required under this Agreement shall be deemed given: (i) when personally delivered; or (ii) after the lapse of five (5) days after mailing by registered or certified mail, postage pre-paid; or (iii) when sent by confirmed electronic mail, and addressed as follows:

To Town of Mead: Town of Mead
Attn: Jason Bradford, Community Development Director
441 Third Street
Mead, CO 80542
E-Mail: jbradford@townofmead.org

With a copy to: Michow Guckenberger & McAskin LLP

Attn: Mead Town Attorney
5299 DTC Blvd., Suite 300
Greenwood Village, CO 80111
E-Mail: MMcAskin@mgmfirm.com

To the Library District: High Plains Library District
Attn: Matthew Hortt, Ph.D., Executive Director
12650 W. 29th Street
Greeley, CO 80634
E-Mail: MHortt@highplains.us

With a copy to: Coan Payton & Payne LLC
Attn: William F. Garcia, High Plains Library District
Counsel
5586 W 19th Street
Greeley, CO 80634
E-Mail: wgarcia@cp2law.com

To the Fire District: Mountain View Fire Protection District
Attn: Deputy Chief Jeff Webb
3561 N. Stagecoach Road
Longmont, CO 80504
E-Mail: jwebb@mvfpd.org

With a copy to: Lyons Gaddis
Attn: John Chmil, Mountain View Fire Protection District
Counsel
P.O. Box 978
Longmont, CO 80502-0978
E-Mail: jchmil@lyongaddis.com

17. NO WAIVER OF GOVERNMENTAL IMMUNITY. 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, CR.S. §§24-10-101 *et seq.*, as applicable now or hereafter amended.

18. SUBJECT TO APPROPRIATION. The Parties understand and acknowledge that Mead, the Fire District, and the Library District are subject to Article X, § 20 of the Colorado Constitution (“TABOR”). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multiple-fiscal year direct or indirect debt or obligation within the meaning of TABOR as no future appropriation of funds beyond the current fiscal year is anticipated or expected. Notwithstanding anything in this Agreement to the contrary, all payment obligations of the Parties are expressly dependent and conditioned upon the continuing availability of funds for such party beyond the term of the party’s current fiscal period ending upon the next succeeding December 31. Financial obligations of the Parties

payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the individual paying party and other applicable law.

19. EXECUTION BY COUNTERPARTS; ELECTRONIC SIGNATURES. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties approve the use of electronic signatures for execution of this Agreement. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24 71.3 101 to -121. 20.

20. AUTHORITY TO ENTER AGREEMENT. The signatures of those representatives of the Parties below affirm that they are authorized to enter into and execute this Agreement and that all necessary actions, notices, meetings, and/or hearings pursuant to any law required to authorize the execution of this Agreement have been made.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Signature Pages Follow.

ATTEST:

TOWN OF MEAD, COLORADO

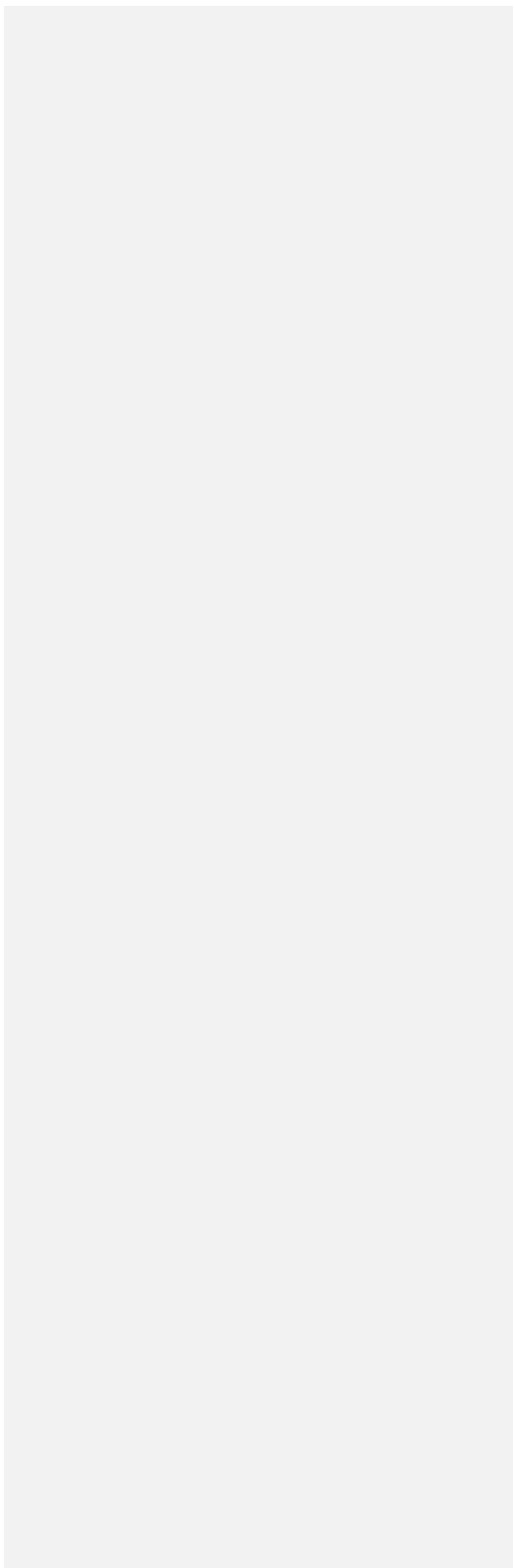
By: _____
Mary E. Strutt, Town Clerk

By: _____
Colleen G. Whitlow, Mayor

Date: _____

APPROVE AS TO FORM:

By: _____
Marcus McAskin, Town Attorney



**MOUNTAIN VIEW FIRE PROTECTION
DISTRICT:**

Laura McConnell, Board President

Date: _____

ATTEST:

Secretary

HIGH PLAINS LIBRARY DISTRICT:

Mary Heberlee, Chair of the Board

Date: _____

ATTEST:

Secretary

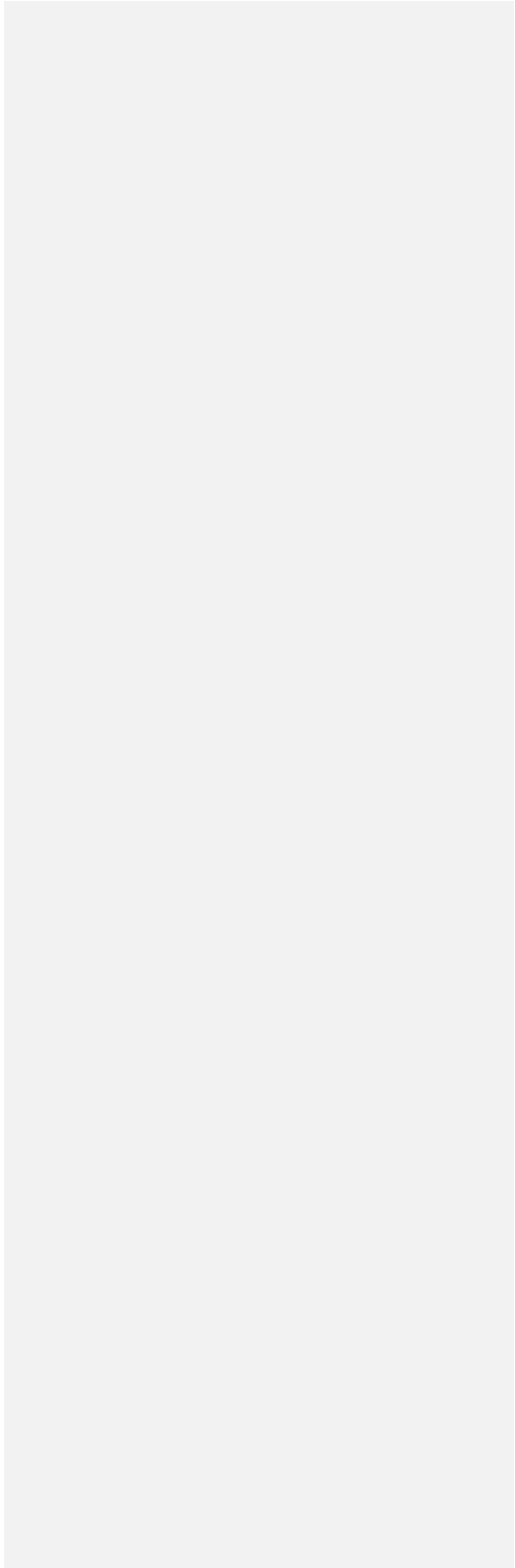
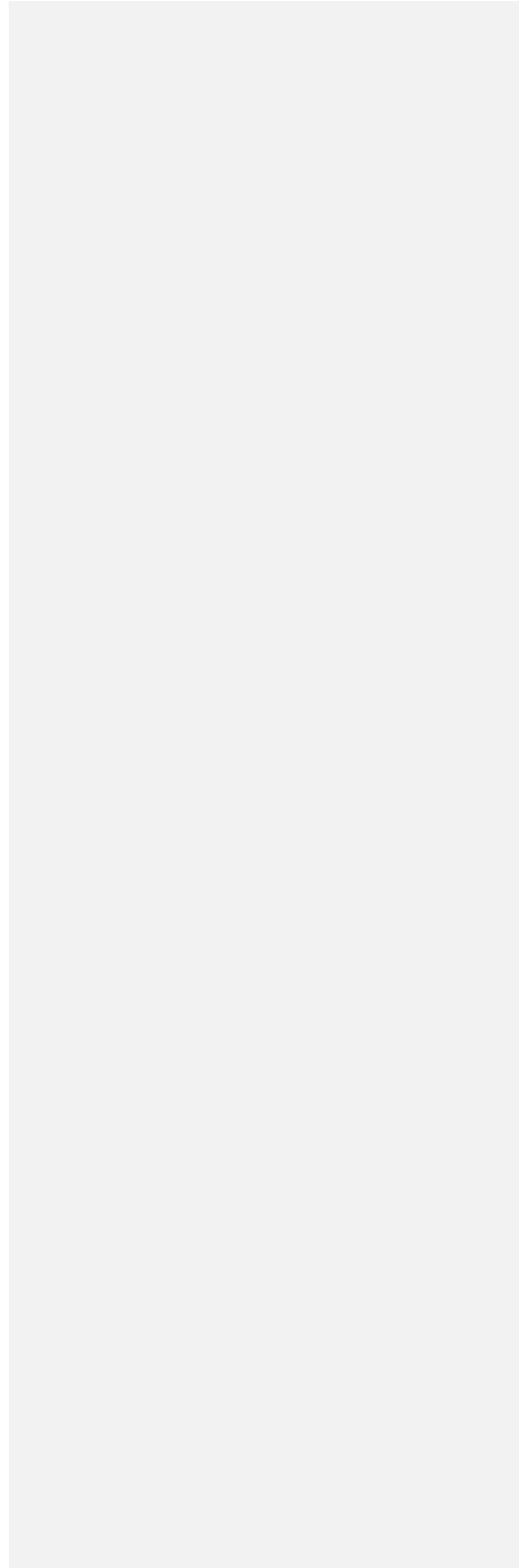


EXHIBIT A
MASTER UTILITY PLAN

EXHIBIT B
ROAD SECTION DETAILS



**PRE-DEVELOPMENT INTERGOVERNMENTAL AGREEMENT
FOR TRACT B - LIBERTY RANCH**

THIS INTERGOVERNMENTAL AGREEMENT (this “Agreement”) is made and entered into as of the date of the last signature below (the “Effective Date”), by and between the Town of Mead, Colorado, a municipal corporation of the State of Colorado (“Mead” or the “Town”), Mountain View Fire Protection District, a political subdivision of the State of Colorado and a fire protection district organized and existing pursuant to C.R.S. §§ 32-1-101, *et seq.* (the “Fire District”), and High Plains Library District, a political subdivision of the State of Colorado and a library district organized and existing pursuant to Colorado Revised Statutes (C.R.S.) §§ 24-90-101, *et seq.* (the “Library District”). Mead, the Fire District, and the Library District are sometimes referred to individually as a “Party” and collectively as the “Parties.” The Fire District and the Library District are sometimes referred to individually as a “District” and collectively as the “Districts.”

RECITALS

WHEREAS, pursuant to C.R.S. §§ 32-1-101, *et seq.*, the Fire District is authorized to provide fire protection services to all areas within its boundaries; and

WHEREAS, pursuant to C.R.S. §§ 24-90-101, *et seq.*, the Library District is authorized to provide library services to all areas within its boundaries; and

WHEREAS, Mead is located within the boundaries of the Fire District and the Library District; and

WHEREAS, the Board of Trustees of the Town (the “Town Board”) and the Board of Directors of the Fire District agree that locating a fire station within the boundaries of the Town will further the Town and Fire District’s common interest that fire protection services be provided to existing and future residents of the Town; and

WHEREAS, the Town Board and the Board of Trustees of the Library District agree that locating a library within the boundaries of the Town will further the Town and Library District’s common interest that a library be provided to existing and future residents of the Town; and

WHEREAS, Mead owns approximately 32.69 acres of land in the Town of Mead legally described as Tract B, Liberty Ranch Filing No. 2, Second Amendment, recorded with the County of Weld Clerk and Recorder, State of Colorado at Reception No. 3996323 (the “Property”); and

WHEREAS, on July 10, 2023, the Town Board approved Resolution No. 44-R-2023 (“Resolution 44”), Approving the Liberty Ranch, Tract B, Municipal Facilities Master Site Plan (the “Master Plan”); and

WHEREAS, the Master Plan contemplates the future use of the Property for a fire station, library, police station, and recreational fields with concession buildings; and

WHEREAS, the Master Plan also depicts two active oil and gas wells located within the northeastern and southwestern portions of the Property (as generally shown on the Master Plan, the “O&G Wells”); and

WHEREAS, the Fire District desires to acquire land within the Property (as defined in Subsection 2.a), the “Fire Lot”) and to construct a fire station on the Fire Lot; and

WHEREAS, the Library District desires to acquire land within the Property (as defined in Subsection 2.a), the “Library Lot”) and to construct a library on the Library Lot; and

WHEREAS, the Town has determined it is in the best interests of the Town and its residents that the Town enter into this Agreement to facilitate the funding, design, and construction of the Project (defined below); and

WHEREAS, the Town desires to facilitate and support the construction of a fire station and library within the Property in accordance with the terms of this Agreement by conveying, for nominal consideration, the Fire Lot and Library Lot to the Fire District and Library District, respectively, contributing land for off-site public improvements, contributing Town staff time, and waiving certain Town fees and costs; and

WHEREAS, the construction and installation of public improvements, including roadway, bicycle, on-street parking, landscaping, and sidewalk improvements and sanitary sewer, storm water, water, and irrigation improvements, within and adjacent to the Property are needed to serve the desired fire station and library and facilitate development of the Property as contemplated by the Master Plan (as further defined in Subsection 2.b), the “Public Improvements”); and

WHEREAS, the Parties desire to memorialize in this Agreement their agreements and understandings related to subdividing the Property, site planning for the Fire Lot and Library Lot, and the funding, design, and construction of the Public Improvements (collectively, the “Project”), and each Party’s respective role and responsibilities with respect to the same; and

WHEREAS, Resolution 44 authorized the Town Attorney and Town Manager to negotiate this Agreement with the Fire District and Library District, conditioned on this Agreement being brought to the Town Board for final review and approval; and

WHEREAS, the Parties are authorized to enter into this Agreement by Colorado Revised Statutes (C.R.S.) Section 29-1-203 and the Colorado Constitution Article XIV, Section 18(2).

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

- 1. INCORPORATION OF RECITALS.** The Recitals set forth above are incorporated and made a part of this Agreement.

2. DESCRIPTION OF THE PROJECT.

- a) **Subdivision of the Property.** The Fire District shall be responsible for the preparation and submission of a minor subdivision to divide the Property into six (6) lots and rights-of-way in accordance with the Town's minor subdivision process (the "Plat"). The Plat shall create a 3.0-acre lot for future conveyance to the Fire District (the "Fire Lot"), a 3.0-acre lot for future conveyance to the Library District (the "Library Lot"), 4.75-acre and 6.75-acre lots for the O&G Wells, a 3.0-acre lot for a future Town police station, and an 8.37-acre lot for Town recreational uses. The Parties agree that the foregoing acreages are approximate and that final acreages shall be determined during the minor subdivision process. The Public Improvements required by this Agreement and the rights-of-way and easements shown on **Exhibit A** and **Exhibit B** to this Agreement shall be shown on the Plat. Without limiting the foregoing, the Fire District shall be responsible for the engagement and oversight of third-party contractors and payment of all fees and costs related to the Plat, and the Library District shall be responsible for reimbursing the Fire District the Library District's share of such fees and costs as set forth in a separate agreement between the Fire District and Library District.
- b) **Public Improvements.** The Fire District shall be responsible for designing, permitting, and constructing the following public improvements (collectively, the "Public Improvements").
- i. Irrigation, sanitary sewer, water, and storm water improvements as shown on the Master Utility Plan for Liberty Ranch Filing No. 2, 3rd Amendment attached as **Exhibit A** to this Agreement (as may be amended during the minor subdivision process, the "Master Utility Plan").
 - ii. The new roadway to be named "Chaparral Street" at the general location shown on the Master Utility Plan. Chaparral Street shall be constructed in compliance with the Road Section Details for Liberty Ranch Filing No. 2, 3rd Amendment attached as **Exhibit B** to this Agreement (as may be amended during the minor subdivision process, the "Road Section Details"). A three-way stop shall be installed where Chaparral Street connects with Birdle Drive in the Liberty Ranch neighborhood as shown on the Road Section Details. Landscaping meeting the Mead Municipal Code (the "Town Code") requirements shall be installed along the western side of Chaparral Street (*i.e.*, the Library Lot frontage). However, only interim landscaping shall be installed at a width of 20' along the eastern side of Chaparral Street (*i.e.*, the frontage along the northeastern O&G Well) to include seeding of native grass and temporary irrigation until the native grass is established. Detailed landscaping requirements shall be determined during the minor subdivision process.
 - iii. The new roadway to be named "Liberty Drive" at the general location shown on the Master Utility Plan. Liberty Drive shall be constructed in compliance with the Road Section Details. Landscaping meeting the requirements of the Town Code shall be installed along the southern side of Liberty Drive (*i.e.*, the Fire Lot frontage). However, only interim landscaping shall be installed at a

width of 20' along the northern side of Liberty Drive (*i.e.*, the frontage along the northeastern O&G Well) to include seeding of native grass and temporary irrigation until the native grass is established. Detailed landscaping requirements shall be determined during the minor subdivision process.

- iv. Installation of emergency-vehicle traffic control signal at the intersection of the driveway for the Fire Lot and WCR 7.
- v. Widening of the west side of Weld County Road (“WCR”) 7 between the Liberty Drive and WCR 7 intersection and the emergency driveway from the Fire Lot onto WCR 7. WCR 7 shall be widened in compliance with the Road Section Details; except that the Fire District shall not be responsible for installing the 10-foot trail shown in the Road Section Details (the “Town Trail”). Rather, the Fire District shall construct a tie-in for the Town Trail at the Liberty Drive and WCR 7 intersection and dedicate an easement for the Town Trail to the Town either, at the Town’s discretion, by reservation to the Town in the Plat or dedication to the Town by separate agreement of the Town and Fire District.
- vi. If required by the traffic study for the Project, construction of auxiliary lanes along WCR 7, such as: a deceleration along the west side of WCR 7 into Liberty Drive; a left turn from WCR 7 into Liberty Drive; and/or an acceleration lane from Liberty Drive heading south on CR 7.

If the drainage plan for the Project complies with the Liberty Ranch Filing No. 2 drainage report and any associated amendments, a separate storm water detention facility will not be required for the Project.

Without limiting the foregoing, the Fire District shall be responsible for the engagement and oversight of third-party contractors and payment of all fees and costs related to the Public Improvements, and the Library District shall be responsible for reimbursing the Fire District the Library District’s share of such fees and costs as set forth in a separate agreement between the Fire District and Library District.

- c) **Site Planning.** The Fire District and Library District shall each be responsible for, at each Party’s sole cost, preparing and obtaining Town approval of the site plan for the Fire Lot and the site plan for the Library Lot, respectively. The Fire District site plan and construction of the fire station shall accommodate the Town’s design and construction plans for the Town Trail.

3. OTHER AGREEMENTS; TOWN FEES AND COSTS.

- a) **Minor subdivision and site plans.** As part of the minor subdivision and site plan processes, the Districts shall be required to enter into a subdivision improvement agreement and a site plan agreement in accordance with Sections 16-4-130 and 16-4-100 of the Town Code, respectively; provided, however, if a District submits its site plan contemporaneously with the Plat, the subdivision improvement agreement may be combined with the site plan agreement. As part of the minor subdivision and site plan

processes, the Districts shall also be required to enter into an agreement for payment of review and development expenses incurred by the Town in accordance with Sections 16-4-80 and 16-4-100 of the Town Code; provided however, that the Town shall waive the Town's application fees and the costs associated with Town staff's review of the Plat and the Districts' site plans. The Districts shall remain responsible for the cost of review by the Town's outside consultants, including (without limitation) traffic engineering review, drainage engineering review, review by the Town's engineering firm (currently, JVA, Incorporated), and legal review.

- b) Development impact fees.** The Fire District and Library District shall be responsible for payment of development impact fees imposed by the Town in accordance with Article VI of Chapter 4 of the Town Code. The fees shall be paid prior to issuance of a building permit for development occurring on each of the Fire Lot and Library Lot and shall be calculated based on the then-current rate imposed for the Office & Institutional development type.
- c) Building permit fees.** The Town shall waive the Town's application fees for Town building permits.
- d) Town inspection fees.** The Town shall waive the cost of inspections by Town staff. The Districts shall remain responsible for the cost of inspections by the Town's outside consultants.
- e) Availability of funding.** The Districts agree that the Town may condition issuance of building permits for the vertical construction of the Lots on the applicable District providing the Town with a copy of executed construction contracts and documentation that funding for the subject work is available and appropriated.

4. NEIGHBORHOOD MEETING. The Fire District shall be responsible, at its cost (subject to reimbursement from the Library District per a separate agreement between the Districts), for scheduling, holding, and conducting at least one neighborhood meeting with the Liberty Ranch neighborhood located immediately west of the Property. The Parties anticipate that the meeting will be held at the current fire station and facilitated by the Project architect (Oz Architecture). Town staff shall attend and be available to answer questions during the neighborhood meeting. The Town shall waive costs for Town staff time related to the neighborhood meeting.

5. STANDARDS.

- a)** The Project shall be designed and constructed in compliance with all applicable federal, state, and local laws, rules, and regulations, including (without limitation) the Americans with Disabilities Act, as amended.
- b)** If the Town proposes to amend the Town Code by adding a public use zoning district, and proposes to rezone the Property to said district, the Town will promptly notify the Fire District and Library District to discuss any potential impacts to the permitted uses.

6. CONVEYANCE OF LOTS. The Town agrees to convey, and the Fire District and Library District agree to acquire, the Fire Lot and Library Lot, respectively, upon the terms and conditions of this Section 6.

a) Consideration. The consideration for the Fire Lot and Library Lot shall be \$10 for each of said lots plus the Districts' performance of their obligations in this Agreement.

b) No Warranties. The Fire District and Library District acknowledge and agree that they are acquiring their respective lots "AS IS," "WHERE IS," "WITH ALL FAULTS," and "WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED," including, without limitation, the physical condition of the lots.

c) Closings.

- i. The Town shall convey the Fire Lot to the Fire District by bargain and sale deed upon the Town approval of the site plan for the Fire Lot and execution by the Town and the Fire District of the corresponding site plan agreement.
- ii. The Town shall convey the Library Lot to the Library District by bargain and sale deed upon the Town approval of the site plan for the Library Lot and execution by the Town and the Library District of the corresponding site plan agreement.

d) Town's Reversionary Interests.

- i. The deed for the Fire Lot shall include a right of re-entry in the Town if the Fire District: (1) fails to pull a building permit for vertical construction of the fire station within two (2) years of the Effective Date of this Agreement (the "Fire BP Condition"), or (2) fails to obtain a temporary certificate of occupancy ("TCO") for the fire station within two (2) years of the issuance of the initial building permit for vertical construction of the fire station (the "Fire TCO Condition"). The deed shall include language that if the Fire District fails to cure the Fire BP Condition within thirty (30) days after receipt by the Fire District of written notice from the Town or the Fire TCO Condition within one-hundred and eighty (180) days after receipt by the Fire District of written notice from the Town, then the Town shall be entitled to a reconveyance of the Fire Lot by bargain and sale deed and the delivery of exclusive possession thereto. In addition, the deed shall state that if the right of re-entry is the result of a failure of the Fire TCO Condition, then the Town's right to a reconveyance of the Fire Lot shall be subject to payment to the Fire District of the appraised value of the Fire Lot.
- ii. The deed for the Library Lot shall include a right of re-entry in the Town if the Library District: (1) fails to pull a building permit for vertical construction of the library within two (2) years of the Effective Date of this Agreement (the "Library BP Condition"), or (2) fails to obtain a TCO for the library within two

(2) years of the issuance of the initial building permit for vertical construction of the library (the "Library TCO Condition"). The deed shall include language that if the Library District fails to cure the Library BP Condition within thirty (30) days after receipt by the Library District of written notice from the Town or the Library TCO Condition within one-hundred and eighty (180) days after receipt by the Library District of written notice from the Town, then the Town shall be entitled to a reconveyance of the Library Lot by bargain and sale deed and the delivery of exclusive possession thereto. In addition, the deed shall state that if the right of re-entry is the result of a failure of the Library TCO Condition, then the Town's right to a reconveyance of the Library Lot shall be subject to payment to the Library District of the appraised value of the Library Lot.

iii. The deeds for the Fire Lot and Library Lot shall also state that the Town's right of re-entry shall expire automatically upon issuance of a TCO. In addition, following the issuance of a TCO, the Town agrees to execute and record a notice of release of its right of re-entry upon request of the applicable District.

e) **Costs and fees.** The Fire District shall pay recording costs related to the closing of the Fire Lot, and the Library District shall pay recording costs related to the closing of the Library Lot. In addition, premiums for any title insurance policy obtained by a District, including the cost of any affirmative coverages or endorsements, shall be borne by the applicable District.

7. **RIGHT OF FIRST REFUSAL.** If at any time the Fire District as to the Fire Lot or the Library District as to the Library Lot receives a bona fide offer to purchase in whole or in part, said lot or to lease the entirety of said lot for a lease term (including extension periods) of more than twenty-five (25) years, the applicable District shall send the Town a copy of the proposed offer and notify the Town of the District's intention to accept the same. The Town shall have the right within sixty (60) days to accept the terms of said offer in writing and within sixty (60) days thereafter to purchase or lease, as applicable, the subject lot for the price and on the terms specified in said offer. If the Town does not so elect within said sixty (60) day period, the applicable District may then sell or lease, as applicable, the subject lot to the offeror provided the sale or lease is on the terms and conditions and for the price set forth in the written offer sent to the Town. This right of first refusal shall in no way restrict a District's right, power, or authority to mortgage or encumber, including lease back financing, grant easements affecting, or grant a lease or leases with a lease term (including extension periods) equal to or less than twenty-five (25) years on, the subject lot. Nor shall this right of first refusal in any way restrict or prohibit transfers of the subject lot by operation of law or transfers of the subject lot between the Fire District and the Town or the Library District and the Town. This right of first refusal shall terminate and be null and void as to the Fire Lot or Library Lot upon the consummation of a sale or conveyance in fee simple or a lease of more than twenty-five (25) years to a third party of said lot after full compliance with the terms of this right of first refusal; provided, however, if there is a sale or conveyance in fee simple of only a portion of a lot, then this right of first refusal shall remain in place for the remainder of said lot. The Town may record a memorandum

of this right of first refusal against the applicable lots.

- 8. TERMINATION OF AGREEMENT.** The term of this Agreement shall commence on the Effective Date and shall terminate upon the date that all obligations of the Parties under this Agreement have been satisfied, unless:
- a) This Agreement is terminated earlier by mutual written agreement of the Parties.
 - b) This Agreement is terminated by the Fire District or Library District by the earlier of the date of Closing or the date that is One Hundred Twenty (120) days of the Effective Date based on the District's determination that title to or environmental condition of the Fire Lot or Library Lot, as applicable, is not acceptable to the District. The terminating District shall provide written notice to the other Parties of such termination on or before the expiration of said date. The Districts shall be solely responsible for obtaining current title commitments for title insurance policies for their subject lots and copies of instruments and documents referenced in such commitments.
 - c) The Plat and the associated subdivision improvement agreement and the site plans and the associated site plan agreements for the Fire Lot and Library Lot are not approved by the Town and fully executed within one (1) year of the Effective Date. Upon such an event, the Parties shall meet to discuss the potential termination or amendment of this Agreement. Unless this Agreement is otherwise amended by the Parties, if the Plat and the associated subdivision improvement agreement and the site plans and the associated site plan agreements for the Fire Lot and Library Lot are not approved by the Town and fully executed within eighteen (18) months of the Effective Date, the Town shall have the right to terminate this Agreement with thirty (30) days' prior written notice to the Districts.

In the event the Parties seek to terminate this Agreement with respect to only one District under Subsection a) above, or if only one District seeks to terminate this Agreement under Subsection b) above, or if the Town seeks to terminate this Agreement with respect to only one District under Subsection c) above, the Town and the remaining District shall work cooperatively and in good faith to amend this Agreement as needed to address the public improvements needed to serve the remaining District's development.

- 9. ENTIRE AGREEMENT; AMENDMENTS.** This Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the Parties and supersedes all prior contracts, proposals, representations, negotiations, letters of intent, whether written or oral, pertaining to the subject matter of this Agreement. No changes, alterations, or modifications to any of the provisions of this Agreement shall be effective unless contained in a written agreement signed by the Parties.
- 10. FORCE MAJEURE.** The Fire District and Library District shall not be liable for any delays or failures in the performance of any of their obligations hereunder due to causes beyond their reasonable control, after written notice to the Town of such cause and exercise of such Party's best efforts to perform such obligations, including, but not limited to, fire, strike, war, riots, acts of civil or military authority, acts of God, judicial action,

unavailability or shortages of materials, equipment or personnel, failures or delays in delivery from vendors and suppliers, or delays in transportation.

11. **ASSIGNMENT.** A Party shall not assign this Agreement or any rights or obligations of such Party under this Agreement without the prior written consent of the other Parties.
12. **BINDING AGREEMENT.** This Agreement shall be binding upon and shall be for the benefit of the Parties, their successors and assigns.
13. **NO THIRD-PARTY BENEFICIARIES.** This Agreement shall not confer any rights or remedies upon any person other than the Fire District, Library District, and Mead and their respect successors and assigns.
14. **CHOICE OF LAW; VENUE.** This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute between the Parties, the exclusive venue for dispute resolution shall be the District Court for and in Weld County, Colorado.
15. **SEVERABILITY.** If any term or condition of this Agreement shall be held to be invalid, illegal, or unenforceable, this Agreement shall be construed and enforced without such provision to the extent that this Agreement is then capable of execution within the original intent of the Parties.
16. **NOTICES.** All notices or demands desired or required under this Agreement shall be deemed given: (i) when personally delivered; or (ii) after the lapse of five (5) days after mailing by registered or certified mail, postage pre-paid; or (iii) when sent by confirmed electronic mail, and addressed as follows:

To Town of Mead: Town of Mead
Attn: Jason Bradford, Community Development Director
441 Third Street
Mead, CO 80542
E-Mail: jbradford@townofmead.org

With a copy to: Michow Guckenberger & McAskin LLP
Attn: Mead Town Attorney
5299 DTC Blvd., Suite 300
Greenwood Village, CO 80111
E-Mail: MMcAskin@mgmfirm.com

To the Library District: High Plains Library District
Attn: Matthew Hortt, Ph.D., Executive Director
12650 W. 29th Street
Greeley, CO 80634
E-Mail: MHortt@highplains.us

With a copy to: Coan Payton & Payne LLC

Attn: William F. Garcia, High Plains Library District
Counsel
5586 W 19th Street
Greeley, CO 80634
E-Mail: wgarcia@cp2law.com

To the Fire District:

Mountain View Fire Protection District
Attn: Deputy Chief Jeff Webb
3561 N. Stagecoach Road
Longmont, CO 80504
E-Mail: jwebb@mvfpd.org

With a copy to:

Lyons Gaddis
Attn: John Chmil, Mountain View Fire Protection District
Counsel
P.O. Box 978
Longmont, CO 80502-0978
E-Mail: jchmil@lyonsgaddis.com

17. NO WAIVER OF GOVERNMENTAL IMMUNITY. 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, CR.S. §§24-10-101 *et seq.*, as applicable now or hereafter amended.

18. SUBJECT TO APPROPRIATION. The Parties understand and acknowledge that Mead, the Fire District, and the Library District are subject to Article X, § 20 of the Colorado Constitution (“TABOR”). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multiple-fiscal year direct or indirect debt or obligation within the meaning of TABOR as no future appropriation of funds beyond the current fiscal year is anticipated or expected. Notwithstanding anything in this Agreement to the contrary, all payment obligations of the Parties are expressly dependent and conditioned upon the continuing availability of funds for such party beyond the term of the party’s current fiscal period ending upon the next succeeding December 31. Financial obligations of the Parties payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the individual paying party and other applicable law.

19. EXECUTION BY COUNTERPARTS; ELECTRONIC SIGNATURES. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties approve the use of electronic signatures for execution of this Agreement. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24 71.3 101 to -121. 20.

20. AUTHORITY TO ENTER AGREEMENT. The signatures of those representatives of

the Parties below affirm that they are authorized to enter into and execute this Agreement and that all necessary actions, notices, meetings, and/or hearings pursuant to any law required to authorize the execution of this Agreement have been made.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Signature Pages Follow.

ATTEST:

TOWN OF MEAD, COLORADO

By: _____
Mary E. Strutt, Town Clerk

By: _____
Colleen G. Whitlow, Mayor

Date: _____

APPROVE AS TO FORM:

By: _____
Marcus McAskin, Town Attorney

**MOUNTAIN VIEW FIRE PROTECTION
DISTRICT:**

Laura McConnell, Board President

Date: _____

ATTEST:

Secretary

HIGH PLAINS LIBRARY DISTRICT:

Mary Heberlee, Chair of the Board

Date: _____

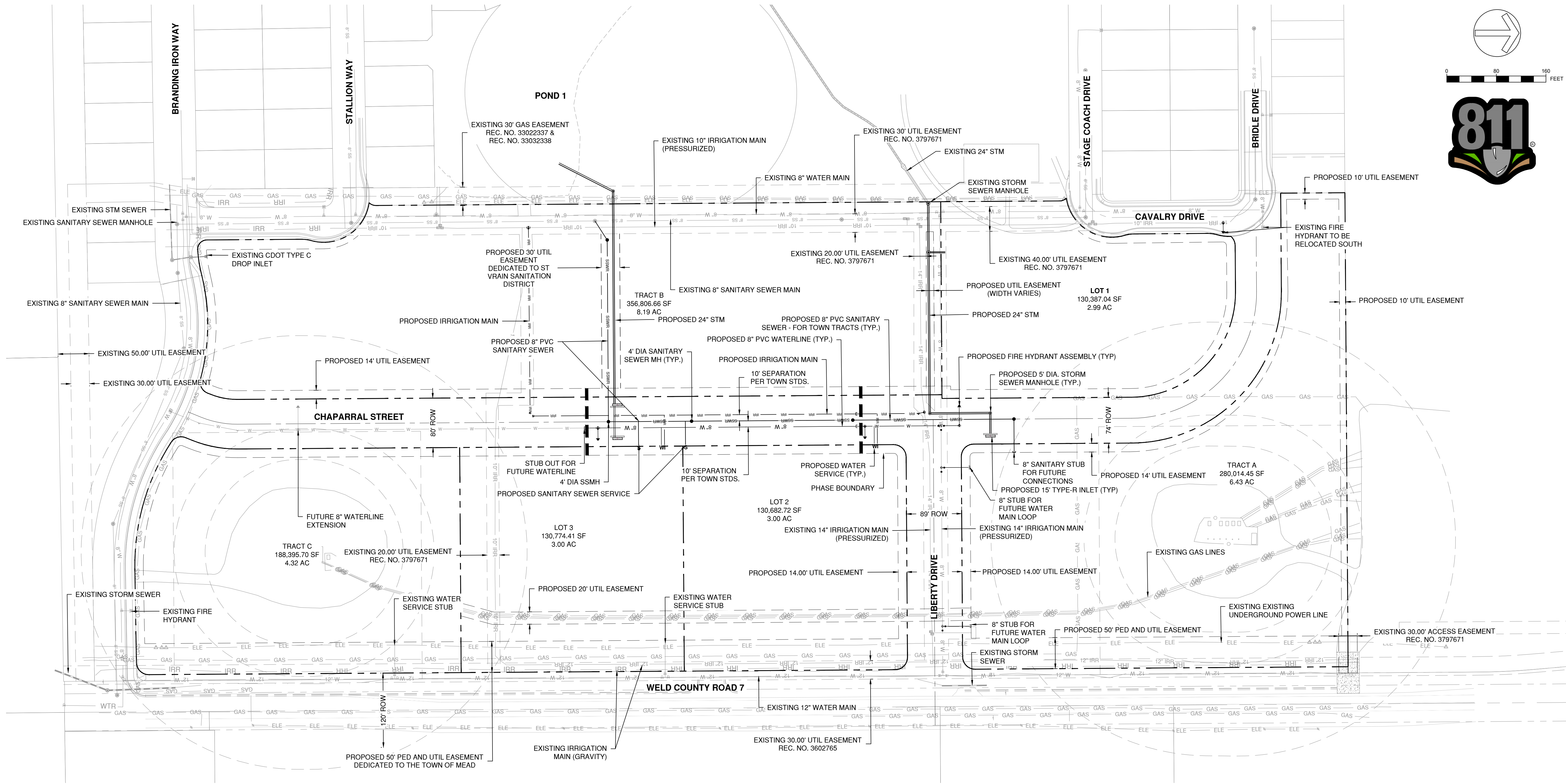
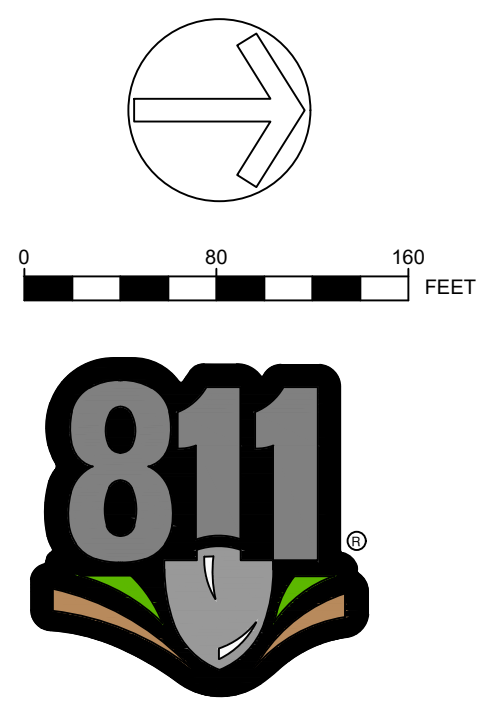
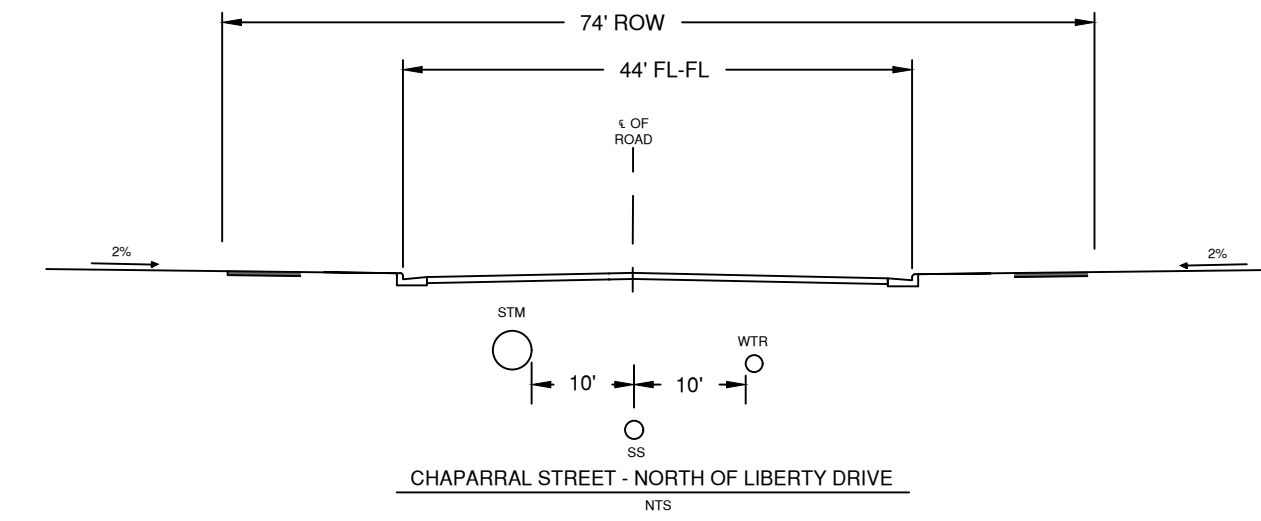
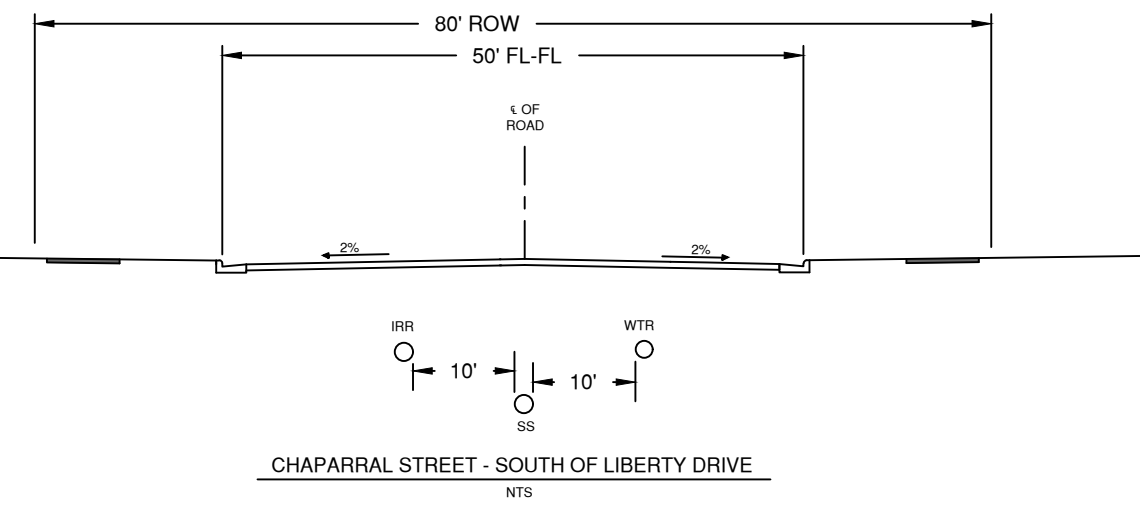
ATTEST:

Secretary

EXHIBIT A
MASTER UTILITY PLAN

LIBERTY RANCH FILING NO. 2, 3RD AMENDMENT

A REPLAT OF TRACT B, LIBERTY RANCH FILING NO. 2, 2ND AMENDMENT
 NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 3 NORTH, RANGE 68 WEST OF THE
 6TH PRINCIPAL MERIDIAN, TOWN OF MEAD, COUNTY OF WELD, STATE OF COLORADO.
 TOTAL ACRES 32.65; 3 LOTS; 3 TRACTS



MASTER UTILITY PLAN
 SCALE: 1" = 80'

ST. VRAIN SANITATION DISTRICT

Development review approval signature and date

These construction plans have been reviewed by St. Vrain Sanitation District for sanitary sewer improvements only. District's acceptance of these plans is valid for one (1) year.

REVISIONS	Description

By	AS
Checked	AK
Designed	MDC
Filename	LibertyRanchFiling2_PLAT

LIBERTY RANCH FILING NO. 2, 3RD AMENDMENT

MASTER UTILITY PLAN

CONTACT INFORMATION
 88 INVERNESS CIRCLE EAST
 SUITE B-101
 ENGLEWOOD, CO 80112
 (720) 206-8831
 CPREDIG@SBSDISTING.COM
 ATTN: CHRIS PERDUE, P.E., M.B.A.



JOB NO. P-2023-023

DATE 8/29/2024

SHEET SHEETS

4

7

EXHIBIT B
ROAD SECTION DETAILS

HIGH PLAINS LIBRARY DISTRICT

BOARD OF TRUSTEES COMMUNICATION

Meeting date: September 16 th , 2024
Type of item: Action
Subject: Hill-n-Park MOU
Presented by: Dr. Matthew Hortt, HPLD Executive Director
Recommendation: Staff recommend the Board approve the proposed MOU and direct the Executive Director to sign the MOU

Background

The Hill-n-Park Senior Center is located at 4205 Yosemite Dr, Greeley, CO 80634, but resides in unincorporated Weld County. The Center was remodeled and reopened on May 7th, 2024. Hill-n-Park Senior Center is overseen by a nonprofit organization and board, Hill-n-Park Senior Center Inc. This organization was established in 1984.

The project was supported heavily by Weld County and the Commissioners. A PCC has been mentioned in the news and at various events by County Staff and the Commissioners. HPLD had been providing Outreach Services to the Center prior to the remodel, and the request has been made to resume services and consider installing a Public Computing Center (PCC) in the Center.

Considerations

- Legal Counsel has reviewed the MOU
- MOU is modeled on the standard PCC MOU in Briggsdale, and mirrors that of the Friends of Raymer MOU approved in June of this year

Staff Recommendation

Staff recommend the Board approve the proposed MOU and direct the Executive Director to sign the MOU

MEMORANDUM OF UNDERSTANDING
CONCERNING LIBRARY SERVICES
AT THE HIGH PLAINS LIBRARY AT THE HILL-N-PARK SENIOR CENTER

This Memorandum of Understanding ("MOU") Concerning Library Services at the High Plains Library at the Hill-N-Park (CO) Senior Center is entered into by and between the High Plains Library District, a library district formed under the provisions of the Colorado Library Law, CRS §24-90-101 et seq. (the "District"), and the Hill N' Park Senior Center Board of Directors ("HNPB"), located in Weld County, Colorado.

RECITALS

WHEREAS, the Board of Trustees of the District is vested with the authority of administering the affairs of the District; and

WHEREAS, the District desires to support an equal level of access to library services for all District residents; and

WHEREAS, Weld County, Colorado is included within the District; and

WHEREAS, HNPB and the District desire to offer certain library services at the Hill N' Park Senior Center (the "HNP") located at 4205 Yosemite Dr. within Greeley , Colorado.

WHEREAS, FOR and the District are authorized to enter into memoranda of understanding and wish to set forth their agreements concerning services at the HNP;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the District and HNPB agree as follows.

AGREEMENT

1. Recitals. The foregoing Recitals are incorporated herein by reference.

2. Purpose. The purpose of this MOU is to set forth the rights, obligations and responsibilities of the District and HNPB concerning library services at the HNP.

3. Term. Unless otherwise terminated as hereinafter provided, this MOU shall be effective beginning TBD, until TBD, and it is renewable annually, upon review of all parties, in order to assure that services are continuing to meet public needs.

4. Obligations of the District. The District shall have the following obligations:

- a.** To assume costs and expenses to provide computers, Internet connectivity, peripherals, furniture, and support equipment for use at the HNP by persons receiving library services to include:
 - i.** 2 PCs
 - ii.** Wireless Internet Access for public inside and outside of the building. People parked in front of the library will be able to access wireless when sitting in their vehicles.
 - iii.** 1 tabletop copier/fax/printer/scanner
 - iv.** 1 PC reservation system
 - v.** 1 Mobile Collaboration/Visualization station (ie. MondoPad)
 - vi.** Filtering software
 - vii.** Dedicated broadband connection
 - viii.** Dedicated Electrical wiring and cabling
- b.** To provide Information Technology staff to troubleshoot computer and network operations.
- c.** To provide property insurance for District-owned equipment and furniture.
- d.** As staffing allows, to provide HNPB services such as computer classes, restocking pre-made library cards, bookmobile services, delivery & pick-up services for materials, and summer reading programming;
- e.** To assist HNP volunteers with issuing District library cards to allow access to virtual library services, troubleshooting equipment, and to monitor the condition of District equipment

5. Obligations of HNPB

HNPB shall have the following obligations:

- a. To assume responsibility for costs or expenses related to maintaining space for library services, including planning and implementation to create and maintain a comfortable and safe facility for the public to use;
 - b. To prepare and provide space for the HNP's equipment, furniture, and services,
 - c. To determine the location and assist in the installation of equipment and furnishings;
 - d. To include HNP furniture during custodial services and facilities maintenance;
 - e. To provide security inside and around the building;
 - f. To pay for utilities and to provide property insurance for the building; and
 - g. To assist with promoting library services through HNPB communication channels.
6. **Computer Use.** All users of library services at the HNP shall be required to hold a District library card and to comply with all District rules for computer use. Access on District equipment shall be through a filtered network.
7. **Relationship of the Parties.** Nothing herein shall create or be construed as creating a partnership, joint venture or agency relationship between the parties and no party shall have the authority to bind the other in any respect. The District shall be the employer of all persons providing services under paragraph 4 of this MOU, the HNPB shall be the employer/volunteer manager of all persons providing services under paragraph 6 of this MOU. Each party shall, for its employees/volunteers, have the sole responsibility for paying salary, including benefits, and shall maintain such general liability, workers' compensation and unemployment insurance coverage as are required by the State of Colorado.
8. **Property.** All equipment and other property provided by the District shall remain the property of the District. The District shall provide insurance on such property, and the HNP shall provide property and liability insurance for the HNP. Each party shall provide to the other an annual Certificate of insurance, naming the other party as an additional insured. If the District, as an additionally insured party, is directly connected to an increase of the insurance cost; the District shall reimburse HNPB for the increased costs for up to 25% above the insurance rate calculated for HNPB without the District as an additionally insured party.
9. **Needs Assessment.** At least annually, the parties will assess the management of and the continuing need for the services provided under this MOU, using the measures described in Exhibit A, which is attached hereto and is incorporated herein by reference.

10. Termination. Each of the parties may terminate this MOU by providing thirty (30) days written notice to the other parties.

11. Miscellaneous Provisions.

- a. Notice.** Any notice required or permitted by this MOU shall be in writing and either delivered or served upon the other party or mailed to the other party, postage prepaid, certified receipt requested, to the respective addresses as set forth below. Any such notice so deposited in the mail shall be deemed received within two (2) days after deposit. Either party may change her/its address by giving notice of the change in accordance with this paragraph.

If to the HNPB:

Hill N' Park Seionr Center Board
Preferred Address
4205 Yosemite Dr
Greeley, CO 80634

If to the District:

High Plains Library District
Attn: Dr. Matthew Hortt, Executive Director
2650 W. 29th St.
Greeley, CO 80631

- b. Entire Agreement; Amendment; Binding Effect.** This MOU contains the entire understanding of the parties. It may not be changed without an agreement in writing signed by both parties. This MOU is binding upon and inures to the benefit of the parties, their successors, assigns and representatives.
- c. Severability.** If any provision of this MOU is found by a court of competent jurisdiction to be illegal or unenforceable for any reason, such clause or provision shall be modified to the extent necessary to make this MOU legal and enforceable. If it cannot be so modified, such clause or provision shall be severed from the remainder of the MOU to allow the remainder of the MOU to remain in full force and effect.
- d. Waiver.** Failure to insist upon strict compliance with any of the terms, covenants or conditions shall not be deemed a waiver thereof, nor shall any waiver or

relinquishment of any right or power hereunder at any one or more times be deemed a waiver of such right or power at any other time.

- e. **Appropriations.** No provision of this MOU shall be construed or interpreted: i) to directly or indirectly obligate either party to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal years direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; iii) as a donation or grant by either party to, or in aid of, any person, company or corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.
- f. **Compliance with Applicable Laws.** At all times during the term of this MOU, the parties shall strictly adhere to and comply with all applicable federal and state laws, orders and regulations as they currently exist or may hereafter be amended, including but not limited to all applicable laws and regulations respecting discrimination.
- g. **Governmental Immunity; Limitation of Liability.** Each party to this MOU shall be responsible for its own negligence and that of its directors, officers, employees, agents, and representatives. Notwithstanding any other provision of this MOU to the contrary, no term or condition hereof shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., as now existing or hereafter amended. The provisions of this IGA shall be controlled, limited and otherwise modified to limit the liability of the parties hereto to the above cited law.
- h. **Legal Authority.** Each party hereto warrants that it has the legal authority to enter into this MOU and that it has taken all actions required by its procedures, by-laws and/or applicable law to exercise that authority and to lawfully authorize its undersigned signatory to execute this MOU.
- i. **No Third Party-Beneficiaries.** This Agreement shall not confer any rights or remedies upon any person other than HNPB and the District and their respected successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed on the date set forth below.

DATE

HIGH PLAINS LIBRARY DISTRICT

By:

Dr. Mathew Hortt, Executive Director, HPLD

Hill N' Park Seionr Center Board

By:

Flo Jean Whitegead, President, Board of Directors

HIGH PLAINS LIBRARY DISTRICT

BOARD OF TRUSTEES COMMUNICATION

Meeting date: September 16 th , 2024
Type of item: Action
Subject: HPLD Vision and Values
Presented by: Dr. Matthew Hortt, HPLD Executive Director
Recommendation: Staff Recommend the Board consider and approve the proposed Vision & Values

Background

In January 2020, the Board approved a new vision and mission for HPLD. At that time, it was determined that the values and vision would be reviewed and considered at a future date. Staff have been working on the proposed new vision and values for the organization that meld both aspects of the Baldrige Framework with library professional values.

Considerations

- Proposed Vision: HPLD is a valued community resource
- Proposed Values on next page

Recommendation

Staff Recommend the Board consider and approve the proposed Vision & Values

	A _{ccess}	S _{erve}	P _{artner}	I _{mprove}	R _{esponsible}	E _{nrich}
<u>HPLD Value</u>	We provide Access to all in the community	We SERVE (value) everyone in our communities	We PARTNER to ensure access to expertise. We PARTNER in support of common goals and expanding our value	We strive to be a role model organization through relentless efforts to IMPROVE .	We are RESPONSIBLE with tax-payer funds and work to be taxpayer proud.	We ENRICH lives through providing the opportunity to learn and grow.
<u>Foundational Principles</u>	Inclusion: We welcome all people and are open and available to all.	Customer Service: We are here to serve and provide an exceptional level of customer service and positive experiences.	Courtesy/Respect: We treat every staff member and patron with courtesy and respect in all spaces	Personal Development: We support, value, and encourage personal development.	Privacy/Safety: We protect patrons' privacy and strive to make a safe place for everyone.	Intellectual Freedom: A democracy needs informed citizens. We defend the First Amendment and the constitutionally protected expressions of others. Our libraries provide free and equal access to information and resources to all in our community.

HIGH PLAINS LIBRARY DISTRICT

BOARD OF TRUSTEES COMMUNICATION

Meeting date: September 16 th , 2024
Type of item: Action
Subject: Policy Updates – Security Cameras
Presented by: Dr. Matthew Hорт, HPLD Executive Director
Recommendation: Staff recommend the Board consider and approve the recommended policy amendment

Background

Staff are recommending the update to the current policy, based on the sunseting of the Patriot Act and subsequent adoption of the US Freedom Act.

Considerations

- The US Freedom Act allows for employees to let their manager know if the US Freedom Act has been used to request library records.
- Verbiage that reflects this change has been added to the policy
- The policy was last revised in 2018
- No other changes are being recommended

Staff Recommendation

Staff recommend the Board consider and approve the recommended policy amendment

Security Cameras policy

The District seeks to strike a balance between guarding patron privacy while ensuring reasonable standards of safety and security. The District's primary objective in using security cameras is to protect the safety and security of patrons and staff. Property is a secondary concern.

Conditions on use

- Pursuant to C.R.S. § 24-90-119, the public is prohibited from viewing security camera footage that contains personally identifying information about library users. Under this statute, there are limited circumstances under which this information will be disclosed. If the Executive Director receives a request from the public to inspect security camera footage, the requestor will be advised as to whether they qualify for any of the listed exceptions. Images are subject to Colorado Open Records Act (CORA) C.R.S. § 24-72-200.5 *et seq.*
- Security cameras are not monitored continuously by library staff.
- Security cameras will not be placed in areas where there is a reasonable expectation of privacy.
- Security cameras are not positioned to intentionally identify a person's reading, viewing, or listening activities.
- Only library staff who have designated authority can access security camera information.
- For cases initiated *by the District*, whether human safety or property concerns, the Executive Director or designated staff may provide security camera information to law enforcement.
- For cases initiated *by law enforcement* involving urgent human safety or criminal concerns, the Executive Director or designated staff *may* provide security camera information to law enforcement without requiring a warrant **if necessary for the reasonable operation of the library.**
- For cases initiated *by patrons or law enforcement agencies*, the Executive Director or designated staff may provide security camera information to law enforcement when presented with a legal warrant, court order or subpoena stating the time and location.
- For cases initiated by the *Federal Bureau of Investigation* (FBI) under the Foreign Intelligence Surveillance Act (FISA), only the Executive Director can approve a request, or an Associate Director in absence of the Executive Director. Staff contacted cannot discuss any information about the request, except with ~~those who are necessary to obtain the requested security camera information~~ **their Manager, the Associate Director, the Executive Director, and the District's legal counsel.**
- Images may be shared with other library staff to identify person(s) who have been suspended and to take appropriate action based thereon.
- Security camera footage shall be retained pursuant to requirements promulgated by the State of Colorado. This retention period may be enlarged or shortened at the direction of legal counsel or as required by law.

Personal responsibility

The use of security cameras by the District does not supplant the requirement for patrons and staff to exercise personal responsibility as it pertains to their own safety and the security of personal property. Security cameras will not be monitored on a continual basis, and should not be relied upon to prevent, detect, or deter criminal or mischievous behavior. High Plains Library District is not responsible for loss of property or personal injury.

Related documents

Websites:

[Colorado State Library Quick Guide for C.R.S. §24-90-119 – Privacy of User Records](#)

[USA PATRIOT-FREEDOM Act https://www.congress.gov/bill/114th-congress/house-bill/2048/text](https://www.congress.gov/bill/114th-congress/house-bill/2048/text)

Other policies:

Patron Rights and Responsibilities statement

Privacy of User Records policy

Security and Safety policy

Procedures:

Privacy of User Records procedure

Security Cameras procedure

Policy History	Security Cameras
2018 – Oct 15	New. Balances importance of safety and security with need for patron privacy
Reviewed by	Associate Director of Public Services

HIGH PLAINS LIBRARY DISTRICT

BOARD OF TRUSTEES COMMUNICATION

Meeting date: September 16 th , 2024
Type of item: Action
Subject: Preliminary tax revenue for 2025
Presented by: Dr. Matthew Hortt, HPLD Executive Director
Recommendation: Information only, no action to be taken

Background

In late August, the Weld County Assessors Office provided preliminary tax revenue numbers for 2025.

Considerations

- The preliminary tax revenue numbers indicate 20% decrease in revenue from the revenue seen in 2024
- Weld County
 - Previous Year Valuation: \$21,021,741,306
 - Current Year Valuation: \$17,204,845,180
 - **Amount of reduction: \$3,816,896,126**
- Boulder County
 - Previous Year Valuation: \$261,956,565
 - Current Year Valuation: \$269,645,666
 - **Amount of reduction: \$7,689,101**
- **Total Reduction \$3,834,585,227**

Staff Recommendation

Information Only, no action to be taken

CERTIFICATION OF VALUATION BY WELD COUNTY ASSESSOR

Name of Jurisdiction: 1050 - HIGH PLAINS LIBRARY

IN WELD COUNTY ON 8/15/2024

New Entity: No

USE FOR STATUTORY PROPERTY TAX REVENUE LIMIT CALCULATIONS (5.5% LIMIT) ONLY
--

IN ACCORDANCE WITH 39-5-121(2)(a) AND 39-5-128(1), C.R.S. AND NO LATER THAN AUGUST 25, THE ASSESSOR CERTIFIES THE TOTAL VALUATION FOR ASSESSMENT FOR THE TAXABLE YEAR 2024 IN WELD COUNTY, COLORADO

1. PREVIOUS YEAR'S NET TOTAL TAXABLE ASSESSED VALUATION:	\$21,021,741,306
2. CURRENT YEAR'S GROSS TOTAL TAXABLE ASSESSED VALUATION: *	\$17,204,845,180
3. LESS TIF DISTRICT INCREMENT, IF ANY:	\$386,072,818
4. CURRENT YEAR'S NET TOTAL TAXABLE ASSESSED VALUATION:	\$16,818,772,362
5. NEW CONSTRUCTION: **	\$113,751,150
6. INCREASED PRODUCTION OF PRODUCING MINES: #	\$0
7. ANNEXATIONS/INCLUSIONS:	\$0
8. PREVIOUSLY EXEMPT FEDERAL PROPERTY: #	\$0
9. NEW PRIMARY OIL OR GAS PRODUCTION FROM ANY PRODUCING OIL AND GAS LEASEHOLD OR LAND (29-1-301(1)(b) C.R.S.): ##	\$2,564,327,505
10. TAXES COLLECTED LAST YEAR ON OMITTED PROPERTY AS OF AUG. 1 (29-1-301(1))(a) C.R.S.):	\$2,348.02
11. TAXES ABATED AND REFUNDED AS OF AUG. 1 (29-1-301(1)(a) C.R.S.) and (39-10-114(1)(a)(I)(B) C.R.S.):	\$38,885.35

* This value reflects personal property exemptions IF enacted by the jurisdiction as authorized by Art. X, Sec.20(8)(b), Colo.

** New construction is defined as: Taxable real property structures and the personal property connected with the structure.

Jurisdiction must submit respective certifications (Forms DLG 52 AND 52A) to the Division of Local Government in order for the values to be treated as growth in the limit calculation.

Jurisdiction must apply (Forms DLG 52B) to the Division of Local Government before the value can be treated as growth in the limit calculation.

USE FOR 'TABOR' LOCAL GROWTH CALCULATIONS ONLY

IN ACCORDANCE WITH THE PROVISION OF ARTICLE X, SECTION 20, COLO CONST, AND 39-5-121(2)(b), C.R.S. THE ASSESSOR CERTIFIES THE TOTAL ACTUAL VALUATION FOR THE TAXABLE YEAR 2024 IN WELD COUNTY, COLORADO ON AUGUST 25, 2024

1. CURRENT YEAR'S TOTAL ACTUAL VALUE OF ALL REAL PROPERTY: @	\$55,763,228,194
ADDITIONS TO TAXABLE REAL PROPERTY:	
2. CONSTRUCTION OF TAXABLE REAL PROPERTY IMPROVEMENTS: !	\$1,145,079,416
3. ANNEXATIONS/INCLUSIONS:	\$0
4. INCREASED MINING PRODUCTION: %	\$0
5. PREVIOUSLY EXEMPT PROPERTY:	\$6,516,514
6. OIL OR GAS PRODUCTION FROM A NEW WELL:	\$2,930,660,004
7. TAXABLE REAL PROPERTY OMITTED FROM THE PREVIOUS YEAR'S TAX WARRANT:	\$0
<small>(If land and/or a structure is picked up as omitted property for multiple years, only the most current year's actual value can be reported as omitted property.)</small>	
DELETIONS FROM TAXABLE REAL PROPERTY:	
8. DESTRUCTION OF TAXABLE REAL PROPERTY IMPROVEMENTS:	\$1,622,062
9. DISCONNECTIONS/EXCLUSION:	\$250,826
10. PREVIOUSLY TAXABLE PROPERTY:	\$5,603,770

@ This includes the actual value of all taxable real property plus the actual value of religious, private schools, and charitable real property.

! Construction is defined as newly constructed taxable real property structures.

% Includes production from new mines and increases in production of existing producing mines.

IN ACCORDANCE WITH 39-5-128(1), C.R.S. AND NO LATER THAN AUGUST 25, THE ASSESSOR CERTIFIES TO SCHOOL DISTRICTS : 1. TOTAL ACTUAL VALUE OF ALL TAXABLE PROPERTY:----->	\$0
---	-----

NOTE: All levies must be Certified to the Board of County Commissioners NO LATER THAN DECEMBER 15, 2024

IN ACCORDANCE WITH 39-5-128(1.5) C.R.S. THE ASSESSOR PROVIDES: HB21-1312 ASSESSED VALUE OF EXEMPT BUSINESS PERSONAL PROPERTY (ESTIMATED): **	\$9,310,598
---	-------------

** The tax revenue lost due to this exempted value will be reimbursed to the tax entity by the County Treasurer in accordance with 39-3-119 f(3). C.R.S.

CERTIFICATION OF VALUATION BY BOULDER COUNTY ASSESSOR

New Tax Entity HPLD YES NO

Date: August 21, 2024

NAME OF TAX ENTITY: HIGH PLAINS LIBRARY DISTRICT GEN OPER

USE FOR STATUTORY PROPERTY TAX REVENUE LIMIT CALCULATIONS (5.5% LIMIT) ONLY

IN ACCORDANCE WITH 39-5-121(2)(a) and 39-5-128(1), C.R.S., AND NO LATER THAN AUGUST 25, THE ASSESSOR CERTIFIES THE TOTAL VALUATION FOR ASSESSMENT FOR THE TAXABLE YEAR :

Table with 11 rows listing valuation items such as 'PREVIOUS YEAR'S NET TOTAL ASSESSED VALUATION' and 'CURRENT YEAR'S GROSS TOTAL ASSESSED VALUATION' with corresponding dollar amounts.

† This value reflects personal property exemption IF enacted by the jurisdiction as authorized by Art . X, Sec. 20(8)(b), Colo. Constitution
* New Construction is defined as: Taxable real property structures and personal property connected with the structure .
≈ Jurisdiction must submit to the Division of Local Government respective Certifications of Impact in order for the values to be treated as growth in the limit calculation; use forms DLG52 & 52A.
⊕ Jurisdiction must apply to the Division of Local Government before the value can be treated as growth in the limit calculation; use Form (DLG 52B).

USE FOR TABOR "LOCAL GROWTH" CALCULATION ONLY

IN ACCORDANCE WITH ART. X, SEC.20, COLO.CONSTITUTION AND 39-5-121(2)(b), C.R.S., THE ASSESSOR CERTIFIES THE TOTAL ACTUAL VALUATION FOR THE TAXABLE YEAR :

Table with 7 rows listing 'CURRENT YEAR'S TOTAL ACTUAL VALUE OF ALL REAL PROPERTY' and 'ADDITIONS TO TAXABLE REAL PROPERTY' with dollar amounts.

DELETIONS FROM TAXABLE REAL PROPERTY

Table with 4 rows listing 'DESTRUCTION OF TAXABLE REAL PROPERTY IMPROVEMENTS', 'DISCONNECTIONS/EXCLUSIONS', and 'PREVIOUSLY TAXABLE PROPERTY' with dollar amounts.

†† This includes the actual value of all taxable real property plus the actual value of religious, private schools, and charitable real property.
* Construction is defined as newly constructed taxable real property structures.
§ Includes production from a new mines and increase in production of existing producing mines.

IN ACCORDANCE WITH 39-5-128(1), C.R.S., AND NO LATER THAN AUGUST 25, THE ASSESSOR CERTIFIES TO SCHOOL DISTRICTS:

TOTAL ACTUAL VALUE OF ALL TAXABLE PROPERTY \$ \$0

IN ACCORDANCE WITH 39-5-128(1.5), C.R.S., THE ASSESSOR PROVIDES:

HB21-1312 VALUE OF EXEMPT BUSINESS PERSONAL PROPERTY (ESTIMATED): ** \$ \$83,530

** The tax revenue lost to this exempted value will be reimbursed to the tax entity by the County Treasurer in accordance with 39-3-119.5(3), C.R.S.



BOARD OF TRUSTEES

Regular Session Agenda

Monday, October 7, 2024

5:00 p.m.

LINC Library Innovation Center

501 8th Avenue, Greeley, CO 80631

This is also streamed virtually by GoToMeeting.

The meeting can be viewed from your computer, tablet, or smartphone.

<https://www.mylibrary.us/hpldboardmeetings>. To view the Board meeting online, use this link and select the date of the meeting you want to join. If you have public comments, you may submit questions at the time of signing up for the meeting. All participants will be muted.

New to GoToMeeting? Get the app now and be ready when your first meeting starts:

<https://global.gotomeeting.com/install/399313765>

If you wish to address the Board via Public Comment, please attend the meeting in person. If you are unable to attend in person, you can submit public comments to the Board prior to the Board meeting via Formstack: https://hpld.formstack.com/forms/board_questions

The High Plains Library District Board may take action on any of the following agenda items as presented or modified prior to or during the meeting, and items necessary or convenient to effectuate the agenda items.

1.0 OPENING OF MEETING

- 1.1 Roll Call and Pledge of Allegiance
- 1.2 Approval of Agenda
- 1.3 Approval of Consent Agenda
 - a. September 16, 2024 Regular Session Meeting Minutes
- 1.4 The Good We Do
- 1.5 Public Comment

2.0 ITEMS FOR INFORMATION/ACTION

- 2.1 Preliminary Budget (Action) - Dr. Matthew Hortt, HPLD Executive Director
- 2.2 Executive Director Annual Performance Appraisal (Information) – Eric Ewing, HPLD Human Resources Associate Director

3.0 DIRECTORS REPORT

- 3.1 Review Draft Agenda – Dr. Matthew Hortt, HPLD Executive Director
 - a. November 18, 2024 RS
- 3.2 District Updates – Dr. Matthew Hortt, HPLD Executive Director

4.0 BOARD COMMENTS

- 4.1 Chair Report
- 4.2 Vice-Chair
- 4.3 Secretary/Treasurer
- 4.4 Committees
- 4.5 Other Board Members

5.0 ADJOURNMENT

Upcoming meetings:

November 18, 2024, 5:00p.m.: HPLD Board of Directors Meeting - Regular Session
Eaton Public Library, 132 Maple Avenue, Eaton, CO 80615

Associate Director of Public Services

What's Happened in the last 30 days?

- PIC training for the Library Material Supervisors
- Grover - keys, furniture, OAC meetings, LA interviews
- Deciding on finishes and carpet for the Carbon Valley and Farr refreshes
- Security Camera Policy
- 2025 budget: staffing requests, facilities requests

What's Coming Up in the next 30 days?

- Planning for Grover continues. Construction will be complete this month, as will hiring for the two 24-hpw LA positions. Figuring out the technology/access for a 24/7 library is next.

Carbon Valley Operations

What's Happened in the last 30 days?

- Patron Feedback: "We love the library!! Friendly staff, great activities for kids and probably our second home. Thank you for all that you do!!"
- Librarians, Diana Grover and Lisa Varra, visited the senior center in Firestone on August 5th to help participants make hypertufa pots.
- Librarian, Chloe Stevens, won a CALCON scholarship!

What's Coming Up in the next 30 days?

- The Firestone Art and Music Show reception is on Friday, September 27. The art exhibit will continue through October 23. The musical entertainment will feature Supa! Marimba.
- Library Manager, Melanie Goldman and librarians Diana Grover, Bridget Parker, Chloe Stevens, and Lisa Varra will attend CALCON September 4-6.
- Children's Librarian, Amanda Pittman, will attend the ALSC conference in Denver on Sept 19-21.

Collections Operational Work

What's Happened in the last 30 days?

- Analyzed data from July's tracking period to determine an average turnaround time for library materials, from delivery from the vendor to dispatch to the branches in courier. Preliminary results indicate Bib Services can receive, catalog, and process new materials in approximately six business days; however, most of the materials in our random test were not ordered in advance of publication, which would extend the time before they could be given to the courier.
 - This is a new measure for Bib Services which we intend to repeat quarterly.

What's Coming Up in the next 30 days?

- Revision of the weeding calendar and overall collection maintenance process continues, with the assistance of public services staff on the Collection Maintenance Taskforce; we hope to finalize the new calendar before October and proceed to planning new training for 2025.

Facilities Operational Work

What's Happened in the last 30 days?

- Completed work orders incl LINC warranty work orders
- Completed MOVE vehicle inspections and maintenance incl facilities truck maintenance
- Attended construction meetings incl assisting architects and subcontractor meetings
- Completed HVAC repairs and PM's
- Replaced broken windows at LINC
- Assisted CIP budgeting and forecasting for all locations incl sun shades, wall addition and cubicles
- Posted ads for Full time custodian and full time facilities tech
- Completed landscaping upgrades all locations
- Completed cleaning schedules for all locations incl carpet and window cleanings
- Assisted with Grover library door hardware schedule, provided all restroom dispensers, trash services, landscaping services, security services, cleaning services and janitorial equipment and supplies
- Completed roof maintenance for all locations
- Completed water pressure issues at LINC
- Completed appliance repair at LINC and lighting issues that weren't completed during construction
- Completed additional exterior lighting at Farr
- Completed security issues for LINC incl new exterior signage
- Completed pest control services for all locations
- Completed irrigation leak detection notifications from City of Greeley at Farr
- Completed annual snow removal contracts for all locations and annual security service contracts

What's Coming Up in the next 30 days?

- Ongoing work orders incl warranty work orders
- Continue construction meetings and subcontractor meetings
- Security issues incl feces from homeless patrons around LINC property
- MOVE vehicle inspections and maintenance incl record keeping
- Interview custodian and facilities tech applicants
- Prep for fall season then winter
- Prep for Grover grand opening

Finance Operational Work

What's Happened in the last 30 days?

- CPE - continuing professional education
- GFOA WPFN mentoring program
- 2025 budget planning
- Work on SOPs
- Work on RFP for investment advisory services
- Vacation August 23 through September 2

What's Coming Up in the next 30 days?

- CPE - continuing professional education
- GFOA WPFN mentoring program
- 2025 budget planning
- Work on SOPs
- Work with Public Trust Advisors on investment portfolio
- Meeting with other Colorado library finance officers September 13

Friends & Foundation Operational Work

What's Happened in the last 30 days?

- Ongoing Innovation Luncheon individual ticket and sponsor solicitations.
 - Raised to date:
 - Sponsors: \$17,500, 9 sponsorships
 - Goal: \$16,100 raised in sponsorships
 - Individual Tickets: \$1,115 17 seats
 - Goal: \$3,000 raised in individual tickets
 - Target Guest Count: 66 paid guests
 - To date: 51 paid guests
- Continued funding project and volunteer program work.
- HPLD F&F Board meeting 8/5, passed HPLD and HPLD F&F MOU
- Attended HPLD Trustee meeting 8/19
- Request for funding support closed on 8/19, 13 requests received for 2025

What's Coming Up in the next 30 days?

- Volunteer and sponsor support at YES!fest 9/14 at LINC
- Review funding requests
- Final work on Innovation Luncheon, 10/1
- Prep for two Friends appreciation events
- Prep for end of year giving

Human Resources Operational Work

What's Happened in the last 30 days?

- Total Employees- 300*
- Open Positions - 10
- Job Applications Received - 150
- New Hires -0
- Resignations -3
- Training Requests - 115

*ADP Employee Count report produced at time of submitting the Board report.

What's Coming Up in the next 30 days?

- Performance Reviews process starts
- Safety Manual updates

Information Technology & Innovation Operational Work

What's Happened in the last 30 days?

- ILS upgrade scheduled
- Construction project support
- AV work at LINC (event space, classrooms)
- Annual schedule refresh planning for 2025 (and remainder of 2024)
 - Smart Badges, computers, gaming systems,
- Finalize 2025 draft budget (add Milliken, ...)
- GCC network upgrade (scheduled in September)
- Eaton additional copier and new computer delivery to remodel space
- Vending unit network installation and rules configuration and support

What's Coming Up in the next 30 days?

- Grover equipment delivery and setup
- Support Governors visit
- Johnstown meeting room equipment installation (pending delivery)
- Vending unit support as needed
- GCC reinstall - on schedule for Sept
- ILS upgrade - on schedule for Sept
- Accessibility - next phase of online catalog and training of video transcription/CC
- Further door technology testing (video)
- Farr replacement display installation
- Gaming systems next steps
- Fort Lupton AV work - on schedule for Sept
- YesFest support

Community Engagement & Strategies Operational Work

What's Happened in the last 30 days?

- Archived Aims/HPLD/UNC Collaboration Presentation is Being Downloaded...Internationally
- Last May, the University of Northern Colorado added the presentation created by Elena Rosenfeld, Annie Epperson (UNC), and Carol Satersmoen (Aims) to their UNCOpen archives. This month we received a report that, since being posted, the presentation has been downloaded twelve times. Six downloads were in the United States (Colorado, Massachusetts, Minnesota and Pennsylvania), five were in China and one in Singapore.
- 2024 Colorado Kids Count Released this month
- The Colorado Children's Campaign released their 2024 Kids Count Report which provides statistics on educational, health, and living conditions of children in Colorado. The report provides both statewide and county-specific data. Unsurprisingly, conditions are getting worse for at-risk children as many of the funding streams provided through COVID funds are being removed. The Kids Count report can be found at <https://www.coloradokids.org/data/kids-count-archive/2024-kids-count/>
- Acts of Connection Project News

- The Acts of Connection project, an effort to fight the impact of social isolation and loneliness, received grant funding from Intermountain Healthcare. The grant funds will be used to help heighten visibility of this effort in the Fort Lupton and Hudson areas which are served by Intermountain's Platte Valley Medical Center.

What's Coming Up in the next 30 days?

- No report at this time

SERVICES

Service - Programming

What's Happened in the last 30 days?

Date	Title	Description	Location	Attendance
8/8/2024	End of Summer Foam Party!	Celebrate the end of the summer with a splash, a giant dance party, a bubblebath playground, and snow cones!	Farr Regional Library	224
8/3/2024	Adventure's End Ball	You are invited to attend our summer's end fantasy ball. Enjoy quests, snacks, music, dancing, crafts, and maybe even be knighted! Costumes are highly encouraged!	LINC Library Innovation Center	102
8/24/2024	Jump on the Magic School Bus and Explore the Five Senses!	Jump on the Magic School Bus for a thrilling ride as we explore all five senses! Get ready for interactive adventures and activities that will delight and engage all your senses.	LINC Library Innovation Center	85
8/20/2024	Music & Movement	Music and Movement is designed for children and caregivers to get up and move together while enhancing motor skills and reinforcing early literacy skills. Instruments and activities are geared toward children ages 3 - 5. This event is drop in and has limited capacity, so please plan to arrive early.	Erie Community Library	73
8/9/2024	Firefighter Storytime	This firefighter-themed storytime features a guest appearance from a Greeley Fire Department firefighter. Then, we'll head outside to our parking lot to explore a firetruck!	Centennial Park Library	68
8/26/2024	Family Storytime	Family storytime is designed for toddlers and preschoolers, though all are welcome to join the fun! Features books, songs, and activities that support early literacy and a love for reading. Seating will be first come, first serve, so please plan to arrive early.	Erie Community Library	62
8/28/2024	Tales for Tots Storytime	Tales for Tots is a storytime for children ages 18 months to 3 years and their caregivers. It features books, songs, and actions designed to develop early literacy skills and a love for reading. Children will develop listening skills allowing them to participate with the storytellers and the other children in the group. Seating will be on a first come, first served basis so please arrive early.	Erie Community Library	57
8/7/2024	End of Summer Tie-Dye Extravaganza!	Let's wrap up the summer with some tie-dye fun at LINC! We'll provide bandanas or bring your own clean, washed, light-colored shirt to turn into a magical tie-dye rainbow!	LINC Library Innovation Center	56
8/8/2024	Back to School Tie-Dye	Head to school in style! Everyone going into Preschool through 12th grade is invited to drop in and create unique tie-dye socks. Please bring clean, washed, light colored socks (old or new) and we'll provide the rest of the supplies. * Tie dye is art you can wear! *While supplies last	Erie Community Library	55