



Agenda
High Valley Transit District
Thursday, August 20, 2026, 2PM

NOTICE is hereby given that the Board of Trustees will meet on Thursday, August, 2026 electronically, via Zoom and at the anchor location at the High Valley Transit campus at 1570 Sego Lily Way, Park City, Utah 84098.

Public comment may also be submitted via email to hi@hvtutah.gov before 12pm on Wednesday, August 19, 2026.

To participate electronically:

<https://zoom.us/j/96642371618?pwd=EbbbskqDaSXJnutPRHLp3MbyfDsJBz.1&from=addon>

Or, to listen by phone, dial 1-301-715-8592

Meeting ID: 966 4237 1618

Passcode: 565743

This meeting may be recorded

Public Meeting

- 1) Pledge of Allegiance
- 2) Public Comment

Work Session

- 3) Quarter 2 Financial Update

Consideration of Approval

- 4) Minutes dated March 16, 2026; June 18, 2026; June 29, 2026; and July 30, 2026
- 5) Discussion and possible authorization for the Executive Director to execute the Phase 1 Construction manager/General Contractor (CM/GC) Preconstruction Services Agreement with Stacy Witbeck from the Kimball Junction Transit Center for an amount not to exceed \$289,938.

Closed Session Potential litigation

Board Comments

Director Comments

Written updates

Ridership and performance

Fleet report

Members of the Board, presenters, and members of the public may attend and fully participate by electronic means, using Zoom (phone or video).

Non-Discrimination Notice The High Valley Transit District's policy is that no person, regardless of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or be subject to any discrimination under any program, activity, or services under Section 601 of Title VI of the Civil Rights Act, as amended. To view a copy of our Title VI Policy and Complaint Procedure, please contact us at (435) 246-1538. If you require this or any information in an alternative format, please contact us at (435) 246-1538.

STAFF REPORT

Date: August 13, 2026
To: Board of Trustees
From: Jolena Ashman, Finance Director
Subject: Quarterly Financial Report

Action Requested

Review quarterly financials for Q2 2026.

Background

Balance Sheet:

- The second quarter balance sheet really illustrates how much work we got done on BRT this spring and early summer. We had \$5-\$6 million invoices from Stacey & Witbeck in April and May. That resulted in a nearly \$5 million increase in activity in accounts payable, accounts receivable, the PTIF account, and our fund balance, which correlates well with how much work we see out on Hwy 224. Invoices are being paid in a timely manner and grant reimbursement requests are received on average a month after request, which feels very healthy.

Income Statement Revenues:

- Sales tax for the second quarter was slow, mirroring the lack of snow from earlier in the year. For 2026, as of June 30th, sales tax is down 5.7%, or \$417,507 compared to 2025 for the same period.
- On the grants front, we've received several excellent pieces of news to balance out the low sales tax numbers. The \$16.2 million Low-No grant and \$15 million TTIF addition are both now contracted. The \$1.7 million planning grant we received from the Rural and Tribal Assistance Pilot Program contract was signed in April and grant kickoff starts soon. And most recently, we received news that two of our FTA 5311 grants have increased in amount by \$943,594. These 5311 grants will be available this fiscal year and went from \$1,530,000 combined to \$2,473,594.

Income Statement Expenses:

- Expenses continue to track as expected for Q2. VIA expenses and payroll/benefits are as budgeted. Fuel costs are up, but we have made adjustments for that. Total business operations expenses are up by 10% from the prior year to date. This tracks with the budget, which was increased by 8.4% from 2025, and factoring in fuel costs.

Cash Balances:

- As of 8/13/26 the total cash balance in all accounts is \$24,794,809. This compares to the \$21,326,281 total cash balance shown on the balance sheet for 6/30/26 and \$26,285,759 on 3/31/26.

High Valley Transit
2026 Quarterly Balance Sheet
10 High Valley Transit - 04/01/2026 to 06/30/2026

	Prior Quarter End	Quarter End	Quarter over Quarter Change
Net Position			
Assets:			
Current Assets			
Cash and cash equivalents			
1111-000-000 CHECKING/DREYFUS SWEEP	990,717	995,915	5,198
1120-000-000 PTIF GENERAL FUND	25,291,657	20,318,371	(4,973,286)
1131-000-000 2022 Sales Tax Bond 3617521	1	3,513	3,511
1135-000-000 2024 Sales Tax Bond 3617524	5	5,071	5,066
1137-000-000 2024 Sales Tax Bond 3617524B	3,379	3,413	33
Total Cash and cash equivalents	26,285,759	21,326,281	(4,959,477)
Receivables			
1311-000-000 A/R ACCRUALS	0	0	-
1311-100-000 ACCOUNTS RECEIVABLE	2,862,414	7,257,077	4,394,663
Total Receivables	2,862,414	7,257,077	4,394,663
Total Current Assets	29,148,173	28,583,358	(564,815)
Total Assets:	29,148,173	28,583,358	(564,815)
Liabilities and Fund Equity:			
Liabilities:			
Current liabilities			
2131-000-000 ACCOUNTS PAYABLE	1,346,414	6,142,209	4,795,795
2131-100-000 A/P ACCRUALS	7,784	-	(7,784)
2144-000-000 ACCRUED LIFE INSURANCE PAYABLE	-	-	-
2147-000-000 ACCRUED STATE RETIREMENT PAYABLE	123,864	60,570	(63,294)
2148-000-000 ACCRUED HEALTH INSURANCE PAYABLE	3,720	3,447	(273)
2149-000-000 LIABILITIES - RENTAL DEPOSIT	3,050	3,400	350
2231-000-000 UNEARNED REVENUE	1,285,625	1,285,625	-
Total Current liabilities	2,770,458	7,495,251	4,724,794
Total Liabilities:	2,770,458	7,495,251	4,724,794
Equity - Paid In / Contributed			
2951-000-000 FUND BALANCE - UNAPPROPRIATED	15,627,715	10,338,107	(5,289,608)
2961-000-000 FUND BALANCE - CAPITAL RENEWAL	750,000	750,000	-
2971-000-000 FUND BALANCE - RESERVE	10,000,000	10,000,000	-
Total Equity - Paid In / Contributed	26,377,715	21,088,107	(5,289,608)
Total Liabilities and Fund Equity:	29,148,173	28,583,358	(564,815)
Total Net Position	-	-	-

High Valley Transit
2026 Quarterly Balance Sheet
91 Governmental Capital Assets & LTD - 04/01/2026 to 06/30/2026

	Prior Quarter End	Quarter End	Quarter over Quarter Change
Net Position			
Assets:			
Non-Current Assets			
Capital assets			
Work in Process			
1601 Construction in Progress	19,328,956	33,653,942	14,324,986
Total Work in Process	19,328,956	33,653,942	14,324,986
Accumulated depreciation			
1721 AccDpn Buildings	514,660	608,389	93,728
1761 AccDpn Bus	3,064,591	3,151,621	87,031
1762 AccDpn Equipment	697,605	711,651	14,046
1763 AccDpn Vehicles	246,178	256,415	10,237
Total Accumulated depreciation	4,523,034	4,728,076	205,042
Total Capital assets	14,805,922	28,925,866	14,119,944
Other non-current assets			
1802 Deferred outflows - pensions	1,139,852	1,139,852	-
Total Other non-current assets	1,139,852	1,139,852	-
Total Non-Current Assets	15,945,774	30,065,718	14,119,944
Total Assets:	15,945,774	30,065,718	14,119,944
Liabilities and Fund Equity:			
Liabilities:			
Long-term liabilities			
2331 Retainage payable	1,448,706	1,448,706	-
2501 Accrued interest	229,531	229,531	-
2502 Compensated absences	512,739	512,739	-
2531 2022 Sales tax revenue bonds	8,760,000	8,760,000	-
2532 2024 Sales tax revenue bonds	18,468,000	18,468,000	-
2601 Net pension liability	292,951	292,951	-
Total Long-term liabilities	29,711,927	29,711,927	-
Deferred revenue			
2602 Deferred inflows - pensions	15,079	15,079	-
Total Deferred revenue	15,079	15,079	-
Total Liabilities:	29,727,006	29,727,006	-
Equity - Paid In / Contributed			
2961 Retainage payable offset	(1,448,706)	(1,448,706)	-
2962 Accrued interest offset	(229,531)	(229,531)	-
2963 Compensated absences offset	(512,739)	(512,739)	-
2964 Long-term Debt offset	(27,228,000)	(27,228,000)	-
2965 Net pension offset	831,822	831,822	-
2971.1 Invested in Fixed Assets	84,224,165	98,549,151	14,324,986
2971.3 Book Cost of assets retired	(601,247)	(601,247)	-
2972 Total Depreciation Charged	(4,491,691)	(4,696,733)	(205,042)
Total Equity - Paid In / Contributed	50,544,073	64,664,017	14,119,944
Total Liabilities and Fund Equity:	80,271,079	94,391,023	14,119,944
Total Net Position	(64,325,305)	(64,325,305)	-

High Valley Transit
2026 Quarterly Income Statement
10 High Valley Transit - 04/01/2026 to 06/30/2026
50.00% of the fiscal year has expired

	Prior Quarter Actual	Current Quarter Actual	Quarter over Quarter Change	Prior YTD Actual	Current YTD Actual	Year over Year Change	Annual Budget	% of Budget YTD
Income or Expense								
Income From Operations:								
Operating income								
Taxes								
3125-000-000 MASS TRANSIT (1ST QTR)	345,155	948,345	603,191	1,392,294	1,293,500	(98,794)	3,646,998	35%
3126-000-000 ADDITIONAL MASS TRANS (2ND QTR)	357,634	1,068,848	711,214	1,478,561	1,426,482	(52,079)	4,178,018	34%
3127-000-000 COUNTY PUBLIC TRANSIT (5TH QTR)	728,235	1,892,863	1,164,628	2,816,321	2,621,098	(195,223)	6,660,981	39%
3128-000-000 ADDITIONAL TRANSIT (A1 DIST)	115,008	316,330	201,322	463,677	431,338	(32,338)	1,215,124	35%
3129-000-000 ADDITIONAL TRANSIT (A2 MUNI)	91,827	290,218	198,391	386,857	382,046	(4,812)	1,109,067	34%
3130-000-000 ADDITIONAL TRANSIT (A3 COUNTY)	211,594	593,479	381,885	839,333	805,072	(34,261)	2,135,572	38%
Total Taxes	1,849,453	5,110,084	3,260,631	7,377,044	6,959,537	(417,507)	18,945,760	37%
Intergovernmental revenue								
3310-000-000 FEDERAL GRANTS - OPERATING	-	39,178	39,178	38,035	39,178	1,142	76,071	52%
3325-000-000 FTA 5311 GRANTS	-	-	-	257,466	-	(257,466)	2,530,000	-
3326-000-000 FTA 5339 GRANTS	-	-	-	-	-	-	15,001,444	-
3327-000-000 FTA RAISE GRANTS	-	3,943,946	3,943,946	-	3,943,946	3,943,946	21,989,700	18%
3328-000-000 UDOT TTIF GRANTS	1,893,750	1,893,750	-	3,787,500	3,787,500	-	13,134,779	29%
3329-000-000 CORRIDOR PRESERVATION	903,977	1,130,862	226,885	-	2,034,839	2,034,839	2,150,000	95%
3330-000-000 COUNTY GRANTS	-	834,138	834,138	557,911	834,138	276,227	6,780,644	12%
Total Intergovernmental revenue	2,797,727	7,841,873	5,044,146	4,640,912	10,639,600	5,998,689	61,662,638	17%
Miscellaneous revenue								
3600-000-000 PROGRAM INCOME	885,609	1,237,880	352,270	2,043,325	2,123,489	80,164	4,992,207	43%
3610-000-000 INTEREST INCOME	260,502	249,228	(11,274)	855,280	509,731	(345,549)	965,250	53%
3615-000-000 GAIN/LOSS ON SALE OF ASSETS	-	500	500	-	500	500	-	-
3624-000-000 RENTAL PROPERTIES	17,250	16,900	(350)	-	34,150	34,150	61,200	56%
3692-000-000 MISCELLANEOUS INCOME	13,163	24,180	11,017	15,065	37,343	22,278	60,000	62%
3710-000-000 CANYONS ASSESSMENT	-	815,570	815,570	794,903	815,570	20,667	1,632,730	50%
3720-000-000 BUSINESS ASSESSMENTS	(2,334)	58,095	60,429	57,976	55,762	(2,214)	60,000	93%
3730-000-000 BUS ADVERTISING PROGRAM	-	-	-	-	-	-	5,000	-
3800-100-000 CONTRIBUTION - COUNTY	-	309,544	309,544	-	309,544	309,544	19,600,000	2%
Total Miscellaneous revenue	1,174,191	2,711,898	1,537,706	3,766,549	3,886,089	119,540	27,376,387	14%
Total Operating income	5,821,371	15,663,855	9,842,483	15,784,505	21,485,226	5,700,722	107,984,785	20%
Operating expense								
Business operations								
4100-100-000 VIA SERVICE	1,704,994	2,295,218	590,224	3,851,345	4,000,212	148,867	8,965,943	45%
4100-110-000 SALARIES - OPERATIONS	1,300,853	1,714,164	413,311	3,621,660	3,015,017	(606,644)	6,794,245	44%
4100-120-000 OVERTIME - OPERATIONS	36,961	27,131	(9,830)	142,892	64,091	(78,801)	196,812	33%
4100-130-000 BENEFITS - OPERATIONS	581,772	599,135	17,363	1,316,121	1,180,907	(135,213)	2,803,039	42%
4100-190-000 BUS UPFITTING	-	-	-	20,937	-	(20,937)	2,090	-
4100-200-000 MATERIALS/SUPPLIES - OPERATIONS	1,637	2,464	827	55,238	4,101	(51,138)	5,500	75%
4100-200-100 MATERIALS/SUPPLIES - UNIFORMS -	-	-	-	16,480	-	(16,480)	-	-
4100-230-000 TRAVEL/TRAINING - OPERATIONS	2,830	7,597	4,767	44,175	10,426	(33,749)	19,538	53%
4100-270-000 DUES/SUBSCRIPTIONS - OPERATION	231	547	316	10,568	777	(9,790)	3,275	24%
4100-275-000 UTILITIES - OPERATIONS	98,972	115,683	16,712	128,623	214,655	86,032	632,730	34%

High Valley Transit
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50.00% of the fiscal year has expired

	Prior Quarter Actual	Current Quarter Actual	Quarter over Quarter Change	Prior YTD Actual	Current YTD Actual	Year over Year Change	Annual Budget	% of Budget YTD
4100-290-100 CELL PHONE - OPERATIONS	700	450	(250)	4,650	1,150	(3,500)	4,800	24%
4100-310-000 PROF/TECH CONTRACTS - OPERATIN	127,269	159,454	32,185	287,370	286,723	(647)	889,313	32%
4100-315-000 MAINTENANCE CONTRACTS - OPERA	36,312	50,377	14,065	332,023	86,688	(245,334)	113,228	77%
4100-315-100 MAINTENANCE CONTRACTS - UNIFO	-	-	-	3,347	-	(3,347)	-	-
4100-360-000 FUEL - OPERATIONS	98,180	200,609	102,429	395,429	298,790	(96,639)	851,265	35%
4200-110-000 SALARIES - MAINTENANCE	208,722	322,388	113,666	-	531,110	531,110	1,189,923	45%
4200-120-000 OVERTIME - MAINTENANCE	13,121	9,495	(3,625)	-	22,616	22,616	34,129	66%
4200-130-000 BENEFITS - MAINTENANCE	93,990	113,853	19,863	-	207,843	207,843	477,130	44%
4200-200-000 MATERIALS/SUPPLIES - MAINTENAN	461	188	(273)	-	648	648	2,500	26%
4200-200-100 MATERIALS/SUPPLIES - UNIFORMS -	2,135	2,814	678	-	4,949	4,949	17,397	28%
4200-230-000 TRAVEL/TRAINING - MAINTENANCE	2,200	6,568	4,368	-	8,768	8,768	45,000	19%
4200-270-000 DUES/SUBSCRIPTIONS - MAINTENAN	-	-	-	-	-	-	11,929	-
4200-290-000 CELL PHONE - MAINTENANCE	450	400	(50)	-	850	850	1,800	47%
4200-315-000 BUILDING MAINTENANCE	7,469	13,640	6,171	-	21,109	21,109	41,261	51%
4200-360-000 FUEL/FLUIDS - MAINTENANCE	13,984	14,446	461	-	28,430	28,430	77,400	37%
4200-365-000 EQUIPMENT/VEHICLE MAINTENANCE	287,747	203,380	(84,367)	436,497	491,126	54,630	1,100,000	45%
4200-370-000 AUTO BODY REPAIRS	-	9,193	9,193	-	9,193	9,193	100,000	9%
4300-110-000 SALARIES - ADMINISTRATION	81,126	130,751	49,625	-	211,877	211,877	467,597	45%
4300-120-000 OVERTIME - ADMINISTRATION	182	620	437	-	802	802	3,079	26%
4300-130-000 BENEFITS - ADMINISTRATION	22,460	25,823	3,362	-	48,283	48,283	96,730	50%
4300-150-000 MARKETING/ADVERTISING - ADMINIS	367	2,114	1,747	12,949	2,481	(10,468)	14,750	17%
4300-200-000 MATERIALS/SUPPLIES - ADMINISTRA	2,122	9,700	7,578	-	11,822	11,822	7,000	169%
4300-230-000 TRAVEL/TRAINING - ADMINISTRATION	2,797	7,881	5,084	-	10,678	10,678	26,937	40%
4300-230-100 TRAINING - TUITION REIMBURSEMEN	2,782	2,239	(543)	-	5,021	5,021	19,548	26%
4300-250-000 TRANSIT BOARD STIPEND	-	5,000	5,000	5,000	5,000	-	20,000	25%
4300-260-000 TRANSIT BOARD TRAVEL/TRAINING	-	-	-	1,369	-	(1,369)	3,000	-
4300-270-000 DUES/SUBSCRIPTIONS - ADMINISTRA	5,533	27,868	22,335	-	33,402	33,402	40,802	82%
4300-290-000 CELL PHONE - ADMINISTRATION	300	300	-	-	600	600	1,200	50%
4300-310-000 PROF/TECH CONTRACTS - OPERATIN	83,232	144,481	61,248	-	227,713	227,713	802,159	28%
4400-110-000 SALARIES - HUMAN RESOURCES	48,906	64,535	15,629	-	113,441	113,441	233,654	49%
4400-130-000 BENEFITS - HUMAN RESOURCES	16,704	18,596	1,893	-	35,300	35,300	121,216	29%
4400-200-000 MATERIALS/SUPPLIES - HUMAN RES	1,100	(142)	(1,242)	-	958	958	1,002	96%
4400-230-000 TRAVEL/TRAINING - HUMAN RESOUR	6,532	3,665	(2,866)	-	10,197	10,197	12,473	82%
4400-270-000 DUES/SUBSCRIPTIONS - HUMAN RES	1,078	218	(860)	-	1,296	1,296	2,298	56%
4400-300-000 EMPLOYEE HOUSING - HUMAN RESO	827	380	(447)	-	1,207	1,207	-	-
4400-310-000 PROF/TECH CONTRACTS - OPERATIN	20,982	23,067	2,085	-	44,049	44,049	72,389	61%
4500-110-000 SALARIES - FINANCE	49,525	66,025	16,500	-	115,551	115,551	243,228	48%
4500-130-000 BENEFITS - FINANCE	21,557	22,959	1,402	-	44,515	44,515	88,612	50%
4500-200-000 MATERIALS/SUPPLIES - FINANCE	552	(308)	(860)	-	245	245	500	49%
4500-230-000 TRAVEL/TRAINING - FINANCE	1,188	3,438	2,251	-	4,626	4,626	9,787	47%
4500-270-000 DUES/SUBSCRIPTIONS - FINANCE	43	100	57	-	143	143	864	17%
4500-290-000 CELL PHONE - FINANCE	150	150	-	-	300	300	1,200	25%
4500-310-000 PROF/TECH CONTRACTS - OPERATIN	6,650	24,150	17,500	-	30,800	30,800	37,700	82%
4600-110-000 SALARIES - HOUSEKEEPING	47,424	64,455	17,031	-	111,879	111,879	232,744	48%
4600-120-000 OVERTIME - HOUSEKEEPING	878	984	106	-	1,861	1,861	6,811	27%
4600-130-000 BENEFITS - HOUSEKEEPING	27,615	28,974	1,359	-	56,590	56,590	113,368	50%

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4600-200-000 MATERIALS/SUPPLIES - HOUSEKEEPI	8,589	11,595	3,006	-	20,185	20,185	45,133	45%
4600-200-100 MATERIALS/SUPPLIES - UNIFORMS	22,843	357	(22,486)	-	23,199	23,199	24,940	93%
4600-200-200 MATERIALS/SUPPLIES - CLEANING S	2,411	11,178	8,768	9,512	13,589	4,078	24,000	57%
4600-290-000 CELL PHONE - HOUSEKEEPING	150	150	-	-	300	300	600	50%
4700-110-000 SALARIES - DEVELOPMENT	36,269	47,652	11,383	-	83,920	83,920	176,694	47%
4700-130-000 BENEFITS - DEVELOPMENT	7,174	7,622	447	-	14,796	14,796	31,157	47%
4700-200-000 MATERIALS/SUPPLIES - DEVELOPME	30	138	107	-	168	168	500	34%
4700-230-000 TRAVEL/TRAINING - DEVELOPMENT	-	-	-	-	-	-	8,000	-
4700-270-000 DUES/SUBSCRIPTIONS - DEVELOPM	366	420	54	-	786	786	1,095	72%
4700-290-000 CELL PHONE - DEVELOPMENT	150	150	-	-	300	300	600	50%
Total Business operations	5,151,582	6,626,477	1,474,895	10,696,186	11,778,059	1,081,873	27,373,614	43%
Capital outlay								
4100-740-000 DEPRECIABLE FIXED ASSETS	162,531	71,252	(91,279)	174,314	233,783	59,469	17,949,055	1%
4200-730-000 CAPITAL IMPROVEMENTS	-	-	-	799	-	(799)	266,453	-
4700-730-100 FACILITY CONSTRUCTION	28,173	263,082	234,909	4,759,016	291,254	(4,467,762)	19,600,000	1%
4700-750-100 PROGRAM MANAGEMENT	404,082	601,924	197,842	642,079	1,006,007	363,927	4,235,000	24%
4700-750-200 DESIGN	1,120,461	-	(1,120,461)	2,251,986	1,120,461	(1,131,525)	1,975,307	57%
4700-750-300 OWNER DESIGN EXPENSES	8,504	79,325	70,821	22,838	87,829	64,991	11,160	787%
4700-751-100 CM/GC	165,744	10,679,993	10,514,250	-	10,845,737	10,845,737	28,866,333	38%
4700-751-200 THIRD PARTY UTILITIES	18,790	30,583	11,793	-	49,373	49,373	-	-
4700-751-400 OWNER CONSTRUCTION EXPENSES	-	6,800	6,800	-	6,800	6,800	-	-
4700-752-100 BUS PURCHASE	-	13,993	13,993	-	13,993	13,993	6,861,022	-
4700-753-100 LAND ACQUISITION COST	903,977	2,578,034	1,674,057	-	3,482,011	3,482,011	4,687,500	74%
Total Capital outlay	2,812,261	14,324,986	11,512,725	7,851,032	17,137,247	9,286,215	84,451,830	20%
Debt service								
4500-810-000 BOND PRINCIPAL	1,290,000	-	(1,290,000)	1,257,000	1,290,000	33,000	1,290,000	100%
4500-820-000 BOND INTEREST	544,018	-	(544,018)	559,915	544,018	(15,897)	1,070,884	51%
4500-830-000 BOND FEES	-	2,000	2,000	2,000	2,000	-	4,000	50%
Total Debt service	1,834,018	2,000	(1,832,018)	1,818,915	1,836,018	17,103	2,364,884	78%
Total Operating expense	9,797,860	20,953,463	11,155,603	20,366,133	30,751,323	10,385,191	114,190,328	27%
Total Income From Operations:	(3,976,489)	(5,289,608)	(1,313,119)	(4,581,628)	(9,266,097)	(4,684,469)	(6,205,543)	149%
Total Income or Expense	(3,976,489)	(5,289,608)	(1,313,119)	(4,581,628)	(9,266,097)	(4,684,469)	(6,205,543)	149%

High Valley Transit
2026 Quarterly Income Statement
91 Governmental Capital Assets & LTD - 04/01/2026 to 06/30/2026
50.00% of the fiscal year has expired

	Prior Quarter Actual	Current Quarter Actual	Quarter over Quarter Change	Prior YTD Actual	Current YTD Actual	Year over Year Change	Annual Budget	% of Budget YTD
Income or Expense								
Income From Operations:								
Operating expense								
Debt service								
4100 Depreciation expense	612,006	205,042	(406,964)	656,743	817,049	160,306	-	-
Total Debt service	612,006	205,042	(406,964)	656,743	817,049	160,306	-	-
Total Operating expense	612,006	205,042	(406,964)	656,743	817,049	160,306	-	-
Total Income From Operations:	612,006	205,042	(406,964)	656,743	817,049	160,306	-	-
Total Income or Expense	612,006	205,042	(406,964)	656,743	817,049	160,306	-	-

Updated 8/13/26

HVT Grants

Account Number	Account Name	Name/Type	Total Grant	Amount Reimbursed	Amount Remaining	2024 Grant Usage	2025 Grant Usage	2026 Expected Grant Usage	On Budget	Contract Status
Building Grants										
3320-000-000	Federal Grants - Capital	ARPA/CRSSA	\$7,364,348	\$7,364,348	\$0	\$7,364,348	\$0	\$0	No	Contracted and fully reimbursed in 2024
3330-000-000	County Grants	21-TST-03 for building	\$620,640	\$620,640	\$0	\$620,640	\$0	\$0	No	Contracted and fully reimbursed in 2024
3330-000-000	County Grants	23-TST-04 for building	\$3,134,910	\$3,134,910	\$0	\$3,134,910	\$0	\$0	No	Contracted and fully reimbursed in 2024
3325-000-000	FTA 5311 Grants	FTA 5311 FFY2023 for HVT facility	\$600,000	\$600,000	\$0	\$0	\$600,000	\$0	No	Contracted and fully reimbursed in 2025
3320-000-000	Federal Grants - Capital	Congressman Moore	\$2,500,000	\$2,500,000	\$0	\$0	\$2,500,000	\$0	No	Contracted and fully reimbursed in 2025
3326-000-000	FTA 5339 Grants	FTA 5339 FFY2024 grants - facility	\$1,680,800	\$1,680,800	\$0	\$0	\$1,680,800	\$0	No	Contracted and fully reimbursed in 2025
3328-000-000	FTA TTIF Grants	Bus Shelters - First and last Mile (FLM)	\$216,000	\$0	\$216,000	\$0	\$0	\$186,517	Yes	for bus stops
		Subtotal	\$16,116,698	\$15,900,698	\$216,000	\$11,119,898	\$4,780,800	\$186,517		
BRT Grants and Funding										
3330-000-000	County Grants	20-TST-02 BRT	\$2,260,973	\$2,260,973	\$0	\$1,216,620	\$1,044,353	\$0	Yes	Contracted and fully reimbursed in 2025
3330-000-000	County Grants	24-TST-04 BRT Design & Construction	\$4,000,000	\$0	\$4,000,000	\$0	\$0	\$4,000,000	Yes	Contracted
3330-000-000	County Grants	25-TST-04 BRT	\$2,000,000	\$0	\$2,000,000	\$0	\$0	\$2,000,000	Yes	Contracted
3325-000-000	FTA 5311 Grants	FTA 5311 (FFY2024)	\$1,000,000	\$0	\$1,000,000	\$0	\$0	\$1,000,000	Yes	expected in 2026
3327-000-000	FTA RAISE Grants	RAISE	\$25,000,000	\$11,219,935	\$13,780,065	\$0	\$2,646,699	\$13,780,065	Yes	Contracted
3328-000-000	UDOT TTIF Grants	TTIF	\$30,300,000	\$15,963,891	\$14,336,109	\$0	\$10,076,875	\$12,048,262	Yes	Contracted
3328-000-000	UDOT TTIF Grants	TTIF	\$15,000,000	\$0	\$15,000,000	\$0	\$0	\$5,000,000	No	Contracted
		UDOT Cooperative Agreement Chevron Gas Line	\$405,372		\$405,372	\$0	\$0	\$405,372	No	Contracted
3329-000-000	Corridor Preservation	Corridor Preservation	\$2,150,000	\$2,150,000	\$0	\$0	\$115,161	\$2,034,839	Yes	Contracted
3329-000-000	Corridor Preservation	Corridor Preservation - Park City	\$450,000	\$0	\$450,000	\$0	\$0	\$0	No	Potential funding
3800-100-000	Contribution - County	County Contribution	\$6,000,000	\$0	\$6,000,000	\$0	\$0	\$0	No	MOU waiting for signatures
3800-300-000	Contribution - Other Entity	Park City Contribution	\$6,000,000	\$0	\$6,000,000	\$0	\$0	\$0	No	MOU waiting for signatures
		Subtotal	\$94,566,345	\$31,594,799	\$62,971,546	\$1,216,620	\$13,883,088	\$40,268,538		
Federal Operating Grants										
3325-000-000	FTA 5311 Grants	FTA 5311 Admin (FY21 & FY22)	\$1,569,084	\$1,569,084	\$0	\$816,594	\$752,490	\$0	No	Contracted and fully reimbursed in 2025
3320-000-000	Federal Grants - Operating	NEMT is ICAM	\$345,250	\$345,250	\$0	\$113,331	\$154,250	\$77,669	Yes	Contracted and fully reimbursed in 2026
3325-000-000	FTA 5311 Grants	FTA 5311 Admin (FFY2024)	\$973,594	\$0	\$973,594	\$0	\$0	\$973,594	Yes	Contract being finalized with UDOT
3325-000-000	FTA 5311 Grants	FTA 5311 Operating (FFY2024)	\$1,500,000	\$0	\$1,500,000	\$0	\$0	\$1,500,000	Yes	Contract being finalized with UDOT
3325-000-000	FTA 5311 Grants	FTA 5311 Operating (FFY2026)	\$2,800,000	\$0	\$2,800,000	\$0	\$0	\$0	No	Tentatively awarded by UDOT. Expected in 2027
3326-000-000	FTA 5339 Grants	Low-No Operating	\$1,681,400	\$0	\$1,681,400	\$0	\$0	\$771,400	Yes	Contracted
		Subtotal	\$8,869,328	\$1,914,334	\$6,954,994	\$929,924	\$906,740	\$3,322,663		
Vehicles/Electric Chargers										
3330-000-000	County Grants	23-TST-03 Vehicles	\$1,300,000	\$519,356	\$780,644	\$519,356	\$0	\$780,644	Yes	Contracted
3328-000-000	UDOT TTIF Grants	TTIF for vehicles	\$900,000	\$0	\$900,000	\$0	\$0	\$900,000	Yes	Contracted
3326-000-000	FTA 5339 Grants	Low-No Capital	\$14,594,160	\$0	\$14,594,160	\$0	\$0	\$14,230,044	Yes	Contracted
3325-000-000	FTA 5311 Grants	FTA 5311 Capital (FFY2025)	\$326,000	\$0	\$326,000	\$0	\$0	\$0	No	expected in 2026
		Subtotal	\$17,120,160	\$519,356	\$16,600,804	\$519,356	\$0	\$15,910,688		
Planning Grants										
3320-000-000	Federal Grants - Capital	FY2024-2025 Rural and Tribal Assistance Pilot Program	\$1,705,000	\$0	\$1,364,000	\$0	\$0	\$0	No	Awarded 4/2026
		Subtotal	\$1,705,000	\$0	\$1,364,000	\$0	\$0	\$0		
		Grand Total	\$136,672,531	\$49,929,187	\$86,743,344	\$13,785,799	\$19,570,628	\$59,688,406		
3326-000-000	FTA 5339 Grants	Low-No and Bus-Bus for Additional Bus Barn	\$16,930,000							Grant request submitted 7/14/25. Rejected
3325-000-000	FTA 5311 Grants	Operator salary (FFY2027)	\$4,863,350							total project cost \$9,726,700.07
	FTA 5304 Grants	KUTC arch and Design	\$1,388,429							total project cost \$1,735,535.99
	FTA 5304 Grants	Wasatch County Transit Facility	\$257,964							total project cost \$322,455
	FTA 5304 Grants	Wasatch County Bus Stop Plan & Design	\$15,600							total project cost \$19,500. Unofficially heard we won
3326-000-000	FTA 5339 Grants	Ham bus from last year (FFY2027)	\$210,584							total project cost \$263,229.68
3326-000-000	FTA 5339 Grants	Wasatch County Bus Stops Construction (FFY2027)	\$400,000							total project cost \$500,000

High Valley Transit District
Board of Trustees Minutes
Monday, March 16, 2026
Special Meeting
1570 Sego Lily Way
Park City, Utah 84098



Members of the Board of Trustees, presenters, and members of the public could attend by electronic means using Zoom (phone or video).

BOARD OF TRUSTEES PRESENT:

Kim Carson, Chair

Bob Zanetti, Board Member

Megan McKenna, Board Member (via Zoom)

David Geffen, Vice Chair

Tonja Hanson, Board Member (via Zoom)

A quorum was present.

ABSENT:

Peter Tomai, Board Member

Chris Robinson, Board Member

STAFF PRESENT:

Caroline Rodriguez, Executive Director

Stephen Rackleff, Fleet Manager

ATTENDING GUESTS:

Dave Thomas, Attorney (via Zoom)

Public Meeting

Pledge of Allegiance

Public Comment: None

Board Chair K. Carson called the special meeting to order and noted it had been called to consider two items related to the Kimball Junction Transit Center.

1) Resolution 2026-01 – Support for FY2027 Community Project Funding (Kimball Junction Transit Center)

Executive Director Caroline Rodriguez presented Resolution 2026-01. Key points:

- The resolution expresses the Board's support for the construction of a new transit center at Kimball Junction.

- It is a required resolution of support enabling the County and High Valley Transit to jointly apply for FY2027 Community Project Funding through Congressman Blake Moore's office.
- The application requests approximately \$8 million in federal community project funding.
- MOU: Summit County has set aside \$19.6 million for construction of the transit center as part of bond proceeds. Any community project funding awarded would reduce the County's \$19.6 million commitment.
- The MOU did not require prior Board approval to sign because it does not commit High Valley Transit to spending funds.

Motion: Vice Chair Geffen moved to approve Resolution 2026-01, supporting Summit County and High Valley Transit's application for FY2027 Community Project Funding for the new Kimball Junction Transit Center.

Second: Board Member Zanetti

In Favor:

Board Chair Carson

Board Vice Chair Geffen

Board Member Zanetti

Board Member Hanson

Board Member McKenna

Opposed: None

Vote: 5-0

Result: Motion approved unanimously

Absent at time of vote: Board Member Tomai, Board Member Robinson

2) Authorization – Public-Private Partnership Agreement (Summit County, High Valley Transit District, and Park City Junction, LLC)

Executive Director C. Rodriguez presented the public-private partnership (P3) agreement among Summit County, High Valley Transit District, and Park City Junction, LLC (an entity of Dakota Pacific). Key points:

- High Valley Transit's primary role under the P3 is as owner and operator of the transit center. The agreement does not commit High Valley Transit to contribute funding toward shared project elements such as the parking structure, public plaza, and amphitheater, but it outlines how the District participates in the three-party agreement.
- High Valley Transit would be the first entity to execute the agreement. Executing first signals to the Transportation Commission that the P3 agreement is moving forward.

Attorney D. Thomas described the transaction structure and the sequence of signatures:

- The agreement is in final executable form and is moving through Dakota Pacific's approval process to sign as Park City Junction.

- The transaction involves a property exchange centered on the Richins parcel, which is owned as tenants-in-common with Summit County (site of the Kimball Junction Transit Center and the Richins building). The County retains its tenancy-in-common ownership; High Valley Transit is exchanging its ownership interest in that parcel to Park City Junction.
- Park City Junction will obtain air rights over the parking structure for retail and commercial uses; the County retains air rights for affordable housing and will own the parking structure.
- High Valley Transit will receive Park City Junction's adjoining property (the amended PCTC 5B lot, next to the Richins parcel and the existing structure housing Hugo Coffee and other tenants), on which the District will build its transit center, with appropriate easements for access into the parking structure.
- High Valley Transit will have the option to join the P3 Owners Association (which will operate the parking structure for the County); the transit center will be stand-alone.
- The remaining signatory after High Valley Transit and Dakota Pacific is the County Manager.
- Vice Chair Geffen raised a concern regarding Section 9 (pedestrian bridge) on page 28. As worded, if Park City Junction's contributions reached its cost cap, a sentence could be read to relieve PCJ of further obligation and make the County solely responsible for pedestrian-bridge costs above the UDOT contribution. Attorney Thomas agreed this was not the intended interpretation, noted PCJ is expected to reach its cap through the plaza work before any pedestrian-bridge costs arise, and recommended the Board approve the agreement subject to possible rewording of that provision.

Motion: Vice Chair Geffen moved to authorize the Executive Director to execute the Public-Private Partnership Agreement by and among Summit County, High Valley Transit District, and Park City Junction, LLC, subject to possible rewording of Section 9 (page 28) relating to the pedestrian bridge.

Second: Board Member Hanson

In Favor:

Board Chair Carson

Board Vice Chair Geffen

Board Member Zanetti

Board Member Hanson

Board Member McKenna

Opposed: None

Vote: 5-0

Result: Motion approved unanimously

Absent at time of vote: Board Member Tomai, Board Member Robinson

3) Adjournment

Motion: Vice Chair Geffen moved to adjourn the meeting.

Second: Board Member Hanson

In Favor:

Board Chair Carson

Board Vice Chair Geffen

Board Member Zanetti

Board Member Hanson

Board Member McKenna

Opposed: None

Vote: 5-0

Result: Motion approved unanimously

Absent at time of vote: Board Member Tomai, Board Member Robinson

Adopted date:

Kim Carson, Board Chair

High Valley Transit District
Board of Trustees Minutes
Thursday, June 18, 2026
Virtual Meeting via Zoom
1570 Sego Lily Way
Park City, Utah 84098



Members of the Board of Trustees, presenters, and members of the public could attend by electronic means using Zoom (phone or video).

BOARD OF TRUSTEES PRESENT:

Kim Carson, Chair
David Geffen, Vice Chair
Peter Tomai, Board Member
Megan McKenna, Board Member

Bob Zanetti, Board Member
Tonja Hanson, Board Member
Chris Robinson, Board Member

A quorum was present.

ABSENT: none

STAFF PRESENT:

Caroline Rodriguez, Executive Director
Jolena Ashman, Finance Director
Allie Shorkey, Human Resources Director

Brad Herkimer, Chief Operations Officer
Stephen Rackleff, Fleet Manager
Gabe Shields, Chief Development Officer

ATTENDING GUESTS:

Dave Thomas, Attorney
Eric Hicks

Public Meeting
Pledge of Allegiance
Public Comment: None

1) Capital Update – SR-224 Bus Rapid Transit

Gabe Shields presented the SR-224 BRT construction update. Key points:

- Contractor Stacy Witbeck has made substantial progress from Olympic Parkway to the Deer Valley Drive/Empire intersection in Park City.
- New pavement scheduled between Olympic and Bear Cub/Bear Hollow, new trails near Silver Springs toward Canyons, and median repaving toward McPolin.
- Contractors have pulled work originally scheduled for summer 2027 into the current season.
- No safety incidents have occurred involving workers, the motoring public, or those traveling by bike or on foot.
- Right-of-way: a total of 31 parcels are required; 26 are essentially complete with 5 remaining in negotiation. Appraisal and review costs came in roughly \$70,000 under budget, and the estimate to complete the right-of-way line item has improved from ~\$7.4 million to ~\$6.9 million.
- The Community Advisory Board (CAB) met earlier in the week with strong attendance and constructive feedback.
- The CAB is a 16-member cross-section of community leaders that meets three times per construction season. Its evaluations are tied to a \$150,000 incentive program for contractors.
- Dave Thomas prepared a pair of MOUs for the County and the City to secure their local contributions; both are currently with those entities.

Kimball Junction Transit Center: Staff reported the preferred concept is nearly finalized on the south end of the P3 site. The project is advancing toward 30% design, and a solicitation for a construction contractor is expected to be issued in one week.

Canyons BRT station: Staff reported Canyons executed its PID, which requires construction of a BRT transit center with \$1 million dedicated toward it. Canyons aims to begin construction in spring of next year.

2) Human Resources Update – Health and Wellness

Allie Shorkey presented an update focused on employee health and wellness. Highlights included:

- The District received its first PEHP health insurance rebate of \$986, based on plan experience and usage, tenure in the PEHP pool, and member engagement in wellness programs.
- At a recent PEHP retreat, the District earned second place in its group size for physical well-being, recognizing the on-site employee gym.
- An employee garden has been planted, with sign-up sheets for staff to participate in its upkeep.

3) Motion to Enter Closed Session

Motion:

Board Member Robinson moved to enter closed session for procurement discussion, personnel matters, and potential litigation.

Second: Board Member Tomai

In Favor:

Board Chair Carson
Board Vice Chair Geffen
Board Member Tomai
Board Member Zanetti
Board Member Hanson
Board Member Robinson
Board Member McKenna

Opposed: None

Vote: 7-0

Result: Motion approved unanimously

The Board entered closed session and subsequently reconvened in open session to continue the regular meeting agenda.

4) Approval of Meeting Minutes – May 21, 2026

Minutes from May 21, 2026 were presented with the following noted correction:

- Under Board Comments, the entry regarding Board Member Tomai's report on the Wasatch meeting should be expanded to note that, while the meeting was constructive, some county members remained transit-skeptical, and to add Board Member Tomai's suggestion of direct, personal outreach.

Motion:

Board Vice Chair Geffen moved to approve the minutes from May 21, 2026 with the noted correction.

Second: Board Member Tomai

In Favor:

Board Chair Carson
Board Vice Chair Geffen
Board Member Tomai
Board Member Zanetti
Board Member Hanson
Board Member Robinson
Board Member McKenna

Opposed: None

Vote: 7-0

Result: Motion approved unanimously

5) Declaration of Surplus Property – 2024 Silverado

Staff requested approval to declare a 2024 Silverado as surplus property. Key details:

- The vehicle, held by the maintenance department, has been determined to have minimal operational use.
- Original purchase price was approximately \$105,000, with roughly \$30,000 in additional parts/equipment.
- Staff is seeking approximately \$130,000 for the vehicle, with a minimum acceptable sale price of \$115,000, to be sold through the District's partner, JJK Auctions.

Motion:

Board Member Tomai moved to approve the declaration of the 2024 Silverado as surplus property.

Second: Board Vice Chair Geffen

In Favor:

Board Chair Carson
Board Vice Chair Geffen
Board Member Tomai
Board Member Zanetti
Board Member Hanson
Board Member Robinson
Board Member McKenna

Opposed: None

Vote: 7-0

Result: Motion approved unanimously

6) Amendment to the Chart of Positions – Wash Bay Attendant and Strategic Sourcing Manager

Staff presented two proposed amendments to the Chart of Positions:

- Wash Bay Attendant: The District proposes to bring microtransit vehicle cleaning in-house. The change is budget neutral. Via has agreed to pay the cost, approximately ~\$86,600.
- Strategic Sourcing Manager: A change in title for the current Fleet Manager position to better align with the role's duties. The change is a budget neutral title change only.

Motion:

Board Vice Chair Geffen moved to approve the changes to the Chart of Positions, including the Wash Bay Attendant and the change of title to Strategic Sourcing Manager.

Second: Board Member Tomai

In Favor:

Board Chair Carson
Board Vice Chair Geffen
Board Member Tomai

Board Member Zanetti
Board Member Hanson
Board Member Robinson
Board Member McKenna

Opposed: None

Vote: 7-0

Result: Motion approved unanimously

7) Adoption of the Privacy Program Policy

Staff presented a Privacy Program Policy for adoption in response to the Utah Government Data Privacy Act, which requires all governmental entities to have a privacy program in place, with full implementation by January 1, 2027. Key points:

- The policy is based on a template provided by the State.
- Requirements include annual privacy training for staff handling personal data, inventorying of records, and completion of privacy impact assessments when new IT platforms are implemented.
- The policy also establishes website privacy-notice requirements relating to cookies, fingerprinting, and tracking.
- Staff noted that a plain-language companion document can be created to accompany the policy.

Motion:

Board Member Zanetti moved to adopt the Privacy Program Policy.

Second: Board Member Tomai

In Favor:

Board Chair Carson
Board Vice Chair Geffen
Board Member Tomai
Board Member Zanetti
Board Member Hanson
Board Member Robinson
Board Member McKenna

Opposed: None

Vote: 7-0

Result: Motion approved unanimously

8) Appointment of Chief Administrative Officer under the Privacy Policy

Staff recommended appointing Allie Shorkey as the Chief Administrative Officer responsible for administering the District's privacy policy, noting that the role aligns well with Human Resources given its focus on training and data collection.

Motion:

Board Member Robinson moved to appoint Allie Shorkey as the Chief Administrative Officer under the District's privacy policy.

Second: Board Member Hanson

In Favor:

Board Chair Carson
Board Vice Chair Geffen
Board Member Tomai
Board Member Zanetti
Board Member Hanson
Board Member Robinson
Board Member McKenna

Opposed: None

Vote: 7-0

Result: Motion approved unanimously

9) Amendment No. 1 – Transit as a Service Order, Wasatch County (High Valley Transit and River North Transit, LLC)

Staff presented Amendment No. 1 to exercise the option year on the District's contract with Via (River North Transit, LLC). Key points:

- All components of the contract remain in place; only the timeline is extended.
- The fixed-route rate of \$171.01 per hour remains unchanged through the calendar year (no change until January 1, 2027).
- The microtransit rate increases from \$73.74 to \$75.95 per hour effective July 1, consistent with Via's adjustment; the increase is already reflected in the adopted budget.
- The existing 180-day notice and termination clause remains in effect.

Motion:

Board Vice Chair Geffen moved to approve Amendment No. 1 to the amended and restated Transit as a Service Order for Wasatch County.

Second: Board Member Robinson

In Favor:

Board Chair Carson
Board Vice Chair Geffen
Board Member Tomai
Board Member Zanetti
Board Member Hanson
Board Member Robinson
Board Member McKenna

Opposed: None

Vote: 7-0

Result: Motion approved unanimously

10) Amendment No. 2 – Transit as a Service Order, Summit County (High Valley Transit and River North Transit, LLC)

Staff presented Amendment No. 2, which exercises the option year for Summit County under the same terms as the Wasatch County amendment, with no changes other than the timeline.

Motion:

Board Vice Chair Geffen moved to approve Amendment No. 2 to the amended and restated Transit as a Service Order for Summit County.

Second: Board Member Robinson

In Favor:

- Board Chair Carson
- Board Vice Chair Geffen
- Board Member Tomai
- Board Member Zanetti
- Board Member Hanson
- Board Member Robinson
- Board Member McKenna

Opposed: None

Vote: 7-0

Result: Motion approved unanimously

11) Salary Increase – Executive Director

Board Chair Carson reported that she and Board Member McKenna conducted the Executive Director's annual review, with input from the full Board. The Chair recommended a 3% salary increase—the budgeted average staff increase—retroactive to January 1, 2026, noting the review had been delayed in part due to revisions to the evaluation tool.

Motion:

Board Member Robinson moved to grant the Executive Director a 3% salary increase, retroactive to January 1, 2026.

Second: Board Vice Chair Geffen

In Favor:

- Board Chair Carson
- Board Vice Chair Geffen
- Board Member Tomai
- Board Member Zanetti
- Board Member Hanson
- Board Member Robinson
- Board Member McKenna

Opposed: None

Vote: 7-0

Result: Motion approved unanimously

12) Board Comments

Board Member McKenna:

- Rode the bus at the Latino Arts Fest and praised the experience as a powerful and well-executed touch that supported a great community event.

Board Chair Carson:

- Reiterated the value of the Community Advisory Board meeting and the input received.
- Thanked Executive Director Rodriguez for supporting District employees participating in the Summit County Recovery Court program, including attending Recovery Court in person.

13) Director Comments

Executive Director Rodriguez provided the following updates:

- FIFA / Miami observation trip: A District group recently returned from Miami, where they observed FIFA World Cup and Miami-Dade Transit bus operations. Key takeaway was that the transit agency had minimal involvement, FIFA chartered private buses instead.
- Olympic transportation funding: A District goal over the coming years is to encourage the State legislature to work with the Olympic Committee on a transportation surcharge applied to Olympic ticket purchases so that supplemental transit service is funded.
- Latino Arts Fest “tiny bus concert”: The District ran live music aboard the Bob bus along a prescribed shuttle route to Canyons Village. Staff credited the driver and the team responsible for events.
- Branding: The Bob bus branding has been well received.
- Transit Day on the Hill: District staff hosted a “Breakfast on Board” activation this week, generating strong foot traffic and networking.
- A fall site visit with state officials is being planned, coordinated through the District's public affairs partner.
- July 1 marks the District's five-year anniversary; an employee and family celebration will be held that day from 11:00 a.m. to 5:00 p.m.
- Recovery Court partnership: The District's third Recovery Court hire begins Monday, and staff continue to advocate for participants at Recovery Court.
- In response to a board question, staff noted that a previously awarded federal program (TIFIA) had been discontinued, with USDOT citing that it had run out of time and funding.

Canyons summer concert series (discussion, no action): Canyons requested that High Valley Transit provide extra evening service at the District's cost. Staff recommended that Canyons cover the cost (estimated at under \$1,500) to avoid setting a precedent with other resort partners. Staff noted CVMA has requested no microtransit into the village. The Executive Director will check in with each board member individually for further input.

Meeting schedule: With no decision points anticipated, the regularly scheduled July 16, 2026 meeting will be cancelled. A brief special meeting will be held Monday, June 29, 2026 at 9:00 a.m. via Zoom to approve the annual audit/financials ahead of the June 30 deadline. The next regular meeting is scheduled for August 20, 2026.

Finance update (J. Ashman): Staff notified the Board of several budget reallocations made under existing policy including correcting a mis posted Low No Grant entry. On fuel, costs rose approximately 81% from May 2025 to May 2026, increasing the projected fuel overage from approximately \$110,000 to approximately \$300,000 for the year. To offset this, staff deferred budgeted bus-shelter replacements and other reallocations.

14) Adjournment

Motion:

Board Vice Chair Geffen moved to adjourn the meeting.

Second: Board Member Robinson

In Favor:

- Board Chair Carson
- Board Vice Chair Geffen
- Board Member Tomai
- Board Member Zanetti
- Board Member Hanson
- Board Member Robinson
- Board Member McKenna

Opposed: None

Vote: 7-0

Result: Motion approved unanimously

Adopted date:

Kim Carson, Board Chair

High Valley Transit District
Board of Trustees Minutes
Special Board Meeting
Monday, June 29, 2026
1570 Sego Lily Way
Park City, Utah 84098



Members of the Board of Trustees, presenters, and members of the public could attend in person or by electronic means using Zoom (phone or video).

BOARD OF TRUSTEES PRESENT:

Kim Carson, Chair

David Geffen, Vice Chair

Peter Tomai, Board Member

Christopher Robinson, Board Member

Megan McKenna, Board Member

Bob Zanetti, Board Member

A quorum was present.

ABSENT:

Tonja Hanson, Board Member

STAFF PRESENT:

Caroline Rodriguez, Executive Director

Gabriel Shields, Capital Development Officer

Jolena Ashman, Finance Director

Ian Gilbert, Data Analyst

ATTENDING GUESTS:

David Thomas, Attorney

Public Meeting

Pledge of Allegiance

Public Comment: None

1) Presentation and Adoption of the 2025 Audit – Basic Financial Statements

Finance Director Ashman presented the District's audited basic financial statements for the year ended December 31, 2025. Key highlights included:

- The District received a clean audit with no findings.
- The District's building was capitalized during the year and moved into the District's property and capital assets. The building is officially the District's going forward.
- In response to a question from Vice Chair Geffen regarding how the SR-224 Bus Rapid Transit (BRT) project appears on the balance sheet, Finance Director Ashman explained that capital projects are tracked by contracts that have been officially executed and by grants that have been awarded and contracted.
- The audit includes a construction-in-progress section (approximately pages 16–21) showing ongoing capital projects with agreed-upon expenses and committed funding. Because the figures are as of year-end, the notes also disclose grants and contracts entered into during the subsequent six months: hard year-end numbers appear in the table, followed by a paragraph describing the additional contracts and grants secured since.
- Chair Carson and Board Member Tomai noted the clean audit as a strong, positive result and thanked Finance Director Ashman and staff for their work.

Motion: Board Member Tomai moved to adopt High Valley Transit's 2025 audit.

Second: Board Vice Chair Geffen

In Favor:

Board Chair Carson
Board Vice Chair Geffen
Board Member Tomai
Board Member Robinson
Board Member McKenna

Opposed: None

Vote: 5-0

Result: Motion approved unanimously

Absent at time of vote: Board Members Zanetti and Hanson

2) Authorization – Supplemental Utility Agreement with Enbridge Gas Utah (SR-224 BRT)

The District's capital projects team presented a request for authorization for the Executive Director to execute a supplemental utility agreement with Enbridge Gas Utah. Key points:

- The agreement covers relocation of Enbridge high-pressure transmission gas lines at nine locations on the project where they conflict with the project's drainage infrastructure.

- The amount is set at an even \$1,800,000. The contract is for actual costs, so a true-up is likely at the end. The cost is consistent with high-pressure relocations seen on UTA's current projects.
- The relocation had been budgeted at approximately \$1,500,000; the additional ~\$300,000 will be drawn from the construction contingency. This is offset by other program items coming in under budget, including state-furnished materials (~\$50,000 under), net deductive change orders to date (~\$30,000), and a soil-hauling risk item (~\$620,000 lower). The program remains on track.
- The agreement is structured as the First Amendment to the existing master utility agreement. Enbridge maintains two business units; this is the high-pressure (transmission) supplemental, and a separate supplemental from Enbridge's distribution business unit is anticipated later as a separate line item not included in the original \$1.5 million.
- In response to questions from Board Member Robinson, staff explained that the last page of the packet presents the overall ~\$102 million program budget for context: the third-party utilities line increased to approximately \$2.95 million (from ~\$2.7 million), with the difference moving from the program-level contingency, which remains healthy. Contingency is now held at the program level (approximately \$255,484 applied) as activity-level expenses are realized and closed out.
- Enbridge and Rocky Mountain Power self-perform their own relocations. Stacy Whitbeck performs the remaining utility relocations.
- Attorney David Thomas advised that SR-224 is a state highway and is therefore not subject to the District's franchise agreement. Cost allocation follows Title 72 of the Utah Code and UDOT regulations, and the District is paying its proper share and no more, consistent with the master agreement. Board Member Tomai confirmed, and Mr. Thomas agreed, that Enbridge and its provider bear liability for the gas-line relocation work.

Motion: Board Member Robinson moved to authorize the Executive Director to execute a supplemental utility agreement (First Amendment to the master utility agreement) with Enbridge Gas Utah in an amount not to exceed \$1,800,000 for gas utility relocations required by the State Route 224 BRT project.

Second: Board Vice Chair Geffen

In Favor:

Board Chair Carson
Board Vice Chair Geffen
Board Member Tomai

Board Member Zanetti
Board Member Robinson
Board Member McKenna

Opposed: None

Vote: 6-0

Result: Motion approved unanimously

Absent at time of vote: Board Member Hanson

3) Construction Update – Cole Sport Power Outage

In response to a question from Board Member Zanetti, staff summarized a recent power outage affecting the Cole Sport business:

- On Thursday around noon, a utility contractor performing underground boring for new signals at the intersection of SR-224 and Deer Valley Drive struck a Rocky Mountain Power service line feeding Cole Sport. Rocky Mountain Power repaired the line that afternoon with a splice.
- The next morning, while subcontractor Cache Valley Electric performed non-destructive (hydro-vac) excavation in the same high-density utility area, the water jet contacted the repaired splice and shorted out the service to Cole Sport. Rocky Mountain Power returned, arriving around 11:00 a.m. and restoring service by about 1:30 p.m.
- Staff identified communication gaps as the primary issue: the District lacked a direct line to Cole Sport's business representatives (who had preferred email contact), and several construction and communications team members were out of office that Friday and Saturday with no emergency call tree in place. A crisis-communications planning meeting is scheduled this week to address contact protocols, phone trees, and coverage when staff are unavailable.
- Executive Director Rodriguez noted she has been in direct contact with the business and is exploring ideas to mitigate its losses. Board Member Zanetti acknowledged such incidents can occur on construction projects of this scale and indicated the response sounded on track.

4) Board Comments

Board Member Tomai raised readiness for the upcoming Fourth of July holiday, anticipating heavy vehicle, bicycle, and pedestrian traffic along the corridor, and asked that staff plan to minimize disruption and maximize roadway access.

- Staff responded that crews will pull off the project at the end of the day Thursday with a project-wide cleanup to secure barrels and remove construction debris from the

roadway, and that the team is meeting on site at the Cole Sport location to plan the intersection configuration for the holiday, recognizing the 5K and other events.

- Chair Carson closed by thanking staff and contractors for working to identify and avoid the many unmarked and densely located utilities along the corridor, which the utility owners themselves do not always know are present.

5) Adjournment

Motion: Board Member Robinson moved to adjourn the meeting.

Second: Board Vice Chair Geffen

In Favor:

Board Chair Carson
Board Vice Chair Geffen
Board Member Tomai
Board Member Zanetti
Board Member Robinson
Board Member McKenna

Opposed: None

Vote: 6-0

Result: Motion approved unanimously

Absent at time of vote: Board Member Hanson

Adopted date:

Kim Carson, Board Chair

High Valley Transit District
Board of Trustees Special
Meeting Minutes
Thursday, July 30, 2026
Virtual Meeting via Zoom
1570 Sego Lily Way
Park City, Utah 84098



Members of the Board of Trustees, presenters, and members of the public could attend by electronic means using Zoom (phone or video).

BOARD OF TRUSTEES PRESENT:

Kim Carson, Chair
David Geffen, Vice Chair
Peter Tomai, Board Member

Bob Zanetti, Board Member
Tonja Hanson, Board Member
Megan McKenna, Board Member

A quorum was present.

ABSENT:

Chris Robinson, Board Member

STAFF PRESENT:

Jolena Ashman, Finance Director
Caroline Rodriguez, Executive Director
Stephen Rackleff, Strategic Sourcing Manager

Gabriel Shields, Capital Development Officer
Brad Herkimer, Chief Operations Officer

ATTENDING GUESTS:

Dave Thomas, Attorney
Dan Filmore
Dustin Grabau

Public Meeting
Pledge of Allegiance
Public Comment: None

1) Resolution – Sales Tax Revenue Refunding Bonds, Series 2026 (Not to Exceed \$18,500,000)

Finance Director J. Ashman presented the proposed resolution authorizing the refinancing of 2024 Sales Tax Bond. Key points and discussion included:

- The \$18,500,000 figure covers refinancing of the existing bond — principal, interest, and associated fees. The amount is not being expanded and no new spending is contemplated.
- Staff asked the Board to establish two things: a minimum savings threshold required to proceed, given that market conditions change daily, and who holds final decision-making authority at the time of pricing.
- Staff is working with Brian Baker of Zions Bank, who continues to monitor the market.
- Earlier proposals showed potential net present value savings of approximately \$1.7 to \$1.9 million. Finance Committee discussion considered thresholds ranging from \$500,000 to \$1,000,000.
- Board Member Hanson noted the volatility of the current bond market; staff responded that municipal bonds have proven less volatile and savings are still projected.
- Vice Chair Geffen noted that the existing bond is callable at any time, while the refunding bond would not be callable for approximately ten years. The value of the forgone call option should be weighed against any savings, and the refunding should not be pursued for a small savings figure. Staff confirmed that a higher interest rate had been accepted originally in order to obtain the fully callable structure, which is part of the reason room for savings exists.
- Board Member Tomai expressed hesitation about setting the threshold as low as \$500,000, citing uncertainty in interest rates and the loss of callability, and suggested a \$1 million target with discretion in that range and further Board discussion for any gross variation.
- Board Member Zanetti stated he did not expect savings to fall as low as \$500,000 and was comfortable delegating the final decision.
- Board Member Hanson stated she would be comfortable with a \$1 million range, noting that Board Member Robinson has placed particular emphasis on the call option in prior bond discussions.
- Board Chair Carson noted the requirement to approve the resolution 30 days in advance for public notice, and that delaying the refunding to future years would reduce the savings available because fewer years remain to realize the improved rate. Chair Carson requested an update at the August 20, 2026 meeting.
- Staff noted the bonds will be placed on the market for approximately two weeks while banks review them, so offers will provide visibility on actual savings ahead of closing. Staff confirmed the savings floor is not expected to affect the offers received.
- The Board reached consensus on a savings floor of \$800,000, with a target closer to \$1 million, and on delegating final decision-making authority to Vice Chair Geffen, Executive Director C. Rodriguez, and Finance Director J. Ashman.

Motion: Board Member Hanson moved to adopt a resolution authorizing the refinancing of not more than \$18,500,000 aggregate principal amount of Sales Tax Revenue Refunding Bonds,

Series 2024, and related matters, including a minimum savings floor of \$800,000 and granting final decision-making authority to Vice Chair David Geffen, Executive Director Caroline Rodriguez, and Finance Director Jolena Ashman.

Second: Board Member McKenna

In Favor:

Board Chair Carson
Board Vice Chair Geffen
Board Member Tomai
Board Member Zanetti
Board Member Hanson
Board Member McKenna

Opposed: None

Vote: 6-0

Result: Motion approved unanimously

Absent at time of vote: Board Member Robinson

2) Approval – Amendment 1, Transit Transportation Investment Fund (TTIF) Cooperative Agreement with UDOT – SR-224 Bus Rapid Transit

Staff presented Amendment 1 to the TTIF cooperative agreement between High Valley Transit and the Utah Department of Transportation for a \$15 million grant for the SR-224 Bus Rapid Transit project. Key points included:

- In June 2024, the Board approved the initial TTIF cooperative agreement in the amount of \$30,300,000 for the BRT project.
- During final design and development of the guaranteed maximum price, staff identified the need for additional funds and began working with UDOT in the fall and continuing through the spring to identify a funding opportunity.
- Staff presented to the State Transportation Commission in March 2026 and was awarded an additional \$15 million, contingent on approval of the P3 project and execution of the joint venture. Both followed shortly thereafter.
- Amendment 1 increases the funding amount from \$30.3 million to \$45.3 million. It is UDOT's standard form of agreement, and language in the amendment confirms that all provisions of the original agreement remain unadjusted.
- Legal counsel Dave Thomas confirmed he had reviewed the amendment and that it is consistent with other UDOT grant agreements HVT has executed.

Motion: Board Member Tomai moved to approve Amendment 1 for Transit Transportation Investment Fund (TTIF) monies, cooperative agreement between High Valley Transit and the Utah Department of Transportation, for a grant of \$15 million for the State Route 224 Bus Rapid Transit project.

Second: Board Member Hanson

In Favor:

Board Chair Carson
Board Vice Chair Geffen
Board Member Tomai
Board Member Zanetti
Board Member Hanson
Board Member McKenna

Opposed: None

Vote: 6-0

Result: Motion approved unanimously

Absent at time of vote: Board Member Robinson

3) Adjournment

Motion: Board Vice Chair Geffen moved to adjourn the meeting.

Second: Board Member Hanson

In Favor:

Board Chair Carson
Board Vice Chair Geffen
Board Member Tomai
Board Member Zanetti
Board Member Hanson
Board Member McKenna

Opposed: None

Vote: 6-0

Result: Motion approved unanimously

Absent at time of vote: Board Member Robinson

Adopted date:

Kim Carson, Board Chair



STAFF REPORT

Date: August 20, 2026
To: Board of Trustees
From: Gabriel Shields, PE Chief Development Officer
Subject: Kimball Junction Transit Center CM/GC Selection

Action Requested

Authorize the Executive Director to execute the Phase 1 Construction Manager/General Contractor (CM/GC) Preconstruction Services Agreement with Stacy Witbeck for the Kimball Junction Transit Center Project in an amount not to exceed \$289,938, inclusive of 3,388 labor hours, and authorize the Executive Director to execute minor contract modifications consistent with the approved budget.

Background

The Kimball Junction Transit Center (KJTC) is a cornerstone of High Valley Transit's long-term vision for regional transit service and mobility in Summit County. The project will replace the existing transit center with a modern multimodal facility designed to accommodate current transit operations while supporting future growth and the surrounding mixed-use redevelopment occurring through the public-private partnership between High Valley Transit, Summit County, and Park City Junction.

Due to the project's complexity—including maintaining uninterrupted transit operations during construction, coordinating with adjacent P3 development, integrating utility relocations, and managing an evolving design—High Valley Transit elected to use the Construction Manager/General Contractor (CM/GC) delivery method. This approach allows the contractor to participate during design by providing constructability reviews, cost estimating, value engineering, scheduling, and risk management prior to establishing a Guaranteed Maximum Price (GMP).

Procurement Process

Prior to issuing the solicitation, High Valley Transit conducted industry outreach to encourage participation from qualified contractors with experience delivering complex public infrastructure and vertical construction projects. Outreach was conducted with Jacobsen Construction, Layton Construction, Mortenson, Okland Construction, and Stacy Witbeck.

Following issuance of the Request for Proposals (RFP), High Valley Transit received proposals from Okland Construction and Stacy Witbeck. Both proposals were determined to be responsive and were evaluated by a multidisciplinary selection committee in accordance with the evaluation criteria identified in the RFP.

Evaluation Criteria

Proposals were evaluated using the criteria established in the Request for Proposals. Committee members independently reviewed and scored each proposal before participating in a consensus evaluation following interviews. The evaluation criteria and final scores are summarized below.

Evaluation Criterion	Maximum Points	Okland Construction	Stacy Witbeck
Organizational Chart and Key Personnel	25	24	21
Project Understanding and Approach	30	22	26
Team Experience and Quality of Similar Work	20	20	17
Preconstruction Pricing	15	8	14
Construction Profit and Overhead Markup	10	9.5	10
Total	100	83.5	88

Evaluation Summary

Both firms submitted high-quality proposals and demonstrated the capability to successfully perform CM/GC services for the Kimball Junction Transit Center. The proposals presented different strengths that were considered by the evaluation committee.

Okland demonstrated particularly strong experience delivering complex vertical construction projects and managing the subcontractor environment associated with this type of facility. Its proposed team and portfolio of similar work were significant strengths of its proposal.

Stacy Witbeck demonstrated a particularly strong understanding of the project, competitive preconstruction pricing, and a collaborative approach to project delivery. Stacy Witbeck also brings a stronger transit-focused resume, including extensive experience delivering transit facilities such as transit centers, maintenance facilities, and systems integration projects, in addition to substantial transportation construction experience and an established working relationship with High Valley Transit through its work on the SR-224 BRT project. That existing relationship provides the KJTC project with established communication, cost-management, scheduling, and decision-making processes that can be carried forward into this project.

The committee also considered each firm's ability to work effectively within the broader project team, which includes High Valley Transit, Summit County, Six Ridge Partners, the design team, and other project stakeholders. These considerations were qualitative and did not modify the scores established through the published evaluation criteria.

While Stacy Witbeck was the highest-ranked proposer, the evaluation committee identified focus areas that will enhance performance as the project enters preconstruction. Staff intends to actively address these areas through the Phase 1 preconstruction process.

Focus Area	Implementation Strategy
Subcontracting Strategy	Develop a comprehensive subcontracting plan focused on competitive bidding, early engagement of critical trades, clear scope definition, and development of a qualified subcontractor pool appropriate for complex vertical construction.
High-Risk Work Management	Identify high-risk scopes and project interfaces early in preconstruction and establish specific mitigation strategies, sequencing plans, and responsible parties for each. Maintain these items through a project risk register.
Permitting Strategy	Develop a coordinated permitting plan with early engagement of Summit County and other reviewing agencies. Incorporate permitting requirements, review periods, and decision points into the project schedule.
Partnering	Establish structured partnering practices at project initiation to align HVT, Stacy Witbeck, the design team, Summit County, Six Ridge Partners, and other stakeholders around project goals, responsibilities, communication protocols, and decision-making processes.

These strategies will become specific priorities for the project team during Phase 1 preconstruction and will be incorporated into the project's management processes and recurring coordination meetings.

Selection Recommendation

Following evaluation of the written proposals and interviews, the selection committee determined that Stacy Witbeck submitted the highest-ranked proposal and represents the best overall value to High Valley Transit.

The committee's recommendation reflects Stacy Witbeck's strong project understanding, competitive preconstruction pricing, collaborative project delivery approach, transportation construction experience, and established working relationship with High Valley Transit. The committee also recognizes that the Kimball Junction Transit Center includes significant vertical construction and subcontractor management requirements and intends to specifically address these areas through the preconstruction strategies identified above.

Upon Board approval, High Valley Transit will execute the Phase 1 CM/GC Preconstruction Services Agreement with Stacy Witbeck in an amount not to exceed \$289,938. The Phase 1 scope includes 3,388 labor hours and authorizes Stacy Witbeck to begin preconstruction services, including cost estimating, constructability reviews, scheduling, value engineering, risk management, subcontractor planning, and coordination with the design team.

A copy of the Phase 1 CM/GC Preconstruction Services Agreement is attached to this staff report for the Board's review.

For Phase 2 construction services, Stacy Witbeck's proposal includes a 6.0% profit and 7.4% overhead markup. These rates were considered as part of the RFP evaluation. Phase 2 construction services are not authorized as part of this action. Following completion of design and the preconstruction process, Stacy Witbeck will develop a Guaranteed Maximum Price (GMP) for Board consideration. Construction will not proceed until a GMP amendment is negotiated and separately approved by the Board.

Financial Impact

The proposed Phase 1 CM/GC Preconstruction Services Agreement is \$289,938, inclusive of 3,388 labor hours, and will be funded through the approved Kimball Junction Transit Center project budget.

The proposed Phase 2 pricing structure includes 6.0% profit and 7.4% overhead. The ultimate value of Phase 2 construction services will depend upon the final construction scope and negotiated GMP.

Approval of this item authorizes only Phase 1 preconstruction services. Authorization to proceed with Phase 2 construction will require future Board approval of the GMP.

DRAFT AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

High Valley Transit Kimball Junction Transit Center
6300 N. Landmark Dr.
Park City, Utah 84098

THE OWNER:

(Name, legal status and address)

High Valley Transit District
1570 Sego Lily Way
Park City, Utah 84098
Chief Development Officer: Gabriel Shields
Ph: (435) 220-5408
E: gshields@hvtutah.gov

THE ARCHITECT:

(Name, legal status and address)

« »
« »
«Project Architect: »
«Ph: () »
E: »

ADDITIONS AND DELETIONS:

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

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

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

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

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

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

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

The parties shall transmit instruments of service and other information in electronic formats. The receiving party shall be entitled to rely on the accuracy of the information transmitted.

§ 1.8 Building Information Models Use and Reliance

If building information modeling is to be used on the Project, the parties shall set forth procedures governing the use of and reliance on the building information model.

ARTICLE 2 OWNER

§ 2.1 General

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

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

§ 2.2 Evidence of the Owner's Financial Arrangements

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

§ 2.2.2 (Intentionally Omitted).

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

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

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 The Owner shall secure and pay for necessary permits, governmental fees, licenses, inspections, approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities, required for execution and completion of the work.

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

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

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

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

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

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

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

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

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

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

§ 3.3 Supervision and Construction Procedures

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

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

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

§ 3.4 Labor and Materials

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

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

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

§ 3.5 Warranty

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

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

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

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

§ 3.7.4 Concealed or Unknown Conditions

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

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner 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.

§ 3.8 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.

§ 3.9 Project Manager

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed project manager. Within 14 days of receipt of the information, the

Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed project manager or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

§ 3.10 Contractor's Construction and Submittal Schedules

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

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

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

§ 3.11 Documents and Samples at the Site

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

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal

schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

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

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

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

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

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

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

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

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

§ 4.2.4 Communications

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

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

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall

be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 Mutual Responsibility

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

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

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

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

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and the profit and overhead percentages from Form B of the proposal.
- .4 As provided in Section 7.3.4.

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

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

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

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

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and

credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

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

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

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

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

§ 8.3.4 The Owner understands and agrees that the Contractor has not included contingency or time associated with any future impacts from the COVID-19 pandemic, or similar future pandemics, including any supply chain impacts; impacts to material availability; impacts to labor productivity; or costs associated with complying with any regulation of any authority having jurisdiction, including any forthcoming OSHA regulation or CDC recommendation not in effect as of the date of execution (“COVID Impacts”). In the event of any COVID Impact, the Contractor shall provide prompt written notice to the Owner. As such impacts become quantified and costs incurred, the Contractor is entitled to an increase in the Contract Time and the Contract Sum arising from such COVID Impact.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

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

§ 9.3.1.1 As provided in Section 7.3.9, such applications may 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 (Intentionally Omitted)

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor’s knowledge, information, and belief, be free and clear of liens, claims,

security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work, except to the extent arising from liens and claims for which Contractor has not been paid as of the date of the Application for 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 (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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

§ 9.5 Decisions to Withhold Certification

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

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

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15. The Owner shall not withhold payment for any damage or claim that falls within the scope of potential coverage of a liability policy or a property policy provided by Contractor and required under this Agreement.

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make

payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

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

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

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

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

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

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

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

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

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

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

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

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

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

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. Upon Substantial Completion of the Work, the Contractor shall be paid all retainage, exclusive of a reasonable estimate of the Work to be completed and one hundred fifty percent (150%) of the value attributable to "punch list" Work. As items on the punch list are completed, the Contractor shall be paid one hundred fifty percent (150%) of their value at the next progress payment.

§ 9.8.6 In the event the Agreement provides for liquidated damages to be assessed for late completion of the Work, such liquidated damages shall cease to accrue as of the earlier of the date that either: (a) a temporary certificate of occupancy is issued by the local authority having jurisdiction or (b) the Owner takes beneficial use of the Work.

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

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

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

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.1.1 The Owner agrees to require all parties or individuals, representing, contracted to or employed by the Owner to comply with Big-D's Safety Manual and Policies while in the area of operations under the scope of this Contract.

§ 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 Except to the extent identified in the Contract Documents, the parties are not aware of and do not expect to encounter any hazardous materials or substances at the Site. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect

will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

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

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles.

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

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

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

§ 11.1.2 At the request of the Owner, the Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located. The Owner shall pay the Contractor a fee of 0.65% of the Total Construction Cost of the project for these bonds.

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

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the

procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.1.5 PROPERTY INSURANCE

§ 11.1.5 Unless the Owner specifically provides such coverage that is equivalent in coverage to the Contractor standard builders' risk policy, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until Substantial Completion or a Certificate of Occupancy has been issued by any regulatory authority governing the work site, whichever first occurs. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. The Contractor shall be required to name the Owner as an additional named insured and provide a certificate of insurance and endorsement confirming such. The Contractor shall make the policy available for review at its office upon reasonable notice from the Owner.

§ 11.1.5.2 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire and physical loss or damage including theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.1.5.3 If the property insurance requires deductibles, deductibles shall be a Cost of the Work.

§ 11.1.5.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.1.5.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property 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.

§ 11.1.5.6 In the event that the Owner elects to provide property insurance in lieu of the Contractor, the Owner shall be required to provide a Builders' Risk policy with coverage equal to or greater than Contractor's policy and with a deductible no greater than \$5,000 per occurrence and with a minimum of \$2 million in coverage for Contractor's Extra Expense and Contractor's Expediting Expense. The Owner shall be required to name the Contractor as an additional named insured and shall be required to provide the Contractor both a certificate of insurance and a complete copy of the policy with all required endorsements. In the event that the Owner's policy provides for coverage that is less favorable than the Contractor's policy, the Owner shall reimburse the Contractor by change order for any costs incurred that are not covered by the Owner's policy if they would have been covered by the Contractor's policy.

§ 11.2 Owner's Insurance

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

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner commits to provide builders risk coverage and subsequently fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or

resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

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

§ 11.3 Waivers of Subrogation

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

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

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

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

§11.5 Adjustment and Settlement of Insured Loss

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

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

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

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

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

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

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

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

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

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

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

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment. If the Owner requests Contractor to execute a Lender Consent to Assignment or other document required by the Lender as a pre-condition to closing, such agreement cannot make any material changes to this Contract or the Contractor shall be entitled to an increase in the Contract Sum or Contract Time associated with any requirement imposed by the Lender Consent to Assignment that is not already required by this Contract. Owner agrees to provide any such document to Contractor at least five (5) days prior to execution required.

§ 13.3 Rights and Remedies

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

§ 13.3.2 Except for notices required pursuant to Article 14, written notices required under this Agreement may be transmitted by email. Any notices required pursuant to Article 14 shall be sent by registered mail or personal delivery, and 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. No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

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

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

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

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

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

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest at the rate of six (6%) percent per annum..

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

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

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

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

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 After written notice and an opportunity to cure as required by Section 14.2.2, the Owner may terminate the Contract if the Contractor

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

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, fourteen days' notice and a reasonable opportunity to cure. If the default cannot reasonable be cured within fourteen days, the Contractor shall be deemed to have cured the default if, within seven days, the Contractor presents and diligently commences a plan to cure such default. If the Contractor does not cure or present a plan to cure the default within fourteen days, the Owner may, 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, except construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

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

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

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

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

§ 15.1.3 Notice of Claims

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

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

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

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

§ 15.1.6 Claims for Additional Time

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

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

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

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

§ 15.2 Initial Decision

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

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

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

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

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

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

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

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

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

§ 15.3 Mediation

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

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

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

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

§ 15.4 Arbitration

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

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

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

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

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party

provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

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

§ 15.4.5 ARBITRATION PROCEEDURE

The parties agree that they shall work together to conduct any arbitration proceedings in an efficient and cost effective manner. The parties stipulate that discovery shall not last longer than nine months from the date of selection of an arbitrator and that an arbitration hearing shall be completed not longer than twelve months from the date of selection of an arbitrator. Accordingly, the parties further agree as follow:

§ 15.4.5.1 Production of Documents. Within 14 days after selection of an arbitrator, each party shall produce disclosures in the form required by Fed. R. Civ. P. 26. In addition, within 30 days after selection of an arbitrator, each party shall produce its entire project file and documents related to the dispute to the other party. Such production shall be in accordance with the following requirements:

.1 documents maintained in paper form shall be produced as either: (a) PDF format with each individual documents as a separate PDF file with Optical Text Recognition applied or (b) in TIFF form (all meta data preserved) with an accompanying load file for an electronic discovery software platform such as Concordance or Relativity.

.2 documents maintained in electronic form shall be produced in either: (a) native format or (b) in TIFF form (all meta data preserved) with an accompanying load file for an electronic discovery software platform such as Concordance or Relativity.

§ 15.4.5.2 Written Discovery. Each party shall be entitled to propound 25 interrogatories and requests for admission, which shall be answered in compliance with the requirements of Fed. R. Civ. P. 26, 33, and 36. Each party shall be entitled to unlimited requests for production of documents in accordance with Fed. R. Civ. P. 34.

§ 15.4.5.3 Depositions. Each party shall be entitled to no more than 3 fact witness deposition each. Depositions of corporate entities pursuant to Fed. R. Civ. P. 30(b)(6) shall be authorized but shall not increase the limit of depositions beyond 3.

§ 15.4.5.4 Experts. Each party shall be entitled to no more than 2 expert witnesses to be designated in compliance with Fed. R. Civ. P. 26. All expert files shall be produced concurrently with any expert reports offered pursuant to Fed. R. Civ. P. 26.

§ 15.4.5.5 Arbitration Hearing. Each party shall be entitled to no more than 20 hours of hearing time to present its case during the arbitration hearing. Time spent for cross examination shall be counted toward the time of the party questioning.

§ 15.4.5.6 Reasoned Decision. The Arbitrator shall prepare its decision in the form of a reasoned award with Findings of Fact and Conclusions of Law not later than 30 days after conclusion of the Hearing.

DRAFT AIA® Document A133™ – 2019

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

AGREEMENT made as of the « » day of « » in the year «2026 »
(In words, indicate day, month, and year.)

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

High Valley Transit District
1570 Sego Lily Way
Park City, Utah 84098
Chief Development Officer: Gabriel Shields
Ph: (435) 220-5408
E: gshields@hvtutah.gov

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

« »
« »
« »

Ph:
E:

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

High Valley Transit Kimball Junction Transit Center
6300 N. Landmark Dr.
Park City, Utah 84098

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

Horrocks Engineers, LLC
1265 East Fort Union Blvd., Suite 200
Salt Lake City, Utah 84047
Claire Woodman
Ph: (801) 301-6156
E: claire.woodman@horrocks.com

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

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

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

«The program will be developed in relation to the High Valley Transit District Request for Proposal for Construction Manager/ General Contractor for the Kimball Junction Transit Center, dated _____, 2025»

§ 1.1.2 The Project's physical characteristics:

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

The Project comprises the demolition of the current Kimball Junction Transit Center and the construction of a new Kimball Junction Transit Center of an approximately 3.45 acre site at 6300 N. Landmark Dr., Park City, Utah. It is intended that the project will consist of bus bays and operational areas to support current and future service levels, customer amenities and compact retail, passenger waiting areas with family friendly amenities, pedestrian circulation and safety enhancements, facilities that support seamless access to the SR 224 BRT corridor and local services, overhead electric bus charging infrastructure, pedestrian connection to podium level of the adjacent P3 development, and 10,000 square-foot administration building.

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

The Construction Budget is currently \$. The pricing will be confirmed through the Pre-Construction Services. At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. When it is accepted, a Guaranteed Maximum Price (GMP) Amendment will be executed. »

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

.1 Design phase milestone dates, if any:

Final design shall be completed nine months on or before ; provided, however, that no final design shall be completed prior to the receipt of a Categorical Exclusion (CE) for the Project.

.2 Construction commencement date:

.

.3 Substantial Completion date or dates:

- Substantial completion of Phase 1 (): .
- Substantial completion of Phase 2 (): .
- Substantial completion of Phase 3 (): .

.4 Other milestone dates: N/A

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

« »N/A

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

«Meet the sustainable requirements depicted within the Plans and Specifications.

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

§ 1.1.7 Other Project information:

»N/A

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Chief Development Officer: Gabriel Shields
Ph: (435) 220-5408
E: gshields@hvtutah.gov
High Valley Transit District
1570 Sego Lily Way
Park City, Utah 84098

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

« »N/A

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

.1 Geotechnical Engineer N/A

.2 Civil Engineer:

Horrocks Engineers, LLC
1265 East Fort Union Blvd., Suite 200
Salt Lake City, Utah 84047
Claire Woodman
Ph: (801) 301-6156
E: claire.woodman@horrocks.com

.3 Program Manager

HNTB Corporation
910 West Legacy Center Way, 4th Floor
Midvale, Utah 84047
Kristi Shinall
Ph: (801) 573-7263
E: kshinall@hntb.com

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

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

« »
« »
« »
« »
«Ph: () »

«E:

»

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

(List any Owner-specific requirements to be included in the staffing plan.)

« »N/A

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

(List any Owner-specific requirements for subcontractor procurement.)

« »N/A

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

« »N/A

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

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

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the requirements of the Contract Documents; 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 requirements of the Contract Documents. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

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

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

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services, including Tasks 1-15 in Section 14 of Exhibit E. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

§ 3.1.3 Consultation

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

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

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

§ 3.1.4 Project Schedule

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

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

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

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

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

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

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

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

§ 3.1.11 Subcontractors and Suppliers

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

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

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

§ 3.1.12 Procurement

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

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

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

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

§ 3.2 Guaranteed Maximum Price Proposal

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

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

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

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

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency as provided in Section 6.1.9 below.

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

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

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

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

Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

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

§ 3.3 Construction Phase

§ 3.3.1 General

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

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

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

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

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

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

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

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

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to

all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

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

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

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

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

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

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

§ 4.2 Owner's Designated Representative

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

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

§ 4.3 Architect

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

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

«Owner shall pay the Construction Manager a stipulated sum Fee of _____ dollars (\$_____.00) for Pre-Construction Services. If Pre-Construction Services extend more than (120) days after the Notice-To-Proceed date, an equitable adjustment will be made to compensate the Construction Manager for additional services and time will be added to the schedule to extend the Substantial Completion date of the Project. Travel outside of Salt Lake County and Summit County will be reimbursed at cost plus ____ % Fee. Printing costs will be reimbursed at cost plus ____ % Fee.»

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

«Additional Pre-Construction Services provided by the Construction Manager will be paid as per the Hourly Billing Rates in EXHIBIT D»

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

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid «thirty» (« 30 ») days after the invoice date shall bear interest at the rate of six (6%) percent per annum.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

«The Construction Manager's Fee shall be 5% of the Total Construction Cost »

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

- «1. *Work Performed In-House / Self-Performed Work: Owner will pay the Construction Manager (CM) the total construction cost plus ____ % Fee.
2. *Additional Work Performed by Subcontractors: Owner will pay the Construction Manager (CM) for cost of the subcontractors work plus ____ % Fee..
3. *Material Changes Only: Owner will pay the Construction Manager (CM) the cost of the materials and delivery plus ____ % Fee.

*All Changes in the Work in items 1., 2., and 3. are plus CM fees, bonds, and insurances. Deductive change orders will not include any credits for CM Fees, bonds, and insurances. »

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

«First Tier subcontractors are allowed ____ % fee.
Second Tier Subcontractors are allowed ____ % fee.
(First Tier ____ % + Second Tier ____ % = Total Subcontractor Markup ____ %))»

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall be invoiced per the rates attached in **Exhibit C**.

§ 6.1.6 Liquidated damages, if any:

«Upon mutual agreement to a substantial completion date for the project, the Construction Manager (CM) acknowledges that the failure of the CM to achieve Substantial Completion by the date agreed upon will result in incalculable and irreparable damage to the Owner and that the Owner has no adequate remedy at law for such failure. Therefore, the CM agrees to immediately pay to the Owner on written request the sum of Five Hundred Dollars (\$500.00) per day for each calendar day after the date of Substantial Completion set forth above that the Work has not achieved Substantial Completion. »

§ 6.1.7 Other: N/A

« »

§ 6.1.8 General Conditions Costs. Owner and Construction Manager have agreed on a stipulated value for general conditions labor and services to be provided by the Construction Manager in the lump sum of \$ _____.00 per Month (the "General Conditions Cost"). The General Conditions Cost shall be payable monthly in the amount of \$ _____.00 per month to be billed each month for the course of the construction phase of the Project. In the event of change orders or delays that impact the Contract Time, the Construction Manager shall be entitled to an increase in the General Conditions Cost to reflect the additional days of work required.

§ 6.1.9 GMP Contingency. The GMP includes a Contingency in the amount of ____ % of the Total Construction Cost which is available for Construction Manager's exclusive use for costs that are incurred in performing the Work that are not included in a specific line item or the basis for a Change Order under the Contract Documents. By way of example, and not as limitation, such costs include:

- .1 Bid reserve to absorb differences between trade contract estimates and actual Subcontractor or supplier bids received.
- .2 Minor increases in scope due to unknown or unforeseen factors, which may adversely affect costs not including "Unforeseen" conditions as defined in General Conditions;
- .3 Discrepancies or gaps in scope between Subcontractor or Suppliers.
- .4 Increased costs in subcontractor bids.
- .5 Cost of schedule acceleration, re-sequencing the Work or recovery from unanticipated changes/delay in schedule.
- .6 Errors by Subcontractors not caused by the negligence of Construction Manager
- .7 The GMP Contingency shall be available for changes in construction means and methods under the control of the Construction Manager.
- .8 Any other such use as the Owner and Construction Manager mutually agree upon.
- .9 And all Trade buy-out differentials, overtime, acceleration, costs in correcting defective, damaged or nonconforming Work, design errors or omissions and Subcontractor defaults.

The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Construction Manager to increase the GMP under the Contract Documents. Construction Manager shall provide Owner with notice of all anticipated charges against the GMP Contingency.

The Construction Manager shall keep the Owner advised of all costs or anticipated costs charged against the GMP Contingency. All transfers from the GMP Contingency shall be documented (not less frequently than once per month) by the Construction Manager and reported to the Owner as Costs of the Work.

The GMP Contingency shall not be interpreted as a fund to be used for upgrading, changing or increasing the Scope of Work, equality, quantity changes or for covering expenses incurred for accelerations of the work, unforeseen conditions,

force majeure issues or for any other reason for which the Construction Manager is otherwise entitled to a Change Order under the provisions of the Contract Documents.

Unspent contingency funds realized at the end of the project shall be split in accordance with 6.2.

§ 6.2 Guaranteed Maximum Price

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

The difference between the Contract Sum at final completion and the Guaranteed Maximum Price shall be deemed Savings. The Construction Manager and the Owner shall split Savings with 70% to the Owner and 30% to the Construction Manager. Construction Manager shall invoice for any Savings with its Final Application for Payment.

§ 6.3 Changes in the Work

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

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

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

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

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

§ 6.3.5 For change order work that increases the scope or cost of the Work, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee in Section 6.1.3, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

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

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

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

§ 7.2 Labor Costs

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

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel identified in *Exhibit D*.

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

« »N/A

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

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

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

§ 7.3 Subcontract Costs

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

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

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

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

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

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

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be identified in Exhibit C.

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

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

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

§ 7.6 Miscellaneous Costs

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

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Insurance shall be billed at the rate of (1.05%) One and Five One Hundredths Percent of the Total Construction Cost.

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

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

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay will be paid by the Owner and **are not** included within the Contract Sum.

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

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

§ 7.7 Other Costs and Emergencies

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

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

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

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

§ 7.8 Related Party Transactions

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

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

§ 7.9 Costs Not To Be Reimbursed

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

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

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

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

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

« »

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the « 30th » day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the « 20th » day of the « following » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « twentieth » (« 20 ») days after the Architect receives the Application for Payment.

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

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

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

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

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

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

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

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

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

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;

- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

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

«five percent (5%) »

§ 11.1.8.1.1 The following items are not subject to retainage:

«insurances, bonds, and general conditions»

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

«At substantial completion of each building Owner will release retention for completed work.»

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8.

« »

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

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

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

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

§ 11.1.13 Upon Substantial Completion of the Work, the Construction Manager shall be paid all retainage, exclusive of a reasonable estimate of the Work to be completed and one hundred fifty percent (150%) of the value attributable to "punch list" Work. As items on the punch list are completed, the Construction Manager shall be paid one hundred fifty percent (150%) of their value at the next progress payment.

§ 11.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

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

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

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

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

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

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

§ 11.3 Interest

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

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

«6» % «six percent»

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017.

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

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§ 12.2 Binding Dispute Resolution

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

(Check the appropriate box.)

☒ Arbitration pursuant to Article 15 of AIA Document A201–2017

☐ Litigation in a court of competent jurisdiction

☐ Other: (Specify)

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

ARTICLE 13 TERMINATION OR SUSPENSION

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

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

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

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

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

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

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

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental

agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

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

§ 13.2.1 Termination

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

§ 13.2.2 Termination by the Owner for Cause

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

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

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

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as set forth in Article 14.4.3 of the AIA Document A201–2017.

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§ 13.3 Suspension

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. If the Owner requests Construction Manager to execute a Lender Consent to Assignment or other document required by the Lender as a pre-condition to closing, such agreement cannot make any material changes to this Contract or the Construction Manager shall be entitled to an increase in the Contract Sum or Contract Time associated with any requirement imposed by the Lender Consent to Assignment that is not already required by this Contract. Owner agrees to provide any such documents to Construction Manager at least five (5) days prior to execution required.

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

§ 14.3 Insurance and Bonds § 14.3.1 Preconstruction Phase

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

§ 14.3.1.1 Commercial General Liability with policy limits of not less than two million dollars (\$2,000,000) for each occurrence and four million dollars (\$4,000,000) in the general aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than two million dollars (\$2,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than « one million dollars » (\$«1,000,000») each accident, « one million dollars » (\$«1,000,000») by disease each employee, and « one million dollars » (\$«1,000,000») by disease policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than « one million dollars » (\$« 1,000,000 ») per claim and « one million dollars » (\$« 1,000,000 ») in the aggregate.

§ 14.3.1.6 Other Insurance

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

Subcontractor Default Insurance (SDI) shall be billed at the rate of (1.25%) One and One-Quarter Percent of the Cost of Work.

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

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

§ 14.3.2 Construction Phase

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

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

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit.

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§ 14.5 Other provisions:

Construction Manager shall assist Owner with federal grant compliance for federal monies associated with this project.

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ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction

[☒] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
EXHIBIT C EXHIBIT D EXHIBIT E EXHIBIT F EXHIBIT G	Equipment Rates Labor Rates High Valley Transit RFP Construction Proposal Federal Contract Clauses		

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

OWNER (Signature)

High Valley Transit District
Kim Carson, Chair« »« »

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

«

»« »

(Printed name and title)

FOR
BID
DRAWING



STAFF REPORT

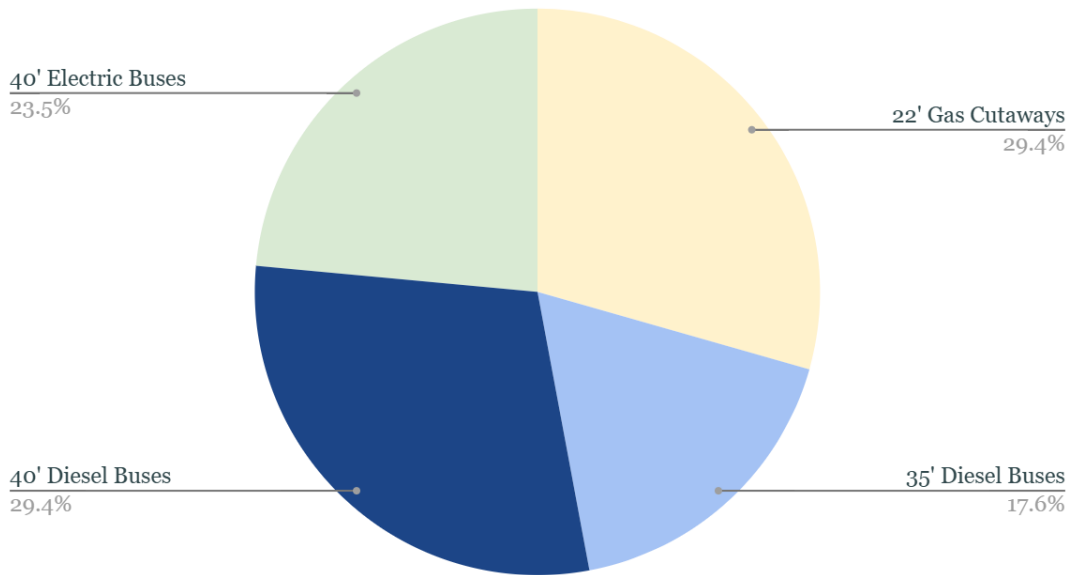
Date: August 20, 2026
To: Board of Trustees
From: Stephen Rackleff, Strategic Sourcing Manager
Subject: Quarter 2 – 2026 Fleet Status

Background

In Quarter 1 of 2026, fleet uptime averaged **82.3%**. With the vehicles we had up and the quick turnaround time on repairs, the maintenance team ensured **100% service coverage** on all routes using spare vehicles that we have at our disposal. This quarter is the last that we expect to have without the full support of the new battery-electric buses, which will drastically lower the age of our fleet, and should also drastically lower our vehicle downtime. Maintenance issues lasting longer than 48 hours were all resolved within an average of 10 days. This includes time spent offsite between Cummins, Chevrolet, and Ford.

The first five of the new battery-electric buses have arrived and initial testing on our service has begun. The buses are fully outfitted with the exception of ETA SPOT tracking that provides passenger counting, on time performance, and live tracking for our passenger-facing app. ETA's equipment is set to be installed starting August 24th, and the five new buses will be deployed on route after that installation.

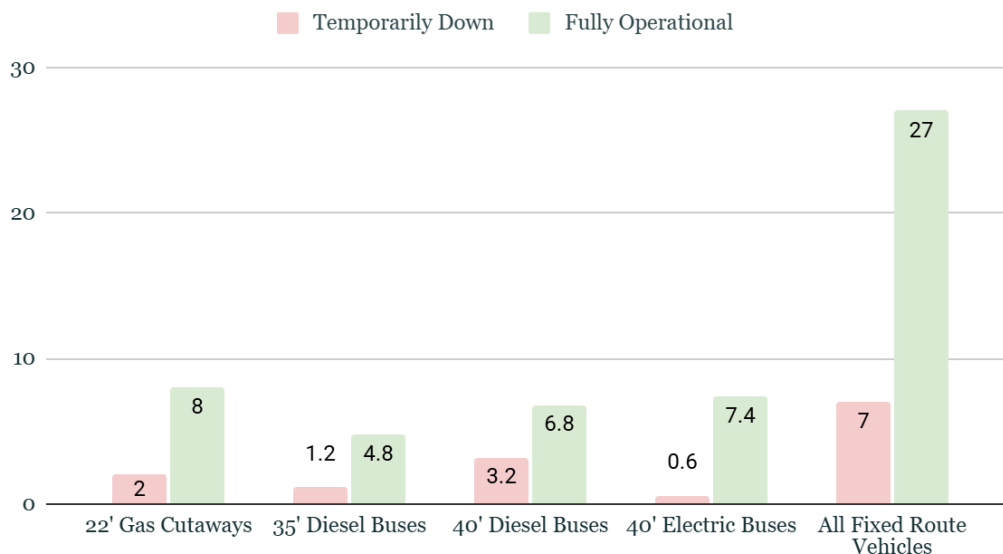
Fleet Composition Q1 of 2026



Fleet Effectivity by Composition

Our fleet showed significant consistency across the board in Quarter 2 of 2026. Our 40 foot diesel buses suffered the most due to a few unexpected transmission issues on two vehicles that took much longer than the average repair. As these vehicles continue to age past their ULB, they will continue to have various failures, but we plan to keep them running as long as possible and use un-salvageable vehicles within the fleet that are past their ULB to sustain the other vehicles as we integrate new buses this year.

Vehicle Operational Effectiveness by Type



Fleet Outlook Q3 of 2026

As of submitting this report on 8/14/2026, our fleet has the following open issues:

- 38 – Gas Cutaway 22-ft – Investigating CEL/Noise - 1 Week Estimate
- 9003 – Deisel 40-ft – Investigating CEL/Water Leak, Engine Losing Power - 2 Week Estimate
- 10037 – Diesel 40 ft – Coolant Leak - Part on Order - 2 Week Estimate
- 9029 – Deisel 40-ft – Intake Manifold Pressure Code – 1 Week Estimate
- 21-101 – Diesel 40-ft – Needs L/R Level Valve and Transmission Harness - 3 Week Estimate
- 23007 – Electric 40-ft – Body Damage, Waiting on Panels - 3 Week Estimate

In Q3 of 2026, High Valley Transit will receive and integrate ten additional battery-electric buses into its fleet. These buses will arrive in September and will be outfitted with on-time tracking hardware as well as security cameras in the four-week period following their arrival. These vehicles will alleviate some of the pressure that our maintenance and operation teams have been under to keep vehicles on route while maintaining working order and preventive maintenance practices.

New charging stations are set to install in Quarter 3, which will increase our ability to rely on the electric vehicles in the fleet. These charging stations will be managed by a Charge Management System to ensure the best financial return by controlling what time of day the vehicles will charge based on Rocky Mountain Power's rate schedule. KPIs will be recorded and submitted to CTE in order to track and compare the performance of these vehicles against our current EVs and our diesel vehicles.