

DRAFT AIA[®] Document A133[™] - 2009

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

AGREEMENT made as of the « » day of «November» in the year «Two Thousand Ten»
(In words, indicate day, month and year.)

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

«City of Lincoln, Nebraska»
«440 South 8th Street»
«Lincoln, Nebraska 68508-2830

And

Block 38 LLC
c/o Woodbury Corporation
2733 E Parleys Way
Suite 300
Salt Lake City, Utah 84109»

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

«Sampson Construction Co., Inc. »
«3730 South 14th Street»
«Lincoln, Nebraska 68502 »

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

«Block 38 Mixed-Use Development»
«Ground Level Retail, 7-Level Parking Garage, 3-Level Residential
Q Street between 13th and 14th Streets
Lincoln, Nebraska»

The Architect:
(Name, legal status and address)

«Sinclair Hille»
«700 Q Street»
«Lincoln, Nebraska 68508»

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

«City of Lincoln»
«Vince M. Mejer
Purchasing Agent
City/County Purchasing
Finance Department

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[™]-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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440 South 8th Street
Suite 200, SW Wing
Lincoln, Nebraska 68508-2830 »
« »
«And

Block 38 LLC
Josh Berger»
«WRK, LLC.
440 N 8th Street, Suite 140
Lincoln, NE 68508»

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

«Boyd Batterman
Sampson Construction Company, Inc.
3730 South 14th
Lincoln, NE 68502»

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

«Liz Kuhlman»
«Sinclair Hille»
«700 Q Street»
«Lincoln, Nebraska 68508»

The Owner and Construction Manager agree as follows.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents 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.

§ 1.2 Relationship of the Parties

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

§ 1.3 General Conditions

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

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and

Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

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

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The 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 well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, quantity take offs of individual components to the greatest extent possible, input from competent subcontractors, or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

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

§ 2.1.5.3 All estimates shall be broken down by individual trades and cost components with quantity take offs and unit prices associated with the various identifiable elements of each trade. Estimates shall also include descriptions of limitations, scope, conditions, assumptions, quality standards, and other considerations used. Construction Manager shall provide such other information reasonably requested by the Owner to evaluate and understand the estimates provided.

§ 2.1.5.4 Owner reserves the right to change the projects scope, the character and quality of building finishes, size, and

structural, mechanical, electrical, or other building systems and finishes in order to bring project costs in alignment with construction budgets or to otherwise make adjustments as may be deemed necessary by the Owner to achieve Owner's desired purposes.

§ 2.1.6 Subcontractors and Suppliers

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

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

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

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

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At such time as plans are deemed to be sixty percent (60%) complete as mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, the Construction Manager's Fixed General Conditions, Costs, Fee, and other variable costs.

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

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee. Such statement shall provide separate costs for the portions of Work attributable to each Owner as directed by the Owner and shown on the Drawings and Specifications;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and

.5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use except as otherwise described in Section 5.3.6 to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

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

§ 2.2.6 The Owner reserves the right to make modifications to the Plans and Specifications in consultation with the Architect and Construction Manager for the purpose of incorporating alternate systems, equipment, finishes, or other changes to effectuate adjustments in the Guaranteed Maximum Price. The Construction Manager shall re-bid or provide alternate prices associated with each modification. In the event that the Guaranteed Maximum Price after adjustments, if any, is not acceptable to the Owner, in the Owner's sole and exclusive judgment, Owner may (1) terminate this Agreement in accordance with the applicable provisions thereof, and make payment for all pre-construction services; or (2) elect to construct only that portion of the project attributable to the parking structure and retail space with appropriate adjustments in the Guaranteed Maximum Price for change in Scope and Fixed General Conditions; or (3) incorporate additional alternate systems, equipment, finishes or other changes working in conjunction with Architect and Construction Manager to achieve reductions in the Guaranteed Maximum Price. Owner shall retain all rights to and the full use of any plans, details, estimates, cost breakdowns, or any other information provided by the Construction Manager as part of its preconstruction services, including disclosing such information to other parties or construction managers, but only after full or partial termination.

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

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

§ 2.2.9 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications, it being understood that unless notified by the Construction Manager in writing within forty-five (45) days after receipt of bid proposals based on those revised Drawings and Specifications, the Construction Manager shall be deemed to have accepted such information without any adjustment to the Guaranteed Maximum Price except as may be permitted pursuant to the provisions of Section 5.3.6.

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

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1.1 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 by 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 through the E-Bid process and as approved by the City, and shall deliver such bids to the Owner. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.1.2 Once Drawings and Specifications are completed to the one hundred percent (100%) level for any given bid package, Construction Manager shall do the following:

- .1 prepare bid packages subject to the review of the City's Purchasing Department to be advertised and bid through Lincoln City's bid process;
- .2 indicate in the bid packages portion which are Private Sector and governmental for tax purposes;
- .3 receive and evaluate bids in conjunction with the Owner and recommend to the Owners which subcontractors and vendors should be selected based, not solely on price, but also on subcontractor and vendor qualifications, experience, financial stability, and ability to provide the requisite labor to complete its Work in accordance with Construction Schedules;
- .4 with the approval of the Owner, select the subcontractors and vendors, and/or reject unqualified subcontractors and vendors; and
- .5 rebid any work for which Construction Manager or Owner considers to have not received an adequate number of bids to have obtained competitive pricing or response from qualified subcontractors or vendors.

§ 2.3.2.1.3 In the event the final bids are less than the Guaranteed Maximum Price, the difference will be considered Additional Contingency for the Construction Manager's exclusive use excepting fixed General Conditions, Cost Not to Be Reimbursed as described in Section 6.8, or costs related to errors, defective work, or damages to completed work caused by subcontractors.

§ 2.3.2.1.4 Proposals shall be requested from subcontractors with respect to portions of the Work that the Construction Manager customarily performs with the Construction Manager's own personnel. Unless Construction Manager can demonstrate to the Owner that the Project will be materially negatively affected otherwise, where such proposals are less than Construction Manager's cost Construction Manager must either utilize the services of such subcontractor or reduce Construction Manager's cost for the Work to an amount equal to the lowest proposal received.

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

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

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

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

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

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

§ 3.1.2 Prior to the commencement of work related to the housing portion of the project, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) a change in the Work materially changes the Contract Sum, or (2) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change.

§ 3.1.3 The Owner shall periodically communicate the Owner's budgetary expectations for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1. Where Construction Manager's preliminary estimates exceed the expectations of the Owner, Construction Manager, in consultation with the Owner and Architect, shall pursue alternative designs or finishes during the preconstruction phase to achieve Owner's budget. The Scope of the Work shall be modified accordingly or the Owner may elect to proceed by making adjustments to its budget. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control 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.

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

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. Notwithstanding, prior to the commencement of any construction or excavation, the Construction Manager shall give notice to each utility provider and require each utility provider to locate and mark underground facilities on or adjoining the site and Project area. Furthermore, Construction Manager and each subcontractor shall be required to visit and familiarize himself with the site. No additional cost will be allowed with respect to any existing conditions that are not shown on surveys or other documentation if such conditions are visible to or could have been determined by the exercise of reasonable observation of the Project area.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Construction Manager understands that the term "Owner" as used herein, means the City of Lincoln and Urban 38 LLC. No Work, changes, or other obligations of the Construction Manager requiring Owner's approval shall be deemed as received until acknowledged in writing by the representatives of each Ownership party designator.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal and accounting services with respect to Owner's obligations, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. Contractor shall provide all legal and accounting services reasonably necessary to track and document project costs and, in addition, provide all insurances required of the Contractor as defined in AIA A201-2007 General Conditions of the Contract for Construction, as modified.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager and approved by Owner, that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

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

«a Fixed Lump Sum equal to thirty thousand dollars (\$30,000). Such amount includes all costs of travel, local and long-distance telephone charges, computer and electronic copying and transmission expenses, delivery charges, Construction Manager's personnel expenses and overhead, and photocopying and reproductions (except for the cost of plan reproduction associated with bidding and determination of the Guaranteed Maximum Price. »

§ 4.2 Payments

§ 4.2.1 Payments for services shall be made as a Fixed Lump Sum on Completion of the Preconstruction Phase Services and acceptance by the Owner of the Guaranteed Maximum Price.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid «thirty» («30») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

«1» % «prorated for each day after which payment is due.»

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1, plus the Construction Manager's Fee, plus the Fixed General Conditions, plus Other Variable Costs.

§ 5.1.1 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.)

«To be two point six five percent (2.65%) of the Cost of the Work completed including General Conditions less retainages applicable thereto as certified by an approved Application for Payment. »

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

«to be two point six five percent (2.65%) of the Cost of the Work completed including General Conditions less retainages applicable thereto as certified by an approved Application for Payment.»

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

«shall be limited to more than fifteen percent (15%) of the aggregate sum approved by Owner for Cost of Materials, labor and heavy equipment costs as defined in AIA201-2007 General Conditions of the Contract for Construction, as modified.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed «two point six five» percent («2.65» %) of the standard rate paid at the place of the Project as defined in AIA A201-2007 General Conditions of the Contract for Construction, as modified.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price/Unit (0.00)
Man/Material Hoist with Operator	Per Week (Assumes 50 hrs/wk)	\$3,070.00
Man/Material Hoist (Erect/Dismantle/Inspect/Power)	Lump Sum	\$18,460.00
Forklift with Operator	Per Week (Assumes 50 hrs/wk)	\$2,070.00
Tower Crane with Operator	Per Month (Assumes 50 hrs/wk)	\$23,563.00

§5.1.6. The Construction Manager's Cost of General Conditions as defined in Article 6 shall be a Fixed Sum of One Million Three Hundred Twenty-One Thousand Twenty Dollars (\$1,321,020) calculated as follows and as itemized on RFP Analysis (Exhibit B). Construction Manager shall be responsible for any costs of General Conditions exceeding the indicated aggregate amount. Payment shall be made in equal installments beginning as of the date Construction Manager receives a Notice to Proceed and commences actual work at the jobsite to Time of Substantial Completion. .

1. Staffing: Eight Hundred & Ninety-Two Thousand Three Hundred Fifty Dollars (\$892,350).
2. Site Requirements: Three Hundred Thirty-Seven Thousand Seven Hundred Fifty Dollars (\$337,750).
3. Miscellaneous: Eighty-Three Thousand Nine Hundred Twenty Dollars (\$83,920).
4. Extended General Conditions, due to schedule extensions by Owner resulting from no fault of Construction Manager, shall be reimbursed in accordance with AIA-201-2007 General Conditions of the Contract for Construction as modified.

§5.1.6.1 Where project costs are divided between the two Owners, the General Conditions shall be allocated to each Owner based on a ratio determined by taking the estimated time required to complete each portion of the Work divided by the total construction time as determined by the approved Construction Schedule.

§5.1.7 The amount of contingency to be included in the Guaranteed Maximum Price shall not exceed three point five percent (3.5%) of the aggregate value of the Cost of the Work unless contractor can demonstrate necessity for a larger amount based on the incompleteness of the Drawings or Specifications.

§5.1.8 Variable costs to be as indicated in Article 8 and paid based on the percentage rate multiplied by the Cost of the Work completed including General Conditions less retainages applicable thereto, as certified by an approved Application for Payment. Cost of Bonds to be paid at time of first Application for Payment.

1. General Liability Insurance: zero point one three six three percent (0.1363%).
2. Builders Risk Insurance: zero point zero seven five percent (0.075%).
3. Warranty Reserve: zero point one four percent (0.14%).
4. Performance and Payment Bonds: zero point three nine percent (0.39%).

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner. *(Insert specific provisions if the Construction Manager is to participate in any savings.)*

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§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.2.3 Unused contingency shall be reduced by one third (1/3) on substantial completion of the building structural shell and exterior enclosure, and by another one third (1/3) on substantial completion of mechanical/electrical rough-in by means of a deductive change order. The remaining unused contingency will be credited to the Owner on Final Completion. Alternatively, Owner may elect to apply unused contingency reductions against pending change orders or other Owner preferred Work. There will be no reductions in the Additional Contingency described in Section 2.3.2.1.2 until time of Final Completion.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General

Conditions of the Contract for Construction, as modified. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction, as modified.

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

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager’s Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

§ 5.3.6 In no event will a change order be approved or will the contingency included in the Guaranteed Maximum Price as referenced in Section 2.2.4 be used for those circumstances or conditions marked “NO” in the chart below except as indicated therein. a conflict between the requirements of the written Specifications and Drawings, Construction Manager’s failure to include an item of work or task in the Guaranteed Maximum Price. The cost of overtime to keep on schedule (but not including overtime requested and approved by the Owner to accelerate the Date of Substantial Completion), cost for expediting materials, equipment or replacement parts to achieve the scheduled Date of Substantial Completion, utility system shutdowns or after hours/Sunday work associated with connection to public utility mainlines, repair of finishes that are visually unacceptable to the Architect, repair of damage caused by water intrusion or other weather related damage, replacement of a subcontractor due to non-performance or the repair to a subcontractor’s completed work where the damage is caused by another subcontractor and prior to Owner’s acceptance of the Work.

CIRCUMSTANCE OR CONDITION

- 1 Correction of non-conforming work by a subcontractor.
- 2 Repair of damages to the work caused by a subcontractor **except where approved by Owner.**
- 3 Removal and relocation of incorrectly placed work by a subcontractor.
- 4 Correction of non-conforming work, repair of damages, or removal and replacement of defective or incorrectly placed work self performed by CM’s own forces.
- 5 Removal, relocation, and/or rerouting of work required as a result of a conflict in the location.
- 6 An omission on the plans. (i.e. the mechanical plans show a piece of equipment requiring power but the electrical drawings don’t show a circuit to the equipment)
- 7 A conflict between the requirements of the written specifications and a note or information shown on plans except when approved by the Owner.
- 8 CM’s failure to include an item of work or task in the GMP. Such failure by a subcontractor is not a cause for a change order or use of CM’s contingency.

	YES	NO
1		X
2		X
3		X
4		X
5	X	
6	X	
7		X
8	X	

9	Cost of overtime to keep on schedule except where approved by Owner.		X
10	Cost for expediting the delivery of materials, equipment, or replacement parts except where approved by Owner.		X
11	Cost of CM's supervision of subcontractors working extended hours or multiple shifts except where approved by Owner.		X
12	Cost of power or other utility services to portions of the work installed by Owner or during Owner's setup of furniture and furnishings prior to substantial completion of the work.	X	
13	Utility system shutdowns or after hours/Sunday work associated with connections to public utility mainlines, it being presumed that all such connections located in public rights-of-way or mainline facilities serving other surrounding businesses will require connection during non-business hours.		X
14	Uncovering of buried conditions shall be considered a change order to Owner.		X
15	A change of material or upgrade of material quality requested by the Owner shall be considered a change order to Owner.		X
16	Cost to correct or modify work required by the building inspector except where incorrectly shown on plans in which case the work shall be considered a change order to Owner.		X
17	Cost to remove and replace work not meeting the minimum requirements specified discovered from quality control testing.		X
18	Cost to repair finishes that are visually unacceptable to the architect.		X
19	Cost to repair damage caused by water intrusion or other weather related damage except where Construction Manager took reasonable precautions to protect the Work against such damage and as approved by Owner.	X	
20	Where a subcontractor needs to be replaced due to non-performance, the cost increase to have another subcontractor take over the work.	X	
21	Cost to repair damage to a subcontractor's completed work where the damage was caused by another subcontractor prior to acceptance of the work except where otherwise approved by Owner where CM is unable to reasonably assign the damage to subcontractors.		X
22	Adverse weather conditions beyond those reasonably anticipatable in the Lincoln area. Weather protection and other cold weather expenses are treated as Allowances.	X	
23	Special event preparations such as Star City Parade, UNL Graduation, P Street Tenant demands.	X	
24	Additional public protection measures beyond that reasonably anticipatable where required by City or Authority Having Jurisdiction.	X	

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages 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.

§ 6.2.2 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3 and are in accordance with the labor rates and mark-ups permitted by AIA A201-2007 General Conditions of the Contract for Construction, as modified, allowed with respect to Change Orders.

§ 6.2.3 Incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

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

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

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

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 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.

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

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

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

§ 6.6 Miscellaneous Costs

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

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

§ 6.6.3 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.

§ 6.6.4 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the

last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.5 Costs for electronic equipment and software, directly related to the Work with the Owner’s prior approval but not including equipment required at Contractor’s field office.

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

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

§ 6.6.8 Subject to the Owner’s prior approval, expenses incurred in accordance with the Construction Manager’s standard written personnel policy for relocation and temporary living allowances of the Construction Manager’s personnel required for the Work.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of 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.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.7.5 An allowance for the cost of temporary heat or other cold-weather protection including fuel costs, equipment rental, materials required or temporary coverings or enclosures, and labor costs associated therewith. Nothing is included in the GMP.

§ 6.7.6 An allowance for fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Subparagraph 13.5.3 of the General Conditions or other provisions of the Contract Documents and which do not fall within the scope of Subparagraphs 7.2.2 through 7.2.4 below.

§ 6.7.7 Cost of General Conditions shall be a fixed amount and include the items set forth below.

§ 6.7.7.1 Labor Costs; Salaries including any associated payroll burden of Contractor supervisory and administrative personnel when stationed at the field office in whatever capacity employed. Supervisory and administrative personnel engaged at shops or on the road, in expediting the production or transportation of materials or equipment, shall be considered as stationed at the field office including:

- .1 Job superintendent, any assistant superintendent if deemed necessary.
- .2 Project management personnel responsible for scheduling, cost estimating, coordination of subcontractors and contracts, etc., who may be stationed at contractor’s office;
- .3 Payroll burden includes costs paid or incurred by the Contractor for employee taxes, insurance, contributions, assessments and benefits required by law and customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and profit-sharing.

§ 6.7.7.2 Travel and Subsistence: All travel and subsistence expenses of the Contractor or of his officers or employees incurred

while traveling in discharge of duties connected with the Work including:

- .1 Any truck allowances and vehicle expense including fuel and mileage costs.
- .2 Any living allowances or other travel expenses of any supervisory or management employee.

§6.7.7.3 Cost of Materials and Equipment, Temporary Facilities and Related Items: Cost, including transportation and maintenance, of all materials, supplies, temporary facilities and hand tools not owned by the workers, which are not consumed in the performance of the Work.

- .1 Rental charges for temporary facilities, construction barricades, fences, temporary pedestrian walkways, signage, safety devices, traffic control, storage sheds, and hand tools not customarily owned by the construction workers (including any hand tools allowances) which are provided by the Contractor's at the site, whether rented from the Contractor's or others, and cost of transportation, installation minor repairs and replacements, dismantling and removal thereof. Include lifts or cranes and other hoisting equipment to the extent deemed necessary by Contractor.
- .2 Cost of construction field office, office supplies, telephone/data lines, computers, and any temporary job utilities and associated expenses, temporary toilets, construction power, water and other construction utilities.
- .3 Cost of removal of all debris including general job clean-up and final clean-up and job close-out expense.
- .4 With respect to temporary power, Contractor shall be responsible for all of the costs related thereto up to and including until the time of Substantial Completion. The requirement will be in effect notwithstanding Owner's earlier commencement of installation of equipment and furnishings which occurs forty-five (45) days prior to Substantial Completion..

§6.7.7.4 Miscellaneous Costs: Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage, photography, and similar petty cash items in connection with the Work.

- .1 Cost relating to building and site layout, staking for establishment of subgrades, gridlines, wall locations, floor elevations, and reasonable staking for establishing the location and elevation of utility and other site surface improvements. Notwithstanding, Contractor's responsibility for site layout, Owner's engineer shall initially establish site boundaries and reference elevations benchmark from which other site layout shall be measured.
- .2 Cost of safety precaution or other municipal or OSHA required barricades, traffic signals, railings, temporary protections, etc.
- .3 Cost of security fencing and video surveillance of primary staging areas and perimeter fencing.
- .4 Cost relating to on site storage and any start-up move on or move off expenses. Cost relating to onsite or off-premise storage.
- .5 Cost of liability and other forms of insurance required to be carried by the Contractor as outlined herein.
- .6 Cost of security guards or other security personnel, monitoring cameras and equipment, etc., as deemed necessary by Contractor to secure the premises during construction through Substantial Completion and protect the building contents, equipment, and construction-in-progress.
- .7 Storm water pollution prevention facilities, State permits, and maintenance.
- .8 Cost of equipment and labor to unload, move, lift, stockpile, and place materials, equipment, tools, personnel, etc., on the site and within the building where such facilities are not required by or included in a subcontract but not including the cost of hoisting which costs shall be included in the Cost of the Work in accordance with the Schedule of Unit Prices.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 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 Contractor's Construction Manager's principal office or offices other than the site office, except for project manager/estimator/engineer/safety coordinator included in General Conditions as specifically provided in Section 6.7, or as may be provided in Article 11;
- .2 Expenses of the Contractor's Construction Manager's principal office and offices other than the site office except as specifically provided in Paragraph 6.1;

- .3 Overhead and general expenses, except as may be expressly included in General Conditions and costs to be reimbursed. Sections 6.1 to 6.7;
- .4 The Contractor's Construction Manager's capital expenses, including interest on the Contractor's Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable including but not limited to costs for the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase; and
- .9 Cost for General Conditions in excess of the fixed sum described herein.
- .10 Rental costs of machinery and equipment, except as specifically provided in costs to be reimbursed.
- .11 Legal expenses of any kind including the cost of defending suits or claims for infringement of patent rights arising from such requirement by the Contract Documents; payment made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements.
- .12 Except as provided in Section 5.3.6 Costs in repairing or correcting Work damaged or improperly executed by construction workers in the employ of the Construction Manager or any subcontractor.
- .13 Costs in correcting defective or nonconforming work performed or supplied by a Subcontractor or material supplier.
- .14 Any costs not specifically and expressly described in Costs To Be Reimbursed.
- .15 Costs which would cause the Guaranteed Maximum Price, if any, to be exceeded.

§ 6.9 Discounts, Rebates and Refunds

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

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, 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, 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 Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

§ 6.11.1 The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. Construction Manager shall not be entitled to any additional overhead expenses or fees associated with making such records available or assisting the auditors in the performance of audits.

§ 6.11.2 If upon auditor's review, costs are overstated in excess of zero point two five percent (0.25%) of the Final Contract Sum, the Construction Manager shall pay the Owner's costs for auditing Construction Manager's records. Notwithstanding, Construction Manager may object to auditor's report, in which case the parties shall informally mediate any objections. Construction Manager's obligation to pay the Costs of audits where overstated shall not apply to any audits performed by the State under Nebraska law. In any case, the Final Contract Sum will be adjusted for any overstatements of costs.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 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.

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

« »

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the «twenty-fifty (25th)» day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the «twenty-fifty (25th)» day of the «following» month. If an Application for Payment is received by the Architect after the application date fixed above, payment 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.)

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

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee and other variable costs shall be shown as single separate items. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect and Owner may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 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 for which the Construction Manager has made or intends to make actual 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.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Only if approved in advance, add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Subcontractor costs and Construction Manager's Fee, less retainage of «ten» percent («10»%). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of «ten» percent («10»%) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007; and
- .8 When the Work of the Contract is fifty percent (50%) complete additional retainage will not be required on the remaining Work, excepting that the total retainage shall in no case be less than an aggregate five percent (5%) or as otherwise provided in AIA Document A201-2007, as modified.

§ 7.1.8 Except with the Owner's prior approval, payments to subcontractors shall be subject to retention of not less than ten percent (10%). The Owner and Construction Manager may agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) for the percentage of retainage held on Subcontracts to be less or for a portion of the retainage to be paid earlier where a substantial inequity to a Subcontractor may exist, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

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

§ 7.2 Final Payment

§ 7.2.1 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 Section 12.2.2 of AIA Document A201-2007, 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; and
- .4 Contractor has provided proof of payment and completed all other closeout requirements as described in the Specifications and AIA Document A201-2007, as modified.

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



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

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. 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.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007. Construction Manager is specifically required to provide all insurances in the coverages as described in AIA Document A201-2007, as modified, including but not limited to:

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

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
Performance and Payment Bond	Full amount of the Guaranteed Maximum Price
Builder's Risk Insurance	Per AIA A201-2007, as modified.
General Liability Insurance	Per AIA A201-2007, as modified.
Automobile Insurance	Per AIA A201-2007, as modified.
Workmen's Compensation Insurance	Per AIA A201-2007, as modified.

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[] Litigation in a court of competent jurisdiction

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

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ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will 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.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

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

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above.

§ 10.3 Suspension

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

§ 10.3.2 Notwithstanding anything to the contrary in the General Conditions or Supplementary General Conditions of the Contract for Construction, Owner may, by giving written notice to the Construction Manager, suspend, delay, or interrupt the Work at any time for such period as the Owner may determine. In the event of such a delay, all contracts and subcontracts will remain in full force and effect. In the event of a suspension in the Work, there shall be no adjustments to the cost thereof, except to the extent that Construction Manager or Subcontractor can demonstrate that his costs have increased. Reasonable adjustments for additional overhead, supervision, and remobilization may be charged based on daily rates as designated in Construction Manager's breakdown of General Conditions.

§ 10.4 Notwithstanding anything to the contrary in Article 10, the provisions of AIA Documents A201–2007 General Conditions of the Contract for Construction, as modified, with respect to termination and suspension of this Agreement shall apply to all sections of this Article 10.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

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

§ 11.5 Other provisions:

« § 11.5.1 Construction Manager acknowledges that Owner intends to obtain construction financing through an institutional lender and that such lender shall be in a priority position as beneficiary under a Deed of Trust recorded against the property. Any prior rights or claim that Construction Manager may have by law due to Contractor's commencement of work prior to recording of any Deed of Trust shall be assigned subrogated to that institutional lender. This Agreement constitutes an automatic assignment without the requirement of any further documentation hereafter and Construction Manager agrees to accept this assignment and subrogation and agrees that contractor's rights shall be subordinate thereto. Furthermore, Construction Manager agrees to include language similar to the above in all of its subcontracts or agreements for purchase of materials with all subcontractors and materials suppliers on this Project.

§ 11.5.2 Construction Manager agrees to execute any assignment of contract requested by Owner's lender provided that such assignment requires lender to assume all obligations of the Owner under this Agreement including obligations for payment of Work performed.

§ 11.5.3 The Parties acknowledge that time is of the essence of this Agreement and that Owner will sustain damages as a result of Construction Manager's failure to achieve Substantial Completion by the dates indicated herein, which damages include, but are not limited to, loss of revenue, service charges, interest charges, breaches of rental contracts, extraordinary vacancy expenses, utility charges, labor and employee expenses. Construction Manager does hereby agree, as a part consideration for the award of this Contract, to pay to the Owner, as liquidated damages and not as a penalty, the sums indicated herein for each calendar day beyond the dates set forth in the Agreement that the Construction Manager fails to achieve Substantial Completion for each portion of the Project as indicated herein. The indicated amount is fixed and agreed on by and between the Construction Manager and the Owner because of the impracticability and extreme difficulty of fixing and ascertaining the actual value of the damages, some of which are indefinite and not susceptible of easy proof, which the Owner will sustain by failure of the Construction Manager to achieve Substantial Completion of the Work by the dates indicated. Said amount of damages is agreed to be a reasonable value which the Owner will sustain. The indicated amount shall be deducted from any monies due or that may become due to the Construction Manager and, if said monies are insufficient to cover said damages, then the Construction Manager shall pay the amount of the difference.

1. For failure to achieve Substantial Completion by September 30, 2011 of the structural platform of the Parking Structure portion on which Residential portion is constructed there shall be no liquidated damages, however, Construction Manager will be responsible for any additional costs to expedite the Work to complete the Residential portion by the date indicated.
2. For failure to achieve Substantial Completion by May 1, 2012 of the Parking Structure portion of the Work, the liquidated damages shall be \$1,100 per calendar day. Substantial Completion means that the entire Parking Structure is accessible, with all systems operational, and able to be occupied for its intended use.
3. For failure to achieve Substantial Completion by July 15, 2012 of the Residential portion of the Work, the liquidated damages shall be \$2,800 per calendar day.
4. For failure to have the Retail grey shell portion of the Work available for Tenants to begin their interior finish build-out by March 1, 2012, the liquidated damages shall be \$1,100 per calendar day.

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

1. AIA Document A133-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
2. AIA Document A201-2007, General Conditions of the Contract for Construction, as modified

.3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

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.4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

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

«Revised General Conditions Cost Breakdown Form dated July 15, 2010 »

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

CONTRACTOR:

SAMPSON CONSTRUCTION CO., INC.

By: _____
Boyd Batterman, Its Vice President

OWNERS:

BLOCK 38 LLC, a Utah limited liability company

By: WOODBURY CORPORATION, a Utah corporation, Its Manager

By: _____
Jeffrey K. Woodbury, Vice-President

By: _____
O. Randall Woodbury, Secretary

CITY OF LINCOLN, NEBRASKA

By: _____
Chris Beutler, Mayor

DRAFT AIA® Document A201™ - 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

«Block 38 Mixed-Use Development»
«Ground Level Retail, 7-Level Parking Garage, 3-Level Residential
Q Street between 13th and 14th Streets
Lincoln, Nebraska»

THE OWNER:

(Name, legal status and address)

«City of Lincoln, Nebraska»
«440 South 8th Street»
«Lincoln, Nebraska 68508-2830

And

Block 38 LLC
c/o Woodbury Corporation
2733 E Parleys Way
Suite 300
Salt Lake City, Utah 84109

THE ARCHITECT:

(Name, legal status and address)

«Sinclair Hille»
«700 Q Street»
«Lincoln, Nebraska 68508

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- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS

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.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

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

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 CONTRACTOR

Wherever the term "Contractor" is used herein, it shall mean Construction Manager unless specifically indicated otherwise.

§ 1.1.10 LAWS AND REGULATIONS

All laws, ordinances, rules, regulations and orders of any public authority, all standard specifications, manuals and codes, and all manufacturer's specifications, directions, recommendations and publications referred to for the

performance of the Work or for the establishment of construction, materials or equipment standards, whether or not specifically made a part of or incorporated by reference into Contract Documents, shall mean and refer to the latest revisions or editions thereof in effect on the date of the Contract Specifications, or as to Change Orders, on the date of the Change Order.

§ 1.1.11 MANUFACTURER'S SPECIFICATIONS

All references to the Manufacturer's Specifications," Manufacturer's Directions or "Manufacturer's Recommendations" shall mean and refer to the referenced manufacturer's published specification or manuals. Upon written approval of the Architect, such publications shall be made a part of and incorporated into the Contract Specifications as though repeated therein in full, and all manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned accordingly, unless specified to the contrary by the Architect.

§ 1.1.12 MISCELLANEOUS DEFINITIONS

"Furnish", unless specifically limited to context, means furnishing to project site items specified, to include unpacking and assembly if necessary. "Install" means incorporation in the Work, including all necessary labor, materials, equipment and connections necessary to complete installation. "Provide" means furnish and install.

§ 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 and to make all working parts operational 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. Should there be anything omitted and/or erroneously described in the Specifications or in the drawings, but is reasonably implied by the Specifications, by the drawings or by general trade practice, and is necessary for the completion of the work, the work shall be completed in every aspect as would be required were such omissions or errors corrected.

§ 1.2.1.1 In general, drawings show dimensions, positions, materials and kinds of construction; specifications describe quality of materials and workmanship. Work not particularly detailed, marked or specified shall be the same as similar parts that are detailed, marked or specified such that all details, ornament, moldings, repeated features, etc. are constructed alike and continue throughout.

§ 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 will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this 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 material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

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.

§ 2.1.3 Where there are separate Owners of different portions the Project, the Owner's responsibilities, obligations, and performance applies only to the Owner of that Owner's portion of the Project. Where the same issues, obligations or performances affects portions of each Owner of the Project, Contractor shall obtain consent or other information from each respective Owner.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Owner warrants that he has the financial capacity or has made financial arrangements to fulfill his obligations under the Contract. At the request of Contractor, Owner will furnish reasonable evidence of such capacity and financial arrangements and shall update such information in the event of a material change and as provide in Sections 3.1.2 of the AIA A133-2009 Agreement.

§ 2.2.2 Owner shall secure and pay for all necessary zoning approvals, easements, property assessments impact fees, development fees and business licenses necessary to obtain a building permit or for operating a business in the finished project. Contractor shall be responsible for all other permits, fees, inspections, etc., required to achieve a final occupancy permit and use of the premises unless specifically noted otherwise in the Contract.

§ 2.2.3 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. Notwithstanding anything to the contrary herein, Contractor will be responsible for notifying all utility companies and locators prior to excavation to identify the location of all overhead and underground utilities. Contractor shall not proceed with such excavation until verifying that the locators have performed their investigations or that observation of the excavation does not require the presence of utility company representatives. Contractor will be responsible for the cost of repair of any existing utilities damaged as a result of Contractor's Work.

§ 2.2.4 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.

§ 2.2.5 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.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. Nothing to the contrary herein will prevent the Owner from having the absolute and unconditional right to stop the Work at any time with or without cause.

§ 2.4 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 written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, upon written notice to the Contractor without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor 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. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 Wherever the term "Contractor" is used herein, it shall mean the Construction Manager who 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 obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Contractor accepts all local requirements and existing conditions of the site. No allowance or additional compensation shall be made to Contractor on account of the conditions of the work site and the area surrounding the site, if such conditions could have been ascertained through exercise of reasonable diligence by Contractor.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Prior to commencing any excavation required by the Work, the Contractor shall notify appropriate agencies or utility company representatives responsible for

marking the location of underground facilities and shall not proceed with the excavation until all such agencies have marked the location of such facilities or verified that none exist. Any charges resulting from damaged facilities or utilities shall be borne by the Contractor.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make 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 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, except as stated below, shall be fully and 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 written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

§ 3.3.4 For all equipment furnished by others to be installed by the Contractor, the Contractor shall use manufacturer's detail drawings, as approved by the Architect or Owner, to establish rough-in dimensions and locations of services.

§ 3.4 LABOR AND MATERIALS

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

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

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

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, 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. Warranties and guaranties of equipment suppliers will be assigned directly to the Owner at the end of the general warranty periods concluding one (1) year from the date of Substantial Completion with no further responsibility, warranty or guarantee of the equipment by the Contractor.

§ 3.5.2 The entire Work shall be warranted against defects in material and workmanship for a period of one (1) year, or such longer time as may be required by the Contract Documents, from the date of Substantial Completion except with respect to any "punch list" items noted at the time of Substantial Completion or occupancy by Owner if prior to date of Substantial Completion. The warranty shall specifically provide that all defects in material and workmanship as determined by the Architect appearing during the warranty period will be remedied to the satisfaction of the Architect at no additional cost to the Owner. Contractor, Owner, and Architect shall conduct an inspection approximately eleven (11) months after the Date of Substantial Completion to identify warranty defects.

§ 3.5.3 Notwithstanding Contractor's warranty as required under Paragraph 3.5.2, Contractor will be responsible for the correction of any hidden or latent defects discovered after the initial warranty period, subject to applicable Nebraska Statutes and law.

§ 3.5.4 Where a greater warranty is called for in the Specifications, the Contractor and his Subcontractor together on a single form, and the material manufacturer on the same or on a separate form, shall jointly furnish the Owner with their written warranty for the specified period in accordance with this article. Such warranties shall be in the Contractor's or Manufacturer's form, or in a trade association form, all subject to the Owner's and Architect's approval.

§ 3.5.5 The Contractor shall secure and furnish to the Owner through the Architect, as a condition precedent to final acceptance and prior to application for final payment, all written guarantees and warranties called for in the Specifications.

§ 3.6 TAXES

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Block 38 LLC's part of 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 Part of the Project is owned by the City of Lincoln, Nebraska. Accordingly, sales and use taxes on tangible personal property to be incorporated into the City's part of the Work are to be excluded under the following procedure: The City will appoint the Contractor as Purchasing Agent for the Owner. Such appointment will authorize the Contractor and its subcontractors to issue exempt sales certificates to the vendors when purchasing tangible personal property to be incorporated only into the City's part of the Work.

§ 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. Whereas the City is the Owner of part of the Project, certain fees, licenses and permits may not be required. The Contractor and the Owner shall determine the necessity of securing any permits or licenses prior to applying for the same.

§ 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 21 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 an equitable adjustment 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 in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

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

§ 3.7.6 The Contractor shall secure all applicable permits and certificates, pay all fees and arrange for necessary inspections required by State, County, City or other authorities and pay all expenses for repairing highways, streets, sidewalks, alley, etc. occasioned by execution of its Work.

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2. No additional cost for Contractor's administrative overhead and profit may be added to any Change Order resulting from allowances.

§ 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 furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply 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 SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Contractor shall build into the schedule time delays due to adverse weather conditions as indicated in Article _____.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, 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. However, it is understood that such schedules shall be a tool for managing the progress of the Work and shall not be considered as contractually affecting the Contractor's obligations with respect to performance except as pertaining to the Dates of Substantial and Final Completion of the Work.

§ 3.10.4 Contractor in conjunction with Major Subcontractors shall provide a Bar Chart or CPM Schedule of work to Architect, Owner and Subcontractors. Contractor, suppliers, manufacturers, and subcontractors are responsible for adherence to this schedule and shall supply sufficient new equipment, tools, and workmen to complete work within time limits specified in this schedule.

§ 3.10.5 Contractor shall submit to Owner and Architect copy of Bar Chart, indicating dates that various phases of work will start and finish. Submit schedule within 15 calendar days of start of construction. Keep Owner apprised of any delays or changes in this schedule. Schedule shall be updated to current conditions and submitted with each pay request. No approval of pay request will be given unless this schedule is submitted.

§ 3.10.6 Contractor shall on a daily basis prepare a report in which all events affecting the job and occurring that day are recorded. When requested by Owner, copies of these reports shall be submitted to the Owner for information and review.

§ 3.10.7 Contractor shall maintain a Shop Drawing and submittal log, which shall be updated to current conditions, reviewed at each progress meeting, and submitted with each request for payment.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked daily to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which 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 submit, with such promptness as to cause no delay in the Work one (1) electronic copy and two (2) printed copies of all shop or setting drawings and schedules required for the Work. Drawings shall show dimensions of all various members, the arrangement and construction of all connections at joints and other necessary details; also all holes, straps, and other fittings required by other contractors for the attaching of their work to the work for which the shop drawings were prepared. Where required, engineering computations shall also be submitted. Contractor shall furnish copies of approved shop drawings to other contractors whose work comes in contact with or is attached to the work for which such drawings were prepared. Contractor shall indicate his review and approval of shop drawings by means of a stamp with his initials and date of review prior to submitting to the Architect for review. Nonetheless, all submitted drawings, whether stamped or not, shall imply Contractor's review and approval thereof.

- .1 Only shop drawings, schedules, models and templates that bear the review stamp of the Architect shall be used on this work. Work materials or equipment for which shop drawings are required shall not be fabricated, performed or installed until the Architect has reviewed and deemed the submittal to be complete. Such work, materials or equipment performed or installed without prior review of shop drawings may not be accepted. It shall be the Contractor's responsibility to submit shop drawings to the Architect.
- .2 The Architect's review of such drawings and schedules does not relieve the Contractor from responsibility for deviations from contract drawings or specifications unless he has, in writing, called the Architect's attention to such deviations at the time of submission of shop drawings.

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

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written 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. 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 cause such services or certifications to be provided by a properly 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, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 Upon Substantial Completion of the Work, the Contractor shall compile for and deliver to the Owner a set of Record Documents conforming to the construction records of the Contractor as provided by him to the Contractor. This set of documents shall consist of corrected specifications and drawings showing the recorded location of the changes in the work. Within 15 days upon completion of all work, the Contractor shall furnish to Architect one (1) complete set of reproducible Record Drawings/Documents that have been corrected to show all revisions, deletions and additions. These drawings shall be designated "Record Documents" and bear the General Contractor's and Subcontractor's signatures and date. The Architect shall then forward the Record Documents to the Owner (2 copies thereof). No final payment will be issued to the Contractor until the complete set of shop drawings, record drawings, and maintenance and operating manuals are delivered to the Architect/Engineer.

§ 3.13 USE OF SITE

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

§ 3.13.2 The Contractor, each Subcontractor, and other Contractors shall provide their own protection against the elements for suitable storage of their materials or equipment delivered to the site or delivered to some other location agreed upon in writing, which are to be incorporated into this project, and shall provide their own trailers or sheds for storage of their materials, equipment, tools, etc., if not otherwise provided by the Contractor. Areas for general storage and storage trailers or sheds shall be approved by the Owner. Deliver all cement, caulking materials, paint materials, lime, plaster, adhesives for resilient floors, acoustical materials, and all similar materials to the job or to the off-site storage location in original sealed containers, unopened, with seals unbroken and with labels plainly indicating manufacturer's name, brand, type and grade of materials. Containers which are broken, opened, water-marked or otherwise damaged and/or which contain caked, lumpy or otherwise damaged materials are unacceptable and shall be immediately removed from the premises. All the above-mentioned materials shall be stored above ground and protected from dampness, weather, and other damage.

§ 3.13.3 The Contractor shall enforce the Owner's instructions regarding use of the site, any designated offsite staging areas, and surrounding public streets regarding signage, advertisement, noise, clean-up, smoking, parking, deliveries, etc., and other reasonable rules of conduct and procedures for minimizing the impact of the Work on surrounding properties and public rights-of-way.

§3.13.4 All utilities, curbs, drives, streets, buildings, mechanical and electrical equipment which are damaged or cut during construction and are to be used after construction shall be repaired such that the condition of the repaired item equals or exceeds its condition prior to construction.

§ 3.13.5 The construction, placement of barricades, and posting of warning signs in the area of construction will be the responsibility of the Contractor. This shall include the placement of construction equipment and any obstacles which are created as a result of the construction project. The placement of barricades and warning signs shall be in compliance with the Manual on Uniform Control Devices and the 2007 edition of the Nebraska Department of Roads "Standard Specifications of Highway Construction". To the extent permitted by law, the Contractor expressly accepts control of the construction equipment and any obstacles created during construction of the project. This Section does not alleviate Owner from statutory or common law duties related to landowners.

§ 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 and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

- .1 Each Subcontractor shall be responsible for all cutting and patching necessary for his work. All patching shall be done by the Contractor whose work is damaged.
- .2 Each Contractor shall do all fitting of his own work as required to make its several components fit together or to receive the work of other Contractors. Holes cut in exterior walls or roofs for installation of mechanical or electrical equipment shall be waterproofed in accordance with 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 such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 Permission to patch any areas or items of work does not imply a waiver of the Architect's right to require, with Owner's consent, complete removal and replacement in said areas and of said items if, in Architect's opinion, patching does not satisfactorily restore the quality and appearance of the work.

§ 3.15 CLEANING UP

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

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

It is mutually understood and agreed that, without exception, Contract prices are to include all royalties and costs arising from patents, trademarks, and copyrights in any way involved in the work. It is the intent that whenever the Contractor is required or desires to use any design device, material, or process covered by letters, patent, or copyright, the right for such use shall be proved for by legal agreement with the Patentee or Owner, however, whether or not such an agreement is made as noted, the Contractor and the surety in all cases shall indemnify and save harmless Lancaster County from any and all claims for infringement by reason of the use of any such patented design, device, material, or process, or any trademark or copyright, in connection with the Work agreed to be performed under the Contract, and shall indemnify Lancaster County for any costs, expenses, and damages which it

may be obligated to pay, by reason of any such infringement, at any time during the prosecution or after the completion of the Work.

§ 3.18 INDEMNIFICATION

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

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

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 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.

§ 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.

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

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

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

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the changes or modifications to plans and Specifications or the interpretation thereof. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner. Notwithstanding, Owner and Contractor may communicate directly with Consultants where Architect is not immediately available or where, in the judgment of the Owner or Contractor, Architect has been unresponsive.

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

§ 4.2.6 The Owner or Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Owner or Architect considers it necessary or advisable, the Owner or Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner or 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, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. Contractor shall promptly notify the Owner if Architect rejects work or request additional inspection/testing.

§ 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, unless otherwise specifically stated by the Architect, 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 authorize 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 duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

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

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

and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

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

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

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 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.

§ 5.1.3 Subcontractors, sub-subcontractors, and material suppliers shall not contact the Architect or Owner directly. Any information they might need shall be obtained through the Contractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, after award of the Contract, shall furnish in writing to the Owner through the Architect 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 Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply 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 previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate agreement, written where legally required for validity, 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, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor

so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 Nothing in Contract Documents shall create a contractual relationship between any Subcontractor or Sub-subcontractor and the Owner or the Architect.

§ 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 in writing; 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 but only to the extent that subcontractor can prove that cost increases are a result of material cost or wage rate increases.

§ 5.4.3 Upon such 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 Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. The Contractor may not claim delay or additional cost of such action by the Owner, except to the extent that Contractor can produce compelling evidence that the work of separate contracts results in significant disruption of Contractor's work.

§ 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 however, Contractor will coordinate the scheduling of the Work of separate contractors. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the 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, the Owner shall be deemed to be subject to the same obligations

and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.1.5 The General Contractor shall cooperate fully with all separate contractors, including all necessary coordination of his own subcontractors, to assure a complete and satisfactory job. It is understood that reasonable cooperation in all phases of the work is to be expected by all separate contractors. Scheduling of their portions of work shall be arranged mutually between them and the General Contractor for smooth sequence of operations.

§ 6.1.6 Contractor shall permit any separate contractors to utilize his temporary facilities, telephone, power, water or other facilities available for use by subcontractors in the execution of their work. Contractor may not charge any fees to separate contractors for permitting the use of Contractor's facilities, except for the actual out-of-pocket cost resulting to the Contractor (such as long-distance telephone charges, equipment rental, extraordinary utility usage, etc.).

§ 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 report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report 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, except as to defects not then reasonably discoverable.

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

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors 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, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

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

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

§ 7.2.2 The method used to determine adjustments to the Contract Sum shall be based on Contractor's and/or Subcontractor's cost thereof for materials, labor, equipment, overhead and markup determined as follows:

- .1 Cost of Materials: To be charged at Contractor's or Subcontractor's actual cost thereof for the in-place quantities required with a reasonable allowance for waste.
- .2 Cost of Labor: To be calculated by taking the number of man-hours required to perform the Work multiplied by the hourly rate for each category of laborer. The hourly rate shall be determined by taking the actual paid out payroll rate to an individual multiplied by 1.50 to cover all payroll burdens such as premiums for workmen's compensation, liability and health insurance, payroll taxes and social security contributions, union charges, vacation and holidays, truck and small tool expenses, and other employee benefits and burdens imposed on a basis of payrolls.
- .3 Cost of Equipment: Direct cost of heavy machinery and equipment to be calculated by taking the number of hours of equipment time required to perform the Work including freight and transportation applicable thereto multiplied by the hourly rate for each piece of equipment. Equipment rates to be based on rates customarily charged in the project area or at an hourly rate agreed to in advance by the Owner. Such rate shall not exceed that amount allowed under the most recently published USACE-Construction Equipment Ownership and Operating Schedule, EP 1110-1-8 for the place of the Project.
- .4 Subcontractor Markup on Materials, Labor and Equipment: Mark-up on such costs for Subcontractors' general conditions, overhead, unassignable job costs, supervision, management, and profit shall be equal to no more than fifteen percent (15%).
- .5 Contractor's Markup on Subcontractor Costs: Mark-up to be the Subcontractor's price for the Work multiplied by the percentage amount thereof indicated in the Agreement as full compensation for the Contractor's supervision, general job expense, overhead, and profit.
- .6 Work Performed Directly by Contractor: To be determined by adding the cost of materials, labor, and equipment as described in subparagraphs 7.2.2.1, 7.2.2.2, and 7.2.2.3 plus fifteen percent (15%) of the cost thereof as full compensation for the Contractor's supervision, general job expense, overhead, and profit.
- .7 Additional General Conditions: No charge for General Conditions, field supervision, or project management will be accepted except to the extent Contractor can demonstrate that actual additional costs have been or will be incurred directly on account of the change.
- .8 Work that is scheduled as a Bid Alternate or Unit Price will be based on the lump-sum or actual in-place measurement of quantity multiplied by the applicable price as shown in the Construction Contract. There will be no additional mark-up or charge for Contractor's supervision, overhead, and profit.
- .9 Costs for Work that is shown as an Allowance will be adjusted based on the provisions of Paragraph 3.8.2. Actual costs will be calculated in accordance with Paragraphs 7.2.2.1, 7.2.2.2, and 7.2.2.3. There will be no additional mark-up or charge for Contractor's supervision, overhead, and profit.

§ 7.2.3 The method used to determine adjustments to the Contract Time shall be determined as follows:

- .1 Contractor's ability to document that the change affects the critical pathwork as shown on the construction schedule and extends and increases the duration of such critical tasks.
- .2 For delays caused by adverse weather, satisfaction of the criteria established by Section 15.1.5.4.
- .3 When the number of days is established, Owner may elect to require Contractor to work overtime or add additional manpower, if possible to reduce the number of additional days. In such instance, Owner will pay additional costs for overtime labor.
- .4 The cost of Contractor's General Conditions applicable to extended time shall be equal to the average daily rate of the Marginal fixed General Conditions. Marginal fixed General Conditions are defined as Contractor's total General Condition less one-time expenses such as permit costs, final clean up, mobilization, etc.

§ 7.2.4 For work omitted, credit will be given in the amount of the actual savings in cost computed on the same basis as for work added but without application of Contractor's percentages covering job supervision, general expense, overhead, and profit described in Sub-paragraphs 7.2.2.4 and 7.2.2.5.

§ 7.2.5 In cases where changes result in work both added and omitted, the percentages covering Contractor's job supervision, general expense, overhead and profit, shall be applied to the net difference between the costs of work added and omitted, if the net result is additive. Otherwise, the aforesaid percentages shall not be applied to either the cost of the work added or omitted.

§ 7.2.6 All estimates for changes shall be accompanied by itemized breakdowns of all material and labor charges and credits. Contractor shall provide other breakdowns as may be reasonably requested by Owner or Architect to permit the proper evaluation of changes.

§ 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 the methods used pursuant to Paragraph 7.2.2.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 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.

§ 7.3.6 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.

§ 7.3.7 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.

§ 7.3.8 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.

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

§ 7.3.10 Contractor will not delay the progress of the Work, pending final determination of value of the Change in the Work, provided he receives authorization from the Owner to proceed.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

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, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

§ 8.2.4 By executing the Construction Contract, Contractor acknowledges that the fixing of the Contract Time, Completion Date, and amount of Liquidated Damages in the Contract Documents is fair and reasonable and has taken the following factors, among others, into consideration:

- .1 The urgent need of the Owner to have the project completed by the time specified in order to fulfill its commitments to lenders, tenants, employees, and other building occupants, invitees, or users;
- .2 The size, design, and location of the project;
- .3 The quantity, quality, and probable availability of labor and materials involved in the construction of the project;
- .4 The total dollar amount of the Construction Contract;
- .5 The average climatic range, the customary weather for the time period of the Construction Contract and the usual customs and practices prevailing in the construction industry in this area;
- .6 The impossibility of ascertaining and fixing the actual damages the Owner would sustain the event of delay in the completion of the project;
- .7 The applicable laws and governmental rules and regulations;
- .8 The weather conditions customarily encountered in the area of the Project and as described in Section 15.1.5.

§ 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 an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or

by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 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

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.

§ 9.2 SCHEDULE OF VALUES

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

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 On or about the first day of each month, the Contractor shall prepare a draft itemized Application for Payment in accordance with the Schedule of Values, indicating the Contractor's right to payment, together with supporting data and breakdowns as the Owner or Architect may reasonably request for work completed. Contractor, Architect, and Owner shall meet at the job site, review Contractor's draft Application, and determine together the appropriate amounts owing for each item of Work. Contractor will then make the appropriate adjustments, provide additional substantiating data when requested, and submit to the Architect four copies of the final notarized Applications for Payment, together with conditional lien waivers, on a form approved by Owner, from each subcontractor and major material supplier in the full amount for which Owner has made previous payments. Contractor will also comply with any customary and reasonable requests by Owner's Lender for information or proof of payment.

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

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

§ 9.3.2 Except as otherwise provided in the Contract Documents, payments will not be made on account of materials and equipment not incorporated in the Work. However, if approved in advance by the Owner, payment may be made for materials and equipment suitably stored off the site at the jobsite or at some other location agreed upon in writing. Generally, Owner will approve payment only for materials that are specially fabricated or that are of a special nature not readily available but that are necessary for the proper sequencing of a timely execution of the construction or for major equipment. Payment shall be made only for Owner pre-approved materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. Notwithstanding the Owner having title to such material and equipment, pursuant to Paragraph 9.3.3, Contractor shall be responsible for the entire cost of any replacement, theft, repair, or other damage which make the materials unsuitable for incorporation in the Work. Contractor will be held completely responsible for the materials until they are fully incorporated into the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.2.1 The Owner will only approve payment for materials and equipment stored off the site under the following conditions:

- .1 The Contractor shall furnish and maintain a suitable storage site and proper storage conditions, which must be approved in advance by the Owner;
- .2 Equipment and materials covered by an application for payment must be stored above grade, and must be properly protected at all times against weather, heat, cold, moisture, vandalism or theft and other hazards as the material may require. All protection must be provided by the Contractor, at his own expense, and must be maintained throughout the storage period;
- .3 Materials and equipment must not be commingled with other similar materials or equipment, but must be stored separately and must be plainly labeled, "PROPERTY OF LINCOLN CITY", with project name;
- .4 Materials and equipment stored at the site must be stored so that they may be readily inspected, measured, and counted, at all times. By the Owner's representative. Application for Payment for materials and equipment stored off the site must be accompanied by a bill of sale, properly identifying the material and transferring ownership of the materials to the County of Lancaster. The bill of sale must be accompanied by an inventory of stored materials or equipment, together with a description of the storage site by street number and city, or by a legal description of the premises;
- .5 The Contractor agrees that in accepting payment for the material or equipment stored off the site, it is in no way relieved of responsibility for the safe storage of the material and its safe transportation to, and installation in, the Work or for furnishing and installing the material in strict accordance with plans and specifications. The Contractor further agrees that acceptance by the Owner of a bill of sale for stored materials or equipment does not imply acceptance of the same for the purpose of this Contract. Such acceptance shall not occur until completion of the Work by the Contractor and final acceptance by the Owner.

§ 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, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. Contractor shall provide lien waivers to the Owner for all Work covered by an Application for Payment no later than the time of the payment.

§ 9.4 CERTIFICATES FOR PAYMENT

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Contractor as provided in Section 9.4.1. If the Contractor and the Owner cannot agree on a revised amount, the Owner and 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 Owner 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 Owner'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;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents; or
- .8 items in dispute between the Owner and Contractor.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made on the next Application for Payment for amounts previously withheld.

§ 9.5.3 If the Owner 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 material or equipment suppliers 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 Architect will reflect such payment on the next Certificate 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 material and equipment 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 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, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment 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 and 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.

§ 9.6.8 The Owner reserves the right to take possession and use any completed or partially completed portion of the Project, regardless of the time of completion of the Project, providing it does not interfere with the Contractor's work. Such possession or use of the Project shall not be construed as final acceptance of the Project of any portion thereof.

§ 9.7 FAILURE OF PAYMENT

If the Owner 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 thirty 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' written 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 shut-down, 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.

§ 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 and the Architect shall prepare and submit to the Owner and Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner and Architect. In such case, the Contractor shall then submit a request for another inspection by the Owner and Architect to determine Substantial Completion. At time of Substantial Completion, Owner may withhold payment as incomplete work and not retainage the following amounts. Payment will be withheld from each contractor, subcontractor and materials supplier until such time as the requested documents are submitted to the Owner in a complete and organized manner.

- 1 The greater of \$500 or one percent (1%) of the contract or subcontract amount for each subcontractor or contractor warranty.
- 2 The greater of \$500 or one percent (1%) of the contract or subcontract amount for each subcontractor or contractor project closeout, operations and maintenance manuals, parts list, extra stock, etc.
- 3 The greater of \$500 or one percent (1%) of the contractor or subcontractor amount until receipt of each as-built drawings as required by project closeout requirements.
- 4 The amount of one percent (1%) of the Contractor's total fee until the receipt of all final or conditional final lien releases from subcontractors and major materials suppliers plus the amount of one percent (1%) of any contract or subcontract amount.

§ 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, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall 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 such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for 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. 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.

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner and Architect will promptly make such inspection and, when the Owner and Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner and Architect will promptly issue a final Certificate for Payment stating that to the best of the Owner's and Architect's knowledge, information and belief, and on the basis of the Owner's and Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Owner and 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. In connection with the final request for payment, the Contractor shall deliver to Owner a Final Lien Waiver and Final Release on Owner's "Lien Waiver and Final Releases" form from Contractor, all subcontractors, and other persons furnishing labor or materials for the entire project. Contractor shall also comply with any requirements of Owner's Lender and Surety.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial 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 and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, 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. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including 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 without terminating the Contract, make payment of the balance due for that portion of the Work fully completed 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 surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment.

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

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents;
- .4 latent and hidden defects discovered after final completion subject to Nebraska statutes and law; or
- .5 unrepaired items which were listed on a "punch list" prepared at time of Substantial Completion or at Final Completion.

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

§ 9.11 PAYMENT CONTINGENT UPON AVAILABILITY OF APPROPRIATED FUNDS OR FUNDS APPROVED BY LINCOLN CITY

Any other provisions of the Contract Documents to the contrary notwithstanding, it is expressly understood and agreed that the legal obligation of the City of Lincoln to pay the Contract Sum or any part thereof shall be contingent upon the availability of funds specifically approved by formal action of Lincoln City for the purpose of payment of the Contract Sum or any part thereof.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;
- .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; and
- .4 the intention of the Contract is that, upon completion, the entire work will be protected and delivered at the end to the Owner in proper, whole, and unblemished condition.

§ 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. More specifically, the Contractor shall give notice in writing at least forty-eight (48) hours before breaking ground, to all persons, public utility companies, owners of the property having structures or improvements in proximity to the site of the Work, and persons in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise, who may be affected by Contractor's operations, in order to provide them with time to remove any obstruction for which they are responsible and to take action to properly protect their property.

§ 10.2.3 The Contractor shall 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 owners and users of adjacent sites and utilities. In addition, the Contractor shall:

- .1 Provide and maintain, required amount of, portable fire-fighting equipment including fire extinguishers. All persons working on the project shall be familiarized with the locations and operation of fire extinguishers.
- .2 Provide, erect, and maintain all required planking, barricades, guardrails, temporary sidewalks, etc., streets, drives adjoining property and the new building, as well as to prevent accidents to the public and the workmen at the jobsite.
- .3 Provide and maintain proper shoring and bracing to prevent earth from caving or washing into the building excavation.
- .4 Provide and maintain proper shoring and bracing for existing underground utilities, sewers, etc., encountered during excavation work, to protect them from collapse or other type of damage until such time as they are to be removed, incorporated into the new work, or can be properly backfilled upon completion of new work.
- .5 Provide heavy plank covering over walks, curbs, drives, etc., and heavy wood cribbing around all trees within the construction area and at corners of the new building to protect them from possible damage by trucking or otherwise.
- .6 Provide and maintain protection against rain, snow, wind, ice, storms and heat so as to maintain all Work, materials, apparatus, and fixtures, incorporated in the Work, free from injury or damage. At the end of the day's work, cover all Work subject to damage. Remove snow and ice as necessary for safety and proper execution of the Work.

§ 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. The Contractor shall exercise the utmost care so as not to endanger life or property in the prosecution of the Work. If the Contractor is negligent, the Contractor will be responsible for any and all damages, claims and for the defense of all actions against Owner and Architect resulting from failure to exercise such care in proportion to Contractor's amount of negligence.

§ 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, except damage or loss 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. Notwithstanding anything to the contrary herein, the Contractor shall assume the responsibility for the protection of all finished construction under his Contract and shall repair and restore any and all damage to his finished construction to its original state. Where responsibility can be fixed, the cost shall be borne by the party responsible. If responsibility cannot be fixed, the cost shall be pro-rated among all Contractors in proportion to their activities at the building at the time the damage was done.

§ 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, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the

site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. Any asbestos, PCB or other hazardous substance or hazardous waste shall be considered outside the scope of this contract and outside the responsibility of the Contractor, and shall be wholly the responsibility of the Owner unless and only to the extent the Owner and the Contractor enter into a written agreement for the Contractor to take action with such materials.

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

§ 10.3.3 Contractor shall not incorporate in the Work any materials containing asbestos, PCB's, or other hazardous materials. Contractor shall not use, produce, store, release, dispose, or handle, in or about the project, or transfer to or from the project (or permit any other party to do such acts), any hazardous substance except in compliance with all applicable environmental laws.

§ 10.3.4 "Hazardous substances" shall mean all substances, materials, and waste that are or become regulated or classified as hazardous or toxic under any environmental law. "Environmental Laws" shall mean any federal, state, or local statute, ordinance, rule, regulation, or guideline pertaining to health, industrial hygiene or the environment, including without limitation the Federal Comprehensive Environmental Response, Compensation, and Liability Act.

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

§ 10.3.6 The Owner shall not be responsible under Section 10.3 for hazardous materials and substances brought to the site by the Contractor.

§ 10.3.7 The Contractor agrees to indemnify and hold harmless, to the fullest extent allowed by law, the Owner, and its principals, officers, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorney's fees) arising out of or resulting from the acts or omissions of the Contractor regarding a hazardous material or substance the Contractor brings to the site. Liability includes any claims, damages, losses, cost of remediation, and expenses arising out of a hazardous material or substance the Contractor brings to the site that results in any claim for damage whatsoever including any bodily injury, sickness, disease, cost of remediation, or damage to or destruction of tangible property, including loss of use resulting therefrom.

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

§ 10.4 EMERGENCIES

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

§ 10.5 WATER PRECAUTIONS

§ 10.5.1 The Contractor shall take all reasonable precautions to keep all parts of Site, including excavations, free from any accumulation of water, no matter what the source or cause.

§ 10.5.2 The Contractor shall dispose of water and waste water in such manner as will not endanger public health and safety or cause damage or expense to property. The Contractor shall comply with any law, or administrative regulatory, rule or local ordinance which is applicable to the disposal of water and waste water. If sewers and streets are allowed to be used for drainage or disposal of water during construction, they shall be maintained and left satisfactorily clean upon completion of Work.

§ 10.5.3 The Contractor shall not be responsible for contaminated ground water, unless the contamination of ground water shall be caused by the Contractor or any of its Subcontractors.

§ 10.6 SIGNS

§ 10.6.1 The display of signs at the Project Site other than those required by law shall be limited to those required by Contract Documents and for safety and for the orderly management of the site. Subject to Owner's written approval, signage identifying Contractor, Architect, Owners or other primary parties may be erected on-site. Contractor shall submit a drawing showing the layout and location of any such requested signs prior to the fabrication and installation thereof.

§ 10.6.2 The Contractor shall furnish and maintain all signs required for prosecution of the Work and as required by law and for public safety the control of vehicular and pedestrian traffic around the site typical for projects of similar scope and locale as deemed prudent by Contractor and Owner.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 PROTECTION FROM LOSS

§ 11.1.1 The Contractor shall protect all parts of the Work from loss by theft or otherwise, and shall assume all risks for repair and replacement for damage to the same, whether caused by lightning, fire, wind, water theft, vandalism, or other causes, until completion and acceptance of the work. All insurance shall be carried by companies acceptable to the Owner, and licensed in the state where the project is located.

§ 11.1.2 The Contractor is required to cooperate with the Owner and the Owner's Risk Manager with regard to administration of any insurance or claims.

§ 11.2 *(Deleted intentionally.)*

§ 11.3 CONTRACTOR'S INSURANCE

§ 11.3.1 The Contractor shall not commence work under this Contract until he has obtained all insurance required under this Article 11 or as may be provided elsewhere in the Contract Documents, until such insurance has been approved by Lancaster County, Nebraska. The Contractor shall not allow any Subcontractor to commence work on his subcontract until all similar insurance required of the Subcontractor has been so obtained with the amount specified in the Contract Document and approved by Owner. The required limits for the dollar value of the coverage shall be available from the Owner's Purchasing Agent.

§ 11.3.2 The insurance required by Section 11 shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.3.3 **Worker's Compensation Insurance and Employer's Liability Insurance:** The Contractor shall take out and maintain during the life of this contract the applicable statutory Workers' Compensation Insurance, and in the case of any work sublet, the Contractor shall require the subcontractor similarly to provide statutory Workers' Compensation Insurance for the latter's employees. Coverage shall be provided by an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract, and the Contractor shall require each of his Subcontractors similarly to maintain Employer's Liability Insurance similar to the Contractor.

Workers' Compensation – Required Limits:

Coverage A – Coverage will include Statutory requirements

Coverage B – Employers Liability
\$100,000 Each Person
\$100,000 Each Person by Disease
\$500,000 Policy Limit – Disease

§ 11.3.4 **General Liability Insurance:** The Contractor shall maintain during the life of this contract Commercial General Liability Insurance, naming and protecting him and Lancaster County against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage which may arise from operations under this contract whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. The insurance requirements are:

§ 11.3.4.1 Commercial General Liability (from CG0001 or equivalent) with minimum limits of:

\$1,000,000 Each Occurrence
\$1,000,000 Personal and Advertising Injury
\$2,000,000 Products/Completed Operations
\$2,000,000 General Aggregate
\$ 100,000 Fire Damage Limit any one fire
\$ 10,000 Medical Damage Limit any one person

§ 11.3.4.2 The required Commercial General Liability Insurance shall also include the following:

- .1 Coverage shall include Contractual Liability coverage insuring the contractual exposure as addressed in this contract;
- .2 There shall be no exclusion or limitation for the Explosion (X), Collapse (C), and Underground (U) hazards. If the contract or Work requires any work procedures involving blasting, excavating, tunneling, or other underground work, the liability coverage shall include Standard Blasting or Explosion Coverage, Standard Collapse Coverage, and Standard Underground Coverage commonly referred to as XCU Property Damage Liability;
- .3 Coverage shall also included Products/Completed Operations for duration of work and shall be maintained for minimum of three years after final acceptance under the Contract or the warranty period for the sam whichever is longer, unless modified in any Special Provisions;
- .4 Lincoln City and all other Owners shall be named as Additional Insureds (CG2010 or equivalent);
- .5 The Commercial General Liability coverage shall be endorsed with the Designated Construction Project(s) General Aggregate Limit endorsement (CG 25 03 or equivalent);
- .6 The property damage coverage shall include a Broad Form Property Damage Endorsement;
- .7 Coverage shall not contain an absolute pollution exclusion, and applicable remaining coverage shall apply for pollution exposures arising from products and completed operations;
- .8 Any fellow employee exclusions shall be deleted;
- .9 Operations by independent contractors independent contractors included;
- .10 Personal and advertising injury included;
- .11 Coverage for all premises and operations;
- .12 Endorsement to provide the general aggregate per project endorsement.

§ 11.3.5 **Automobile Liability Insurance:** The Contractor shall take out and maintain during the life of the contract such Automobile Liability Insurance as shall protect him against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage which may arise from the operations of any owned, hired or now-owned automobiles used by or for him in any capacity in connection with the carrying out of this contract. The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall be as follows:

Bodily Injury and Property Damage \$1,000,000 Combined Single Limit

§ 11.3.6 **Railroad Protective Liability:** If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, track, road beds, tunnel, underpass or crossing or otherwise required by the Special Provisions of applicable requirements of an affected railroad, the Contractor shall provide Railroad Protective Liability Insurance naming the affected railroad(s) as insured with minimum limits for bodily injury and property damage of \$2,000,000 per occurrence, \$6,000,000 aggregate, or such other limits as required in the Special Provisions or by the affected railroad. The original of the policy shall be furnished to the railroad and a certified

copy of the same furnished to the Lincoln City Attorney's Office prior to any related construction or entry upon railroad premises by the Contractor or for work related to the Contract.

§ 11.3.7 **Umbrella or Excess Insurance:** The Contractor shall provide Umbrella or Excess insurance coverage with minimum coverage limits of \$5,000,000 each occurrence and aggregate.

§ 11.3.8 **Lincoln City, Nebraska and all other Owners, included as additional insureds on Contractor's Policy – Endorsements Required:** The Contractor shall provide adequate written documentation, including applicable ACORD certificates, declarations pages or other acceptable policy information showing the specific limits of insurance, coverage modifications and endorsements required by Sections 11.3.3, 11.3.4, 11.3.5, 11.3.6, 11.3.7 and 11.5, and showing Lincoln City and all other Owners as additional insureds where required. Such certificate shall specifically state that insurance policies are to be endorsed to require the insurer to provide Owner thirty days notice of cancellation, non-renewal or any material reduction of insurance coverage.

§ 11.3.9 All insurance shall be provided on an occurrence basis and not on a claims made basis, except for hazardous materials, errors or omissions, or other coverage not reasonably available on an occurrence basis; provided that all such claims made coverage is subject to the prior written approval of the Lincoln City Attorney's Office and must be clearly indicated as such in any certificate showing coverage.

§ 11.3.10 All insurance coverage are to be placed with an insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has A.M. Best's Rating of no less than A:VII unless specific approval has been granted by Lincoln City.

§ 11.4 OWNER'S LIABILITY INSURANCE

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

§ 11.5 PROPERTY INSURANCE

§ 11.5.1 The Contractor shall provide property insurance (a/k/a Builder's Risk or installation Floater) on all Projects involving construction or installation of buildings or structures and other projects where provided in the Special Provisions. Such insurance shall be provided in the minimum amount of one-hundred percent (100%) of the total Contract Sum and in addition applicable modifications thereto for the entire work on a replacement cost basis. Such insurance shall be maintained until the Owner completes final acceptance of the work as provided in the Contract. Such insurance shall be written and endorsed, where applicable, to include the interests of the Owner, Contractor, Subcontractors, Sub-subcontractors in the related work. The maximum deductible for such insurance shall be \$2,000 for each occurrence, which deductible shall be the responsibility of the Contractor. Such insurance shall contain a "permission to occupy" endorsement. Losses, if any, shall be made payable to Owner and Contractor as their interest may appear. A certificate of insurance evidencing such insurance coverage shall be filed with Owner by the time work on the building begins and such insurance shall be subject to the approval of Owner.

§ 11.5.1.1 All related Property insurance shall be provided on a "Special Perils: or similar policy form and shall at minimum insure against perils of fire including extended coverage and physical loss or damage including, without limitation, or duplication of coverage: flood, earthquake, theft, vandalism, malicious mischief, collapse, windstorm, testing and startup, and debris removal including demolition whether occasioned by the loss of enforcement of applicable legal or safety requirements, including compensation or costs for Owner's related costs and expenses (as Owner) including labor required as a result of such loss.

§ 11.5.1.2 All related Property Insurance shall include coverage for falsework, temporary buildings, work stored off-site or in-transit to the site, whether in whole or in part. Coverage for work off-site or in-transit shall be a limit of \$1,000,000.

§ 11.5.1.3 The Contractor's Property Insurance shall be primary coverage for any insured loss related to or arising out of the Contract and shall not be reduced by or coordinated with separate property insurance maintained by Owner.

§ 11.5.1.4 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance/builder's risks insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the

insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance. Notwithstanding anything to the contrary, Owner may take partial occupancy without the consent of the insurance company in which case Owner shall be responsible for any costs or reduction of insurance payments on a paid out claim, if any.

§ 11.5.2 BOILER AND MACHINERY INSURANCE

The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.5.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards which are not proximately caused by the Contractor or its Subcontractors. A limit of \$250,000 per covered loss..

§ 11.6 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.5 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.7 PERFORMANCE BOND AND PAYMENT BOND

§ 11.7.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contractor and payment of obligations arising thereunder. The Contractor shall furnish Performance and Labor and material Payment Bonds in the amount of one hundred percent (100%) of the Contract Sum. Such bonds shall be executed by the Contractor and by a corporate surety company authorized to transact business in the State of Nebraska. Such bonds shall be conditioned upon the faithful performance of all the terms and conditions of the Contract Document, including holding harmless the Owner from failure to do so and including the making good of any guarantees which the Contract Documents may require, an such bond shall be further conditioned upon the payment of all laborers and materialmen who provide labor, materials, etc. actually used or rented in the performance of the Contract, including insurance premiums and interest. The Contractor shall deliver the required bonds to the Owner at least three (3) days before commencement of any Work at the Project site.

§ 11.7.2 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.

§ 11.7.3 Should the principal amount of the Owner's Protection Bond be modified as a result of a Change Order, the Contractor shall provide to the Owner written confirmation from the Surety indicating that the bond has been modified and to what extent it has been modified.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Owner's or 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 Owner's or 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 Owner or Architect has not specifically requested to examine prior to its being covered, the Owner or 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, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs. Contractor shall be responsible for all costs associated with uncovering and recovering any Work that requires special inspection where such inspections were not performed.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 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 an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. 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 2.4.

§ 12.2.2.2 The one-year period or any extended warranty period required by the Contract 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. Neither the one-year warranty period nor acceptance of premises by the Owner shall relieve the Contractor of liability as to "latent defects" in workmanship or material discovered after the warranty period, **subject to Nebraska statutes and law.**

§ 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, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the State of Nebraska.

§ 13.2 SUCCESSORS AND ASSIGNS

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

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

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 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.

§ 13.4.2 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 there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

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

§ 13.5.2 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 13.5.1, 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 13.5.3, shall be at the Owner's expense. Contractor shall notify Owner of the request to perform any additional testing or inspection prior to performing such work.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 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.

§ 13.5.4 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.

§ 13.5.5 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.

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

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may 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.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 13.8 CODES AND ORDINANCES

Nothing contained in these specifications or on the drawings shall be construed as authority for violation by the Contractor of any applicable codes or ordinances in effect at the site. Codes and ordinances in effect shall take full and complete precedence over anything herein contained to the contrary. When the specifications or drawings call for work or materials of higher standard than those required by codes or ordinances, the specifications and drawings shall govern.

§ 13.9 TRADE SECTIONS

The specifications are generally divided into trade sections for the purpose of ready reference, consistent with the Construction Specifications Institute's format. The division of the Work among his subcontractors is the Contractor's responsibility and the Architect assumes no responsibility to act as arbiter to establish subcontract limits of work.

§ 13.10 SAFETY REGULATIONS

All work on this project will be done in accordance with the applicable regulations of the Federal Register, Occupation Safety and Health Administration, Occupation Safety and Health Act and other applicable State and Federal regulations. Compliance with these regulations shall be the responsibility of the Contractor.

§ 13.11 CONSTRUCTION AND GRADING STAKING

The Contractor shall be responsible and pay for all construction staking and layout (working from building corners, boundary corners, and elevation reference datum point established by Owner's Engineer) including, but not limited to establishing the location of all gridlines, curbs and finish floor elevations. Contractor shall not begin paving operations until Owner and Architect have approved grades. Owner reserves the right to have an independent Registered Civil Engineer, employed by the Owner, verify any or all locations, grades or elevations. The Contractor shall make all corrections as required at no extra cost to the Owner.

§ 13.12 FEES FOR TESTS AND INSPECTIONS

§ 13.12.1 All testing and inspection consultants shall be approved by the Contractor and Owner. The Contractor shall be solely responsible for having all tests and special inspections required by the Contract Documents performed, and shall notify the Consultant when inspections are required. No work requiring inspections shall be covered or enclosed until such inspections have been performed.

§ 13.12.2 The frequency of testing required will be as indicated in the Specifications section, unless otherwise directed by Owner or Architect.

§ 13.12.3 The cost of all quality control testing shall be paid by the Owner. Any retesting required as a result of deficient initial tests shall be paid for by the Contractor.

§ 13.12.4 Testing of utility systems, water and gas piping, electrical and alarm systems, fire sprinkler systems, and other systems customarily requiring testing pursuant to mechanical, plumbing or electrical codes, or acceptance by municipalities or utility companies shall be performed and paid for by Contractor.

§ 13.14 TIME

Time is of the essence in each Subcontract Agreement between the General Contractor and Subcontractor, and the above provisions shall be included in all subcontractors contracts.

§ 13.15 NEBRASKA FAIR EMPLOYMENT PRACTICE ACT

Neither the Contractor nor any Subcontractor or Sub-subcontractor shall discriminate against any employee or applicant for employment to be employed in the performance of the Contract, with respect to hire, tenure, terms, conditions, or privileges or employment, because of race, color, religion, sex or national origin, as prohibited by the Nebraska Fair Employment Practice Act. The Contractor hereby warrants and represents that it is in compliance with said Act. The Contractor shall receive from each Subcontractor warranties and representations similar in substance to those contained in this paragraph.

§ 13.16 RELATIONSHIP OF PARTIES TO THE CONTRACT

It is the express intent of the parties that this Contract shall not create an employer-employee relationship. Employees of the Contractor, or the Subcontractor, or the Sub-subcontractor, shall not be deemed to be employees of Lincoln City, and employees of Lincoln City shall not be deemed to be employees of the Contractor or the Subcontractors. The Contractor, Subcontractor, Sub-subcontractor and Lancaster County shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees, the Subcontractor's employees, the Sub-subcontractor's employees nor Lancaster County's employees shall be entitled to any salary, wages or benefits from any other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local, and any other payroll taxes with respect to its employees' compensation.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, 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 Or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, 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 more.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, Contractor may only terminate after giving seven (7) days written notice of Contractor's intent to terminate. If the Owner is unable to satisfy or remove the cause for termination within seven (7) days after Contractor's notice of intent to terminate, Contractor may, upon

seven (7) days written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit. Contractor shall perform all tasks described in Section 14.4.2 as a condition precedent to the receipt of payments to which Contractor is entitled.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor 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' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

§ 14.2.2 When any of the above reasons exist, 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' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

§ 14.2.4 If the 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, exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Owner 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 as described in Section 14.3.1. 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 written 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;

- .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;
- .4 obtain materials from Subcontractors and suppliers for which payment has been made and deliver them to the jobsite or such other location as designed by Owner. Also, move stockpiled materials at the site to locations within the building or other locations designated by Owner; and
- .5 where orders have been placed, determine to what extent and at what cost the orders may be canceled. Provide such information to Owner so Owner can decide whether to cancel or accept delivery and make payment. Deliver all such materials to the jobsite or to other location designed by Owner.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

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, 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.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must 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 CONTINUING CONTRACT PERFORMANCE

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. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. No claim for additional costs will be allowed unless the Work related thereto has been approved in writing by the Owner. Such approval will not be reasonably withheld. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein 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.

§ 15.1.5.2 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.

§ 15.1.5.3 The Contractor shall take due note of the fact that his failure to place orders for specified equipment or material sufficiently in advance of his scheduled date of installation will not be considered by the Architect or Owner as a valid reason upon which the Contractor may base his request for an extension of contract time, for any substitutes, or for any deviations from the drawings and/or specifications.

§ 15.1.5.4 No additional time will be allowed as a result of adverse weather unless it can be demonstrated that the period of time where extraordinary conditions existed above the norm customarily occurring for the full calendar month during which work was being performed. The Owner will extend the contract time due to weather conditions when all the following conditions are met:

- .1 The Contractor shall provide a written justification why Work could not effectively be performed under the weather conditions. Include the project schedule of work and identify how the weather occurrence adversely affected the critical path of construction. If the critical path Work is indoors, temperature, wind speed, and precipitation will not be justifications for additional time unless the structure was not substantially enclosed or minimum indoor working temperature were not able to be maintained.
- .2 Claims for weather delay must be made in writing within ten working days from the end of the event occurrence except with respect to precipitation which shall be based on Paragraph (3) below.
- .3 Local Climatological Data from the US Department of Commerce, NOAA, National Climatic Data Center at the Municipal Airport, Lincoln, Nebraska will be used as the weather data for determining weather delay claims. The following will constitute factors for weather delay claims:
 - (1) Temperature: Any three hour period during working hours that is reported in the above referenced Climatological Data as being below zero degrees Fahrenheit.
 - (2) Wind Speed: Any three hour period during working hours that is reported in the above referenced Climatological Data as being in excess of 20mph.
 - (3) Precipitation: Will be based on the number of days per month when precipitation exceeds .01 inch and the number of such days exceed the median number of days per month when the precipitation exceeds .01 inch as shown in the table below:

Median No. of Days when Precipitation Exceeds .01 inch by Month

Jan	8	Feb	6	Mar	8	Apr	10	May	11
Jun	9	Jul	8	Aug	9	Sep	7	Oct	6
Nov	5	Dec	5						

Notwithstanding the foregoing, it is understood and agreed by the parties that depending upon the circumstances certain amounts of precipitation may affect the project schedule. The Contractor shall notify the Architect and Owner in writing any time the Contractor believes that precipitation warrants an extension in the Contract Time. Any such notice shall be delivered to the Architect and Owner within ten (10) days of occurrence of the precipitation believed by the Contractor to warrant an extension of the Contract Time.

§ 15.1.6 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 person; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation for 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 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, 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 arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no 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. In the event Owner fails to authorize retention of such persons, the Initial Decision Maker shall render a decision based on his experience and belief, or advise the Parties he is unable to resolve the claim because he lacks sufficient information to evaluate the merits.

§ 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 such 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 binding on the Parties but if objections remain and the Parties are unwilling to accept the decision and otherwise unable to resolve the dispute, the claim shall be subject to the other remedies available herein.

§ 15.2.6 Except as mutually determined otherwise by the Owner and Contractor, all claims, disputes and other matters in question between the Contractor and the Owner arising out of or relating to the Contract Documents or breach thereof, that cannot be mutually resolved between the Contractor and/or any of its Subcontractors and/or the Owner by a decision of the Architect, or mediation and, except for claims which have been waived by the making or acceptance of final payment, shall be decided by the courts of law unless the Parties mutually agree to arbitration. Any demand for mediation must be made in writing within thirty (30) days after the date on which the Party making the demand receives the written opinion of the Architect. Failure to demand mediation within said thirty (30) days shall result in the Architect's decision becoming final and binding upon the Owner and Contractor.

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

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

§ 15.2.9 Pending final resolution of any claims including legal proceedings, the Contractor shall carry on the Work and maintain its progress, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents except for items specifically in dispute.

§ 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 15.1.6 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 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. In the event the Parties are unable to agree on the decision reached by mediation, a request for arbitration may be made within twenty-one (21) days thereafter. If the Parties do not mutually agree to arbitration within ten (10) days after a written request, then the dispute shall be decided by legal action and the courts of law.

