

POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT

NOS. 1-9

NOTICE OF SPECIAL MEETING AND AGENDA

Trustees	Office	Terms
Jay Hardy	Chair	Term from June 28, 2024, to 4 years from appointment
Robert Booth	Treasurer & Vice Chair	Term from June 28, 2024, to 6 years from appointment
Zachary Clegg	Clerk & Secretary	Term from June 28, 2024, to 6 years from appointment
Cal Roberts	Trustee	Term from June 28, 2024, to 4 years from appointment
Michael Ambre	Trustee	Term from June 28, 2024, to 6 years from appointment

Date: September 18, 2026 (Friday)

Time: 11:00 A.M.

Anchor Location: 166 E 14000 S, Suite 210, Draper, UT, 84020

This meeting is open to the public and may be joined using the following information:

[Join the meeting now](#)

Meeting ID: 293 268 531 239 465; Passcode: ao2at6pw

[+1 720-721-3140,,86219545#](#); Phone conference ID: 862 195 45#

I. ADMINISTRATIVE ITEMS

- A. Declaration of Quorum/Call to Order.
- B. Approval of Agenda.
- C. Public Comment for Non-Agenda Items. (Limited to 3-Minutes Per Person).

II. ACTION ITEMS

- A. Approval of Minutes – August 20, 2026, Board Meeting. **(enclosure)**
- B. Ratification of WaterPro Inspection Fee Payment for The Point Event Venue Project. **(enclosure)**
- C. Ratification of Owner-Contractor Agreement with Layton Construction for The Point Event Venue. **(enclosure)**
- D. Approval of Event Venue Sewer Connection Indemnification Agreement. **(enclosure)**
- E. Approval of Promenade Sewer Connection Indemnification Agreement. **(enclosure)**
- F. Approval of Event Venue Impact Fee Indemnification Agreement. **(enclosure)**
- G. Consider Award of Contract for Construction Materials Testing and Quality Assurance Services for the Point of the Mountain Event Center Project.

III. ADMINISTRATIVE NON-ACTION ITEMS

IV. CLOSED MEETING

- A. Closed Meeting pursuant to Utah Code § 52-4-205(1)(d) for a strategy session.

V. ADJOURNMENT

*****The next Regular Meeting is scheduled for October 15, 2026*****

RECORD OF PROCEEDINGS

MINUTES OF THE REGULAR MEETING OF THE POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NOS. 1-9

HELD
August 20, 2026

The Regular Meeting of Point Phase 1 Public Infrastructure District Nos. 1-9 was held at the offices of Wadsworth Development Group, 166 E 14000 S, Suite 210, Draper, UT, 84020 and via MS Teams and Teleconference at 11:00 a.m.

ATTENDANCE

Trustees in Attendance:

Jay Hardy – Chair
Robert Booth – Treasurer & Vice Chair
Zachary Clegg – Clerk & Secretary
Cal Roberts – Trustee
Michael Ambre – Trustee

Also in Attendance:

Megan Murphy, Esq., and Betsy Russon, Esq; WBA, PC.
Shannon McEvoy, Brendan Campbell, Jake Downing, and John Callahan III; Pinnacle Consulting Group, Inc.
Andrew Gaittens; The Connexion Group.
Aaron Van Dyke; Lincoln Property Company.

ADMINISTRATIVE ITEMS

Call to Order: The Meeting of the Boards of Trustees of The Point Phase 1 Public Infrastructure District Nos. 1-9 was called to order by Mr. McEvoy.

Declaration of Quorum: Mr. McEvoy noted that a quorum was present, with four out of five Trustees in attendance.

Coordinated Meetings: The Boards determined to hold joint meetings of the Districts and to prepare joint minutes of actions taken by the Districts at such meetings. Unless otherwise noted below, the matters set forth below shall be deemed to be the actions of the Board of Trustees of the Point Phase 1 Public Infrastructure District No. 1 with concurrence by the Boards of Trustees of the Point Phase 1 Public Infrastructure District Nos. 2, 3, 4, 5, 6, 7, 8, and 9.

RECORD OF PROCEEDINGS

Approval of Agenda: The Boards considered the approval of the agenda. Following review and discussion, upon a motion duly made by Mr. Booth, seconded by Mr. Hardy, and upon vote, unanimously carried, it was

RESOLVED to approve the agenda, as presented.

Public Comment: None.

ACTION ITEMS

Minutes: Mr. McEvoy presented the Minutes of the July 16, 2026, Regular Meeting to the Boards. Following review, upon a motion duly made by Mr. Hardy, seconded by Mr. Booth, and upon vote, unanimously carried, it was

RESOLVED to approve the minutes of the July 16, 2026, Regular Meeting, as presented.

Residential Development Backbone Contract with Rocky Mountain Power: Ms. Murphy presented the Residential Development Backbone Contract with Rocky Mountain Power to the Boards and answered questions. Ms. Murphy noted that, in connection with the contract, the District would approve a procurement findings for a sole-source award. Rocky Mountain Power is the only power distributor available to provide the required power service to the applicable area, making the sole-source procurement appropriate. Following review and discussion, upon a motion duly made by Mr. Booth, seconded by Mr. Hardy, and upon vote, unanimously carried, it was

RESOLVED to approve the Residential Development Backbone Contract with Rocky Mountain Power, subject to legal review and finalization of the procurement findings by the Procurement Official.

Agreement with Jordan Basin Improvement District Regarding Installation Maintenance, and Replacement of Sewer Facilities within Private Roadways: Ms. Murphy presented the Agreement with Jordan Basin Improvement District Regarding Installation Maintenance, and Replacement of Sewer Facilities within Private Roadways to the Board and answered questions. Following review and discussion, upon a motion duly made by Mr. Hardy, seconded by Mr. Booth, and upon vote, unanimously carried, it was

RESOLVED to approve the Agreement with Jordan Basin Improvement District Regarding Installation Maintenance, and Replacement of Sewer Facilities within Private Roadways, as presented.

RECORD OF PROCEEDINGS

Sixth Additional Services Addendum with Kimley Horn and Associates, Inc: Ms. Murphy presented the Sixth Additional Services Addendum with Kimley Horn and Associates, Inc to the Board and answered questions. Following review and discussion, upon a motion duly made by Mr. Hardy, seconded by Mr. Booth, and upon vote, unanimously carried, it was

RESOLVED to approve the Sixth Additional Services Addendum with Kimley Horn and Associates, Inc, as presented.

Resolution Regarding Acceptance of District Eligible Costs (Cost Certification #07) and Administrative Costs: Mr. Gaittens reviewed the Resolution Regarding Acceptance of District Eligible Costs (Cost Certification #07) and Administrative Costs to the Board and answered questions. Following review and discussion, upon a motion duly made by Mr. Ambre, seconded by Mr. Booth, and upon vote, unanimously carried, it was

RESOLVED to approve the Resolution Regarding Acceptance of District Eligible Costs (Cost Certification #07) and Administrative Costs, as presented in the amount of \$137,072.87.

Award of Contract for Construction for Event Venue: Mr. Van Dyke discussed the Award of Contract for Construction for The Point Event Venue with the Boards and answered questions. Following review and discussion, upon a motion duly made by Mr. Booth, seconded by Mr. Hardy, and upon vote, unanimously carried, it was

RESOLVED to approve the construction contract with Layton Construction, with the understanding that supporting documentation regarding the subcontractor procurement and bid process would be provided to the Trustees for review.

Property Leasing Agreement with Centennial Real Estate Management: Ms. Murphy presented the Property Leasing Agreement with Centennial Real Estate Management to the Boards. Following review and discussion, upon a motion duly made by Mr. Hardy, seconded by Mr. Ambre, and upon vote, unanimously carried, it was

RESOLVED to approve the Property Leasing Agreement with Centennial Real Estate Management, subject to legal review and finalization of the procurement findings by the Procurement Official.

RECORD OF PROCEEDINGS

ADJOURNMENT

There being no further business to come before the Boards, upon a motion duly made by Mr. Hardy, seconded by Mr. Ambre, and upon vote, unanimously carried, the meeting was adjourned.

The foregoing constitutes a true and correct copy of the minutes of the above-referenced meeting.

Respectfully Submitted,

John Callahan III, Recording Secretary for the Meeting.

The Point Phase 1 Public Infrastructure District No. 1
c/o Pinnacle Consulting Group, Inc.

Aug 26, 2026

Steve Cunningham
Water Pro, Inc.
12421 S 800 E Draper Ut 84020

RE: The Point – Event Venue Infrastructure

Mr. Cunningham,

Thank you in advance for all of your assistance getting the subject secondary water extension agreements in place for The Point development. Payment is currently being processed the by the Point Phase 1 Public Infrastructure District No. 1 (the “**District**”).

Per your request all permitted plans for The Point Event Venue are to be installed according to the Draper Irrigation Company, a Utah non-profit corporation (“**Draper Irrigation Company**”) construction standards and specifications.

All work installed by Layton Construction and their subcontractors will not be accepted under the terms of their agreement until proper inspection has been conducted and the completed work approved. Once substantial completion is met on the project and agreed to by all stakeholders a warranty period of 12 months will then commence.

Thank you again for ongoing help on this project and we look forward to a successful installation. Please feel free to reach out if you have any questions or concerns.

Sincerely,

**POINT PHASE 1 PUBLIC INFRASTRUCTURE
DISTRICT NO. 1**, a quasi-municipal corporation
and political subdivision of the State of Utah



Jay Hardy (Sep 12, 2026 13:21:48 MDT)

Officer of the District



EXTENSION AGREEMENT DEVELOPMENT FEES

Summary of Development

Date:	August 26, 2026
Subject:	Point of the Mountain - Event Venue
Address:	Momentum Way, Draper, UT
Developer:	CLW Point Partners, LLC
Contact Person:	Unknown
Development Type:	Commercial
Number of Building Units:	1
Basis of Quantities:	Plans Dated June 16, 2026
Water Services Being Provided:	PI Outdoor

Quantities

Culinary Water	
Tie-in To Existing Main and/or Loop	0
Looping Existing Mainline	0
New Laterals (<1.5")	0
New Laterals (1.5"-2")	0
Large Vault	0
Length of New Mainline	0 feet
New Fire Hydrants	0
Pressure Irrigation:	
Tie-in To Existing Main and/or Loop	2
Looping Existing Mainline	0
New Laterals (<1.5")/Blow-off/Storm Drain Tie-in	3
New Laterals (1.5"-2")	1
Large Vault/Air Valve/PRV	0
Length of New Mainline	829 feet

Development Fees

General Administration/Processing	\$1,000.00
General Engineering/Plan Review (\$200/hour, \$2,000 minimum)	\$2,100.00
Extension Agreement / Spec. Books (3 Copies)	\$0.00
Legal Fees as Required (\$250 minimum)	-

Culinary

Engineering Fire Flow Analysis	
Mainline Construction Inspection	
$\$350 + \$0.62/\text{foot of new mainline pipe over 100 feet} = \$350 + (0-100) \times \$0.62$	\$0.00
Mainline Hot-Tap or Cut-In Inspection 0 @ \$750	\$0.00
Looping of Existing Mainline Inspection 0 @ \$2,500	\$0.00
<1.5" Water Service Line Inspection 0 @ \$75	\$0.00
1.5"-2" Water Service Line & Vault Inspect. 0 @ \$350	\$0.00
Large Vault Inspection Fee 0 @ \$500	\$0.00
Fire Hydrant Flow Test Fee	

Pressure Irrigation

Mainline Inspection	
$\$350 + \$0.62/\text{foot of new mainline pipe over 100 feet} = \$350 + (829-100) \times \$0.62$	\$801.98
Mainline Hot-Tap or Cut-In Inspection 2 @ \$750	\$1,500.00
Looping of Existing Mainline Inspection 0 @ \$2,500	\$0.00
<1.5" Water Service Line Inspection 0 @ \$75	\$225.00
1.5"-2" Water Service Line & Vault Inspecti 0 @ \$350	\$350.00
Large Vault Inspection Fee 0 @ \$500	\$0.00

Total	\$5,976.98
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AIA® Document A102® – 2017

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

AGREEMENT made as of the 4th day of September in the year 2026 (but shall be effective as to any Work or services performed or provided prior to such date)
(In words, indicate day, month and year.)

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

POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Utah
c/o WBA, PC
139 Hunter's Grv Ln., Suite 200
Lehi, UT 84043
Attention: Blair M. Dickhoner
bdickhoner@wbapc.com

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

Layton Construction Company, LLC
9090 South Sandy Parkway
Sandy, Utah 84070

for the following Project:
Point of the Mountain Event Center Project consisting of new ground-up construction of a 5026-seat, 107,675 gross square-foot building.

The Architect:
M. ARTHUR GENSLE, JR. AND ASSOCIATES, INC.
d/b/a GENSLE
220 Montgomery Street, Suite 200
San Francisco, CA 94104

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

The parties should complete A102™–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. 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.

TABLE OF ARTICLES

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ARTICLE 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, including the Contractor’s Qualifications and Assumptions attached hereto as **Schedule E**, 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. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The priority for interpreting conflicts in the Contract Documents is set forth in Section 1.2.4 of AIA Document A201–2017.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents or reasonably inferable therefrom or ascertainable in the exercise of Professional Efforts (as hereinafter defined) as necessary to produce the results intended by the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. As used herein, the term "Professional Efforts" means that level of skill and care ordinarily exercised by experienced contractors and construction managers comparable to Contractor engaging in institutional and commercial projects similar in size and complexity to the Project in major United States urban areas, when performing duties, responsibilities and obligations comparable to those under the Contract Documents. For the avoidance of doubt, the term "Professional Efforts" shall only be applied to the Contractor in the Contractor's capacity as a construction contractor and not as a design professional.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and the other consultants retained by the Owner and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. Nothing herein shall create a fiduciary relationship between the Contractor and the Owner; nor shall Contractor owe any fiduciary duties to Owner. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the physical Work at the Project site shall be the date set forth in a written notice to proceed issued by the Owner. If, prior to commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows: None.

§ 4.2 The Contract Time shall be measured from the date of commencement.

§ 4.3 The Contractor shall perform the Work in accordance with the schedule attached hereto as **Schedule A-1** (as amended from time to time with the written consent of the Owner or as otherwise provided in the Contract Documents, the "Construction Schedule"), shall achieve Substantial Completion of the Work as a whole not later than July 27th, 2028 (as adjusted for permitted adjustments of the Contract Time, the "Required Substantial Completion Date"), shall complete all physical Punchlist items no later than September 28, 2028, and shall achieve Final Completion of the Work (as hereinafter defined) not later than thirty days following Substantial Completion of the Work, subject to adjustments of this Contract Time as provided in the Contract Documents. The Contractor shall have achieved "Final Completion of the Work" when all conditions precedent to final payment under the Contract Documents have been completed or satisfied

§ 4.4 The Contractor acknowledges and agrees that the Owner will sustain damages, the exact amount of which are difficult to ascertain at this time, if the Contractor fails to achieve Substantial Completion of the Work on or before the Required Substantial Completion Date. The Owner and the Contractor therefore agree that if the Contractor fails to achieve Substantial Completion of the Work by the Required Substantial Completion Date, the Owner shall be entitled to retain or recover from the Contractor, as liquidated damages solely for delayed completion of the applicable level of Work and not as a penalty, the applicable "Liquidated Damages Amount" set forth on **Schedule A-2** for each day commencing on the Required Substantial Completion Date and ending on the date that Substantial Completion of the Work is achieved. Such liquidated damages are hereby agreed to be (a) a reasonable pre-estimate of damages the Owner will incur as a result of delayed Substantial Completion of the Work, and (b) the Owner's sole and exclusive damage remedy on account of the Contractor's delay in achieving Substantial Completion of the Work. Such liquidated damages are not intended to cover, and shall not limit the Owner's remedies against the Contractor attributable to, any cause other than delayed Substantial Completion of Work, except as provided in the following sentence.

Notwithstanding the foregoing or anything else to the contrary: (1) if the Contractor fails to comply in all material respects with Schedule Recovery Measures that the Owner has directed the Contractor to implement, there will be no aggregate limit on the amount of liquidated damages and the Owner shall be entitled to collect from the

Contractor, in addition to the stated liquidated damages, all damages suffered by the Owner on account of the late Substantial Completion of the Work which are not adequately covered by the stated liquidated damages; and (2) nothing in the Contract Documents shall limit Contractor's liability for damages suffered by the Owner on account of the late completion of the Work which are not adequately covered by the stated liquidated damages to the extent that such damages would be covered by available insurance in the absence of Section 15.1.6 of AIA Document A201–2017 or any other any waiver contained in the Contract Documents or would be recoverable from direct or lower tier subcontractors, suppliers and their sureties in the absence of Section 15.1.6 of AIA Document A201–2017 or any other waiver in the Contract Documents.

The parties acknowledge and agree that damages under this Section 4.4 are fully recoverable by the Owner, and are not waived by the Owner, notwithstanding Section 15 of AIA Document A201–2017 or any other any waiver contained in the Contract Documents.

Contractor Initial Here

DSL

Owner Initial Here

JH

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.1 The Contractor's Fee shall be Three percent (3%) of the Cost of the Work, excluding (a) costs attributable to insurance, bonds, subcontractor default insurance (if used), contractor controlled insurance programs ("CCIP") (if used), and building and other permits, and (b) any other exclusions in this Agreement or the General Conditions of the Contract.

§ 5.1.2 For changes in the Work that decrease the Cost of the Work, the Percentage Markup (as defined in Section 7.1.5 of AIA Document A201-2017) to be applied for purposes of determining reductions to the Contractor's Fee and/or the Guaranteed Maximum Price shall be the percentage of the net decrease in the Cost of the Work attributable to such changes set forth in Section 5.1.1.

§ 5.1.3 For changes in the Work: (1) the Percentage Markup for a first tier Subcontractor (a) for Work performed directly by the first tier Subcontractor's own forces shall not exceed ten percent (10%) of the Subcontractor's Direct Cost of the Work attributable to such changes and (b) for Work performed by a Sub-subcontractor shall not exceed five percent (5%) of the Sub-subcontractor's Direct Cost of the Work (or proposed Direct Cost of the Work if the price is being established prior to actual performance by the Subcontractor) attributable to such changes;

(2) the Percentage Markup for a Sub-subcontractor for Work performed directly by such Sub-subcontractor's own forces shall not exceed ten percent (10%) of the Sub-subcontractor's Direct Cost of the Work attributable to such changes; and (3) the aggregate Percentage Markup for all direct and lower tier Subcontractors and Sub-subcontractors shall not exceed fifteen percent (15%). Notwithstanding anything to the contrary, for purposes of this Section 5.1.3, the Subcontractor's Direct Cost of the Work and the Sub-subcontractor's Direct Cost of the Work shall be determined as provided in Sections 7.1.5 and 7.3.7 of AIA Document A201-2017. For changes in the Work that decrease the Subcontractor's Direct Cost of the Work or the Sub-subcontractor's Direct Cost of the Work, the same Percentage Markups shall be applied for purposes of determining reductions to subcontract amounts.

§ 5.1.4 Unit prices, if any, are listed in **Schedule B** attached hereto and made a part hereof. Unless otherwise provided in the Contract Documents, unit prices shall cover the cost to the Contractor of (1) materials and equipment delivered at the site and all required taxes, less applicable trade discounts, and (2) unloading, handling and installation costs; however, unit prices do not include the Contractor's Fee therefor.

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed Ninety Million Eight Hundred Eighty-Five Thousand Six Hundred Nine Dollars (\$ 90,885,609.00), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the

Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§ 5.2.2 The Guaranteed Maximum Price includes the alternates, if any, which are described in the Contract Documents and listed in Schedule C attached hereto and made a part hereof. Schedule C also includes the dates by which the Owner shall make elections as to whether or not to accept the alternates listed thereon and the adjustments, if any, to the Guaranteed Maximum Price for each accepted alternate.

§ 5.2.3 Allowances, if any, are listed in **Schedule D** attached hereto and made a part hereof.

§ 5.2.4 Assumptions, if any, on which the Guaranteed Maximum Price is based are listed in **Schedule E** attached hereto and made a part hereof (the “Qualifications and Assumptions”).

§ 5.2.5 The Drawings, Specifications and Other Contract Document upon which the Guaranteed Maximum Price is based are as listed in **Schedule F** attached hereto and made a part hereof. To the extent that the Drawings, Specifications and other Contract Documents are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include Scope Changes (as defined in Section 7.1.4 of the General Conditions of the Contract) which, if required, shall be incorporated by Change Order.

§ 5.2.6 By executing this Agreement, the Contractor represents that the Drawings and Specifications listed in **Schedule F** describe the scope, construction requirements and design intent of the Work in sufficient detail to enable the Contractor to establish firmly the Guaranteed Maximum Price and the Construction Schedule, subject to the Qualifications and Assumptions.

§ 5.2.7 A detailed, line item breakdown of the Guaranteed Maximum Price, including the Cost of the Work and the Contractor’s Fee (the “Schedule of Values”), is attached hereto as **Schedule G**. Any adjustment to the Guaranteed Maximum Price shall be reflected in a revised schedule of values prepared by the Contractor for the Owner’s written approval. Once approved by the Owner in writing, such revised schedule of values shall be the schedule of values for all purposes of the Contract. For the avoidance of doubt, the parties agree that Contractor is not guaranteeing any line item with the Guaranteed Maximum Price.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.2 Adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee) shall be calculated in the manner provided in Section 7.1.5 of AIA Document A201–2017. Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 Adjustments to the Guaranteed Maximum Price shall be calculated in the manner provided in Section 7.1.5 of AIA Document A201–2017.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 Where any cost is subject to the Owner's prior consent or approval, the Contractor shall obtain this consent or approval in writing prior to incurring the cost. Except as otherwise agreed in writing by the Owner, the Contractor must competitively bid any trade Work, including Work that the Contractor wishes to perform with the Contractor's own forces or through a related party (as defined in Section 7.8.1) in accordance with this Section and Article 10. The Contractor shall obtain no less than three (3) responsive bids for each component of the Work from responsible Subcontractors acceptable to the Owner. The bid of the Contractor or a related party shall include its complete take off and unit pricing sufficient to allow the Owner to independently verify that such costs do not exceed those commonly paid in the market. Any bid from the Contractor or a related party shall be submitted to the Owner at least one (1) day in advance of receipt of bids from the unaffiliated Subcontractors. The Contractor or a related party shall be permitted to perform such trade Work only if (i) the Owner consents thereto in writing after full disclosure in writing by the Contractor to the Owner of the affiliation or relationship of the related party to the Contractor and (ii) the Owner approves in writing any subcontract, contract, purchase order, agreement or other arrangement between the Contractor and such related party in form and substance. Any trade Work performed by the Contractor's own forces or by a related party, if required by the Owner, shall be performed on a lump sum basis (except to the extent otherwise approved by the Owner in writing), and shall be subject to the same terms and conditions as Work performed by Subcontractors under the approved form of subcontract and the other requirements for subcontracts as set forth in Section 5.3 of AIA Document A201-2017.

§ 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops, the cost of which shall be at the Billable Rates included in the attached Schedule I.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when (a) a stationed at the site with the Owner's prior written approval or (b) stationed at the Contractor's home office when performing services directly related to the Work (but only for the personnel specified in **Schedule I** attached hereto and made a part hereof), the cost of which shall be at the Billable Rates included in the attached Schedule I.

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 15, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged with the Owner's prior written approval at factories, workshops or on the road, 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, the cost of which shall be at the Billable Rates included in the attached Schedule I. Owner's prior written approval in each instance shall be required for any such wages or salaries to be considered reimbursable in accordance with this Section 7.2.3.

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

§ 7.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, but only with the Owner's prior written approval.

§ 7.2.6 Notwithstanding anything to the contrary, but subject to Section 7.9.3, the aggregate reimbursable labor costs for the Contractor's personnel included within the Cost of the Work shall be the wage or salary rates specified in the attached **Schedule I** (which includes all labor burden) (the "Stated Rates"). Notwithstanding the attachment of Stated Rates, the timecards shall remain subject to Owner verification and audit; The Contractor shall bill the Owner for the Contractor's personnel and jobsite labor using the Stated Rates. No overtime premium shall be charged for salaried personnel and the aggregate weekly amount payable for any salaried personnel shall not exceed the standard (non-overtime) Stated Rate for forty hours.

§ 7.3 SUBCONTRACT COSTS

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

The Contractor, with the participation of the Owner and the Architect as provided in Sections 7.1.2 and Article 10 (and elsewhere in the Contract Documents), shall select Subcontractors and suppliers who shall provide labor, equipment and materials related to completion of the Work. As this “buyout” process is completed, the schedule of values shall be revised and the actual costs associated with the line items in the schedule of values shall be incorporated into such schedule of values. Payments made by the Contractor to Subcontractors in accordance with the requirements of the Subcontracts (“Subcontractor Costs”). To the extent that the Contractor is able to complete the award and contract buyout of the Subcontractor Costs (“Buyout”) for an amount less than the original bid price as reflected in the initial Schedule of Values, the amount of such difference shall be deemed the “Buyout Savings.” The Contractor agrees to complete the Buyout in accordance with the following schedule:

Percent Complete Date Complete

50% of Buyout	Within 90 days after execution of the Agreement
75% of Buyout	Within 120 days after execution of the Agreement
90% of Buyout	Within 135 days after execution of the Agreement
100% of Buyout	Within 150 days after execution of the Agreement

The Contractor shall allocate any and all Buyout Savings into a separate line item in the Schedule of Values clearly designated as “Buyout Savings” which shall be used by Contractor, at its reasonable discretion to address the following: (1) the costs of accelerating the schedule and minimizing delays to critical path items in the Construction Schedule due to delays for which Contractor is not entitled to an increase in the Contract Time; (2) Subcontractor breach or negligence provided that Contractor demonstrates to the Owner’s reasonable satisfaction that Contractor has in good faith used reasonable efforts to obtain performance from the defaulting or negligent party; (3) scope gaps, buy-out losses, bid-busts and other circumstances where the actual demonstrable costs of buying out the Cost of the Work for the Project exceeds the originally estimated Cost of the Work within the GMP; and (4) mitigating unforeseen Site conditions or force majeure events for which relief is not otherwise available under this Agreement. Provided, however, such savings shall not be allocated to Contractor’s Fee or General Conditions Costs, and Contractor shall provide Owner with a written summary no less frequently than monthly regarding the status of Buyout Savings. The following credits and savings shall not be considered as part of Buyout Savings and shall belong 100% to Owner: (i) Savings achieved through value engineering reductions in the scope of Work initiated by Owner or its consultants shall not be considered as part of Buyout Savings and shall be accomplished by deductive Change Order; provided, however, that any savings achieved through value engineering by Contractor or its Subcontractors and incorporated into the Contract Documents after execution of the Agreement shall be included in Buyout Savings. Cost underruns achieved in connection with Allowances are also not to be considered in the calculation of Buyout Savings, it being agreed that 100% of such Allowance underruns shall be for the benefit of the Owner. In the event there are any sums remaining in the Buyout Savings line item at Final Completion, the Contractor shall be entitled to thirty percent (30%) of any Buyout Savings which shall be paid to Contractor along with final payment. Provided, however, the Buyout Savings for the contractor shall be no more than \$800,00.00, and no Buyout Savings will be calculated on Change Orders except with respect to Change Orders resulting from owner-directed scope changes not caused by or contributed to by an error, mistake or negligence on the part of the Contractor or any party for which Contractor is legally liable.

No subcontract shall require or provide for any direct or lower tier subcontractor to engage, pay amounts to, or otherwise include funds which may be returned or received by, the Contractor or any related party, without the prior written approval of the Owner in each instance (which approval must be express and shall not be deemed given solely by the Owner’s approval of a subcontract or Subcontractor without such an express acknowledgment). Any amounts received by the Contractor or a related party under any such arrangement without the express prior written approval of the Owner shall be credited against the Cost of the Work, the Maximum General Conditions Reimbursement Amount and the Guaranteed Maximum Price.

Every payment from a Subcontractor to the Contractor, or backcharge or credit from a Subcontractor to or for the benefit of the Contractor, shall be fully disclosed by the Contractor to the Owner in writing.

§ 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ 7.4.1 Costs, including transportation and storage, 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 but required 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 and any unsold materials shall be disposed by the Contractor. 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, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor 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 Contractor shall mean fair market value. The Contractor shall obtain bids for all significant items of machinery or equipment to be purchased from no less than three (3) responsible suppliers, except as otherwise requested by the Contractor and approved in writing by the Owner. Owner hereby approves the Contractor's engagement of the subcontractors listed in **Schedule N** for the corresponding trade Work listed for such subcontractors in **Schedule N** and the subcontract prices listed in **Schedule N** (the "Subcontractor Information"). Notwithstanding anything to the contrary, the Cost of the Work for any machinery or equipment purchased by Contractor for the performance of the Work and not to be incorporated into the Work shall be limited to the lesser of (a) the fair market value of such machinery or equipment at the time placed in service to perform the Work less salvage value following completion of the Work (unless turned over to the Owner as provided below) or (b) the rental charges that would have been included within the Cost of the Work for such machinery or equipment had the machinery or equipment been rented in accordance with Section 7.5.2 rather than purchased. The Contractor shall maintain an inventory of the items described in this Section 7.5.1 that it purchases to perform the Work and charged as Costs of the Work. Equipment purchased and charged to the Project as a reimbursable cost shall become the property of the Owner or, at the Owner's election, shall be sold by the Contractor and the amounts realized by such sales shall be paid to the Owner or credited to the Owner as a deduction from the Cost of the Work. Following completion of the Work and as a condition precedent to final payment, the Contractor shall submit to the Owner a final accounting in which (i) all such items are listed, (ii) for each item, the amount charged as a Cost of the Work is indicated, and (iii) the final disposition of each such item (*i.e.*, retained by the Contractor, sold, or turned over to the Owner) is indicated.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any item may not exceed the purchase price of any comparable item. Rates of and quantities of equipment rented shall be subject to the Owner's prior written approval. The Contractor or a related party shall be permitted to provide rental items as a Cost of the Work only if (x) the Owner consents thereto in writing after full disclosure in writing by the Contractor to the Owner of the affiliation or relationship of the related party to the Contractor and (y) the Owner approves in writing the Contractor's standard form of subcontract, contract, or purchase order and such standard form is used for such procurement without modification. In no event shall the Cost of the Work include charges for rental items owned by the Contractor or a related party for periods when such items are not in active use. Rental charges shall in no event exceed those generally prevailing in the location of the Project. Further: (a) in no event shall the cumulative total of rental charges included in the Cost of the Work for any item exceed eighty percent (80%) of its fair market value of such item as of the date that such item is first put into service in connection with the Work (with the Contractor paying any excess rental charges outside the Cost of the Work); and (b) Contractor shall make arrangements with any provider of rental items such that once the aggregate charges for an item equal eighty percent (80%) of its fair market value of such item as of the date that such item is first put into service in connection with the Work, title to such item shall be conveyed to the Contractor under a "rent to own" provision (and thereafter used for the Work), and at the completion of the Work either conveyed to the Owner at no additional cost to the Owner or, at the

Owner's election, sold by the Contractor and the amounts realized by such sales shall be paid to the Owner or credited to the Owner as a deduction from the Cost of the Work. Any lease/purchase rental arrangements must be disclosed to the Owner, and if the Contractor purchases equipment under a lease/purchase arrangement whereby rental payments were charged to Owner as reimbursable costs, an appropriate credit will be given to the Owner for the fair market value of the equipment at the time it was last used on the Project.

All costs incurred for normal wear and tear shall be reimbursed at actual cost. Such costs include routine and preventative maintenance, minor repairs and other incidental costs. Major repairs and overhauls are not considered routine and ordinary. Consequently, such costs are not reimbursable and are intended to be covered by the rental rates. Incoming and outgoing shipping costs will be paid for Contractor-owned and related party tools and equipment when shipping equipment to and from the Contractor's equipment yard. Incoming shipping costs from other locations will only be paid if the total mileage from that location is less than the total mileage from the Contractor's closest equipment yard to this Project. Outgoing shipping costs to another project are not reimbursable, and are the responsibility of the Contractor.

For equipment owned by the Contractor or a related party, the Contractor shall maintain daily equipment usage time reports noting the hours and activity for which the equipment was used, standby time, idle time, etc. Such equipment usage reports will be used by the Contractor to determine whether hourly, daily, weekly, or monthly rates shall apply; and the rates used for billing purposes will be those most economical to the Owner based on the circumstances of actual usage.

"Fair market value" for used material and equipment as referred to in this Section 7.5.2 shall mean the estimated price a reasonable purchaser would pay to purchase the used material or equipment at the time it was initially needed for the Project, which is usually lower than the price a reasonable purchaser would pay for a similar new construction material or construction equipment.

§ 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 document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

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

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 Premiums for insurance, Subcontractor Default Insurance, and bonds required by the Contract Documents shall be billed and paid for at the agreed upon rates in the Contract or Schedule G.

.1 INTENTIONALLY DELETED.

.2 The Cost of the Work for Contractor's required insurance shall be paid as a Cost of the Work at the following rates One Point Four Five percent (1.45%) of the Contract Sum (excluding costs for insurance, CCIP (if used), subcontractor default insurance ("SDI") (if used), bond premiums and the building permit), and shall be billed on a monthly basis charged against the Cost of the Work included in each approved Application for Payment.

.3 The Cost of the Work for payment, performance and lien bonds naming the Contractor as principal, to the extent that Owner requires the Contractor to provide such bonds naming the Contractor as principal in accordance with Section 11.4 of AIA Document A201-2017, shall be paid at the rate of One percent (1.1%) of the Contract Sum (excluding costs for insurance, CCIP (if used), SDI (if used), bond premiums and the building permit), and shall be billed on a monthly basis charged against eligible Cost of the Work Items included in each approved Application for Payment.

- .4 The Cost of the Work for SDI, shall be paid at the rate of One percent (1.1%) of the subcontract cost for each enrolled subcontractor.
- .5 The Cost of the Work (regardless of whether included within the General Conditions Items, General Requirements Items or elsewhere as a Cost of the Work) for the CCIP shall not exceed the rate of one and thirteen hundredths percent (1.13%) (excluding costs for insurance, CCIP (if used), SDI (if used), bond premiums and the building permit), and shall be billed on a monthly basis charged against eligible Cost of the Work Items included in each approved Application for Payment.

§ 7.6.2 Sales, use or similar taxes, imposed by a governmental authority that are related to the Work and for which the Contractor is liable (subject to Section 3.6 of AIA Document A201–2017).

§ 7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay. ***The fees and assessments for the building permit shall not be a Cost of the Work and the Owner shall pay for such fees and assessments outside of the Contract Sum.***

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work.

§ 7.6.5 The Contractor shall not enter into any agreement which requires the payment of royalties or license fees without the prior written consent of the Owner. Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's prior written consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2017 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 [Intentionally Omitted].

§ 7.6.7 Deposits lost for causes other than the fault, negligence or failure to fulfill a responsibility of the Contractor or any Subcontractor, Sub-subcontractor, supplier or other party for whom the Contractor is responsible.

§ 7.6.8 [Intentionally Omitted].

§ 7.6.9 [Intentionally Omitted].

§ 7.6.10 That portion of the reasonable travel and subsistence expenses of the Contractor's supervisory or administrative personnel incurred while traveling out of town in discharge of duties connected with the Work if approved in advance in writing by the Owner, but excluding commuting to and from the Project site, the Contractor's office(s) and/or the Owner's offices.

§ 7.7 OTHER COSTS AND EMERGENCIES

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

§ 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 Section 10.4 of AIA Document A201–2017, unless such emergency results from the fault, negligence or failure to fulfill a responsibility of the Contractor or any Subcontractor, Sub-subcontractor, supplier or other party for whom the Contractor is responsible.

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

to fulfill a responsibility of the Contractor or any Subcontractor, Sub-subcontractor, supplier, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, SDI, sureties, Subcontractors, Sub-subcontractors, suppliers, or others.

§ 7.8 RELATED PARTY TRANSACTIONS

§ 7.8.1 For purposes of the Contract Documents, the term “related party” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term “related party” shall also include (a) with respect to any officer, employee, or owner of the Contractor, an individual who is a relative or an entity owned or managed by a relative, and (b) any party or entity related to or affiliated with the Contractor or in which the Contractor has direct or indirect ownership or control, including, without limitation (i) any entity owned in whole or in part by the Contractor, (ii) any party or entity with more than ten percent interest in the Contractor and (iii) any entity in which any officer, director, employee, partner or shareholder (or relative of any of the foregoing persons) of the Contractor or any entity owned by the Contractor has a direct or indirect interest. The term “related party” includes any relative of any person identified above. The term “relative” means father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, sister-in-law, brother-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor 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 as provided in Section 7.1.2, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 10.

§ 7.9 OTHER COST OF THE WORK PROVISIONS

§ 7.9.1 Contingency. The term “Contingency” is defined herein with the value listed for the Contingency line item in the Contractor’s schedule of values (**Schedule G**). The Contingency shall be an amount available to reimburse the Contractor for unanticipated Cost of the Work items that are not otherwise accounted for in the Schedule of Values (except General Conditions Items, General Requirements Items, insurance premiums or bond premiums). The Contractor shall notify the Owner of costs that the Contractor proposes to charge to the Contingency, together with an explanation of the reason such costs are to be incurred, prior to incurring such costs. The contingency is not available to the Owner for owner discretionary changes in scope. or any other item which would entitle the Contractor to an adjustment in the GMP under the Contract Documents. The Contingency may only be used by Contractor for the following: (1) the costs of accelerating the schedule and minimizing delays to critical path items in the Construction Schedule due to delays for which Contractor is not entitled to an increase in the Contract Time; (2) Subcontractor breach or negligence provided that Contractor demonstrates to the Owner’s reasonable satisfaction that Contractor has in good faith used reasonable efforts to obtain performance from the defaulting or negligent party; (3) scope gaps, buy-out losses, bid-busts and other circumstances where the actual demonstrable costs of buying out the Cost of the Work for the Project exceeds the originally estimated Cost of the Work within the GMP; (4) mitigating unforeseen Site conditions or force majeure events for which relief is not otherwise available under this Agreement;. Contingency requests involving an allocation of Contingency in an amount greater than \$20,000 requires Contractor to obtain Owner’s prior written approval, which approval shall not be unreasonably delayed, conditioned or withheld.

§ 7.9.2 [Intentionally Deleted].

§ 7.9.3 The term “General Conditions Items” means, collectively, those properly reimbursable Cost of the Work items described as such on **Schedule J-1**. Notwithstanding anything to the contrary, the aggregate compensation for General Conditions Items shall not exceed Two Million, Two Hundred Seventy-Five Thousand, Nine Hundred and

Fifty-Seven Dollars (\$2,275,957.00) unless such amount is adjusted for Compensable Delay Occurrences in accordance with Section 8.3.4 of AIA Document A201–2017.

The term “General Requirements Items” means those properly reimbursable Cost of the Work items described as such on **Schedule J-2**. Notwithstanding anything to the contrary, the aggregate compensation for General Requirements Items shall not exceed Eight Hundred Ninety Thousand, Five Hundred Sixty Dollars (\$890,560.00) unless such amount is adjusted for Compensable Delay Occurrences in accordance with Section 8.3.4 of AIA Document A201–2017.]

If and to the extent that any General Conditions Items or General Requirements Items are performed or provided by Subcontractors, the amounts paid to the Subcontractors for performing or providing such General Conditions Items or General Requirements Items shall be credited against the maximum compensation for General Conditions Items or General Requirements Items, as applicable, and the Guaranteed Maximum Price.

§ 7.9.4 Costs included in the Cost of the Work shall be actual costs paid by the Contractor, except the cost of Contractor’s personnel, insurance and any other services or items agreed upon in the Contract Documents shall be billed and paid at the agreed upon Billable Rates in the Contract Documents. Notwithstanding the breakdown or categorization of any costs in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

§ 7.9.5 Before incurring any overtime premium expense as a Cost of the Work, the Contractor shall advise the Owner and provide a reasonably detailed explanation of the need therefor and the impact on the Construction Schedule, Milestone Dates and Contract Time if such overtime services are not provided. The Owner may direct the Contractor not to incur the requested overtime premium expense as long as the Owner agrees to extend the Construction Schedule, Milestone Dates and Contract Time to reflect the additional time reasonably required to complete the Work to the extent attributable to the Contractor’s not incurring the overtime premium expense which the Owner requested the Contractor not to incur. Notwithstanding anything to the contrary, overtime premium expense will not be included in the Cost of the Work if the necessity to work overtime to keep to schedule is the fault of the Contractor or any Subcontractor, Sub-subcontractor, supplier or other party for whom the Contractor is responsible.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

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

- .1** Salaries and other compensation of the Contractor’s principals and branch office or departmental heads, non-line staff personnel (including, without limitation, legal, billing/collections, financial, corporate, insurance/risk management and similar personnel) and other personnel stationed at the Contractor’s principal office or offices other than the site office;
- .2** Expenses of the Contractor’s principal office and offices other than the site office;
- .3** Overhead and general expenses, except as may be expressly included in Article 7;
- .4** The Contractor’s capital expenses, including interest on the Contractor’s capital employed for the Work;
- .5** Costs due to the fault, negligence or failure to fulfill a responsibility of the Contractor, Subcontractors, Sub-subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to costs for the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and correcting damage to property not forming part of the Work, except as provided in Section 7.7.3 of this Agreement;
- .6** Any cost not specifically and expressly described in Article 7;
- .7** Costs that would cause the Guaranteed Maximum Price (as adjusted pursuant to the Contract Documents) to be exceeded;
- .8** Rental costs of machinery and equipment, except as specifically provided in Section 7.5.2;
- .9** Labor, material, and equipment costs or any other costs incurred which should be back-charged to any Subcontractor, any Sub-Subcontractor, any direct or lower tier supplier, or any other party for whom the Contractor is responsible;

- .10 Costs or losses resulting from lost, damaged or stolen tools and equipment;
- .11 Costs of bonding or securing liens or defending claims filed by any Subcontractor, any Sub-Subcontractor, any direct or lower tier supplier or any other party for whom any of such parties or the Contractor is responsible arising from nonpayment, unless such nonpayment is the result of the Owner's failure to pay Contractor undisputed amounts as and when due under the Contract Documents;
- .12 Costs of self-insured losses (e.g., losses within the deductible limits maintained by the Contractor or any direct or indirect subcontractor), costs covered by any insurance carried by a Contractor or a direct or lower tier subcontractor, costs which would have been covered by the insurance required to be carried by a Contractor or a direct or lower tier subcontractor under the Contract Documents, and costs which would have been covered by insurance but for failure of the Contractor or direct or lower tier subcontractor to properly submit, process or give notice of the occurrence or claim;
- .13 Costs of employee bonuses and executive bonuses whether or not based in whole or in part on performance related to the Work;
- .14 Costs of insurance or bond premiums not required by the Contract Documents; data processing costs; overtime premium expense if the necessity to work overtime to keep to schedule is the fault of the Contractor, any Subcontractor, any Sub-Subcontractor, any direct or lower tier supplier, or any other party for whom the Contractor is responsible; costs incurred after the Contractor's application for final payment; legal, mediation or arbitration costs; costs of relocation or temporary living expenses; costs of home office computer services or other outside computer processing services; and, except as otherwise included in the Stated Rates, cellular phone charges; and costs of commuting to or from the Project site or charges for vehicles used by supervisory or administrative personnel;
- .15 Amounts required to be paid by Contractor for federal, state or local income or franchise taxes;
- .16 Costs associated with Contractor's failure to (i) obtain any and all applicable permits that are Contractor's responsibility under the Contract Documents in a timely manner or (ii) coordinate and schedule inspections and commissionings;
- .17 Any cost incurred by Contractor prior to its receipt of the Notice to Proceed from Owner unless specifically authorized in writing by Owner;
- .18 Fees, costs or expenses for legal, mediation or arbitration proceedings or other claims related expenses (including, without limitation, amounts payable to attorneys or consultants);
- .19 Penalties, extensions or fines imposed by any governmental authority caused by or arising out of conduct of the Contractor, any Subcontractor, any Sub-Subcontractor, any direct or lower tier supplier, or any other party for whom the Contractor is responsible;
- .20 Any costs or expenses in connection with any indemnity provided by Contractor pursuant to the Contract Documents;
- .21 Costs incurred or paid for recruiting employees (whether to third party recruiters or to employees); and
- .22 Severance or similar payments on account of terminated employees.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 9.3 Discounts, rebates, refunds or dividends, and a proportion of any volume rebates earned with purchase of material charged to this Project, and any concessions or discounts provided by unions or other trade organizations, shall accrue to the Owner and be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not perform with the Contractor's own personnel (as and to the extent permitted by Section 7.1.2) shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor

shall obtain bids. As provided in Section 7.1.2 and this Article 10, the Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner and the Architect. The Owner shall then determine, with the advice of the Contractor, which bids will be accepted. The Contractor shall contract only with parties approved by Owner and only for work within their specialty; however, Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.2 All subcontracts and purchase orders shall be awarded according to the procedure in this paragraph. The Contractor shall invite bids from, and enter into contracts and material orders with, only Subcontractors and suppliers who (and under subcontract agreements which) have first been approved in writing by the Owner. Each bidder shall be required to furnish its hourly rates for regular and overtime labor (including full labor burden) with its bid, unit prices wherever applicable, and other information sufficient to allow appropriate control of costs associated with potential changes to subcontractor work (and the Contractor shall work with the Owner to develop cost protection measures to include in such bid documents). After receiving such bids, the Contractor shall analyze them and make recommendations for awards, accompanying its recommendation with all pertinent data required for decision upon the award, and certifying that, to the best of its knowledge, the bid of the recommended subcontractor or supplier is bona fide, fair and reasonable. The Contractor shall summarize the bids on a form approved by the Owner, and shall submit such summary and complete sets of all subcontractor bids received (including each bidder's clarifications, qualifications and assumptions), along with the Contractor's recommendation for award, for each component of the Work in accordance with the Buyout Schedule set forth in Section 7.3 of this Agreement. The Contractor shall also identify with specificity any changes to the approved form of subcontract (described in Article 5 of AIA Document A201-2017) proposed for the bidder which the Contractor recommends. When the Owner has determined the award of any such subcontract or purchase order, the Contractor shall contract in its own name and behalf, and not in the name or behalf of the Owner, with the specified subcontractor or supplier. The Contractor's subcontract and purchase order forms shall provide that subcontractor shall perform its portion of the Work in accordance with all applicable provisions of this Agreement and the Contract Documents. The Contractor shall submit its subcontract and purchase order forms to the Owner for review prior to use in connection with the Project, and shall promptly deliver to the Owner a copy of all executed subcontracts and purchase orders entered into in connection with the Project. If a specific bidder among those whose bids are delivered by the Contractor to the Owner (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work in accordance with all requirements of the Contract Documents (including, without limitation, insurance and bonding requirements); and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner without cause or justification requires that another bid be accepted, then the Contractor 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 Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner. Any such request to adjust the Guaranteed Maximum Price by the Contractor must be made in writing prior to award of the applicable subcontract. The Owner's decision regarding the award of any subcontract or purchase order, or approval of the form of subcontract or purchase order, shall not constitute a waiver of any of the requirements of the Contract Documents, and the Contractor shall remain primarily responsible for full compliance and conformance with all requirements of the Contract Documents notwithstanding any discrepancy, variance or inconsistency between the requirements of the Contract Documents and any awarded subcontract or purchase order.

§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement and all other applicable provisions of the Contract Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. The Contractor 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 Contractor in Article 11 below.

§ 10.4 [Intentionally Deleted]

§ 10.5 No subcontract shall require or provide for any direct or lower tier subcontractor to engage, pay amounts to, or otherwise include funds which may be returned or received by, the Contractor or any related party, without the prior written approval of the Owner in each instance (which approval must be express and shall not be deemed given solely by the Owner's approval of a subcontract or Subcontractor without such an express acknowledgment). Any

amounts received by the Contractor or a related party under any such arrangement without the express prior written approval of the Owner shall be credited against the Cost of the Work, the maximum compensation for General Conditions Items or General Requirements Items, as applicable, and the Guaranteed Maximum Price.

ARTICLE 11 ACCOUNTING AND OTHER RECORDS

§ 11.11.1 Records and Accounting Systems. The Contractor shall keep full and detailed books, records and accounts related to the Project and the Work, and shall exercise such controls as may be necessary for proper financial management under this Contract, including, without limitation, to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner.

§ 11.11.2 Audit Right. The Owner, and the Owner's auditors, accountants, agents, authorized representatives, or any audit entity under contract with the Owner (collectively, 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 Contractor's books and records, including complete documentation supporting accounting entries, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract reasonably necessary to verify the Cost of the Work or the manner in which the Work was performed. Any audit under this Section 11.11 (1) is limited to books and records that relate to this Contract and/or subcontracts entered into pursuant to this Contract, and (2) may only occur at a reasonable place and time. Notwithstanding the foregoing, unless required by the Owner's agreement with an end user of which the Owner has notified the Contractor, fixed components of costs, such as the Contractor's Billable Rates, shall not be subject to audit.

§ 11.11.3 Retention of Records. The Contractor shall preserve its books and records for a period of seven (7) years after final payment under this Contract, or until all audits initiated under Section 11.11.2 within that seven (7) year period have been completed, whichever is later, or for such longer period as may be required by law.

§ 11.11.4 Subcontractors. The Contractor shall require all Subcontractors and lower-tier subcontractors to comply with the provisions of this Section 11.11, including the recordkeeping, retention, and audit-access obligations set forth above, by inserting such requirements in a written contract between the Contractor and each Subcontractor; provided, however, that the Owner's right to review or audit the records of Subcontractors under lump sum subcontracts shall be limited to the extent necessary to confirm adjustments to subcontract amounts or for Work performed on a cost-plus or time-and-materials basis.

§ 11.11.5 Overcharges. If any inspection or audit by the Owner or the Owner's Auditors reveals an overcharge, the Contractor shall pay the Owner upon demand an amount equal to such overcharge as reimbursement for said overcharge, and if the overcharge is greater than one and one-half percent (1.5%) of the Cost of the Work, the Contractor shall also (i) reimburse the Owner for the expense incurred by the Owner in determining the overcharge(s), and (ii) pay the Owner interest on the amount of the overcharge(s) from the date the overcharge was paid by the Owner through the date the overcharge is reimbursed by the Contractor, at the rate specified in Section 15.2.

§ 11.11.6 Cost Segregation. The Contractor shall implement accounting, control and financial management systems sufficient to segregate and properly allocate costs attributable to such portions of the Work as the Owner may direct, and shall provide the Owner and the Owner's representatives with such materials as may be requested by the Owner to support such cost allocations.

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

§ 12.1.1 Based upon Applications for Payment submitted to the Architect and Owner by the Contractor and Certificates for Payment issued by the Architect (as approved or modified by the Owner), the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below in this Article 12 and elsewhere in the Contract Documents. The Contractor's Applications for Payment shall be submitted on AIA Document G702 together with AIA Document G703, along with the required items listed in Section 12.1.4 and anything else required under the Contract Documents (which shall collectively comprise the Application for Payment), all in form and substance satisfactory to the Owner.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. Applications for Payment delivered prior to the last date of the period covered by such Application for Payment shall be deemed to have been submitted on the last date of the period covered by such Application for Payment for all purposes. Each Application for Payment shall show in complete detail (itemized by Subcontractor and for the specific General Conditions Items and General Requirements Items) all monies paid out or costs incurred on account of the Cost of the Work during the period covered by such Application for Payment ("Payment Request Period") for which Contractor is to be reimbursed under the Contract Documents, and the amount of the Contractor's Fee due, together with such commercially reasonable supporting documentation as may be reasonably required by the Owner or the Architect (including, without limitation, the items listed in Section 12.1.1, copies of requisitions from Subcontractors and material suppliers, affidavits and other items referenced in Section 12.1.4).

§ 12.1.3 The Contractor shall deliver a draft Application for Payment with available supporting materials (the "Pencil Requisition") to the Owner and Architect via facsimile or e-mail on or about the 25th day of each calendar month (with Work forecasted until the end of such month), in order to allow sufficient time for distribution of copies of the Pencil Requisition to any Lender (as defined below) and all other parties whose review is required. The Architect, an Owner's Representative, the Contractor and any other applicable parties will meet at the Project site on or about the 25th day of each calendar month to review the Pencil Requisition along with the progress of the Project. Following such review by the parties, the Contractor will prepare the actual Application for Payment consistent with the Pencil Requisition and any changes requested by the Architect or the Owner's Representative for submittal to and review by the Owner. Such actual Application for Payment, together with all required supporting materials, will be delivered to the Architect and Owner as provided in this Article 12. The Owner shall make payment to the Contractor in the amount certified by the Architect (as approved or modified by the Owner), less applicable retainage, within thirty (30) days following receipt by the Architect and Owner of a properly prepared and submitted actual Application for Payment together with all required supporting documentation. For the avoidance of doubt, and notwithstanding anything to the contrary, (i) nothing in the Contract Documents shall preclude the Architect or the Owner from nullifying any previously issued Certificate for Payment or approved or deemed approved actual Application for Payment in accordance with Section 9.5 of AIA Document A201-2017 and (ii) in no event shall any Pencil Requisition be deemed to be an application for payment for any purpose.

§ 12.1.4 As part of each Application for Payment, the Contractor shall submit time cards, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence reasonably required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) timecards for the period covered by the present Application for Payment; plus (4) retainage. In addition to other required items, each Application for Payment shall include the following, all in form and substance satisfactory to the Owner and any Lender:

.1 A report from the Contractor showing all suppliers who have provided supplies and/or materials to the Project and Subcontractors with whom the Contractor has entered into subcontracts, the amounts of such subcontracts, the amount requested for any Subcontractor in the Application for Payment and the amount to be paid to the Contractor from such progress payment;

.2 A duly completed and executed Payment Acknowledgment and Lien Waiver instrument from the Contractor in the forms attached hereto as **Exhibit 1**;

.3 A duly completed and executed Payment Acknowledgment and Lien Waiver instrument, in the form attached hereto as **Exhibit 2**, from each Subcontractor and supplier (and, to the extent requested by the Owner, each lower tier subcontractor and supplier) for whom payment was made under previous Applications for Payment;

.4 Applications for payment from each Subcontractor on AIA Document G702 together with AIA Document G703, a summary (and copies if requested by the Owner) of all supplier invoices included within such Application for Payment; and

.5 Such other information, documentation and materials as the Owner or any Lender may require.

For the avoidance of doubt, and notwithstanding anything else to the contrary, no Application for Payment shall be deemed submitted or complete unless and until all the items listed above in this Section 12.1.4 and anything else required by the Contract Documents have been delivered to and received by the Architect and the Owner.

§ 12.1.5 Each Application for Payment shall be based on the most recent Schedule of Values accepted by the Owner for the Work in accordance with the Contract Documents and the portion of the Contractor's Fee which is due and payable, less the Retainage, but in no event shall the payment amount exceed the amount computed under Section 12.1.7 based on the Schedule of Values. The Schedule of Values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that each of the Contractor's Fee, General Conditions Items, Contingency, Buyout Savings, insurance and bonds shall be shown as separate items. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect or the Owner may require. The initial Schedule of Values is attached hereto as **Schedule G**. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.6 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 Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values approved by the Owner.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values, less retainage of five percent (5%);
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment purchased directly by the Contractor delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing, less retainage of five percent (5%);
- .3 Add the Contractor's Fee less retainage of five percent (5%). The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work described in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5%) from the portion of the Work that the Contractor self performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment or for which the Owner has withheld payment as provided in Section 9.5 of AIA Document A201–2017.

§ 12.1.8 RETAINAGE

Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of not less than five percent (5%). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors. Subcontractor retainage shall be held in accordance with applicable laws.

§ 12.1.9 [Intentionally Omitted].

§ 12.1.10 Except with the Owner's prior express written approval (which approval shall not be deemed given by the Owner by the Owner's mere approval of a subcontract), the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered to the site, adequately protected and stored at the site.

§ 12.1.11 Upon achievement of Substantial Completion of the Work, the Owner shall release all retainage to the Contractor except an amount equal to the sum of (i) all retainage on the Contractor's Fee plus (ii) two hundred percent (200%) of the value of incomplete, nonconforming or defective Work as identified in the Punchlist.

§ 12.2 FINAL PAYMENT

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2017 which has not been identified as requiring correction at the time of final payment, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted to the Owner and the Architect, and the Owner's auditors have reviewed, a final accounting for the Cost of the Work and a final Application for Payment together with all required supporting documentation; and
- .3 a final Certificate for Payment has been issued by the Architect and accepted by the Owner, and Final Completion has been achieved as outlined in Section 9.10 of AIA Document A201-2017.

§ 12.2.2 The Owner (and, at Owner's election, Owner's auditors and/or representatives) may review and report in writing on the Contractor's final accounting within 45 days after receipt by the Owner and Architect from the Contractor of the final accounting along with the final Application for Payment and all required supporting materials, or notify the Architect that it will not review and report. Based upon such Cost of the Work as the Owner (and, at the Owner's election, the Owner's auditors and/or representatives) report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner (and, at the Owner's election, Owner's auditors and/or representatives), or Owner's notification that it will not review and issue a written report, either issue to the Owner a final Certificate for Payment (which shall be subject to review and approval or modification by the Owner) with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2017. The time periods stated in this Section 12.2.2 supersede those stated in Section 9.4.1 of the AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.3 If the Owner (and, at the Owner's election, Owner's auditors and/or representatives) report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to demand dispute resolution in accordance with AIA Document A201–2017. A demand for dispute resolution shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment (as approved or modified by the Owner). Failure to demand dispute resolution within this 30-day period shall result in the substantiated amount reported by the Owner (and, at the Owner's election, the Owner's auditors and/or representatives) becoming binding on the Contractor. Pending a final resolution of the disputed amount and subject to Section 11.11.1, the Owner shall pay the Contractor the undisputed amount.

§ 12.2.4 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment and approval thereof by the Owner following completion of all Punchlist items. The amount of the final payment shall be calculated as follows:

- .1 Take the sum of the Cost of the Work substantiated by the Contractor's final accounting and the Contractor's Fee, but not more than the Guaranteed Maximum Price;
- .2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment or for which the Owner withholds payment as provided in Subparagraph 9.5.1 of AIA Document A201–2017 or other provisions of the Contract Documents; and

.3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Contractor, the Contractor shall reimburse the difference to the Owner within ten (10) days following Owner's demand therefor, plus any amounts applicable thereto pursuant to Section 11.1.1.

§ 12.2.5 Any costs incurred by the Contractor to correct or complete defective or nonconforming Work after the Contractor's application for final payment shall not be reimbursed by the Owner.

§ 12.2.6 The foregoing provisions of this Section 12.2 are subject to the provisions of Section 9.5.1 of the General Conditions of the Contract concerning the grounds for withholding the final Certificate for Payment. In particular, final payment shall not be made until any then-identified defective or nonconforming Work has been remedied.

§ 12.3 Payment of Subcontracts. Supplementing the provisions of Section 9.3 and Section 9.6 of the General Conditions of the Contract, (a) the Contractor shall pay all Subcontractors or suppliers for whom the Contractor included amounts in any Application for Payment (including, without limitation, subcontractor retainage) the amounts included in such Application for Payment and received from the Owner (the "Subcontractor Requisition Amounts") within five (5) business days following receipt from the Owner, and (b) any amounts not released to Subcontractors prior to the next billing must be returned to the Owner via a credit for the amount not paid in the following billing.

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 [INTENTIONALLY OMITTED].

§ 13.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☐ Arbitration

☒ Litigation in a court of competent jurisdiction pursuant to Section 15.4 of AIA Document A201–2017

☐ Other *(Specify)*

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 14.2 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 Contractor under Section 14.2.4 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 Contractor to the date of termination;
- .2** Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor'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 damages suffered or to be incurred by Owner under Article 14 of AIA Document A201–2017.

§ 14.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.4 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 Section 14.3.2 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Contractor’s Fee as described in Section 5.1.1 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 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.

§ 15.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at a rate equal to the “prime rate” as published in *The Wall Street Journal* on the date such payment was due or, if *The Wall Street Journal* was not published on such date, the corresponding rate in the next issue of *The Wall Street Journal* published after the due date. If, at any time, *The Wall Street Journal* ceases to publish the “prime rate” for any reason, a comparable interest rate shall be selected by the Owner.

§ 15.3 The Owner’s representatives are:

Aaron Van Dyke
Lincoln Property Company Commercial
2701 N. Thanksgiving Way, Suite 200
Lehi, UT 84043
503.763.1149

§ 15.4 The Contractor’s representative:
(Name, address and other information)

Jared Adamson, Vice President
9090 South Sandy Parkway
Sandy, UT 84070
801.803.1698

§ 15.5 Neither the Owner’s nor the Contractor’s representative shall be changed without ten days’ written notice to the other party.

§ 15.6 Other provisions:

§ 15.6.1 The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents) as a material inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work: (1) the Contractor is financially solvent, able to pay all debts as they mature and possessed of sufficient working capital to complete the Work and perform all obligations hereunder; (2) the Contractor is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so; (3) the Contractor is authorized to do business in the state where the Project is located and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the

Contractor and over the Work and the Project; (4) the Contractor's execution of this Agreement and performance thereof is within the Contractor's duly authorized powers; (5) the Contractor's duly authorized representative has visited the site of the Project and is familiar with the local conditions under which the Work is to be performed and has correlated observations with the requirements of the Contract Documents; (6) the Contractor possesses a high level of experience and expertise in the business administration, construction, construction management and superintendence of projects of the size, complexity and nature of this particular Project and will perform the Work with the care, skill and diligence of such a contractor; and (7) the Contractor is familiar with and shall comply with all laws and regulations applicable to the performance of the Work, including, but not limited to, Sections 63G-6a-101, *et seq.*, Utah Code Annotated 1953 (the "Utah Procurement Code"), and shall comply with all such applicable laws and regulations. The Contractor shall promptly advise the Owner of any occurrence, event, fact or other matter that has had, will have or might reasonably be predicted to have a material adverse effect upon the financial condition of the Contractor.

§ 15.6.2 The Contractor acknowledges that the Owner may finance the Work with funds provided and/or administered by one or more lenders (each, a "Lender"). The Contractor agrees to (1) comply with reasonable requirements of any Lender which bear upon the performance of the Work, (2) make the site of the Work available at reasonable times for inspection by any Lender and/or its representatives, and (3) promptly furnish the Owner with information, documents and materials that the Owner may reasonably request from time to time in order to comply with the requirements of any Lender. The Contractor shall consent to, and execute all reasonable documents reasonably requested by the Owner in connection with, the assignment of the Contract and the Drawings and Specifications to any Lender for collateral purposes.

§ 15.6.3 The key members of the Contractor's staff shall be persons agreed upon with the Owner and identified as "Key Personnel" in the attached **Schedule K**. No Key Personnel member shall be changed without the written consent of the Owner, unless such person becomes unable to perform his or her duties due to death, disability or termination of employment, or unless the Owner requests removal. If a Key Personnel member is no longer capable of performing in the capacity described in the attached **Schedule K**, or is removed by the Owner, the Owner and the Contractor shall agree on a mutually acceptable substitute.

§ 15.6.4 By executing this Agreement, the Contractor acknowledges and agrees that the Contractor has received and reviewed copies of the permits, approvals, agreements and other documents, if any, which are listed in and/or attached to **Schedule L** (collectively, the "Permits, Approvals and Agreements"). The Permits, Approvals and Agreements form a part of the Contract, and the Contractor shall (and shall cause all Subcontractors and Sub-subcontractors to) comply with the terms and provisions of the Permits, Approvals and Agreements to the extent applicable to the Work without any adjustment to the Guaranteed Maximum Price or Contract Time. In the event of any conflict between the terms and provisions of the Permits, Approvals and Agreements and any other terms and provisions of the Contract, such terms and provisions shall be interpreted so as to require the most substantial and comprehensive performance of the Work and better quality or greater quantity of Work.

§ 15.6.5 The Contractor shall comply with the recordkeeping and reporting requirements listed in **Schedule M** attached hereto and made a part hereof.

§ 15.6.6 The Guaranteed Maximum Price includes, and the Contractor shall be required to obtain and provide: (a) payment, performance and lien bonds complying with the requirements of Section 11.4 of the General Conditions of the Contract for itself; and (b) payment and performance bonds for the subcontractors listed (either by name or trade) in **Schedule N** attached hereto and made a part hereof ("Subcontractor Information"), except to the extent that the Owner agrees in writing to waive the bonding requirement for a particular Identified Subcontractor upon the request of the Contractor (but no such waiver by Owner, or failure by the Contractor to obtain any bond not waived by the Owner, shall relieve the Contractor of its obligations with respect to such subcontractor). Contractor can enroll any subcontractor for whom subcontractor bonds are required in the Contractor's subcontractor default ("SDI") insurance program meeting the requirements of the following paragraph. If the Owner agrees in writing to

waive the bonding or SDI requirement for a particular subcontractor upon the request of the Contractor, or any if such subcontractor fails to provide bonds or be enrolled in the Contractor’s SDI program (whether with the Owner’s prior approval or otherwise), the "savings" resulting from such waiver (based on the charge for subcontractor bonds or enrollment in the SDI program for such subcontractor) shall reduce the Guaranteed Maximum Price. All subcontractor bonds shall name the Owner and any lender (along with the Contractor) as obligees.

If the Owner approves in writing the use of SDI in lieu of subcontractor bonds, the Contractor shall purchase from and thereafter maintain in a company or companies acceptable to the Owner and lawfully authorized to do business in the jurisdiction in which the Project is located, SDI covering the payment and performance obligations of all Identified Subcontractors. The SDI shall: (a) include a financial interest endorsement in form and substance satisfactory to the Owner naming the Owner and any other party identified by the Owner as beneficiaries thereunder; (c) insure that each covered Subcontractor will perform each and every part of its subcontract(s), cover all guarantees called for and insure prompt payment to all persons furnishing material or labor requirement in prosecution of the work under its subcontract(s); (d) permit additions or deductions from the Work in any amount without diminishing or affecting coverage; (e) require no notice of alterations, additions or omissions to be given to the insurer; and (f) permit the Owner to occupy the Project at any time without diminishing or affecting coverage. Certificates of insurance with the aforementioned financial interest endorsement shall be issued to Owner and such other parties as Owner may request. The Cost of the Work attributable to the SDI shall not exceed the rate therefor set forth in Section 7.6. In the event of a default on the part of a subcontractor, the Contractor shall, without reimbursement as a Cost of the Work or other cost to the Owner, promptly exercise all of the rights under the SDI and pay all costs arising from such default. In the event of a default on the part of a Subcontractor, the Contractor shall, outside of the Cost of the Work and the Guaranteed Maximum Cost and without cost to the Owner, promptly cause the cure of such default without charge as a Cost of the Work. [The Contractor, at its discretion, may elect to exclude certain Identified Subcontractors from the policy, however, in such instances, the Identified Subcontractor will be required to provide payment and performance bonds separately. The cost for any bond placed this way will be included as a Cost of the Work (within such Subcontractor’s subcontract sum) as a separate charge from that of the SDI program, although the Cost of the Work will not include a SDI program charge for such unenrolled Subcontractor(s) based on the subcontract cost(s) of such unenrolled Subcontractor(s).

§ 15.6.7 [Intentionally Omitted].

§ 15.6.8 Notwithstanding anything to the contrary, neither the Owner nor any of the Owner’s trustees, partners, members, beneficiaries, shareholders, ventures, partners, officers, directors, employees or other representatives shall have any personal liability under the Contract Documents or otherwise with respect to the Project.

§ 15.6.9 [Intentionally Omitted].

§ 15.6.10 [Intentionally Omitted].

§ 15.6.11 [Intentionally Omitted].

§ 15.6.12 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original binding on the parties hereto.

§ 15.6.13 The Initial Negotiation Representatives and Second Negotiation Representatives of the Owner and the Contractor are as follows:

	Owner	Contractor
Initial Negotiation Representatives	Aaron Van Dyke	Jared Adamson
Second Negotiation Representatives	Steven Chapman	Dave Whimpey

§ 15.6.14 [Intentionally Omitted].

§ 15.6.15 OWNER’S PROJECT MANAGER. The Owner has engaged CLW Point Partners, LLC, a Delaware limited liability company d/b/a The Point Partners (as changed by the Owner from time to time if and when the Owner

elects, "Owner's Project Manager") to provide day-to-day Project management and administration services for the benefit of the Owner. The Owner's Project Manager shall represent the Owner in certain dealings with the Contractor; however, notwithstanding the foregoing or anything else to the contrary, in no event shall any action or direction by the Owner's Project Manager have any binding effect on the Owner without the express written approval of the Owner if such action or direction would (i) change the scope of the Work in any material respect, (ii) extend the Contract Time or increase the Guaranteed Maximum Price, (iii) relieve the Contractor of, or release the Contractor from, any obligations or liabilities, (iv) accept Substantial Completion of the Work or any portion of the Work, or (v) terminate the services of Contractor. In furtherance of the foregoing: (a) the Contractor shall make the site of the Work available at all times for inspection by the Owner's Project Manager; (b) the Contractor shall promptly furnish the Owner's Project Manager with any information, documents and/or materials relating to the Project that the Owner's Project Manager may request; (c) the Contractor shall provide the Owner's Project Manager with reasonable prior notice of, and allow the Owner's Project Manager or its respective representatives a reasonable opportunity to attend and participate in or observe, all Project meetings, tests, inspections and similar Project activities; (d) all items requiring the consent or approval of the Owner shall be submitted to the Owner's Project Manager; and (e) the Contractor shall deliver copies of all applications for payment, notices and submittals to the Owner's Project Manager. The Owner's Project Manager shall be an Indemnitee and named as an additional insured to the same extent as the Owner under the Contract Documents.

§ 15.6.16 [Intentionally Omitted].

§ 15.6.18 DESIGN-BUILD WORK. The Contractor's services under the Contract Documents may include certain design, engineering and coordination services for the Project which are not intended to be performed by the Architect. Without limiting the generality of the foregoing, the Contractor's services shall include providing all design, engineering and coordination services for the mechanical, electrical, plumbing and fire protection/life safety components of the Project. Supplementing certain other provisions of the Contract Documents: (a) the Contractor will cause all design engineering and coordination services performed by or on behalf of the Contractor to comply with all applicable laws, statutes, ordinances, building codes, and rules and regulations and with all requirements of the Contract Documents (including, without limitation, any performance or design criteria or requirements set forth in the Contract Documents); (c) the Contractor will cause all design, engineering and coordination services performed by or on behalf of the Contractor to be performed by qualified and licensed engineers; (c) the Contractor shall cause all parties performing design, engineering or coordination services to maintain professional liability insurance with limits of not less than Two Million Dollars (\$2,000,000) and to maintain such insurance for a period of not less than nine (9) years following Substantial Completion of the Work as a whole. Construction level drawings and specifications for all items designed by the Contractor shall be submitted to the Architect and the Owner for review and approval in the form of Shop Drawings and other submittals, and no Work on any such components designed by the Contractor shall be performed until the respective submittal has been approved by the Architect and the Owner. The portions of the Work that are the subject of the approved submittal shall be completed in accordance with such approved submittal; provided, however, that the Contractor shall not be relieved of responsibility for deviations from requirements applicable laws, statutes, ordinances, building codes, and rules and regulations and with all requirements of the Contract Documents (including, without limitation, any performance or design criteria or requirements set forth in the Contract Documents) by the Architect's approval of any submittal unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in any submittals for the design-build components of the Work by the Architect's approval thereof.

§ 15.6.19 Owner and Contractor acknowledge there is a potential for the imposition of new tariffs or import duties imposed by the United States government or government authority, an increase in the rate of a tariff or import duty imposed by the United States government or government authority, or similar charges imposed by the United States government or any governmental authority ("Tariffs") which are not presently legally enacted, but if enacted during the course of the construction of the Project, could impact the price, availability and/or delivery time frames of certain materials, equipment, and/or services to be utilized ("Tariff Impacts").

Owner and Contractor further acknowledge the quantification of the risk of Tariff Impacts is not possible until such Tariffs are published for legal enactment and seek to provide for a fair allocation of the risk of such tariffs while balancing the benefit of cost and time savings to Owner should Contractor bear and price the risk of such Tariff Impacts against providing Contractor an avenue for an equitable increase in the Contract Sum and equitable extension of the Contract Time should such Tariff Impacts occur.

Accordingly, Owner and Contractor agree as follows:

- .1 If, following the execution of the Agreement, Contractor demonstrates to the reasonable satisfaction of Owner that the cost or price of materials, equipment and/or services are subject to Tariff Impacts and that such Tariff Impacts have caused a verifiable and material increase in such costs, then the Contract Sum shall be equitably adjusted by an amount reasonably necessary to cover any such material cost or price increases. Provided, however, Contractor's right to relief under this Section 15.6.19 is expressly conditioned on Contractor's compliance with the Buyout Schedule set forth in Section 7.3 of this Agreement.
- .2 If Contractor is delayed at any time in the commencement or progress of the Work due to a Tariff Impact, beyond the control of and without the fault of the Contractor or its Subcontractors, Contractor shall be entitled to an equitable extension of the Contract Time and an equitable adjustment of the Contract Sum for costs arising out of such delays. The Contractor shall use Professional Efforts to mitigate the effect of such delays.
- .3 Contractor shall provide Owner written notice of any such Tariff Impacts within thirty (30) days from the date Contractor knew or should have been aware of such impacts. Notice shall be provided in accordance with the Contract Documents. Failure to provide such written notice shall be deemed a waiver by the Contractor of any rights afforded under this Section 15.6.19.

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 16.1.1 The Agreement is this executed AIA Document A102–2017, Standard Form of Agreement Between Owner and Contractor.

§ 16.1.2 The General Conditions are, and all references in this Agreement or the other Contract Documents to the "General Conditions of the Contract" or "AIA Document A201-2017" shall be deemed to refer to, AIA Document A201–2017, General Conditions of the Contract for Construction, as modified and adopted by the Owner and the Contractor for the Project.

§ 16.1.3 The Supplementary and other Conditions of the Contract, if any, are listed in **Schedule F**.

§ 16.1.4 The Specifications are listed in **Schedule F**.

§ 16.1.5 The Drawings are listed in **Schedule F**.

§ 16.1.6 The Addenda, if any, are listed in **Schedule F**. Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 16.

§ 16.1.7 Additional documents, if any, forming part of the Contract Documents are listed in **Schedule F**.

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 The Contractor shall purchase and maintain insurance and provide bonds meeting the requirements of Section 15.6.6 of this Agreement and Article 11 of AIA Document A201–2017.

ARTICLE 18 SPECIAL PROVISION REGARDING PRECONSTRUCTION SERVICES

The Contractor acknowledges and agrees that it has been involved with the Project during the design phase and that the Contractor has performed preconstruction services for the Project during the design process (including, without

limitation, (A) periodic evaluations of the Owner's program and Project budget requirements, each in terms of the other, (B) participation in periodic meetings with the Owner, the Architect and other members of the Project team, (C) recommendations and advice to the Owner, the Architect and other members of the Project team regarding (1) site use and improvements, (2) selection of materials, building systems and equipment, (3) construction feasibility, (4) time requirements for procurement, installation and construction completion, and (5) factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies, (D) INTENTIONALLY DELETED, (E) preparation and revisions of the Project schedule throughout the design process, (F) preparation and refinement of cost estimates (with supporting data) at periodic intervals of the design process) which has enabled the Contractor to obtain detailed and specific knowledge about the Project (including, without limitation, the Drawings and Specifications) and the Project site, and (G) including identifying and reporting clashes and interferences in the 3D project model(s) and Drawings provided by the Architect (including, without limitation, running the electronic files provided by the Architect through the clash detection functions of the Contractor's software). Accordingly, notwithstanding anything to the contrary the Guaranteed Maximum Price shall include all items shown on the Contract Documents, subject to Contractor's Assumptions, Clarifications and Exclusions, and all other items which are reasonably inferable from the Contract Documents as necessary to produce the indicated results.

ARTICLE 19 SPECIAL PROVISIONS REGARDING THE POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NO. 1

§ 19.1 If this Contract is a "multiyear contract" as defined in Section 63G-6a-103(49), Utah Code Annotated 1953, then it is subject to the provisions of Section 63G-6a-104, Utah Code Annotated 1953.

§ 19.2 Nothing in this Contract shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Owner, its respective officials, employees, contractors, or agents, or any other person acting on behalf of the Owner and, in particular, governmental immunity afforded to or available to the Owner pursuant to Sections 63G-7-101, et seq., Utah Code Annotated 1953 (the "Governmental Immunity Act of Utah").

§ 19.3 The Parties understand that all material provided or produced under this Agreement may be subject to Sections 63G-2-101, et seq., Utah Code Annotated 1953 (the "Utah Government Records Access and Management Act").

§ 19.4 During the performance of this Agreement, the Owner may disclose Personal Identifying Information to the Contractor. "Personal Identifying Information" means a Social Security number; a financial account number, or credit or debit card number; a required security code, access code, or password; an official state or government-issued driver's license or identification card number, as defined as "Personal information" in Utah Code § 13-44-102(4); or an address, birth date, Social Security number, tax identification number, passport number, driver license number, non-driver government-issued identification number (including a military identification number), telephone number, bank account number, student identification number, credit or debit card number, personal identification number, unique biometric data, employee or payroll number, automated or electronic signature, computer image file, photograph, computer screen name, personal identification code, or account balance, overdraft history, or payment history, as defined as "Identifying information" or "Personally identifiable information" in Utah Code § 13-40-102(7), (14). In compliance with Utah Code §§ 78B-4-701, et seq., the Cybersecurity Affirmative Defense Act, the Contractor agrees to implement and maintain reasonable security procedures and practices that are: (i) appropriate to the nature of the Personal Identifying Information disclosed to the Contractor; and (ii) reasonably designed to help protect the Personal Identifying Information from unauthorized access, use, modification, disclosure, or destruction.

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

OWNER:

CONTRACTOR:

POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Utah

LAYTON CONSTRUCTION COMPANY, LLC

Signed by:
By: Jay Hardy
Name: Jay Hardy
Title: Authorized Signatory

Signed by:
By: David S. Layton
Name: David S. Layton
Title: President/CEO

LIST OF SCHEDULES AND EXHIBITS

- | | |
|--------------|---|
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| Schedule A-2 | Liquidated Damages Amounts |
| Schedule B | Unit Prices |
| Schedule C | Potential Deductive Alternates |
| Schedule D | Allowances |
| Schedule E | Qualifications and Assumptions |
| Schedule F | Drawings, Specifications and Other Contract Documents |
| Schedule G | Schedule of Values |
| Schedule H | Components of Stated Rates for Contractor’s Personnel |
| Schedule I | Stated Rates for Contractor’s Personnel |
| Schedule J-1 | General Conditions Items |
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| Schedule K | Key Personnel |
| Schedule L | NOT USED |
| Schedule M | Selected Reporting and Recordkeeping Requirements |
| Schedule N | Subcontractor Information |
| Schedule O | CCIP Manual |
| Exhibit 1 | Contractor Payment Acknowledgment and Lien Waiver Form |
| Exhibit 2 | Subcontractor Payment Acknowledgment and Lien Waiver Form |
| Exhibit 3 | Form of Subcontract |



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Point of the Mountain Event Center Project consisting of new ground-up construction of a 5026-seat, 107,675 gross square-foot building.

THE OWNER:

(Name, legal status and address)

POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Utah
c/o WBA, PC
139 Hunter's Grv Ln.
Suite 200
Lehi, UT 84043
Attention: Blair M. Dickhoner
bdickhoner@wbapc.com

THE ARCHITECT:

(Name, legal status and address)

M. ARTHUR GENSLER, JR. AND ASSOCIATES, INC.
d/b/a GENSLER
220 Montgomery Street, Suite 200
San Francisco, CA 94104

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ADDITIONS AND DELETIONS:

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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™–2017, Guide for Supplementary Conditions.

- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
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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, Contractor's Assumptions, Clarifications and Exclusions included in **Schedule E**, 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 otherwise specifically enumerated in the Agreement or these General Conditions of the Contract, the Contract Documents do not include other documents such as bidding requirements (advertisement, sample forms, or the Contractor's bid or proposal).

§ 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. The Contract is subject to, and the Work shall be performed in accordance with, all laws, statutes, regulations, codes, ordinances, rules and orders of the United States of America, the State of Utah, the City of Draper, and all other governmental or public agencies and authorities having jurisdiction over the Work, including, but not limited to, Sections 63G-6a-101, *et seq.*, Utah Code Annotated 1953 (the "Utah Procurement Code"), and all fire and other insurance requirements applicable to the manner in which the Work is performed (collectively, "Laws"), and any other agreements and other matters, if any, referred to or incorporated in the Contract Documents, and where any requirements contained in the Contract do not conform to or are inconsistent with such Laws or agreements to which the Contract is subject or by which it is governed, such Laws or agreements shall have precedence over any other matters set forth in the Contract Documents; provided, however, that the Contractor's obligations under this sentence are subject to Section 3.2.3. The Contract is based upon a standard form created by the American Institute of Architects, with modifications negotiated by the parties. As such, the parties agree that neither party shall be considered the author of the Contract, and there shall be no application of any presumption in the event of an ambiguity.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents or reasonably inferable therefrom or ascertainable as necessary to produce the indicated results in the exercise of Professional Efforts, 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, including manufacturers' instructions, specifications or directions regarding proper installation and/or use of products, materials or other items by the Contractor, its agents, employees, subcontractors of any tier, or other entities or persons for whose acts or omissions the Contractor is responsible. In the event of conflict between those documents specified by the Architect and those specified by manufacturers, the Contractor shall proceed as directed in Section 1.2.7 below.

§ 1.1.7 DESIGN DOCUMENTS

Design Documents are representations, in any medium of expression now known or later developed, of the Project and all requirements for construction of the Project. Design Documents may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 NUMBER AND GENDER

The pronouns "they", "them", and "their" are used with a singular antecedent that is indefinite or that does not specify gender, in lieu of the masculine singular and feminine singular pronouns "he", "she", "him", "her", "his", and "hers", and accordingly "they", "them", and "their", may be singular or plural depending on their antecedents and the context.

§ 1.1.9 KNOWLEDGE; RECOGNIZE; DISCOVER; REASONABLY INFERABLE

The terms "knowledge," "recognize" and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows, recognizes or discovers (or should know, recognize or discover) in exercising Professional Efforts. Analogously,

the expression “reasonably inferable” and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable as necessary to produce the indicated results by a general contractor or construction manager familiar with the Project in the exercise of Professional Efforts.

§ 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 intended to supplement one another, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them in the exercise of Professional Efforts as being necessary to produce the indicated results.

§ 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. Where it is stated in Contract Documents or in various sections of the Specifications that a Subcontractor shall perform certain Work, it shall mean that the Contractor shall cause the Subcontractor to perform said Work (with Contractor maintaining full responsibility for such Work).

§ 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.

§ 1.2.4 In the event of conflicts or discrepancies among the Contract Documents, the Contract Documents shall be interpreted on the basis of the following priorities:

First Modifications and Addenda to the Agreement, with those of later date having precedence over those of earlier date

Second Agreement

Third General Conditions of the Contract

Fourth Schedules and Exhibits to the Agreement, excluding **Schedule E**

Fifth **Schedule E**, Qualifications and Assumptions

Sixth Addenda to Drawings and Specifications, with those of later date having precedence over those of earlier date

Seventh Drawings and Specifications

All dimensions shall be determined by figures rather than scaled dimensions. The Contractor acknowledges and agrees that (a) the Contractor has had an opportunity during the preconstruction, bidding or negotiation stage to request figures for any scaled dimensions shown in the Contract Documents to the extent the Contractor deems necessary to establish the Contract Sum or the Guaranteed Maximum Price, as applicable, (b) prior to ordering any materials or equipment or performing any Work shown in the Contract Documents only by scaled dimensions, the Contractor shall either (i) submit a request for information for the Architect to provide such figures or (ii) submit a Shop Drawing proposing such figures for the Architect’s review and action, and (c) the Contractor shall not be entitled to any increase in the Contract Sum or Guaranteed Maximum Price, as applicable, to the extent the actual figures for any dimension initially shown in the Contract Documents only by scaled dimensions differ from those used by the Contractor in establishing the Contract Sum or Guaranteed Maximum Price, as applicable. Subject to **Schedule E** (Qualifications and Assumptions), should the Drawings or the Specifications disagree in themselves or with each other, the Contractor shall provide the better quality or greater quantity of the Work unless otherwise directed by written Addendum. Notwithstanding the order of priority of documents set forth in this Section: (1) any matters contained in the Specifications which have been omitted from the Drawings or vice versa shall be construed as though contained in both; and (2) in the event of any duplication, conflict or discrepancy between Drawings and Specifications, Drawings shall control as to any conflict regarding location or quantity, and Specifications shall

control as to any conflict regarding quality of performance. No such duplication, conflict or discrepancy is intended by the Contract Documents and any duplication, conflict or discrepancy specified shall not become a basis for any increase in the Contract Sum or the Guaranteed Maximum Price, as applicable. In the event of any conflict between the physical improvements comprising the finished Work as required by the Qualifications and Assumptions and the physical improvements comprising the finished Work as required by the Specifications and Drawings, the physical improvements comprising the finished Work as required by the Qualifications and Assumptions shall control.

§ 1.2.5 [INTENTIONALLY OMITTED].

§ 1.2.6 Where codes, standards, requirements and publications of public and private parties are referred to in the Contract Documents, references shall be understood to be to the latest revision prior to the date the Owner and the Contractor execute the Agreement, except where otherwise indicated in the Contract Documents.

§ 1.2.7 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents. If the Contractor discovers or should have discovered in the exercise of Professional Efforts that the Contract Documents and any manufacturer instructions are inconsistent or conflict: (a) the Contractor shall identify each specific inconsistency or conflict in a written notice to the Owner and the Architect, and request specific directions from the Architect on how to proceed; and (b) thereafter perform the applicable installation or Work in accordance with the written directions received from Architect. If, at any time, a manufacturer or supplier of any article, material or equipment fails to honor its product warranty based in whole or in part because of a defective or noncompliant installation, the Contractor shall be responsible for (i) correcting the defective or noncompliant installation and (ii) providing the correction, repair or replacement of the warranted product.

§ 1.2.8 Where the Work is to fit with existing conditions or work to be performed by others, the Contractor shall fully and completely join the Work with such conditions or work, unless otherwise specified in the Contract Documents.

§ 1.2.9 Where no explicit quality or standards for materials or workmanship are established for Work, such materials and workmanship shall be consistent with the quality of the surrounding Work and of the construction of the Project generally and suitable for the intended use.

§ 1.2.10 Exact locations of fixtures and outlets shall be obtained from the Architect before the Work is roughed in; Work installed without such information from the Architect shall, at the request of the Owner, be relocated at the Contractor's expense.

§ 1.2.11 Certain drawings (including mechanical, electrical and fire protection drawings) are diagrammatic only, and are not intended to show the alignment, physical locations or configurations of such Work. Such Work shall be installed without any increase in the Contract Sum or the Guaranteed Maximum Price, as applicable, to clear all obstructions, permit proper clearances for the Work of other trades and operation and maintenance, provide clear access to all control points (including valves, strainers, filters and control devices), and present an orderly appearance where exposed. Prior to beginning such Work, the Contractor shall prepare coordination drawings showing the exact alignment, physical location and configuration of the components of the mechanical, electrical and fire protection and other allied systems. The Contractor shall be solely liable and responsible for any costs and/or delays resulting from the Contractor's failure to prepare such coordination drawings and properly coordinate such installations. Provided, however, and without limiting the Contractor's representations set forth in Article 18 of the A102, nothing herein shall be construed as requiring the Contractor to take responsibility for the design of the sizing and configuration of the Project spaces that house the equipment and materials to be furnished by the Contractor.

§ 1.2.12 Test boring or soil test information included with the Contract Documents or otherwise made available to the Contractor was obtained by the Owner for use by the Architect in the design of the Project or Work.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, (3) the titles of other documents published by the American Institute of Architects or (4) defined in the Agreement.

§ 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. The term “including” as used in the Contract Documents means “including but not limited to”.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DESIGN DOCUMENTS

§ 1.5.1 The Drawings, Specifications and other Design Documents, including those in electronic form, whether prepared by the Architect or other parties, are the property of the Owner, the Architect or other parties, who will retain all common law, statutory and other reserved rights (including copyrights). As set forth more fully in Section 3.11, the Contractor shall maintain at the site for the Owner a record copy of such documents which shall be marked currently to record changes and selections made during construction, and which shall be delivered to the Architect and the Owner upon completion of the Work as provided in Sections 3.11 and 9.10.2. The Contractor may elect, at the Contractor’s own expense, to prepare and retain the Contractor’s own record set. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Design Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the copyright or other reserved rights held by the Owner, Architect or other parties.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other Design Documents appropriate to and exclusively for use in the execution of their Work under the Contract Documents. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Drawings, Specifications or other Design Documents on other projects without the specific prior written consent of the Owner.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

The Contractor shall, and shall cause its Subcontractors to, enter into and/or comply with any agreement or protocol regarding the transmission and/or use of data in digital form reasonably requested by the Owner.

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. Each of the initial Owner’s representatives (each, an “Owner’s Representative”) is set forth in the Agreement. Notwithstanding anything to the contrary, (a) no party other than the person(s) designated as Owner’s Representative(s) from time to time shall have authority to make any agreement, give any instruction or otherwise make any commitment on the Owner’s behalf and (b) whenever any approval, assent, consent or commitment of the Owner is requested or required, such approval, assent, consent or commitment must be in writing and signed by one of the person(s) designated as Owner’s Representative(s) from time to time. Except as otherwise provided in Section 4.2.1, the Architect does not have authority to act on behalf of or bind the Owner. The term “Owner” means the Owner or the Owner’s authorized representative. The Owner reserves the right to change the Owner’s Representative and/or to designate one or more additional Owner’s Representatives by written notice to the Contractor.

§ 2.1.2 The Owner upon reasonable written request shall furnish to the Contractor 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 at the time of execution of the Agreement.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor 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. In the event the Contractor makes such request in writing prior to commencement of the Work, the Owner shall furnish such evidence as a condition precedent to commencement of the Work. Thereafter, the Contractor may only request such evidence if (1) the Owner persistently fails to make undisputed payments to the Contractor as and when the Contract requires; or (2) a change in the Work increases the Guaranteed Maximum Price by more than fifteen percent (15%). After the Contractor commences the Work, the Contractor shall have no right to suspend the Work or terminate this Agreement except as otherwise provided in Article 14 below and elsewhere in the Contract Documents. 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.

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

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site, each to the extent required for the Contractor to perform the Work; however, the Contractor shall be responsible for all construction surveying, including establishing and/or installing control points, survey marks and construction stakes (*see, also*, Sections 3.9.7 and 3.9.8). The Contractor shall be entitled to reasonably rely on the accuracy of such information furnished by or through the Owner or Architect, but shall exercise proper precautions relating to the safe performance of the Work. The Contractor may assume that the locations of any underground or hidden utilities, plumbing or electrical runs indicated in the surveys or Contract Documents are shown in the approximate locations, but the Contractor is responsible for verifying that the utilities are in fact located as indicated by the information furnished by the Owner.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for the Contractor's use during the execution of the Work. The Contractor shall arrange for the reproduction of such items as necessary within the Contract Sum or Guaranteed Maximum Price, as applicable, at no additional cost to the Owner.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or 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. The Owner's exercise of any rights under this paragraph shall not entitle the Contractor to any increase in the Contract Sum or Guaranteed Maximum Price (within the maximum compensation for General Conditions Items), as applicable, or the Contract Time. The rights of the Owner under this Section 2.3 are cumulative and not in limitation of any other rights of the Owner contained in the Contract Documents, at law or in equity.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Owner may, after seven (7) days' written notice to the Contractor and without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order or Construction Change Directive (subject to Contractor's right to dispute a Construction Change Directive pursuant to the applicable provisions of the Contract Documents) shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If

payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within thirty (30) days following Owner's demand. The Owner shall have the right to offset such amounts from all further payments to the Contractor until paid in full. Payments not received by the Owner within such time period shall accrue interest at the rate specified in the Agreement. 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. The rights of the Owner under this Section 2.4 are cumulative and not in limitation of any other rights of the Owner contained in the Contract Documents, at law or in equity. In no event shall the Owner have any control over, charge of, or any responsibility for, construction means, methods, techniques, sequences or procedures or for safety programs or precautions in connection with the Work, notwithstanding any rights or remedies granted to Owner in the Contract Documents

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 in the jurisdiction where the Project is located, and shall remain in good standing as a registered and licensed contractor throughout the duration of the Work and any subsequent period, until issuance of Final Payment. 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 initial Contractor's representative is set forth in the Agreement. The term "Contractor" means the Contractor or the Contractor's authorized representative. The Contractor shall be and operate as an independent contractor under the Contract, and is not an agent or employee of the Owner.

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

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with (or to correct any Work that is found not to be in accordance with) the Contract Documents either by activities or duties of the Architect or the Owner's Project Manager in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor (even if a defect or nonconformance is not disclosed by any test or inspection, and is subsequently discovered or identified).

§ 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 familiar with local conditions under which the Work is to be performed and the site specific conditions and constraints as well as local and state regulatory requirements affecting the site, carefully, examined the Contract Documents, and correlated personal observations with requirements of the Contract Documents. The Contractor has evaluated and satisfied itself as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and physical conditions of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, (5) parking, traffic and logistics, (6) geotechnical data, soil and subsurface conditions of the Project site as disclosed in reports and materials delivered or made available to the Contractor. The Owner assumes no responsibility or liability for the safety of the Contractor's operations at the Project site, including the activities of any entities or persons acting under or through the Contractor, and the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in the Contract Sum or Guaranteed Maximum Price, as applicable, or the Contract Time on account of the conditions and limitations described or referenced in this paragraph.

§ 3.2.2 Because the Contract Documents are complementary and intended to supplement one another, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe and verify any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may

require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Prior to ordering any materials or equipment or performing any Work shown in the Contract Documents only by scaled dimensions, the Contractor shall either (i) submit a request for information for the Architect to provide figures for such scaled dimensions or (ii) submit a Shop Drawing proposing figures for such scaled dimensions for the Architect's review and action. Before ordering any materials or doing any Work, the Contractor and each Subcontractor shall verify all measurements at the building site to the extent feasible, and shall be responsible for the correctness of same. No increase to the Contract Sum or Guaranteed Maximum Price, as applicable, will be allowed on account of differences between actual measurements and the dimensions indicated on the Drawings if the Contractor failed to verify such measurements, when possible, before ordering any materials or doing any Work. All differences which may be found shall be reported in writing to the Architect for consideration before proceeding with the Work.

§ 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 orders of public authorities unless they bear upon performance of the Work (or, if being delivered under design-build or delegated design, unless they bear upon compliance with mechanical, electrical, plumbing, fire protection and similar trade codes) for which the Contractor and applicable Subcontractors are responsible (specifically excluding zoning, land use and other laws relating to architectural design), but the Contractor shall promptly report to the Architect and the Owner in writing any nonconformity observed or discovered by or made known to the Contractor as a request for information in writing in such form as the Architect or Owner may require, and provide such additional detail as the Architect or Owner may require. The Contractor shall not proceed with any Work not clearly and consistently defined in detail in the Contract Documents, but shall instead request additional information or clarification from the Architect. The Contractor shall give the Architect notice of any additional Drawings, Specifications, or instructions required to define the Work in greater detail, or to permit the proper progress of the Work, sufficiently (but not less than ten (10) business days) in advance of the time such information is needed by the Contractor so as to permit the Architect a reasonable time for responding to such requests without delaying the progress of the Work. If the Contractor proceeds with such Work without first obtaining such further Drawings, Specifications or instructions, or taking field dimensions, the Contractor shall correct Work incorrectly done at the Contractor's own expense.

§ 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 may request a Change Order under Article 7. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and orders of public authorities (except to the extent otherwise provided in Section 3.2.3), unless the Contractor recognized or should have recognized in the exercise of Professional Efforts, pursuant to the requirements of Sections 3.2.2, 3.2.3 and/or 3.2.6, such error, impossibility, inconsistency, omission, difference or nonconformity and failed to report it to the Architect.

§ 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 (including, without limitation, (x) all safety precautions and programs and (y) all shoring, bracing and temporary supports for earth and existing improvements) 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 fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor believes that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall (a) give timely written notice to the Owner and Architect of the specific means, methods, techniques, sequences or procedures referred to in the Contract Documents that the Contractor believes are not safe or suitable and shall not proceed with that portion of the Work until the Owner, the Architect and the Contractor have agreed

upon specific means, methods, techniques, sequences or procedures that the Contractor agrees are safe and suitable for the Work and (b) participate in discussions with the Owner and the Architect regarding the specific means, methods, techniques, sequences or procedures referred to in the Contract Documents that the Contractor believes are not safe or suitable until the Owner, the Architect and the Contractor have agreed upon specific means, methods, techniques, sequences or procedures that the Contractor agrees are safe and suitable for the Work. The Contractor shall remain solely responsible for and have control over the means, methods, techniques, sequences or procedures that are employed by the Contractor for the Work, notwithstanding that such construction means, methods, techniques, sequences or procedures are (i) referred to, indicated or implied by the Contract Documents or (ii) agreed to by the Owner and/or the Architect. The Contractor represents and covenants that the construction means, methods, techniques, sequences and procedures necessary to perform the Work will be consistent with and conform to: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to the Work; (3) requirements of any warranties applicable to the Work; and (4) applicable Laws.

§ 3.3.1.1 Supplementing certain provisions of Section 3.3.1, the Contractor shall design or, if the Contract Documents give specific instructions concerning such items, independently evaluate and confirm the adequacy of (pursuant to the procedures in Section 3.3.1), and thereafter provide as part of the Work, all temporary supports, underpinning, shoring and bracing as necessary to immobilize and prevent the movement of earth, improvements and other site elements and to prevent the occurrence or recurrence of excessive stresses. The Contractor shall remain solely responsible for and have control over the means, methods, techniques, sequences or procedures that are employed by the Contractor for temporary supports, underpinning, shoring and bracing, regardless of whether such construction means, methods, techniques, sequences or procedures are (i) referred to, indicated or implied by the Contract Documents or (ii) agreed to by the Owner and/or the Architect.

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

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

§ 3.3.4 The Contractor shall coordinate and supervise the Work performed by Subcontractors to the end that the Work is carried out without conflict between trades and so that no trade, as a result of improper coordination or supervision, causes delay to the general progress of the Work. The Contractor and all Subcontractors shall at all times afford each trade, any separate contractor, or the Owner, every reasonable opportunity for the installation of Work and the storage of materials.

§ 3.3.5 The Contractor shall arrange for and attend project meetings with the Owner and the Architect and such other persons as the Architect or Owner may from time to time wish to have present. The Contractor shall be represented by a principal, project manager, general superintendent or other authorized main office representative, as well as by the Contractor's own superintendent. An authorized representative of any Subcontractor or lower tier subcontractor shall attend such meetings if the representative's presence is required by the Owner or the Architect. Such representatives of the Contractor and the Subcontractors shall be empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, change orders, time schedules and manpower. Any notices required under the Contract may be served on such representatives. A current progress report (as defined in Section 3.10.4) shall be used as a reference point at all project meetings to establish the actual progress of the Work as compared to the progress shown in the most recent approved Construction Schedule and Work yet to be performed. Such project meetings shall be held no less frequently than weekly, and shall be held more often if requested by the Owner. The Contractor shall take, maintain and distribute minutes of such meetings in a form and manner acceptable to the Owner.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents (including, without limitation Section 10.2.13), 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. The word “provide” shall mean furnish and install complete, including connections, unless otherwise specified.

§ 3.4.2 The Contractor may make substitutions only with the written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. The written request must include the specifications for the material or product and any proposed change in the Contract Sum or Guaranteed Maximum Price, as applicable, or Contract Time. By requesting a substitution, the Contractor represents that it has personally investigated the proposed material or product and determined that it is equal or better to that specified, that the same or better warranty will be provided for the substitution, that complete cost data, including all direct and indirect costs has been presented (and the Contractor waives all claims for additional costs related to the substitution which subsequently become apparent), that it will coordinate the installation of the accepted substitute with any affected Subcontractors of any tier and will not impact other parts of the Work, and that the material is available in sufficient quantity and can be delivered in time to incorporate into the Work without adversely affecting the progress of the Work required by the Construction Schedule. Materials shall conform to the manufacturers’ standards in effect at the date of execution of the Contract Documents and shall be installed in strict accordance with the manufacturers’ instructions, specifications, and directions.

§ 3.4.2.1 If the Contractor desires to substitute a product or method in lieu of what has been specified or shown in the Contract Documents, the Contractor may propose to do so in a written request to the Architect setting forth the following: (1) full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information for the original specified item and the proposed substitution as necessary for a complete evaluation of the substitution; (2) reasons why the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (3) the adjustment, if any, in the Contract Sum or Guaranteed Maximum Price, as applicable, in the event the substitution is acceptable; and (4) the adjustment, if any, in the Construction Schedule and Contract Time in the event the substitution is acceptable. Proposals for substitutions shall be submitted to the Architect, with a copy to the Owner, not later than 30 days prior to the time such substitute product would be ordered or method would be incorporated in the Work or, if to be ordered or incorporated within 30 days of the commencement of the Work, immediately upon execution of the Agreement, and in any event within time periods consistent with the current agreed submittal schedule. No substitutions will be considered or allowed without the Contractor’s submittal of complete substantiating data and information as stated herein. Approval of a proposed substitution shall be at the sole discretion of the Owner (after consulting with the Architect).

§ 3.4.2.2 The Contract Documents are intended to produce a project of consistent character and quality of design. All components of the Project, including visible items of mechanical and electrical equipment, have been selected to have a coordinated design in relation to the overall appearance of the Project. The Architect shall judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits. The Architect will not recommend approval by the Owner of proposed substitutes which, in the Architect’s opinion, would be out of character, obtrusive, or otherwise inconsistent with the character or quality of design of the Project. In order to permit coordinated design of color and finishes, the Contractor shall, if required by the Architect or the Owner, furnish the substituted material in any color, finish, texture, or pattern which would have been available from the manufacturer originally specified, regardless of whether this is a custom color or profile in the opinion of the substitute supplier, at no additional cost to the Owner.

§ 3.4.2.3 Any additional cost, including additional design cost required by the proposed substitution, or any loss or damage arising from the substitution of any material or any method for those originally specified, shall be borne by the Contractor, notwithstanding approval or acceptance of such substitution by the Owner or the Architect, unless such substitution was initiated and made at the written request or direction of the Owner or the Architect.

§ 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.

§ 3.4.4 All manufactured materials shall be ordered to be delivered in the manufacturer's original, unbroken packages, containers or bundles, bearing the name of the manufacturer and brand name or other designation, and all materials shall be handled, stored, installed, cleaned and protected in accordance with the manufacturer's directions, unless otherwise indicated in the Contract Documents.

§ 3.4.5 Any product, material or equipment specified in the Contract Documents by reference to the number symbol or title of a specified standard, such as a commercial standard, federal specification, trade association standard, or other similar or related construction industry standard, shall comply with requirements in the latest revision thereof as of the date the Owner and the Contractor execute the Agreement.

§ 3.4.6 In all cases in which a manufacturer's name, trade name or other propriety designation is used in the Contract Documents in connection with a material, equipment or product to be furnished thereunder, the Contractor shall furnish the material, equipment or product of the named manufacturer(s) without substitution unless a written request for substitution is made in accordance with Section 3.4.2 and the substitution is approved in writing by the Owner.

Where the Contract Documents specify a manufacturer's name, trade name or other propriety designation and model but allow the Contractor to furnish a replacement item that is "equal" or words of similar meaning: (i) the Contractor shall deliver written notice to the Architect requesting action by the Architect on its request for the Architect's acceptance of the Contractor's proposed "equal" replacement (accompanied by all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information on the proposed replacement as necessary for a complete evaluation of the proposed replacement), with a copy to the Owner, not later than 30 days prior to the time such replacement item would be ordered; and (ii) the determination of whether a proposed replacement item is "equal" shall be in the discretion of the Architect.

Where the Contract Documents provide the Contractor with two or more alternate choices for a product, material or item of equipment, the Contractor may select any of the alternate items specified in the Contract Documents.

§ 3.4.7 The Contractor and all Subcontractors shall make all provisions necessary to avoid any disputes with labor unions and shall be responsible for any delays, damages or extra costs (including, without limitation, police details and extra gates) incurred as a result of labor disputes. The Contractor shall be responsible for the maintenance of labor relations among its employees and the employees of its Subcontractors in such manner as will provide for harmony as far as practical among workers at the Project site. Prior to contracting with any Subcontractor, the Contractor will require such Subcontractor to certify its willingness to cooperate with not only the other Subcontractors hired by the Contractor, but also with the Owner, any other contractors hired by the Owner, and their subcontractors. Any Subcontractor not cooperating shall, at the Owner's reasonable discretion, be dismissed by the Contractor and a replacement subcontractor shall be hired at the Contractor's expense.

§ 3.4.8 The Architect may require the Contractor to produce documentation confirming that a material meets such requirements, such as certified reports of past tests by qualified testing laboratories, reports of studies by qualified experts. No inspection performed or failed to be performed by the Owner or the Architect hereunder shall (a) constitute a waiver of, or relieve the Contractor of, any of the Contractor's obligations hereunder nor (b) be construed as an approval or acceptance of the Work or any portion thereof.

§ 3.5 WARRANTY

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality, new and of recent manufacture unless the Contract Documents otherwise specify. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be of good quality and free from faults and defects. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, will be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Supplementing and without limiting the generality of the foregoing, the Contractor warrants that to the

extent such work is within the scope of the Contractor's Work, the Work shall be watertight and leakproof at every point and in every area affected by the Work, except to the extent that leaks are properly attributed to (a) damage to the building(s) not caused by Contractor or those for whom Contractor is responsible and/or (b) defects in the Contract Documents prepared by or on behalf of the Architect unless the Contractor recognized or should have recognized such defects in the exercise of Professional Efforts and failed to report them to the Architect and the Owner. The Contractor shall, immediately upon notification by the Owner of water penetration, determine the source of water penetration. If the cause of the water penetration is covered by the foregoing warranty, the Contractor shall, at its own expense, (i) complete any work necessary to make the Work watertight and (ii) repair or replace, as necessary to restore to original condition, any other building materials, finishes, and furnishings that are damaged as a result of this water penetration (whenever such damage becomes evident).

§ 3.5.1 The Contractor hereby assigns to the Owner, effective at the time of Substantial Completion of the Work, any and all manufacturer's warranties required by the Contract Documents relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve all such manufacturer's warranties.

§ 3.5.2 The Contractor shall procure and deliver to the Owner, within thirty days following the date that Substantial Completion of the Work is certified, all special warranties required by the Contract Documents.

§ 3.5.3 The warranty provided in this Section 3.5 shall (a) apply to both patent and latent defects, (b) not be limited to the durations set forth in Section 12.2.2 and (c) be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise provided by law.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes and tariffs for the Work provided by the Contractor that are legally enacted when the Work is performed, provided that any such taxes or tariffs enacted after execution of the Agreement shall, subject to Section 15.6.19 of the Agreement, entitle Contractor to an adjustment in the Guaranteed Maximum Price. The Contractor shall indemnify, defend and hold harmless the Indemnitees from any claim or liability for any such taxes and taxes relating to the employees of the Contractor, any Subcontractor or any Sub-subcontractor, including taxes and contributions required under the Federal Social Security Act and the unemployment compensation law or any similar law of any state.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents: (a) the Owner shall secure (with Contractor's assistance) and pay for (outside of the Contract Sum) the building permit; and (b) the Contractor shall secure and pay for all other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work and which are legally required. The Contractor shall apply and arrange for required licenses, permits, inspections and/or approvals sufficiently in advance of the time required to allow the Contractor and/or the Architect to respond to any municipal comments, conditions or requests (including, without limitation, changes to the Work) without delaying the progress of the Work.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and orders of public authorities applicable to performance of the Work. The Contractor is familiar with and shall perform the Work in compliance with Sections 63G-6a-101, et seq., Utah Code Annotated 1953 (the "Utah Procurement Code"), and shall comply with all such applicable laws and regulations.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or orders of public authorities, or performs Work for which the Contractor is responsible for trade code compliance as provided in Section 3.2.3 which is not in compliance with such trade codes, the Contractor shall assume appropriate responsibility for compliance of the Work with such trade codes and shall bear the costs attributable to correcting any non-compliance.

§ 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 provide notice to the Owner and the Architect promptly following discovery and before conditions are disturbed and in no event later than three (3) days after first observance of the conditions. The Architect will promptly investigate such conditions and make a recommendation to the Owner as to (a) whether the Architect concludes that such conditions 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, and (b) an equitable adjustment in the Contract Sum or Guaranteed Maximum Price, as applicable, or Contract Time, or both. The Architect shall make its recommendation to the Owner in writing, stating the reasons. Following receipt and review of the Architect's recommendations with respect to alleged concealed or unknown conditions, the Owner shall issue a determination to the Contractor as to whether an equitable adjustment in the Contract Sum or Guaranteed Maximum Price, as applicable, or Contract Time, or both, is warranted and, if so, the adjustment(s) thereto. If the Contractor disputes the Owner's determination, the Contractor may proceed with a Claim in opposition to such determination as provided in Article 15. Notwithstanding anything to the contrary, (i) the Contractor shall not be eligible for any increase in the Contract Sum or Guaranteed Maximum Price, as applicable, or the Construction Schedule or Contract Time, in connection with concealed or unknown conditions that were disclosed, or which should have been disclosed in the exercise of Professional Efforts, by the prior tests, reviews or preconstruction services which the Contractor performed or was engaged to perform, (ii) in no event shall conditions (including, without limitation, geotechnical, hydrogeological or environmental conditions), including those that require excavation, haulage and disposal of materials, disclosed in the information and reports supplied to the Contractor by the Owner, or known by Contractor on the execution of this Contract, cause a change in the Guaranteed Maximum Price, Contract Time or other terms of the Contract Documents, and (iii) no adjustment to the Guaranteed Maximum Price, Contract Time or other terms of the Contract Documents shall be permitted in connection with a concealed or unknown condition disclosed by the Contractor's prior inspections, tests and reviews for the Project.

§ 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 promptly notify the Owner and Architect. Upon receipt of such notice, the Owner shall be responsible for obtaining governmental authorization to the extent the same may be 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 or Guaranteed Maximum Price, as applicable, and Contract Time arising from the existence of such remains or features may be made in the form of a Claim as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contract Sum or Guaranteed Maximum Price, as applicable, includes all allowances listed in **Schedule D** of the Agreement. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct or approve in writing, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum or Guaranteed Maximum Price, as applicable, shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance requiring selection by the Owner shall be selected by the Owner with reasonable promptness to avoid delay in the Work; provided, however, the Contractor shall give the Owner sufficient prior notice of the time by which the Owner must make such selection(s) to avoid such delay in the Work.

§ 3.8.4 If the Contractor determines that the cost for any allowance item is likely to exceed the corresponding allowance cost for such allowance item listed in the Contract Documents which would entitle the Contractor to an increase in the Contract Sum or Guaranteed Maximum Price, as applicable, under Section 3.8.2.3 above, the

Contractor shall promptly notify the Owner in writing. Upon receipt of any such notice from the Contractor, the Owner may, at its sole option and discretion, either: (a) issue a Construction Change Directive or execute a Change Order which increases the Contract Sum or Guaranteed Maximum Price, as applicable, by the additional amount necessary to furnish or construct such allowance item; or (b) direct the redesign and/or reselection of such allowance item to reduce the anticipated cost of furnishing or constructing such item (in which event the Contractor shall, and shall cause all direct and lower tier subcontractors to, cooperate in such redesign and/or reselection by evaluating the cost and construction-related issues of proposed alternatives and otherwise). Once the scope of any allowance item has been sufficiently identified to allow the Contractor to procure such item, and the Contractor has awarded subcontract(s) therefore in amounts approved by the Owner, the adjustment (if any) to the Contract Sum or Guaranteed Maximum Price, as applicable, on account of such allowance item shall be established based on the amount(s) of the awarded subcontract(s) and shall no longer be subject to further adjustment in accordance with this Section 3.8 (provided that adjustments to the Contract Sum or Guaranteed Maximum Price, as applicable, attributable to any allowance items that are based on unit prices for assumed quantities shall be made at such time or times as the actual quantities of such items are established). All allowance Work shall be procured on a stipulated sum basis unless otherwise approved by the Owner.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent project managers and superintendents (individually and collectively the “Management Staff”) and necessary competent assistants who shall be in attendance at the jobsite at reasonable times during the progress of the Work. The Contractor and Management Staff shall employ a competent, licensed (where available) superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The Management Staff shall be individuals approved by the Owner. The Contractor’s most senior project manager shall have full authority to act on behalf of the Contractor. The Contractor shall authorize the Management Staff to receive and act on the Contractor’s behalf upon instructions from the Owner given pursuant to the Contract Documents. The Management Staff shall represent the Contractor, and written communications given to Contractor’s most senior 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 furnish in writing to the Owner the name and qualifications of a proposed project manager and superintendent (to the extent not already identified as a Key Personnel). The project manager and superintendent shall each be subject to the Owner’s approval, and shall each constitute Key Personnel.

§ 3.9.3 The Contractor, as soon as practicable after execution of the Agreement (unless attached to the Agreement), shall furnish in writing to the Owner and the Architect the name and qualifications of a proposed Management Staff, along with an organizational chart describing the various roles of the parties contained therein. The Owner or Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed staff or staffing plan or (2) that the Owner or Architect requires additional time to review. Failure of either the Owner or the Architect to reply within the 14-day period shall constitute notice by such party of no reasonable objection by such party.

§ 3.9.4 The superintendent shall keep a daily log (the “Daily Log”) of the progress of the Work, Project activities and other relevant factors (including, without limitation, (i) weather conditions, (ii) Subcontractors and Sub-subcontractors working on site and the number of workers representing each Subcontractor and Sub-subcontractor, (iii) Project visitors, (iv) significant materials and equipment received, (v) description of the activities performed by the Contractor and each Subcontractor and Sub-subcontractor, (vi) description of any problems encountered by the Contractor or any Subcontractor or Sub-subcontractor and the resolution or direction set for resolution of such problems, (vii) Project delays or potential delays, including specific description of contributing causes, and (viii) any other items required by the Building Code or other applicable legal requirements). The Daily Log shall be available to the Owner’s Representative at all times. A copy of the Daily Log shall be submitted to the Owner’s Representative from time to time as requested by the Owner’s Representative and as otherwise may be provided in the Contract Documents.

§ 3.9.5 The Contractor shall furnish to the Owner and the Architect the names and contact information of the superintendent, the superintendent’s immediate supervisor, the superintendents of all Subcontractors, and at least

two other of the Contractor's and each Subcontractor's authorized representatives indicating where they can be contacted at times other than normal working hours in case of emergency.

§ 3.9.6 The Contractor's superintendent and project manager shall not be assigned to, or become involved in, any project other than that of this Contract and separate contracts related to this Project that may be let by the Owner. The Contractor's superintendent shall remain in attendance at the site, and, except for illness or other reason excusable to the Owner, shall be present at all times when Work of any kind is being done, including Work done during overtime. If absent for illness or other reason excusable to the Owner, a replacement acceptable to and approved by the Owner shall be named for the period of absence, such replacement having full authority and responsibility of the full-time superintendent.

§ 3.9.7 The Contractor shall retain a competent engineer or registered land surveyor, approved by the Architect in writing, who shall establish the exterior lines and required elevations of all buildings, structures and other improvements to be erected or installed on the site, and provide primary control and bench marks. The Contractor shall provide field engineers to establish line and grade for the Work. As a condition precedent to Substantial Completion of the Work, the engineer or registered land surveyor approved by the Architect shall deliver (and the Contractor shall provide to the Owner) a written certification in form and substance satisfactory to the Owner as to the actual location of the constructed facilities in relation to property lines, building lines, easements, and other restrictive boundaries.

§ 3.9.8 The Contractor shall be solely responsible for, and shall cause a registered land surveyor to perform, all construction surveying to locate and mark the controlling points for all structures, improvements and utilities included in the Project. The marking shall include the corners of the structures and improvements and other horizontal and vertical positions by means of stakes, batter boards with string lines, drill holes, cut and fill notations and similar conventional methods. Without limiting the generality of the foregoing, the Contractor shall (a) establish the building grades, lines, levels, and column and wall partition lines required for all aspects of the Work and (b) field verify the finish floor elevations of all floors of existing structures to which new Work is joined, connected, or attached, and shall insure that new floor elevations match existing floors (where applicable).

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The initial approved Construction Schedule is attached to the Agreement. At the request of the Owner, the Contractor shall reformat the Construction Schedule to the extent necessary so that the Construction Schedule is in a detailed, precedence-style critical path method (CPM) format using a time scaled logic diagram (Gantt Chart) satisfactory to the Owner which: (1) provides a graphic representation of the interrelationship of all material activities and events that will occur during performance of the Work; (2) identifies each phase of construction and occupancy; (3) sets forth dates that are critical in ensuring the timely and orderly completion of the Work, in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"); and (4) clearly establishes and shows the "critical path" through the job. The reformatted Construction Schedule shall be revised and re-submitted as necessary to obtain Owner's approval thereof. The Contractor shall deliver to the Owner electronic files with all relevant data relating to the Construction Schedule (including, without limitation, all supporting assumptions and logic for each version of the Construction Schedule), and shall provide the Owner (at no increase to the Guaranteed Maximum Price) with full access and the full right to use all electronic data relating to the Construction Schedule. The Construction Schedule and the Milestone Dates may be adjusted pursuant to Section 8.3 below.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval (as approved by the Architect, the "Submittal Schedule"). Immediately after being awarded the Contract, the Contractor shall meet with the Owner and the Architect to discuss the required Submittal Schedule and then shall prepare and submit within two weeks for approval a proposed Submittal Schedule for the Work. The Submittal Schedule shall (1) be coordinated with the Construction Schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule or comply with the approved Submittal Schedule, the Contractor shall not be entitled to any increase in Contract Sum or Guaranteed Maximum Price, as applicable, or extension of Contract Time based on the time required for review of submittals. The Submittal Schedule shall relate to the entire Project, shall be consistent with the Construction Schedule, and shall contain the

following: (x) Shop Drawing Schedule (for shop and setting drawings to be provided by Contractor); (y) Sample Schedule (for samples to be provided by Contractor); and (z) Product Data Schedule (for manufacturer's product data, technical information, test reports, catalog cuts, etc., to be provided by Contractor). The Submittal Schedule shall list (1) all of the submissions required of each trade, (2) the item, description, type, quantity, and size (where applicable) of each submission, and (3) the following dates, as estimated: (a) required date of submission; (b) required date of approval; (c) estimated date of beginning fabrication or manufacture of product (where applicable); (d) required date of submission of product to testing laboratory; (e) required date of testing laboratory approval; (f) required date for delivery of product to site; (g) required date for beginning of installation of product; and (h) required date for completion of installation (and in-place testing). Each schedule shall allow adequate time for review by the Architect and the Architect's consultants. The Contractor shall be solely responsible to correct Work performed in shop or field prior to approval at no cost to the Owner. The schedules shall be subject to change with the Owner's approval in accordance with the progress of Work. A copy of all submittal schedules shall be delivered to the Owner.

§ 3.10.2.1 Notwithstanding the foregoing provisions of Sections 3.10.2, in all cases the Contractor shall submit Shop Drawings, Product Data, Samples and other submittals for approval in a timely manner so as not to delay the progress of the Work and in accordance with the Submittal Schedule.

§ 3.10.3 [INTENTIONALLY OMITTED].

§ 3.10.4 The Contractor shall monitor the progress of the Work for conformation with the requirements of the Construction Schedule and shall promptly (but in any event within five (5) days following the occurrence giving rise to any delays or potential delays) advise the Owner of any delays or potential delays to the critical path of the Work. The Contractor's monthly progress report shall include an updated schedule showing the progress of the Work and highlighting discrepancies between the actual progress of the Work and the most recent Construction Schedule approved by the Owner in writing (such updates are sometimes referred to in these General Conditions as "progress reports"). Supplementing the foregoing, each progress report shall (a) show the actual current progress compared to the most recent Construction Schedule approved by the Owner in writing, (b) show the actual percentage of completion for each task as of the update, and (c) include progress bars overlaid on the 'as-planned' baseline shown on the most recent Construction Schedule approved by the Owner in writing and shall not hide the 'as-planned' schedule task bar. Each progress report shall also: (1) include a reasonable number of photographs showing progress of the Work and taken since the last progress report; and (2) state in reasonable detail (i) start and finish dates for all activities started or finished during the progress report period, (ii) the current status of all activities reported as being in progress in the last progress report and, if completed during the current report period, the date of actual completion and for those still in progress, the remaining time duration should be estimated and noted, (iii) activities that need to be re-sequenced, added, deleted or modified to add clarification, to reflect a change in plan of operation, or to maintain required schedule detail for proper monitoring and control, and (iv) the sequence of new activities or activity revisions that the Contractor proposes to add to the existing Construction Schedule to demonstrate the influence of delays and the method for incorporating delays and impacts into the Construction Schedule as they are encountered (each, a "fragnet"). The progress report should also identify any problems with respect to the Construction Schedule, the reasons for cost or schedule variances, the impact to the immediate task and to the total project.

In the event any progress report indicates that the performance of any portion of the Work on the critical path as of any date has not progressed or reached the level of completion required by the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents), the Contractor shall propose in written form an affirmative plan and recovery schedule (the "Schedule Recovery Plan") to correct the delay, including overtime and/or additional labor, if necessary, which Schedule Recovery Plan shall indicate the date by which the progress of the Work will comply with the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents), and shall be subject to the approval of the Owner. The Contractor shall not be entitled to an increase in the Contract Sum or Guaranteed Maximum Price, as applicable, in connection with the implementation of any Schedule Recovery Plan to accelerate the progress of the Work to the level of completion required by the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents). In no event shall any progress report or Schedule Recovery

Plan constitute an adjustment in the Construction Schedule, Contract Time or any Milestone Date unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order.

§ 3.10.5 In the event the Contractor fails to submit a Schedule Recovery Plan as required in Section 3.10.4 that is approved by Owner in its reasonable discretion or the progress of the Work is not brought back into compliance with the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents) on the date proposed by an approved Schedule Recovery Plan, the Owner shall have the right to order the Contractor to take corrective measures to expedite the progress of the Work, including, without limitation, (1) working additional shifts and/or overtime, (2) supplying additional manpower, equipment, and/or facilities, (3) re-sequencing of schedule items, and (4) other measures to mitigate delay (hereinafter referred to collectively as “Schedule Recovery Measures”). Such Schedule Recovery Measures shall continue until the progress of the Work complies with the stage of completion required by the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents). The Owner’s right to require Schedule Recovery Measures is solely for the purpose of ensuring the Contractor’s compliance with the Construction Schedule (as adjusted for permitted extensions of the Contract Time pursuant to the Contract Documents). The Contractor shall not be entitled to an increase in the Contract Sum or Guaranteed Maximum Price, as applicable, in connection with Schedule Recovery Measures required by the Owner. The Contractor shall not be required to take any corrective actions to expedite the progress of the Work, and the term “Schedule Recovery Measures” expressly excludes any actions: (a) not permitted by applicable Laws; (b) impossible for the Contractor to provide or perform (it being acknowledged and agreed that the cost of an action shall not excuse the Contractor from taking such action); (c) requiring means, methods, techniques, sequences or procedures which cannot be safely performed; or (d) requiring the Contractor to accelerate the Work to recover delays to the critical path due to causes for which the Contractor is entitled to an extension of the Contract Time. Nothing contained in any other provision of the Contract Documents shall limit the Contractor’s obligations to perform, or the damages that may be recoverable against the Contractor for failing to perform, Schedule Recovery Measures in accordance with this Section 3.10.5.

§ 3.10.5.1 The parties have agreed that the Contractor shall be obligated to achieve Substantial Completion of the Work on or before the Required Substantial Completion Date. Supplementing the provisions of Section 3.10.5, any activity that impacts the achievement of Substantial Completion of the Work by the Required Substantial Completion Date shall be deemed to be on the critical path (regardless of whether such activity would be on the critical path for Substantial Completion of the Work as a whole) for purposes of requiring a Schedule Recovery Plan and/or the Owner's right to require Acceleration Measures in accordance with, and subject to the terms and conditions of, Section 3.10.5.

§ 3.10.6 Except as specifically agreed to elsewhere in the Contract Documents, the Contractor acknowledges and agrees that no Work may be performed, as a “Schedule Recovery Measure” or otherwise, in buildings while such buildings are occupied, in order to bring the progress of the Work in compliance with the most recent Construction Schedule approved by the Owner, without the express prior written approval of the Owner.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 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. Approval by the Architect and the Owner of Record Documents prepared by the Contractor and its Subcontractors and suppliers shall be a condition precedent to the Owner’s obligation to make final payment to the Contractor. The Contractor shall also deliver to the Architect and Owner all operations manuals for equipment.

§ 3.11.2 [INTENTIONALLY OMITTED].

§ 3.11.3 Upon completion of the Work, the Contractor shall deliver to the Architect the marked up Record Documents for review for completeness and consistency. The Architect shall review the Record Documents for completeness and consistency, and shall submit to the Contractor any comments on such Record Documents the Architect may have. Upon receiving any comments from the Architect, the Contractor shall revise and re-submit the

Record Documents as necessary to obtain the Architect's approval thereof. The Architect shall review any revised Record Documents prepared by the Contractor and, when the Architect considers the Record Documents to be satisfactory, the Architect shall recommend acceptance of the Record Documents by the Owner.

§ 3.11.4 Upon acceptance of the Record Documents by the Owner, the Contractor shall prepare and deliver editable electronic versions of the Record Documents on a format approved by the Owner in writing (the "as built" information can be added to editable electronic versions of the underlying Construction Documents provided by the Architect). The editable electronic versions of the Record Documents shall be submitted to the Architect for review in accordance with the same procedure outlined in Section 3.11.3 for the paper Record Documents. When the Architect considers the editable electronic versions of the Record Documents to be satisfactory, the Architect shall recommend acceptance of the editable electronic versions of the Record Documents by the Owner.

§ 3.11.5 Approval and recommendation for acceptance of the paper and editable electronic versions of the Record Documents by the Architect, and subsequent approval thereof by the Owner, shall be a condition precedent to the Owner's obligation to make final payment to the Contractor.

§ 3.11.6 The Contractor shall prepare complete sets of manufacturer's catalogs, instructions, and other similar data, including the necessary graphic cuts, diagrams, valve charts and the like, covering all mechanical and manually operated devices furnished and/or installed in any permanent improvement as part of the Work, and all subcontractor and manufacturer warranties (the "Operating Manuals"). The Operating Manuals are intended to serve to instruct and assist the maintenance staff in the care, operation, maintenance and repair of all such devices. The Operating Manuals shall be in tangible binder form and in digitized, searchable electronic format acceptable to the Owner. Draft copies of the Operating Manuals shall be submitted to the Owner and the Architect for review and comment at least thirty (30) days prior to Final Completion of the Work. The Architect shall review the draft Operating Manuals and shall submit to the Contractor any comments on such draft Operating Manuals the Architect may have. Upon receiving any comments from the Architect or the Owner, the Contractor shall revise and re-submit the Operating Manuals as necessary to obtain the Architect's and the Owner's approval thereof. The Architect shall review any revised Operating Manuals prepared by the Contractor and, when the Architect considers the Operating Manuals to be satisfactory, the Architect shall recommend acceptance of the Operating Manuals by the Owner. Approval and recommendation for acceptance of the Operating Manuals by the Architect, and subsequent approval thereof by the Owner, shall be a condition precedent to Final Completion of the Work.

§ 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 or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate materials or equipment for some portion of the Work.

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

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

§ 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 and 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, dimensions, quantities, relations to existing work, coordination with work to be installed later, coordination with information on previously accepted Shop Drawings, Product Data, Samples or similar submittals, field measurements and field construction criteria related thereto, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The accuracy of all such information is the responsibility of the Contractor. In reviewing Shop Drawings, Product Data, Samples, and similar submittals, the Architect shall be entitled to rely upon the Contractor's representation that such information is correct, complete and accurate.

§ 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. The portions of the Work that are the subject of the approved submittal shall be completed in accordance with such approved submittal.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect and Owner in writing of such deviation at the time of submittal and (1) the Architect, with Owner's approval, 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 or Owner's written 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. Unless such written notice has been given, the Architect's approval of a resubmitted Shop Drawing, Product Data, Sample, or similar submittal shall not constitute approval of any changes not requested on the prior submittal.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify performance and design criteria given in the applicable building code or any such criteria as the Architect may elect to augment the building code, or require as part of the Architect's professional judgment, that such services must satisfy. The Contractor shall (a) cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional and (b) cause all parties performing such design, engineering or other professional services to maintain professional liability insurance as required by Section 11.1.1. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria described above in this paragraph that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with the design concept expressed in the Contract Documents. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Owner shall be entitled to rely upon such certifications, and neither the Owner nor the Architect shall be expected to make any independent examination with respect thereto.

§ 3.13 USE OF SITE

The Contractor shall confine the Contractor's apparatus, the storage of materials, and the operations of all workers to limits indicated by applicable Laws, the Contract Documents and permits and/or directions of the Architect and/or the Owner, and shall not unreasonably encumber the site with materials or equipment. The right of possession of the premises and the improvements made thereon by the Contractor shall remain at all times in the Owner. The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents. The Owner shall have the right to refuse admittance to the site to, and/or to direct the Contractor to re-assign (or to cause any direct or lower tier subcontractor or supplier to re-assign), any agent or employee of the Contractor or any direct or lower tier subcontractor or supplier whose presence the Owner deems hostile to the Owner's interest. Notwithstanding the foregoing, it is understood and agreed that the Contractor shall be responsible for full operational control and security of the site in the customary and normal performance of its duties as "Contractor" during the construction period.

§ 3.13.1 Notwithstanding the designation of contract limits or the indication of temporary fences or barricades, the provisions of the Contract Documents governing certain phases or portions of the Work may require that certain operations be carried out beyond such designated limits. Such other Work, if required beyond such designated limits, shall be scheduled in such a manner as to cause a minimum of inconvenience or disturbance to or interference with the normal operations of the Owner, abutters and the public. The Contractor shall use diligent efforts to obtain the Owner's prior approval and all necessary approvals from abutters, public authorities and utility companies for such operations, prosecute such operations expeditiously and restore the affected area to its original condition immediately upon completion of such operations, unless otherwise specified in the Contract Documents. All existing walks, roadways, paved or landscaped areas over which temporary driveways or walks are rerouted shall be restored to their original condition immediately upon completion of the related phases or portions of the Work, unless otherwise specified in the Contract Documents or in the approved Construction Schedule.

§ 3.14 CUTTING AND PATCHING

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

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. Structural members shall not be cut without the express prior written approval of the Architect or the Architect's authorized structural consultant, which may be accomplished in the form of a Shop Drawing or other submittal. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work. Existing items that are cut, damaged, disturbed or otherwise interfered with by the Contractor, a Subcontractor, or anyone for whom they are responsible shall be fully, properly and carefully repaired by the responsible Contractor or Subcontractor with no increase in the Contract Sum or Guaranteed Maximum Price, as applicable. All such repairs shall be completed in a first-class manner to the satisfaction of the Architect, and shall match similar existing adjoining work. Fitting of all materials shall be done to preserve the strength and durability of the material and to present a clean, well-worked appearance.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project. Immediately prior to the Architect's inspection for Substantial Completion of the Work (or any portion thereof), the Contractor shall cause the premises to be completely and thoroughly cleaned in compliance with requirements of the Contract Documents. Without limiting the generality of the foregoing, (a) concrete and ceramic surfaces shall be cleaned and washed, (b) resilient coverings shall be cleaned, waxed and buffed, (c) woodwork shall be dusted and cleaned, (d) sash, fixtures and equipment shall be thoroughly cleaned, (e) stains, spots, dust, marks and smears shall be removed from all surfaces, (f) hardware and all metal surfaces shall be cleaned and polished,

and (g) glass and plastic surfaces shall be thoroughly cleaned by professional window washers. The Contractor must obtain Owner's written approval of all cleaning products prior to use. All damaged, broken or scratched material (including, without limitation, glass, plastic or finished architectural metal surfaces) shall be replaced by the Contractor at the Contractor's expense. Provided, however, nothing in this provision is intended to limit or restrict Contractor's right to seek available insurance coverage.

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

§ 3.15.3 The Contractor shall provide adequate dumpsters for all waste materials or rubbish caused by operations under the Contract.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect safe access to the Work in preparation and progress wherever located. Exercise of such rights shall not release the Contractor from any of its obligations under the Contract Documents.

§ 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 such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or a patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect and the Owner.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law and subject to Section 3.18.2, the Contractor shall indemnify, defend and hold harmless the Owner (POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NO. 1), Lincoln Property Company, Lincoln Property Company Commercial, LLC, CLW POINT PARTNERS, LLC, Wadsworth Development Group, LLC, Colmena Capital, Inc., Colmena Point, LLC, any party providing debt or equity financing for the Project, their affiliates, any project manager engaged by the Owner, Architect, any lender, their respective members, managers, partners, trustees, officers, directors, shareholders (each, an "Indemnitee," and collectively, "Indemnitees") from and against claims, damages, losses, expenses and liabilities, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, or the acts or omissions of the Contractor, a Subcontractor, a lower tier subcontractor, a supplier, a materialmen, or anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, provided that such claim, damage, loss or expense is attributable to (a) bodily injury, death or property damage, including loss of use, of any Indemnitee, any of Indemnitee's employees, agents, contractors or subcontractors, licensees or invitees, or any other persons, whether based upon, or claimed to be based upon, statutory (including, without limitation, worker's compensation), contractual, tort or other liability, (b) any failure of the Contractor, any direct or lower tier subcontractor or those acting under or on behalf of such parties to conduct the Work in accordance with applicable Laws, (collectively, "Indemnified Claims"); provided, however, that the Contractor shall only be obligated to indemnify, defend and hold harmless the Indemnitees for Losses arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault or negligence of the Contractor, a Subcontractor, a Sub-subcontractor, a direct or lower tier supplier or any of their respective agents, representatives or subcontractors. The intent of this provision is to require indemnification, defense and hold harmless to the greatest extent permitted by, but in full compliance with, Section 13-8-1 Utah Code Annotated 1953, and this Section 3.18 shall be interpreted consistent therewith. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 Each Subcontract shall contain an indemnification in favor of the Indemnitees and the Contractor, which indemnification shall offer no less protection to the Indemnitees than this Section 3.18 (which shall be deemed incorporated by reference into any such subcontract to the extent necessary to achieve this result).

§ 3.18.3 After the Owner has tendered a claim to Contractor that falls within the scope of the indemnity set forth in Section 3.18.1, the Contractor shall bear any and all reasonable expense because of any Indemnified Claim, including without limitation, attorneys' and consultants' fees and expenses, court costs, and costs related to the defense of, or preparing for the defense against, any such Indemnified Claim.

§ 3.18.4 [INTENTIONALLY OMITTED].

§ 3.18.5 [INTENTIONALLY OMITTED].

§ 3.18.6 No performance bond or insurance protection required by the Contract Documents, or otherwise provided by the Contractor or any Subcontractor, shall in any way limit the responsibility to indemnify and hold harmless the Indemnitees as herein provided.

§ 3.18.7 [INTENTIONALLY OMITTED].

§ 3.19 LIENS

In the event that any Subcontractor, Sub-subcontractor, supplier, design professional or any other party of any tier for whom the Contractor is responsible establishes a lien against the Project and/or the Project site, the Contractor shall, within five business days of receipt of notice from the Owner regarding such lien, cause the lien to be discharged (either by obtaining and recording a lien discharge bond from a surety and in a form acceptable to the Owner or otherwise) at no cost to the Owner, except to the extent that any such lien is attributable to Owner's failure to pay undisputed amounts as and when due under the Contract Documents (other than amounts for which withholding is permitted under the Contract Documents). The Owner shall have the right to withhold all further payments to the Contractor until the lien is discharged. The Owner may either (a) apply amounts so withheld to discharging such lien or (b) retain such amounts until such lien is discharged or released by the Contractor or the lienor, and shall thereafter credit to the Contractor any amounts remaining after payment of the fees and expenses the Owner incurs in connection with such lien. The Contractor agrees to indemnify, defend and hold harmless the Owner from all claims and all costs and expenses incurred by the Owner in connection with such liens, except to the extent that any such lien is attributable to Owner's failure to pay undisputed amounts as and when due under the Contract Documents (other than amounts for which withholding is permitted under the Contract Documents). Provided, however, in no event shall Contractor's obligations under this section apply to liens arising from payment disputes which are the subject of a Claim submitted by Contractor in accordance with Section 15.1 of the General Conditions.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Architect is the person or entity designated by the Owner and, except as provided in the following sentence, identified as the Architect in the Agreement. The Owner reserves the right to substitute for the Architect designated in the Agreement (as provided in Section 4.1.3). The Architect is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect, the Architect's authorized consultants or the Architect's authorized representative.

§ 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.

§ 4.1.3 If the employment of the Architect is terminated with respect to all or any part of the Project, the Owner shall appoint a successor party whose status under the Contract Documents shall be that of the former Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents. 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, on behalf of the Owner, will visit the site at intervals appropriate to the stage of construction (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion

of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed 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 report to the Owner (1) known deviations from the Contract Documents and from the most recent Construction Schedule submitted by the Contractor and approved by the Owner, and (2) defects and deficiencies observed in the Work. Neither the Owner nor the Architect will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Owner nor the Architect will have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

The Owner and the Contractor may communicate directly with each other about matters arising out of or relating to the Contract, and the Owner and the Contractor shall endeavor to promptly inform the Architect of any such direct communications to the extent such communications are relevant to the performance by the Architect of the Architect's services. Communications by the Contractor with the Architect's consultants shall be through the Architect (except as, and to the extent, otherwise approved in advance by the Architect and the Owner). Communications by the Architect with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner's Representative.

§ 4.2.5 Based on the Architect's observations and the representations of the Contractor made in 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 recommend to the Owner rejection of Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to recommend that the Owner require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 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 with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review, but in any event in accordance with any time periods specified in any approved Submittal Schedule or other agreements between the Architect and the Owner and/or Contractor. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will review proposed Change Orders prepared by the Contractor, prepare Construction Change Directives, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or Guaranteed Maximum Price, as applicable, or an extension of the Contract Time 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 on-site inspections to determine its belief as to the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of any such project representatives shall be as agreed by the Owner and the Architect. Alternatively, or in addition to engaging the Architect to provide one or more project representatives, the Owner may employ a clerk of the works or similar representative for the Project, in which case the Owner shall, following written request of the Contractor, provide the Contractor with a written statement of the duties, responsibilities and limitations of authority of such clerk of the works. Except as expressly set forth in such a written statement signed by the Owner, the clerk of the works shall have no authority to approve Work, to approve changes, or to exercise any of the power and authority of the Owner or the Architect.

§ 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. If no agreement is made concerning the time within which interpretations or responses to submittals required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations or responses until ten (10) business days after written request is made for them, and not then unless the Contractor shows that the Architect's delay has materially interfered with the progress of the Work. If the Contractor believes that the Architect is not providing timely responses to the Contractor's requests for interpretations or submittals, the Contractor shall promptly inform the Owner so that the Owner can investigate and follow-up with the Architect.

§ 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 As between the Architect and the Contractor, the Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents; however, the Owner's decision on matters relating to such matters shall control over decisions of the Architect.

§ 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 no agreement is made concerning the time within which the Architect's response to requests for information shall be furnished, then delay shall not be recognized on account of failure by the Architect to furnish such information until ten (10) business days after written request is made, and not then unless the Contractor shows that the Architect's delay has materially interfered with the progress of the Work. If deemed appropriate by the Architect, the Architect may prepare and issue supplemental Drawings, Specifications and/or instructions, in response to the requests for information or otherwise, indicating in greater detail the construction or design of the various parts of the Work. Such supplemental Drawings, Specifications or instructions may be effected by field order or other notice to the Contractor, and the Work shall be executed in accordance with such supplemental Drawings, Specifications or instructions. If the Contractor claims additional cost or time on account of such supplemental Drawings, Specifications or instructions, the Contractor shall give the notice and provide a Proposed Change Order prior to initiating a claim under Sections 15.1.4 or 15.1.5. Such supplemental Drawings, Specifications or instructions shall also be subject to the requirements of Section 7.1.4.

ARTICLE 5 SUBCONTRACTORS**§ 5.1 DEFINITIONS**

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

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

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

§ 5.2.1 The Contractor shall comply with all provisions of the Contract Documents relating to the solicitation and award of subcontracts (including, without limitation, any provisions of the Agreement addressing competitive bids and trade Work performed or proposed by the Contractor to be performed by the Contractor or any party affiliated with the Contractor or holder of a beneficial interest in Contractor). Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract (and in any event not later than thirty days after the execution of the Agreement or as otherwise provided in a bid schedule approved by the Owner in writing), shall furnish in writing to the Owner and the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work (to the extent not already done at the time the Agreement is executed). Failure to object to a subcontractor, manufacturer or supplier shall not constitute a waiver of any of the requirements of the Contract Documents, and all products furnished by the Contractor must fully conform with all such requirements.

§ 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 objects to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work and of complying with bonding, insurance and other applicable requirements under the Contract Documents, and the Owner without cause or justification requires that another bid be accepted, the Contract Sum or Guaranteed Maximum Price, as applicable, 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.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected and approved by Owner without the Owner’s consent.

§ 5.2.5 All portions of the Work that the Contractor’s organization does not perform with its own personnel or any related party (as and to the extent permitted under Section 7.1.2 and Article 10 of the Agreement) shall be performed under Subcontracts or by other appropriate agreements with Contractor. Prior to awarding a portion of the Work to any proposed Subcontractor, Contractor shall deliver to Owner a copy of any proposed Subcontractor’s bid and comply with all other applicable bidding requirements contained in the Contract Documents, including without limitation Section 7.1.2 and Article 10 of the Agreement. All Subcontracts shall conform to the requirements of the Contract Documents. The Contractor shall deliver to Owner copies of all Subcontracts both prior to and following their execution. At any time and from time to time at the request of the Owner, either before or after any termination of the Contractor’s services, the Contractor shall deliver true, correct and complete copies of all Subcontracts and supply agreements to the Owner or the Owner’s designee.

§ 5.2.6 The Contractor shall provide the Owner (from time to time, but no less frequently than monthly with each Application for Payment, and at the time of Substantial Completion or the Work a cumulative list of all

Subcontractors, lower tier subcontractors, and every person who has given the Contractor notice that such party is furnishing of labor, materials, rental equipment, appliances and/or tools to the Project.

§ 5.2.7 The form of each subcontract shall be the Contractor's standard form subcontract, a copy of which is attached as **Exhibit 3** of the Agreement, as qualified by Section 5.3. Each subcontract shall expressly provide for the contingent assignment referred to in Section 5.4.1. By entering into a subcontract for any portion of the Work, a Subcontractor shall be deemed to have irrevocably agreed to the contingent assignment referred to in Section 5.4.1.

§ 5.2.8 At any time and from time to time at the request of the Owner, either before or after any termination of the Contractor's services, the Contractor shall deliver true, correct and complete copies of all subcontracts and supply agreements to the Owner or the Owner's designee.

§ 5.3 SUBCONTRACTUAL RELATIONS

By written agreement complying with the requirements of Section 5.2.7 and this Section 5.3, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, . The Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Each subcontract agreement shall state (and, by entering into a subcontract for any portion of the Work, a Subcontractor shall be deemed to have irrevocably agreed) that: (a) the Subcontractor agrees that (i) the Contractor's rights under the subcontract agreement may be assigned to the Owner, subject to the conditions of Section 5.4.1 of these General Conditions, and (ii) the Subcontractor's services may be terminated by the Contractor without penalty or premium if the Contractor's services are terminated; and (b) the Subcontractor shall be required to perform all of its Work in accordance with applicable Laws without any adjustment to the subcontract amount or time for performance. Each such subcontract shall also, where the context so requires, contain provisions that: (1) require Work to be performed in accordance with the requirements of the Contract Documents; (2) waive all rights the contracting parties may have against one another or that the Subcontractor may have against the Owner for damages caused by fire or other perils or losses covered by the insurance described in the Contract Documents (and require their respective insurers to waive rights of subrogation against the Owner or any of the other Indemnitees, Contractor and Subcontractors); (3) require the Subcontractor to carry and maintain insurance coverage in accordance with the Contract Documents, and to file certificates of such coverage with the Contractor; (4) require the Subcontractor to submit certificates and waivers of claims and liens for Work completed by it and by its lower tier subcontractors as a condition to the disbursement of the progress payment next due and owing; (5) require submission to Contractor or Subcontractor, as the case may be, of applications for payment in a form approved by the Owner, together with clearly defined invoices and billings supporting all such applications under each subcontract to which the Contractor is a party; (6) report, so far as practicable, unit prices and other feasible formula for use in the determination of costs of changes in the Work; (7) require each Subcontractor to furnish to the Contractor in a timely fashion all information necessary for the preparation and submission of the reports required by the Contract Documents; (8) at Owner's option, require that each Subcontractor continue to perform under its subcontract in the event the Contract is terminated and the Owner requests such Subcontractor to continue such performance;; (9. By entering into a subcontract for any portion of the Work, a Subcontractor shall be deemed to have irrevocably agreed to the provisions of this paragraph.

§ 5.3.1 Any specific requirement in the Contract Documents that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis only; all such obligations shall apply to each Subcontractor to the extent applicable to the Subcontractor's Work. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

§ 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 Contractor's services and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

The Owner may, in lieu of taking an assignment of any subcontract in its own name, instead direct that a subcontract be assigned to, and assumed by, a replacement contractor or construction manager designated by the Owner. Upon the effectiveness of any such assignment of a subcontract agreement, the Owner or such designee assumes the Contractor's rights under the subcontract and obligations of the Contractor under the subcontract, excepting any obligations for which Owner has paid Contractor and excepting any non-payment obligations that arose prior to such effectiveness. Except as set forth in the prior sentence, the Owner or other assignee shall have no liability to any Subcontractor under an assigned subcontract for obligations arising prior to the effectiveness of the acceptance of any such assignment by the Owner or its designee.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 60 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

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

§ 5.5 SUBCONTRACT SUPERVISION

The Contractor will require each Subcontractor to employ a competent superintendent or trade foreman who shall be in attendance at the Project site during the progress of such Subcontractor's Work.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.1.1 Notwithstanding anything to the contrary, the Owner shall have the right to install fixed and loose furniture, furnishings, fixtures, data communications lines, equipment and other items during the Contractor's performance of the Work or portion(s) thereof. The Owner and the Contractor shall cooperate in scheduling and coordinating any such activities by or on behalf of the Owner. Any such installation or activities by or on behalf of the Owner shall not be deemed as acceptance, occupancy or use of any part of any Work not completed in accordance with the Contract Documents.

§ 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 other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 When the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, Owner shall use commercially reasonable efforts to include in its written agreements

with its Separate Contractors the same obligations and rights that the Contractor has under the General Conditions of the Contract. Any separate contractors engaged by the Owner to perform construction activities at the Project site prior to Substantial Completion of the Work shall be directed to comply with any uniformly applied safety and access requirements adopted by the Contractor and generally applicable to the Contractor's Subcontractors performing Work at the Project site.

§ 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and the Owner in writing apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to report discrepancies or defects Contractor discovered (or should have discovered in the exercise of Professional Efforts) shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and/or 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 allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

§ 7.1.2 A Change Order shall be based upon agreement among the Owner and Contractor; a Construction Change Directive requires agreement by the Owner 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 (with the approval of the Owner) alone.

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

§ 7.1.4 Subsequent to execution of the Agreement, the Architect may issue additional answers to RFIs, Drawings and Specifications for portions of the Work, supplemental instructions, sketches and other materials intended to further define, clarify or modify the Drawings and Specifications existing as of the date of the Agreement and/or provide details regarding the construction or design of various parts of the Work (collectively, the "Supplemental Drawings and Specifications"). The Architect may also, but shall have no obligation to, request that the Contractor submit a proposal, called a Change Estimate, with regard to the amount of the adjustment (if any) of the Contract Sum or the Guaranteed Maximum Price, as applicable, and the extent of the adjustment (if any) in the Construction Schedule and/or Contract Time attributable to the Supplemental Drawings and Specifications.

§ 7.1.4.1 The Contractor shall review all Supplemental Drawings and Specifications in detail and shall, within twenty-one (21) days of receiving any Supplemental Drawings and Specifications, notify the Owner and the

Architect in writing of any error, inconsistency or discrepancy that the Contractor discovers between the Supplemental Drawings and Specifications and the Drawings and Specifications listed in the Agreement. Within such twenty-one (21) day period the Contractor shall also notify the Owner in writing of any item which, in the Contractor's opinion, represents a Scope Change, as defined in Section 7.1.4.2 below, setting forth, with particularity, the reasons the Contractor contends such item represents a Scope Change (such notice shall constitute a "Scope Change Request"). The Contractor shall not be permitted to claim any adjustment in the Contract Sum or Guaranteed Maximum Price, as applicable, Construction Schedule and/or Contract Time, as applicable, in connection with any Supplemental Drawings and Specifications unless the Work described in such Supplemental Drawings and Specifications constitutes a Scope Change. A Scope Change Request shall set forth the Contractor's preliminary estimates of the increased costs and the impacts on the Construction Schedule, if any, that the Contractor attributes to the Work covered by such Scope Change Request. Failure of the Contractor to notify the Owner of any item the Contractor considers a Scope Change within twenty-one (21) days after the date of receipt by the Contractor of Supplemental Drawings and Specifications is hereby deemed to mean: (1) such Supplemental Drawings and Specifications are consistent with the Drawings and Specifications listed in the Agreement; (2) no Scope Changes exist; and (3) the Contractor is willing and able to perform all of the Work without increase in the Contract Sum or the Guaranteed Maximum Price, as applicable, or the Contract Time and in accordance with all the requirements of the Contract Documents. The Contractor shall also, within twenty-one (21) days of receipt of any Supplemental Drawings and Specifications that contain an item or items the Contractor considers to require a Scope Change (unless the Owner consents in writing to allow the Contractor additional time therefor, which consent shall not be unreasonably withheld), prepare and provide to the Owner a detailed breakdown of the proposed increase in the Contract Sum or Guaranteed Maximum Price, as applicable, and the proposed changes to the Construction Schedule and Milestone Dates, if any, related to such alleged Scope Change.

§ 7.1.4.2 A "Scope Change" is hereby deemed to mean Work described in the Supplemental Drawings and Specifications or otherwise constituting a material change in the quantity, quality, programmatic requirements or other deviation from the then existing Drawings and Specifications forming a part of the Contract Documents, as qualified or otherwise affected by the Qualifications and Assumptions (if any).

§ 7.1.4.3 If the Contractor timely submits a Scope Change Request or a Change Estimate to the Owner in accordance with the requirements of Section 7.1.4.1, the Architect will review the Contractor's response to the Supplemental Drawings and Specifications and provide the Owner with recommendations for approval or disapproval, and the Owner shall have one or more of the following options:

(a) The Owner may direct the Architect to modify that aspect of the Supplemental Drawings and Specifications to which the Contractor objects. The Contractor shall cooperate with the Owner and the Architect during the modification effort and shall make recommendations appropriate to correct such portions of the Supplemental Drawings and Specifications. The Architect shall submit to the Contractor the revised Supplemental Drawings and Specifications as approved by the Owner. The Contractor shall promptly reexamine such revised Supplemental Drawings and Specifications as described in Section 7.1.4.1;

(b) If, upon review of the Scope Change Request or Change Estimate, the Owner (after consultation with the Architect) believes that the portion of the Work described therein does not constitute a Scope Change, or disagrees as to the impact claimed by the Contractor to the Contract Sum or Guaranteed Maximum Price, as applicable, Construction Schedule and/or Contract Time, as applicable, the Owner may so advise the Contractor. If such disagreement is not promptly resolved, the Work subject to disagreement shall be identified in a schedule (the "Disputed Work Schedule"). Whenever possible, the Owner and the Contractor shall resolve items set forth in the Disputed Work Schedule confirming such resolution in Change Orders. Items in the Disputed Work Schedule that are not resolved by the Owner and the Contractor shall be subject to the dispute resolution procedures set forth in Article 15 of these General Conditions of the Contract. During the pendency of such dispute resolution procedures, all items remaining in the Disputed Work Schedule shall be performed by the Contractor after the Owner causes a Construction Change Directive to be issued for the performance of the Disputed Work as required by the Contract Documents and a tentative adjustment shall be made to the Contract Sum or Guaranteed Maximum Price, as applicable, in the amount of the undisputed portion of the Scope Change Request or Change Estimate. No adjustment shall be made to the Contract Sum or the Guaranteed Maximum Price, as applicable, for disputed portions of the Scope Change Request or Change Estimate. For each remaining item in the Disputed Work

Schedule, the Contractor shall keep a specific, detailed accounting of the time and materials required to complete such item. Adjustments to the Construction Schedule shall not be permitted on a tentative basis;

(c) If, upon review of the Scope Change Request or Change Estimate, the Owner agrees that all or a portion of the Work therein constitutes a Scope Change and upon the impact to the Contract Sum or Guaranteed Maximum Price, as applicable, Construction Schedule and/or Contract Time, as applicable, and the Owner elects not to direct the Architect to modify the Supplemental Drawings and Specifications, the Owner and the Contractor shall enter into a written Change Order providing for such agreed changes to the Contract Sum or Guaranteed Maximum Price, as applicable, Construction Schedule and/or Contract Time, as applicable.

§ 7.1.4.4 If requested, the Contractor shall meet with Owner and/or the Architect for negotiation with respect to any Scope Change Request or Change Estimate.

§ 7.1.4.5 The Owner shall have the right at any time to notify the Contractor if, in the Owner's opinion, any Supplemental Drawings and Specifications are grounds for a change in the Contract Sum or Guaranteed Maximum Price, as applicable, Construction Schedule and/or Contract Time, as applicable. Any disagreement between the Owner and the Contractor relating to such claim by the Owner that is not resolved by such parties shall be subject to the dispute resolution procedures set forth in Article 15 of these General Conditions of the Contract.

§ 7.1.5 If any change in the Work requires an adjustment to the Contract Sum or Guaranteed Maximum Price, as applicable, the adjustment shall be based on one of the following methods, as selected by the Owner: (a) by unit prices stated in the Contract Documents or otherwise mutually agreed upon; (b) agreed upon lump sum cost; or (c) by actual net increase or decrease in the Cost of the Work incurred or to be incurred by the Contractor as a result of such change, plus the applicable Percentage Markup (as hereinafter defined) applied to the net change in the Direct Cost of the Work (as hereinafter defined). Adjustments to amounts payable to Subcontractors and Sub-subcontractors for any change in the Work shall, if not based on agreed unit prices or lump sum cost, be based on the actual net increase or decrease in the Direct Cost of the Work (as hereinafter defined) incurred or to be incurred by the Subcontractor or Sub-subcontractor as a result of such change, plus the applicable Percentage Markup applied to the net change in the Direct Cost of the Work. For the avoidance of doubt, the Percentage Markup shall be applied to changes which reduce the Contract Sum or Guaranteed Maximum Price, as applicable, as well as to changes which increase the Contract Sum or Guaranteed Maximum Price, as applicable. Any adjustment to the Construction Schedule and/or Contract Time, as applicable, due to a change in the Work shall be based on the net increase or decrease (if any) in the time required to perform the Work attributable to the change. When, in the reasonable judgment of the Architect or the Owner, a series of Construction Change Directives or Change Orders effect a single change, (i) Percentage Markup shall be calculated on the cumulative net increase or decrease in the Direct Cost of the Work, if any, and (ii) the adjustment to the Construction Schedule and/or Contract Time, as applicable, shall be equal to the net increase or decrease (if any) in the time required to perform the Work attributable to the change.

As used herein, the term "Direct Cost of the Work" for any Subcontractor or Sub-subcontractor means the costs, and only the costs, listed in Section 7.3.7, excluding (i) wages, salaries and other costs of labor (including, without limitation, social security, old age and unemployment insurance, fringe benefits required by agreement or custom, workers' compensation insurance and other items customarily included in "labor burden") for supervisory personnel, (ii) administrative, or accounting costs, and (iii) general conditions, general requirements and all other indirect or overhead costs (compensation for the excluded items listed in clauses (i), (ii) and (iii), if any, is included in the applicable Percentage Markup).

As used herein, the term "Percentage Markup" means a markup for overhead, profit and any other expenses excluded from the Direct Cost of the Work for any change. The applicable Percentage Markup for the Contractor, Subcontractors and Sub-subcontractors shall be as follows, and subject to the aggregate limits in Section 5.1.3 of the Agreement:

- (a) Contractor: For Work performed directly by the Contractor's own forces or Work performed by first tier Subcontractors' own forces or Sub-subcontractors' forces, the Contractor's Percentage Markup shall be the corresponding amount specified in the Agreement.

- (b) Subcontractor (First Tier): For Work performed by the first tier Subcontractors' own forces or Work performed by a Sub-subcontractor, the first tier Subcontractor's Percentage Markup shall be the corresponding amount specified in the Agreement.
- (c) Sub-subcontractor: For Work performed by Sub-subcontractors, the Percentage Markup for the Sub-subcontractor directly performing the Work shall be the corresponding amount specified in the Agreement.

For the avoidance of doubt, the Owner shall have the right to receive backup to support the Direct Cost of the Work for Subcontractors or any tier.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument 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 or Guaranteed Maximum Price, as applicable; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Unless expressly reserved on the face thereof, an executed Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change, any adjustments to the Contract Sum or Guaranteed Maximum Price, as applicable, and any and all adjustments to the Construction Schedule, Contract Time and/or Milestone Dates.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Guaranteed Maximum Price, as applicable, 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 or Guaranteed Maximum Price, as applicable, and Contract Time being adjusted accordingly. Within ten (10) calendar days of receipt of a Construction Change Directive, the Contractor shall provide to the Owner and the Architect a proposal that sets forth the Contractor's estimates of the cost and/or schedule impacts related to the Construction Change Directive. Unless Contractor is directed to proceed in writing by Owner under a time and materials basis, within twenty (20) days of receipt of a Construction Change Directive, the Contractor shall provide to the Owner and Architect a final detailed breakdown of the cost and/or schedule impacts related to the Construction Change Directive.

§ 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 A Construction Change Directive may provide for a proposed adjustment to the Contract Sum or Guaranteed Maximum Price, as applicable, Construction Schedule and/or Contract Time, as applicable, or method for determining them. Unless otherwise provided, the adjustment shall be based on one of the methods specified in Section 7.1.5 as selected by the Owner.

§ 7.3.4 [INTENTIONALLY OMITTED].

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect and the Owner of the Contractor's agreement or disagreement with the proposed adjustment in the Contract Sum or Guaranteed Maximum Price, as applicable, Construction Schedule and/or Contract Time, as applicable. Upon receipt of a Construction Change Directive, the Contractor shall establish a separate accounting or cost code and otherwise implement accounting procedures sufficient to separately allocate and track all costs for such Construction Change Directive, cause all Subcontractors to similarly track their

costs on a time and materials basis, and provide weekly updates of all Cost of the Work items for such Construction Change Directive.

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

§ 7.3.7 Failure of the Contractor to notify the Owner of any disagreement with any proposed adjustment to the Contract Sum or Guaranteed Maximum Price, as applicable, Construction Schedule and/or Contract Time within ten (10) days after the date of receipt by the Contractor of such Construction Change Directive shall be deemed to be a disagreement by the Contractor to the proposed adjustment to the Contract Sum or Guaranteed Maximum Price, as applicable, Construction Schedule and/or Contract Time, as applicable. Any disagreement as to the determination of such items that is not resolved by the Owner and the Contractor shall be subject to the dispute resolution procedures set forth in Article 15 of these General Conditions of the Contract. Supplementing Section 7.1.5 above, costs for purposes of calculating Direct Cost of the Work for a change shall, with respect to any direct or lower tier subcontractor, be limited to the following items, and be further qualified pursuant to Section 7.1.5:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .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, Subcontractor Default Insurance, and insurance (all at the Billable Rates included in the Exhibit attached to the Agreement) permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel which would not be incurred but for the change at the Billable Rates included in the Exhibit attached to the Agreement.

§ 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 or Guaranteed Maximum Price, as applicable, shall be actual net cost plus the Percentage Markup thereon, as confirmed by the Owner. When both additions and credits covering related Work or substitutions are involved in a change, the Percentage Markup shall be figured on the basis of net increase or net decrease 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 Owner will make a preliminary determination of amounts payable under any such Construction Change Directive, for purposes of monthly certification for payment by the Architect. The Owner's preliminary 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 or Guaranteed Maximum Price, as applicable, and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate 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 has authority (subject to the approval of the Owner) to order minor changes in the Work not involving adjustment in the Contract Sum or Guaranteed Maximum Price, as applicable, or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly; however, 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 in writing within fourteen (14) days of Contractor's receipt of the written order.

§ 7.5 BACKUP FOR CHANGES, CHANGE ESTIMATES AND CHANGE ORDER REQUESTS

§ 7.5.1 Cost Proposal. Any cost proposal for changes in the Work submitted by or on behalf of the Contractor shall be itemized for the various components of Work and segregated by labor, material and equipment in a detailed format satisfactory to the Owner. Such format will include a material and labor quantity takeoff and related pricing information and extensions (by drawing, if applicable). The Contractor will furnish its itemized cost proposal and the similarly detailed proposals from Subcontractors or every tier involved in such change.

§ 7.5.2 Time and Material. Should the Owner elect to have the extra Work or change performed on a time and materials basis, and so notify the Contractor in writing, the Contractor, Subcontractor and lower tier subcontractors shall perform the Work in such manner. Records supporting the actual cost of the Work performed must be kept and forwarded to the Owner. Such records include, but are not limited to, material tickets for all actual material used, daily time sheets itemizing workmen's names and hours worked for all actual labor costs, and such other evidence as the Owner may reasonably request. Owner may require authentication of all time sheets and material tickets. If so requested, the failure to provide such authentication shall constitute a waiver of any rights to payment of the Contractor, Subcontractor or any lower tier subcontractor for the extra Work or change performed. Supplementing the foregoing, if the Owner elects to determine the Direct Cost of the Work for any change as provided in method (b) in the first paragraph of Section 7.1.5 or if the method of determining the Direct Cost of the Work has not been established before the Work is begun, the Contractor shall keep detailed daily records of labor and materials costs applicable to the Work. Daily time slips, showing the names of the trades' persons and the hours worked, for the change Work shall be submitted to the Owner or the Owner's designated representative for verification no later than the close of one business day following the day the applicable portion of the change Work is performed. All daily time slips shall bear the signature of the Contractor as well as the respective Subcontractors and Sub-subcontractors. Change Order requests without this backup will not be approved.

§ 7.5.3 Unit Prices. The Contractor, Subcontractor or lower tier subcontractor's proposal shall itemize the quantities of each item of Work for which there is an applicable unit price. The quantities must be itemized in relation to each specific contract drawing. If the Owner elects to determine the Direct Cost of the Work under Section 7.1.5 for any change by unit prices and the nature of the Work is such that its extent cannot readily be measured after the completion of such Work or any subsequent Work, the Contractor shall keep daily records, available at all times to the Owner and Architect for inspection, of the actual quantities of such Work put in place and delivery receipts or other adequate evidence, acceptable to the Owner and Architect, indicating the quantities of materials delivered to the site for use in such unit price Work, and distinguishing such from other similar material delivered for use in Work included in the base Contract Sum or Guaranteed Maximum Price, as applicable. If so required by the Owner or Architect, materials for use in unit price Work shall be adequately segregated from all other materials on the Project.

§ 7.6 PRIOR APPROVAL REQUIRED FOR EXTRA COMPENSATION OR EXTENSION OF TIME

Any changes undertaken without the Owner's authorization will not be recognized as a basis for a claim for extra cost at a later date. If the Contractor claims that any instructions or orders, whether oral, written, by drawings, or otherwise, involve extra cost or time, and such instructions or orders are not accompanied by a written acknowledgment by the Owner that extra payment will be made or time extended, the Contractor shall promptly so notify the Owner in writing and should not proceed with the Work until Contractor has received a further written order to proceed, except in cases of emergency affecting life or property. No claim for extra cost or time on account of such instructions shall be valid unless the Contractor has so notified the Owner, before proceeding, that Contractor claims extra cost and time and has received the further written order from the Owner's representative to proceed. IN NO EVENT SHALL THE CONTRACTOR RECEIVE ANY PAYMENT OR COMPENSATION WHICH WOULD CAUSE THE CONTRACT SUM OR GUARANTEED MAXIMUM PRICE, AS APPLICABLE, TO BE EXCEEDED NOR SHALL CONTRACTOR BE ENTITLED TO RECEIVE ANY COMPENSATION FOR EXTRA WORK WHETHER PARTIALLY OR FULLY COMPLETED OR SIMPLY PROPOSED, UNLESS SUCH ADDITIONAL WORK IS AUTHORIZED BY A WRITTEN CHANGE ORDER OR CONSTRUCTION CHANGE DIRECTIVE SIGNED BY THE APPROPRIATE PARTY OR PARTIES AS SET FORTH IN THIS CONTRACT. CONTRACTOR WAIVES THE RIGHT TO RECEIVE ANY ADDITIONAL COMPENSATION

FOR EXTRA WORK WHICH IS NOT AUTHORIZED BY CHANGE ORDER SIGNED BY THE APPROPRIATE PARTIES AS SET FORTH IN THIS CONTRACT OR CONSTRUCTION CHANGE DIRECTIVE SIGNED BY OWNER.

§ 7.7 PROPOSED CHANGE ORDER LOG

The Contractor shall maintain, and shall submit to the Owner each week, a Change Order log listing (i) all of the Contractor's proposed Change Orders, and (ii) with respect to each proposed Change Order, the date such proposed Change Order was submitted to the Owner and the status (*e.g.*, accepted, rejected, under review). The Contractor acknowledges and agrees that the parties will rely on the Change Order log to administer all of the Contractor's proposed Change Orders. Accordingly, notwithstanding anything to the contrary, any proposed Change Order that is omitted or removed from the Change Order log shall be deemed to have been rescinded and withdrawn by the Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

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

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

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

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 and the other provisions of the Contract Documents to be furnished by the Contractor and the Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the progress of the Work by any act or omission of the Owner, the Architect, Separate Contractor or anyone for whom the Owner is responsible, or any breach by the Owner of an affirmative contractual obligation benefitting the Contractor (excluding those acts or omissions taken in the exercise of rights under the Contract Documents), or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by concealed or unknown physical conditions encountered at the site (subject to Section 3.7.4 above), or by labor disputes not directed at the Contractor or a direct or lower tier subcontractor or anyone for whom the Contractor is responsible, fire, unusual delay in deliveries, abnormal adverse weather (subject to Section 8.3.5 below), unavoidable casualties or by other causes beyond the Contractor's control that the Owner reasonably determines may justify delay, then the Contract Time shall be adjusted by Construction Change Directive for such reasonable time as agreed to by the Contractor and the Owner (or, if not so agreed to, as resolved by dispute resolution pursuant to Article 15 of these General Conditions of the Contract); however, the Contractor shall be required to use diligent and commercially reasonable efforts to mitigate both the necessity of the delay and the period of the delay, so long as such efforts do not include incurring any cost by Contractor. The Contractor acknowledges and agrees that: (a) no adjustments to the Construction Schedule and/or Contract Time shall be made unless the events described above have the effect of delaying completion of components of Work on the critical path indicated in the Construction Schedule; and (b) adjustments to the Construction Schedule and/or Contract Time will be permitted in connection with any of the events described above only to the extent that the

delays resulting therefrom (1) are not caused, or could not have been avoided or mitigated (including, without limitation, by rescheduling or re-sequencing activities after the occurrence of the event causing delay), by the Contractor, (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay, and (3) have an impact of at least one (1) day. Any extension in the Construction Schedule and/or Contract Time shall be net of any "float" time included in the Construction Schedule, but Contractor's schedule contingency shall not be used to reduce or offset the delay caused by the events described in this section. Notwithstanding anything to the contrary, the Contractor shall not be entitled to any extension in the Contract Time for delays in receiving required licenses, permits, inspections or approvals which are the Contractor's responsibility under the Contract Documents unless such delay was caused by factors outside or beyond the Contractor's control.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15 and Section 8.3.3.

§ 8.3.3 The Contractor shall give written notice to the Architect and the Owner within fourteen (14) days after the time that the Contractor knows (or in the exercise of Professional Efforts should have known) any cause which will result (or has resulted) in delay for which the Contractor claims or intends to claim an extension of the Contract Time (including those causes which the Owner or the Architect is responsible for or has knowledge of). Such notice shall not be effective unless in writing given to both the Owner and the Architect. Any such written notice shall (i) explicitly state that an extension is claimed; (ii) state in detail the circumstances which form the basis of the delay; and (iii) describe as fully as practicable at the time the date of commencement and duration or expected duration of the delay and its effect on the various portions of the Work. The Contractor shall provide such supporting documentation as the Owner or Architect may require, including, where appropriate, a revised schedule for construction indicating all of the activities affected by the circumstances which form the basis for the claim. The submission of such written notice within the time period provided above shall be a condition precedent to any extension of the Contract Time; otherwise, the claim shall be waived. If the Contractor fails to notify the Owner and the Architect in writing of any claims relating to time within the time period required by this Section 8.3.3, the Contractor shall be barred from asserting any claim for an extension in the Contract Time or for compensation, expense or damages with respect to such delay. For the avoidance of doubt, the Contractor shall bear the burden of proof to support any requested extension of the Contract Time.

§ 8.3.4 No claim for delay shall be allowed on account of failure of the Architect to furnish Drawings, Specifications or instructions or to return Shop Drawings or Samples until a reasonable period of time (but in any event not less than ten (10) business days or such longer period as may be agreed to among the Architect, the Contractor and the Owner) after receipt by the Architect of written request for such instructions, Drawings, Specifications, Shop Drawings or Samples, and not then unless the Contractor shows that the Architect's delay has materially interfered with the progress of the Work.

§ 8.3.5 Notwithstanding anything to the contrary in any of the Contract Documents, the Contractor acknowledges and agrees that no extension of time or additional compensation shall be granted on account of weather conditions except as provided for in this paragraph. A Claim by the Contractor for an increase in the Contract Time on account of weather shall only be granted if all the following conditions are met: (1) the weather during any calendar month (or pro rata portions of partial months at the beginning and end of the Contract Time) is "abnormal," as defined below; (2) the Contractor demonstrates that such abnormal weather had the effect of delaying completion of components of Work on the critical path indicated in the Construction Schedule; and (3) such Claim is made by written notice. "Abnormal weather" shall, for purposes of this paragraph, be limited to circumstances in which adverse weather conditions significantly exceed those which have historically been encountered, or may reasonably be expected to be encountered, at the Project site. Written notice of abnormal weather must be delivered by the Contractor to the Owner within three (3) business days following such abnormal weather delay (and if the Contractor fails to so deliver written notice of abnormal weather to the Owner within seven (7) days following such abnormal weather, the Contractor shall have no right to seek an extension of the Contract Time or an increase in the Contract Sum or Guaranteed Maximum Price, as applicable, on account of such abnormal weather).

§ 8.3.6 The Contractor hereby agrees that the Contractor shall have no claim for damages of any kind against the Owner or the Architect on account of any delay in the commencement of the Work and/or any hindrance, delay or suspension of any portion of the Work, whether such delay is caused by the Owner, the Architect, or otherwise,

unless the Owner is first given written notice by the Contractor of the circumstances causing hindrance, delay or suspension and a period of ten (10) business days from the date of such notice to cure such circumstances. If any of events described in this Section 8.3 of the General Conditions of the Contract or elsewhere in the Contract Documents entitle the Contractor to an extension of the Contract Time, the sole remedy of the Contractor shall be such extension of the Contract Time and the Contractor shall not be entitled to any adjustment of the Contract Sum or Guaranteed Maximum Price, as applicable, except as otherwise provided in the following sentence. If and to the extent that the Contract Time is extended on account of Compensable Delay Occurrences (as hereinafter defined) only, the Contract Sum or Guaranteed Maximum Price, as applicable, shall be increased by the Contractor's reasonable and verified additional costs of performing the Work to the extent directly and solely attributable to extensions of the Contract Time on account of Compensable Delay Occurrences. As used herein, the term "Compensable Delay Occurrences" means, and is limited to, permitted extensions of the Contract Time to the extent attributable to: (i) acts or omissions of the Owner or Architect or any breach by the Owner of an affirmative contractual obligation benefitting the Contractor (excluding those acts or omissions taken in the exercise of rights under the Contract Documents); (ii) changes in the physical improvements comprising the completed Work; and (iii) concealed or otherwise unknown physical conditions.

The Contractor's remedies under this Section 8.3.6 are the Contractor's sole remedy for any delay or resulting loss (including, without limitation (a) delay in the commencement, prosecution or completion of the Work, (b) hindrance, obstruction or suspension in the performance of the Work, (c) loss of productivity or (d) other similar delays and losses), whether or not foreseeable. Without limiting the generality of the foregoing, in no event shall the Contractor be entitled to any other compensation or recovery of damages with respect to any delay or resulting loss, including consequential damages, lost opportunity costs, impact damages or similar remuneration.

§ 8.3.7 The Owner and Contractor agree that it is the intent of the Contract Documents that the Contractor shall have responsibility to achieve Substantial Completion of the Work within the Contract Time with an adequate work force, irrespective of any labor dispute (other than those of general applicability not directed at the Work, the Contractor or anyone for whom the Contractor is responsible), including picketing at or near the Project site, whether or not the Contractor is the primary employer involved in the labor dispute or a neutral employer, and whether or not the Contractor has a collective bargaining relationship with the union(s) involved in the labor dispute. Notwithstanding anything to the contrary in any of the Contract Documents, the Contractor acknowledges and agrees that no extension of time shall be granted on account of a labor dispute (other than those of general applicability not directed at the Work, the Contractor or anyone for whom the Contractor is responsible).

§ 8.3.8 The remedies in this Section 8.3 represent the sole remedy of the Contractor for excusable delays and Compensable Delay Occurrences.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum or Guaranteed Maximum Price, as applicable, is stated in the Agreement and, including authorized adjustments, is the maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. If requested by Owner, the Contractor shall provide to the Owner, throughout the course of the Work, reports projecting the cash flow needs of the Contractor. This report shall be prepared and delivered monthly, projecting the anticipated needs for the balance of the Project.

§ 9.2 SCHEDULE OF VALUES

The initial schedule of values is attached as an exhibit or schedule to the Agreement. The schedule of values shall be revised if later found by the Architect or the Owner to be inaccurate. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. If required by the Owner, each line item in the schedule of values for a portion of the Work shall be exclusive of the Contractor's fee, general conditions, general requirements, contingency, insurance and bonds (in which case the proper share of the Contractor's fee, general conditions, general requirements, contingency, insurance and bonds for each item shall be listed in a separate line or column).

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 The Contractor shall submit to the Architect and the Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work as and when required by Article 12 of the Agreement. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Each Application for Payment shall be deemed to include a representation by the Contractor that to the best of the Contractor's knowledge, information and belief, except as expressly disclosed to the Owner in writing in such Application for Payment: (a) the Contractor has paid all amounts owed to its Subcontractors and suppliers for previous payment periods; (b) the Contractor has no knowledge that any party has filed or threatened to file a lien against the Project site; and (c) the Contractor has no knowledge of any basis on which it may assert a claim for an extension of the Contract Time or an increase in the Contract Sum or Guaranteed Maximum Price, as applicable.

§ 9.3.1.1 On all Applications for Payment the Contractor shall indicate the sums of money being requisitioned for payment of the Contractor's suppliers and Subcontractors for each subdivision of Work and shall include therewith a certificate of payment and release of lien in form approved by the Owner stating that all such money will be used to pay the named suppliers and Subcontractors as their interests may appear within five (5) business days after receipt of payment from the Owner. Prior to the next regular monthly payment, the Contractor shall provide unconditional lien releases from each of its Subcontractors which attest to the fact that they have received the previous month's payment from the Contractor.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to promptly pay a Subcontractor or material supplier within the time period specified in Section 9.6.2, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner in accordance with the provisions of Section 9.3.2.1, 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 subject to Owner's approval and 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, and shall be conditioned upon the Contractor's compliance with the requirements of Section 9.3.2.1.

§ 9.3.2.1 STORAGE OF MATERIALS OFF-SITE. The Contractor shall obtain prior written approval from the Owner to store materials to be incorporated in the Work, for which progress payments will be requested, at off-site locations. Any request for the Owner's approval shall also be submitted simultaneously to Architect. Any and all charges for stored materials, whether stored on-site or offsite, including insurance and all costs associated with Contractor's visits to off-site locations, shall be included within the Contract Sum or Guaranteed Maximum Price, as applicable. Any payment for stored materials, whether stored on-site or off-site, including insurance and all costs associated with Contractor's visits to offsite locations, shall be subject to the following conditions: (a) delivery of a bill of sale and/or other documentation satisfactory to the Owner transferring title to such materials to the Owner free and clear of any liens, encumbrances or security interests, (b) evidence that the location is properly secure, (c) proper proof of insurance and proof of satisfactory contractual arrangements for transportation to the site (if stored offsite), and (d) a certificate from the Contractor stating: (i) the name of the Contractor and/or Subcontractor leasing or owning the storage area (if stored offsite); (ii) the location of such storage space, including the storage area (*i.e.*, the entire premises or certain areas of a warehouse giving the number of floor or portions thereof), and a certification that the Contractor has visited such location, verified the storage of such material therein or thereon, and payment of all current storage charges; (iii) photographs of the stored materials with the name or the Owner and the Project affixed to the stored item(s); (iv) the date on which the material is first stored (if stored offsite); and (v) a detailed, itemized description, including quantities and value, of the materials stored. The Contractor shall furnish to the Owner, not less often than once per month with each Application for Payment, a current stored materials log which includes (1) a current inventory of all materials being stored at each on-site or offsite location (which includes all the information in clause (d) above), (2) a list of all stored materials for which the Contractor is currently

requesting payment, (3) a list of all stored materials for which payment has been previously made, (4) a list of all items previously stored offsite which have been moved to the Project site and (5) a list of all previously stored materials which have been incorporated into the Work (and are no longer stored on-site or offsite). The Contractor and all applicable Subcontractors shall mark each sealed carton or other item with the name of the Project and the Owner, and all materials stored off-site shall be segregated to the extent required by the Owner. The Contractor or applicable Subcontractor must, if requested by the Owner, execute a security agreement which, *inter alia*, (x) authorizes the Owner to file a UCC-1 Financing Statement with both the Secretary of State's Office where the Project is located and on the land records for the municipality or municipalities in which the Project is located and where the item or items are stored, (y) indicates that the Contractor or Subcontractor has received value in connection with the execution of the security agreement and (x) indicates that the Contractor or Subcontractor has rights in the collateral described in the security agreement and UCC-1 Financing Statement.

§ 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 receipt of payment by the Contractor, and all Work shall be free and clear of all liens, claims, security interests or encumbrances (hereinafter referred to in this Article 9 as "liens") to the extent Contractor has received payment from the Owner.

§ 9.3.4 Each Application for Payment shall be accompanied by a certificate from each Subcontractor stating that the Subcontractor has been paid all amounts due the Subcontractor on the basis of the previous payment to the Contractor, and that the Subcontractor has subsequently paid all monies that it has received from Contractor and that are owed to its Sub-subcontractors, suppliers, and vendors for Work performed on behalf of or material supplied to the Project, or else stating the amount not so paid and the reason for the discrepancy. In the event of any such discrepancy, the Contractor shall furnish the Contractor's own written explanation to the Owner through the Architect. Such waiver or certificate shall be in a form acceptable to the Owner and shall comply with the statutory form found in Section 38-1a-802, Utah Code Annotated 1953.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will review the Contractor's Application for Payment, and either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

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

§ 9.4.3 The provisions of the Contract Documents for action by the Architect in connection with reviewing and taking action upon the Contractor's Applications for Payment are solely for the benefit of the Owner, and no third party (including, without limitation, any direct or lower tier subcontractor, or any surety) shall have any Claim or right of action against the Owner, the Architect or any party acting on behalf of either the Owner or the Architect for waiving or misapplying such provisions.

§ 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. In the event the Architect determines to make such revised Certificate for Payment, the Architect shall also issue a written, itemized list of specific items for which it is withholding certification, the bases therefor and the specific dollar amounts withheld for each such item. 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 asserted or filed or reasonable evidence indicating probable assertion or filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum or Guaranteed Maximum Price;
- .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 retainage currently held by the Owner would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents;
- .8 amounts previously paid to the Contractor in excess of amounts properly due to the Contractor;
- .9 failure of the Contractor to comply with any of the Contractor's indemnification obligations as set forth in the Contract Documents;
- .10 failure of the Contractor to maintain the Project site in a clean and safe condition;
- .11 failure of the Contractor to meet any other monetary obligation imposed upon it pursuant to the Contract Documents; or
- .12 the expiration, withdrawal or threatened withdrawal prior to completion of any licenses, permits or approvals reasonably required to perform the Work due to the breach, fault or neglect of the Contractor, a direct or lower-tier subcontractor, or anyone else for whom the Contractor is responsible.

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

§ 9.5.3 If the Owner determines that any of the reasons for withholding a Certificate for Payment or nullifying any previously issued Certificate for Payment described in Section 9.5.1 exist, the Owner may (without action by the Architect) withhold payment to the extent as may be necessary in the Owner's opinion to protect itself from loss for which the Contractor is responsible; provided, however, that the Owner provides notice to the Contractor of the reason(s) for such withholding. When the reasons for withholding are removed, payment will be made for amounts previously withheld.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment and the Owner has approved it, the Owner shall make payment in the manner and within the time provided in the Contract Documents, including Section 12 of the Agreement.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than five (5) business days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Owner, after giving the Contractor appropriate notice, may make payments on account of labor, materials and/or equipment for the Work by joint check to Contractor and to the Subcontractors, Sub-subcontractors or parties entitled to the same in lieu of paying the Contractor. Any amounts so paid shall be credited against the Contract Sum. No such joint payment pursuant to this Section or any other provision of the Contract Documents shall create any relationship between the recipient thereof and the Owner, nor any duty on the part of the Owner. The Contractor shall cooperate with the Owner to facilitate any such joint payments and shall provide such evidence as the Owner may request for purposes of determining any amount to be so paid.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence when requested, the Owner, without limiting any other rights or remedies available to the Owner under the Contract Documents or otherwise, shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, lower tier subcontractor or material supplier.

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

§ 9.6.6 A Certificate for Payment, a progress payment, final 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 Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be promptly paid by the Contractor to those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner.

§ 9.7 FAILURE OF PAYMENT

If the Owner does not pay the Contractor within ten (10) days after the date established in the Contract Documents the amount certified by the Architect (as approved or modified by the Owner, and subject to the Owner's rights under Section 9.5.4) or finally awarded by binding dispute resolution pursuant to Article 15 of these General Conditions of the Contract (following expiration of any available appeal periods), then the Contractor may, upon seven (7) additional days' written notice to the Owner and Architect (during which the Owner fails to cure the default by paying such amounts to the Contractor), stop the Work until payment of the amount owing has been received; provided that, Contractor shall have no right to stop the Work if Contractor is paid for all undisputed Work, and if so paid, Contractor shall proceed with the performance of its obligations under the Contract Documents with reservation of all rights and remedies it may have at law or in equity with respect to the disputed Work. The Contract Time shall be extended appropriately and the Contract Sum or Guaranteed Maximum Price, as applicable, shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, which shall be determined in accordance with Article 7.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion of the Work shall be achieved when (a) the Work is sufficiently complete in accordance with the Contract Documents so that the Owner and all intended users can commence beneficial use and occupancy of the Project as intended, (b) all Project systems included in the Work are operational as designed and specified, (c) all designated or required governmental inspections have been successfully completed (including, without limitation, all trade inspections, final Fire Marshall inspection, final building inspection, Health Department inspection (if applicable)), and certificates of occupancy have been obtained, in each case to the extent required to occupy and use the Project for its intended use, (d) all final finishes required by the Contract Documents are in place except for minor Punchlist items which do not materially detract from the utility of the Work as intended (the completion or correction of which does shall not interfere in any material respect with the beneficial use and occupancy of the Project as intended), (e) INTENTIONALLY DELETED, (f) all remaining Work is reasonably estimated to be completed within thirty (30) consecutive calendar days (or as otherwise agreed to by the Owner) following the date of Substantial Completion of the Work. In general, the only remaining Work shall be minor in nature, so that the Owner could occupy the Project on the date of Substantial Completion and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's use and occupancy of the Project as intended. As a further condition of Substantial Completion, the Contractor shall certify that all remaining Work will

be completed within thirty (30) consecutive calendar days following the Date of Substantial Completion or as otherwise agreed in writing by the Owner.

§ 9.8.1.1 Supplementing Section 9.8.1 above, acceptance of a temporary certificate of occupancy for Substantial Completion of the Work shall be subject to Owner's reasonable discretion based on a determination by the Owner that such temporary certificate of occupancy (a) lawfully allows the Owner and all intended users full beneficial use and occupancy of the Project for all purposes as intended and (b) includes no unacceptable conditions, qualifications or limitations (including any which may impose a future risk of interfering with the continued lawful full beneficial use and occupancy of the Project for all purposes as intended).

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof designated in the Contract Documents for separate completion, is substantially complete and the premises comply with Section 3.15.1, the Contractor shall prepare and submit to the Architect (a) a comprehensive list of items to be completed or corrected together with the estimated value of completing or correcting such item (as approved or modified by the Architect and accepted by the Owner, the "Punchlist"). The Architect shall have the right to modify and supplement the list of items on the Punchlist and to modify or, for items added by the Architect, establish, the estimated value of completing or correcting such items. The Contractor shall proceed promptly to complete and/or correct all items on the Punchlist. The failure to include any items on the Punchlist 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 inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents to satisfy the conditions for Substantial Completion of the Work, 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 the date of Substantial Completion of the Work.

§ 9.8.4 When the Work or designated portion thereof satisfies the requirements for Substantial Completion of the Work, the Architect will prepare a Certificate of Substantial Completion that shall establish Architect's certification as to the date of Substantial Completion of the Work, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the Punchlist. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work as a whole, unless otherwise provided in the Certificate of Substantial Completion, except that warranties on subsequently completed items shall commence on the date that such items are completed and accepted by the Owner.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

§ 9.8.6 The Contractor shall, from time to time as requested by the Architect or the Owner, but no less frequently than weekly, prepare and deliver to the Owner and the Architect a written Punchlist completion status report showing (a) each of the Punchlist items and (b) the status of each (e.g., completed but awaiting inspection, completed and accepted, not yet commenced, commenced with percentage complete and estimated date of completion) with narrative supplemental notes as appropriate. If the Contractor has not completed the Punchlist items on or before the date that is thirty (30) calendar days (or as otherwise agreed) from the date of Substantial Completion of the Work due to circumstances within the Contractor's control, the Contractor agrees to reimburse the Owner for costs incurred to re-inspect and verify the completion of the Punchlist items, including, but not limited to, the costs of travel and the Architect's, Owner's project manager's and consultants' fees. The Owner shall have the right to deduct such costs from the retainage and/or any other amounts held by the Owner pending disbursement to the Contractor.

§ 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 that the respective responsibilities of the Owner and Contractor with respect to payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work, insurance, correction of the Work, and warranties have been established by agreement of the Owner and Contractor or, absent such agreement, have been determined by the Owner subject to the right of either party to contest such determination in accordance with Article 15.

§ 9.9.2 Immediately prior to such partial occupancy or use, the 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. Owner may elect to participate in such inspection.

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions 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 and the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) waivers of liens, in the form provided by the Owner, from the Contractor and all Subcontractors and suppliers who performed portions of the Work or supplied materials or equipment in connection with the Work, (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, (7) to the extent that final certificate(s) of occupancy for the Project and the certificates of inspection and operating permits and certificates described in Section 13.5.4 are required by governmental authorities to use and occupy the Project as intended, and to the extent that such items were not delivered to the Owner as a condition to Substantial Completion of the Work, the final certificate(s) of occupancy for the Project and the certificates of inspection and operating permits described in Section 13.5.4, (8) the As-Built Documents in paper (two (2) sets) and editable electronic (one (1) set) format in accordance with Section 3.11, (9) all special warranties required by the Contract Documents, endorsed by the Contractor and in a form reasonably acceptable to the Architect and the Owner, (10) all Operating Manuals in accordance with Sections 3.11 and 9.8.1 to the extent that such items were not delivered to the Architect and the Owner as a condition to Substantial Completion of the Work, (11) all documentation required to be compiled by the Contractor in order to obtain the Owner's desired level of LEED certification for the Project, and (12) the Contractor has (i) installed all valve tags and labeled all MEP systems, (ii) delivered complete sets of all Operating Manuals, which have been approved by the Architect and accepted by the Owner in accordance with Section 3.11.6, to the Owner (two (2) tangible sets and one (1) electronic digitized searchable set) and the Architect (one (1) tangible set and one (1) electronic digitized searchable set), (iii) provided the Owner's property management and operations personnel with training in the operation and maintenance of building systems and controls installed as part of the Work, (iv) delivered to the Owner the written certification of the Contractor's engineer or registered land surveyor as to the actual location of the constructed facilities in relation to property lines, building lines, easements, and other restrictive boundaries referenced in Section 3.9.7, and (v)

delivered or provided any other items required by the Contract Documents as a condition precedent to Substantial Completion of the Work (regardless of whether any such item in this Section is also listed as a condition precedent to final payment in Section 9.10). All of the foregoing items shall be submitted to the Owner in a single binder (the "Project Binder"), and the Contractor shall submit two (2) hard copies of the Project Binder to the Owner and one (1) hard copy of the Project Binder to the Architect. The Contractor shall also provide to the Owner and the Architect fully-searchable and editable electronic versions of the Project Binder in .pdf format and otherwise acceptable to the Owner and the Architect. As additional conditions to be satisfied prior to final payment, the Contractor's personnel or Subcontractors' or suppliers' personnel, as appropriate, shall provide the property management and operations personnel at the Property with training in the operation and maintenance of building systems and controls installed as part of the Work. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and 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 [INTENTIONALLY OMITTED].

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee in writing delivered to the Owner as unsettled at the time of, and submitted with, the 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 required by law, the Contract Documents or as reasonably requested by the Owner in connection with the performance of the Contract. Neither the Owner nor the Architect shall be liable to the Contractor, the Subcontractors, the lower tier subcontractors, their employees or anyone else with respect to the conditions of the premises where Work under the Contract is performed.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; 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.

In the event of any damage, injury or loss to persons or property, the Contractor shall (a) comply with all reporting requirements under OSHA and other applicable Laws and (b) promptly report such incident to the Owner and the Architect in writing.

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

§ 10.2.2.1 The Contractor shall, and shall cause all direct and lower tier subcontractors to, comply with applicable provisions of the Federal Occupational Safety and Health Act and all regulations promulgated thereunder (collectively, “OSHA”), and all other laws, ordinances, rules, regulations, and orders of any Federal, State, or local public authority having jurisdiction for the safety of persons or property, including but not limited to the local Fire Department and Board of Health.

§ 10.2.2.2 The Contractor shall comply with regulations, conditions, or instructions affecting the performance of the Work issued by the Federal Environmental Protection Agency, the Department of Environmental Protection, or any other Federal, State or local public authority having jurisdiction to abate or prevent pollution, including water pollution, air pollution, land pollution and/or other health or safety hazards.

§ 10.2.2.3 The Contractor shall be directly responsible for compliance therewith on the part of its agents, employees, Subcontractors, Sub-subcontractors and materialmen and shall indemnify, defend and hold harmless the Indemnitees for all citations, assessments, fines or penalties which may be incurred by reason of the failure of its agents, employees, materialmen, Subcontractors or Sub-subcontractors to so comply.

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

§ 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 and in accordance with all Federal, State or local regulations, and shall provide the Owner with advance notice of its intent to perform such operations.

§ 10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 to the extent caused 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, and excepting damage or loss attributable to casualty events covered by the builder’s risk/property insurance required by Article 11 of these General Conditions, 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. 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, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery; The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 The Contractor shall provide and maintain in good operating condition suitable and adequate fire protection equipment and services, and shall comply with all reasonable recommendations regarding fire protection made by the representatives of the fire insurance company carrying insurance on the Work or by the local fire chief or fire

marshal. The area within the site limits, including all storage areas, shall be kept orderly and clean, and all combustible rubbish shall be promptly removed from the site.

§ 10.2.10 The Contractor is responsible for maintaining the area within the site limits free of all debris and food-related trash that may harbor and/or attract rodents. The Contractor shall provide secure refuse containers for all food-related trash. The containers shall be heavy-duty refuse containers with tight-fitting domed lids, with a spring loaded flap, and no openings that allow access by rodents. The Contractor shall notify the Owner immediately whenever rodents or signs of rodents (e.g., burrows, droppings) are observed.

§ 10.2.11 The Contractor shall at all times, in the exercise of Professional Efforts, protect excavations, trenches, buildings and materials, from rain water, ground water, backup or leakage of sewers, drains and other piping, and from water of any other origin and shall remove promptly any accumulation of water. The Contractor shall provide and operate all pumps, piping and other equipment necessary to this end.

§ 10.2.12 The Contractor shall remove snow and ice which might result in injury, damage or delay.

§ 10.2.13 During the progress of the Work and at all times prior to the date of Substantial Completion or occupancy of the Work by the Owner, whichever is earlier, the Contractor shall provide temporary heat, ventilation, and enclosure adequate to permit the Work to proceed in a timely fashion, and to prevent damage to completed Work or Work in progress, or to materials stored at the premises. The permanent heating and ventilation systems may be used for these purposes when available unless otherwise provided for in the Contract Documents; provided, however, that (a) the prior written approval of the Owner is obtained, (b) if the Contractor so uses the permanent heating and ventilation systems, such systems shall be (i) used, serviced and maintained in accordance with any applicable Specifications or plan approved by the Owner and otherwise pursuant to requirements imposed by the Owner, (ii) cleaned, and all filters and any other parts and equipment that normally require periodic maintenance and replacement shall be replaced, so that the systems are left in "like new" condition at Substantial Completion of the Work, and (iii) used at the sole cost, risk and responsibility of the Contractor, and (c) no such use by the Contractor shall cause any warranty or correction periods to commence prior to Substantial Completion of the Work.

§ 10.2.14 The Contractor shall take reasonable precautions to prevent loss or damage caused by vandalism, theft, burglary, pilferage or unexplained disappearance of property of the Owner, whether or not forming part of the Work, located within those areas of the Project to which the Contractor has access.

§ 10.2.15 The Contractor shall broom clean the Project at least once a week, and more often if necessary. The Contractor shall erect and maintain barriers to prevent dust, dirt, odor, noise, smoke and other forms of construction generated irritants from (a) entering any existing or completed structures or (b) interrupting the normal operations of the occupants. If certain Work required by the Project may cause vibrations, noise or other interruption of service or access by the occupants so as to require special scheduling, the Contractor will identify this Work early enough before commencing such Work to allow coordination with the occupants so as not to interrupt their normal work. No dirt or debris of any kind will be closed up inside walls or chases.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. Subject to the provisions of Section 10.3.7, if the Contractor encounters a hazardous material or substance on the site not addressed in the Contract Documents including but not limited to asbestos, polychlorinated biphenyl (PCB), oil, lead paint, silica dust, or other pollutants, hazardous materials or contaminants (collectively, "Hazardous Materials"), the Contractor shall immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. If in fact the material is a Hazardous Material and it has not been rendered harmless, the Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor. If the material is not a Hazardous Material, the Work in the affected area shall be resumed upon direction by the Owner and Architect.

§ 10.3.2 Subject to the provisions of Section 10.3.7, upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered

harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor agrees to cooperate with the Architect and other consultants engaged by the Owner to perform services with respect to the detection, removal, containment, treatment or disposal of Hazardous Materials. Subject to the provisions of Section 10.3.7, when the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. Subject to the provisions of Section 10.3.7, the Contract Time shall be extended appropriately and the Contract Sum or Guaranteed Maximum Price, as applicable, shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

§ 10.3.3 If (a) firstly, the Owner receives Contractor's written notice of the Hazardous Material pursuant to Section 10.3.1; (b) secondly, Work resumes in the affected area after Owner and Contractor enter into the written agreement described in Section 10.3.2; (c) thirdly, it is discovered during the resumed operations of Contractor that such Hazardous Material has not been rendered harmless pursuant to Section 10.3.2; and (d) fourthly, no later than the earlier of the date of Substantial Completion of the Project or two (2) years after the date of such discovery, a claim is brought by a third party against the Contractor for bodily injury or property damage alleged to be caused solely by such Hazardous Material, then (1) Contractor shall notify Owner immediately of such claim in writing, and (2) if after an adjudication of the claim it is determined the third party's damages were in fact caused solely by such Hazardous Material, Owner shall reimburse Contractor for all costs, including Contractor's reasonable attorney's fees, reasonably incurred by Contractor because of such claim. In the event of any claim arising under this Section 10.3, Contractor shall timely file a claim on its applicable liability insurance polic(y)(ies), provide evidence of the filing of such insurance claim to Owner in writing, and shall not seek reimbursement from Owner under this Section 10.3.3 for any costs covered under Contractor's liability insurance policies. In no event shall Owner be required to reimburse Contractor for any costs arising from the fault or negligence of Contractor or any subcontractor of any tier.

§ 10.3.4.1 Hazardous Materials that are generated by the Contractor as part of the Work shall be stored and disposed of in accordance with all applicable Laws. Hazardous waste storage requirements include, but are not limited to, secondary containment, proper labeling, and segregation of incompatible materials and routine inspection of storage areas. In addition, all hazardous waste containers shall be constructed of a material that is compatible with the waste, shall be in sound condition, and shall be kept securely closed at all times.

§ 10.3.4.2 The Contractor shall be solely responsible under this Section 10.3 for proper use, handling, storing, transporting, and disposing of materials or substances (including, without limitation, all paints, lubricants, cleaning products and chemicals) brought to the site by or on behalf of the Contractor or any direct or lower tier subcontractor. The Contractor shall also be solely responsible for the proper removal and disposition of all surplus chemicals (e.g., paints, lubricants, cleaning products) that the Contractor, any Subcontractor or any other party for whom the Contractor is responsible may bring on-site as part of the Work or otherwise. The Contractor's responsibility under this paragraph includes, but is not limited to, on site management, storage and compliance with all applicable Laws relating thereto (including those under or issued by OSHA, the Department of Environmental Protection, the Environmental Protection Agency, the Resource Conservation and Recovery Act, Department of Homeland Security, and Department of Transportation). The Contractor shall not use any drain, pipe or plumbing fixture for the disposal of any waste materials. No chemicals or other Hazardous Materials that the Contractor, any Subcontractor or any other party for whom the Contractor is responsible brings on-site shall remain on the Project site at the completion of the Work.

§ 10.3.5 The Contractor shall reimburse, defend and indemnify the Owner for the cost, third party liability, and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a Hazardous Material solely by reason of performing Work as required by the Contract Documents, the Owner shall pay or reimburse the Contractor for such cost of remediation.

§ 10.3.7 [INTENTIONALLY OMITTED].**§ 10.4 EMERGENCIES**

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

§ 10.5 CRANE AND TOWER OPERATIONS

The following provisions shall be applicable to all Work ("Crane and Hoist Work") which involves the use or operation of any of the following equipment ("Crane and Hoist Equipment"): Tower Cranes; Climbing Cranes; Wheel Mounted Cranes; Track Mounted Cranes; Material Hoists; Personnel Hoists; or any other type of hoist, mobile or stationary, requiring a license or for which certification from the National Commission for the Certification of Crane Operators ("NCCCO") is available. The Contractor shall, and shall cause all direct or lower tier subcontractors supplying and or operating Crane and Hoist Equipment to: (a) allow only persons (including, without limitation, operators, riggers and signal personnel) holding current and valid licenses required by Laws and all available applicable unexpired certifications from NCCCO to operate such Crane and Hoist Equipment and perform such Crane and Hoist Work; (b) include copies of all such licenses and other evidence of compliance in the Contractor's site-specific safety plan; (c) comply with the manufacturer's recommended safety procedures for installation, set-up, operation, disassembly, maintenance, and inspection of all Crane and Hoist Equipment; and (d) comply with all applicable governmental required licensing of all Crane and Hoist Equipment.

ARTICLE 11 INSURANCE AND BONDS**§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located having a rating of A-VIII or better by AM Best, and to which the Owner has no reasonable objection, such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

The insurance required by this Section 11.1.1 shall include, without limitation, the following coverages with the indicated minimum coverage limits:

- (a) Workers' Compensation Insurance compliant with the jurisdiction in which the accident occurs, the jurisdiction in which any employee resides and any other states which may claim jurisdiction, and Employer's Liability Insurance with minimum limits of \$1,000,000 each accident for Bodily Injury by accident, \$1,000,000 each employee for Bodily Injury by disease, and \$1,000,000 policy limit for Bodily Injury by disease. Such insurance shall be endorsed to include Other States Coverage and to include a Waiver of Our Right to Recover from Others Endorsement in favor of the Owner.

(b) Commercial General Liability Insurance, in form no less broad than the most recently filed edition of CG 00 01, including coverage for Premises-Operations (including X-C-U), , Products-Completed Operations, Insured Contract Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards), and including Cross Liability and Severability of Interests. Any limiting or exclusionary endorsements must be disclosed and approved by Owner in writing. The Commercial General Liability Insurance shall have the following minimum limits:

- (i) \$2,000,000 Each Occurrence;
- (ii) \$1,000,000 Damage to Rented Premises;
- (iii) \$10,000 Medical Expense (Any One Person);
- (iv) \$4,000,000 General Aggregate;
- (v) \$2,000,000 Personal and Advertising Injury; and
- (iv) \$4,000,000 Products-Completed Operations Aggregate.

Such policy shall be endorsed to have the General Aggregate on a per project basis. Products and Completed Operations insurance shall be maintained for a minimum period equal to the greater of (i) the period under which a claim can be asserted under the applicable statutes of limitations and/or repose or (ii) three (3) years after final payment. The Insured Contract Liability Insurance shall include coverage sufficient to meet the obligations in Section 3.18 of these General Conditions of the Contract.

(c) Automobile Liability Insurance (covering all owned, non-owned and hired vehicles) for bodily injury and property damage with a minimum limit of \$2,000,000 combined single limit per accident.

(d) Umbrella Liability Insurance (excess of primary commercial general liability, automobile liability and employer's liability insurance) with minimum limits of \$75,000,000 each occurrence and \$75,000,000 annual aggregate. Such limits shall apply on a per project basis. The Umbrella Liability Insurance shall be "follow form" coverage that is at least as broad as the primary Commercial General Liability and Automobile Liability Insurance, without additional exclusions or qualifications.

(e) Contractor's Pollution Liability Insurance covering liability of the Contractor arising out of any sudden and/or non-sudden pollution or impairment of the environment, including clean-up costs and defense, that arise from the operations under Contract (whether by the Contractor or a direct or lower tier subcontractor). Coverage under this policy shall have a limit of liability of not less than \$40,000,000 each occurrence, with no exclusion or sublimit for mold and no sunset clause. Coverages under this policy shall also include, without limitation, emergency response costs, transportation coverage and non-owned disposal site (NODS) coverage. Coverage under this policy, unless written on an occurrence basis, shall be renewed through the period of the Statute of Repose. The policy may contain a deductible of a maximum of \$1,000,000, but in such case the deductible is the sole responsibility of the Contractor, and no portion of such deductible is the responsibility of the Owner.

(f) Contractor's Professional Liability Insurance covering the liability of the Contractor for any and all errors or omissions committed in the performance of the work. The coverage shall be maintained during the entire term of the operations, and for at least six (6) years following completion of the Project. The policy shall have limits of liability of not less than \$5,000,000 per claim and in the annual aggregate with limits reinstated annually. The policy may contain a deductible of a maximum of \$1,000,000, but in such case the deductible is the sole responsibility of the Contractor, and no portion of such deductible is the responsibility of the Owner.

(g) All Risk Property Insurance covering physical loss or damage to all property of the Contractor used in the performance of the Work. The policy shall have limits of liability adequate to cover all property of the Contractor (including personal property of others in Contractor's care, custody, or control) and shall include a waiver of subrogation against the Owner.

(h) Employment practices liability insurance with minimum limits of \$1,000,000.

The Contractor shall require all Subcontractors to comply with the identical insurance requirements as required of Contractor under clauses (a), (b), (c), (d) and (g) above and meeting the corresponding requirements of this Section 11.1.1 and Sections 11.1.2 through 11.1.5 below; provided, however, that (i) the minimum limits of the Employer's Liability Insurance to be maintained by Subcontractors shall be not less than \$500,000 each accident for Bodily Injury by accident, \$500,000 each employee for Bodily Injury by disease, and \$500,000 policy limit for Bodily Injury by disease, (ii) the minimum limits of the Commercial General Liability Insurance to be maintained by Subcontractors shall be not less than \$1,000,000 Each Occurrence, \$2,000,000 General Aggregate, \$1,000,000 Personal and Advertising Injury and \$2,000,000 Products-Completed Operations Aggregate unless otherwise approved by Owner in writing, (iii) the Umbrella Liability Insurance to be maintained by Subcontractors shall have limits of not less than \$5,000,000 each occurrence and \$5,000,000 annual aggregate unless otherwise approved by Owner in writing, (iv) the Contractor shall also cause Subcontractors providing design, engineering or other professional services to carry Professional Liability Insurance with limits of liability of not less than \$1,000,000 per claim and in the annual aggregate with limits reinstated annually for at least six (6) years following completion of the Project; (v) the Contractor shall cause Subcontractors transporting or disposing of hazardous materials or waste, as well as any disposal site operator, to carry pollution legal liability insurance naming the Owner as an additional insured (complying with the terms of clause (e) above, this Section 11.1.1 and Sections 11.1.2 through 11.1.5 below); and (vi) the Contractor shall cause Subcontractors providing environmental or hazardous waste consultation, including all asbestos and lead abatement consultants, to carry Environmental Errors and Omissions/Professional Liability insurance of not less than \$1,000,000 per claim and in the annual aggregate, with a per project limit endorsement where applicable, and with coverage renewed through the period of the Statute of Repose.

The Contractor shall implement a CCIP for the Project with coverages and terms set forth in Schedule O to the Agreement ("CCIP Manual"). The Contractor shall either (a) require the Subcontractor to obtain and maintain workers' compensation insurance with employer's liability insurance, commercial general liability and umbrella liability insurance with the minimum limits specified above in this Section or (b) cause the Subcontractor to be enrolled in the CCIP with coverages no less beneficial than those described in Schedule O and cause the Subcontractor to carry the insurance required to be carried by such Subcontractor in Schedule O and/or Exhibit 3. The CCIP will provide workers' compensation insurance, commercial general liability insurance and umbrella liability insurance for Subcontractors enrolled in the CCIP ("Enrolled Subcontractors") as described in Schedule O. All other provisions in this Article 11 applicable to workers' compensation insurance, commercial general liability insurance and umbrella liability insurance provided by the Contractor shall apply to the CCIP (including, without limitation, the provisions of Sections 11.1.1 through 11.1.5), except that the limits of insurance under the CCIP shall be as set forth in Schedule O. The commercial general liability insurance and umbrella liability insurance limits under the CCIP shall apply on a per project basis and reinstate annually. The Contractor's practice policy limits for commercial general liability insurance and umbrella liability insurance shall be excess of the coverage provided under the CCIP. Owner shall be included as an additional named insured under the CCIP.

§ 11.1.2 All insurance except for Pollution Liability, Professional Liability Insurance and Employer's Liability Insurance shall be written on an occurrence basis. The insurance carried by the Contractor and each Subcontractor shall be endorsed to provide that the coverage of such policy is primary and any coverage under any policy or policies of insurance held by the Owner or any other Indemnitee or additional insured is secondary. Each policy of insurance carried by the Contractor pursuant to Section 11.1.1 shall be endorsed to provide a separate general aggregate limit for the Work performed under this Contract, and will, by its terms, specifically cover the entire term of this Contract. The insurance carried by the Contractor and each Subcontractor shall not include any limitation or exclusion (i) for claims or suits by one insured against another insured or (ii) for liabilities arising from blasting, subsidence, earth or land movement, or for any other type of services or work performed by such insureds. Coverages shall be maintained without interruption from the date of commencement of the Work until the date of final payment and, if later, termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's products and completed operations coverage, for a minimum period equal to the greater of (i) the period under which a claim can be asserted under the applicable statutes of limitations and/or repose or (ii) six (6) years after final payment.

§ 11.1.3 Certificates of insurance (and, if requested by the Owner, certified copies of the insurance policies) acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. The Owner may withhold any payments due

Contractor at any time that Owner has not received current certificates of insurance (and, if requested by the Owner, certified copies of the insurance policies) complying with the requirements of this paragraph. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled, amended or allowed to expire until at least 30 days' prior written notice has been given to the Owner. These certificates (and, if requested by the Owner, insurance policies) shall set forth evidence of all coverage required by this Section 11.1 and shall be issued to the Owner and any other parties requested by the Owner from time to time. The form of certificate shall be the ACORD 25 form, modified as necessary to comply with the requirements herein. An additional certificate and certified copies of the insurance policies evidencing continuation of such coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending limits of coverage.

The Contractor shall (a) cause all Subcontractors to deliver and shall collect certificates of insurance naming the Owner as a certificate holder and all parties required to be named as additional insureds on the Contractor's policies under Section 11.1.4 as additional insureds on a primary non-contributory basis (providing coverage for each additional insured for completed operations and ongoing operations) and (b) deliver such certificates to the Owner's representative.

§ 11.1.4 The Contractor shall cause the insurance policies required by the Contract Documents (other than Worker's Compensation and Professional Liability) to name the Owner (POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NO. 1), Lincoln Property Company, Lincoln Property Company Commercial, LLC, CLW POINT PARTNERS, LLC, Wadsworth Development Group, LLC, Colmena Capital, Inc., Colmena Point, LLC, any party providing debt or equity financing for the Project, their affiliates, any project manager engaged by the Owner, Lender, and their respective trustees, directors, officers, employees, agents and representatives, (using CG2010 (11/85) or equivalent; provided that subcontractors can use either (i) CG2010 (11/85) or (ii) both of CG 20 10 10 01 and CG 20 37 10 01) or (ii) their equivalent) on a primary non-contributory basis (providing coverage for each additional insured for completed operations and ongoing operations); and provided further that no additional insured coverage shall require privity of contract between the named insured and any additional insured or that operations be performed for any additional insured in order for coverage to apply. Coverage afforded the additional insureds under all insurance carried by the Contractor and each Subcontractor shall be at least as broad as the coverage afforded the named insured(s), and such policies shall not include exclusionary language or limitations applicable only to the additional insureds. In the event that the Contractor has in force any insurance with coverages broader and/or limits higher than the minimum coverage amounts specified hereunder, (a) such broader coverages and higher limits shall insure and be available to all additional insureds and (b) this Contract shall be deemed to require such broader coverages and higher limits. No deductible or self-insured retention amount in any insurance required by the Contractor hereunder shall (i) apply to the Owner or any other additional insured or (ii) exceed \$50,000, except that professional liability insurance may have a deductible as specified in Section 11.1.1(f). If, despite the preceding sentence, any deductible or self-insured retention amount in any such insurance does apply to the Owner or any other additional insured, the Contractor shall be required to fund the cost of such deductible or self-insured retention.

§ 11.1.5 Notwithstanding anything to the contrary in the Contract Documents, the Contractor and each direct and lower tier subcontractor hereby waives all rights of recovery (including rights of subrogation) against the Owner, the Owner's representative(s), and the trustees, directors, members, officers, shareholders, partners, principals, employees and agents of any of them, and their respective agents, representatives and servants, for any claim, injury, loss or damage arising from any occurrence that (a) is covered by any insurance maintained by the Contractor or such direct or lower tier subcontractor or (b) would have been covered by any insurance required to be maintained by the Contractor or such direct or lower tier subcontractor under the Contract Documents. All of the Contractor's insurance policies and the policies of each direct and lower tier subcontractor shall include a waiver of subrogation clause or endorsement denying to the insurer rights of subrogation against the Owner and such other parties. The provisions of this paragraph shall be deemed incorporated into each subcontract to the extent necessary to achieve the result intended.

§ 11.1.6 Failure of the Contractor to secure insurance coverages or failure to comply fully with any of the insurance provisions of the Contract Documents shall in no way relieve the Contractor of its obligations under the Contract Documents. Nothing in this Article 11 shall modify or limit Contractor's indemnification obligations under Section 3.18 and other provisions of the Contract Documents.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner may, in its discretion, purchase its own liability insurance. Such liability insurance will be in excess of the liability insurance provided by the Contractor.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance for the Project on a replacement cost basis. Such property insurance shall be subject to all of the terms, conditions, qualifications, exclusions, deductibles, sub-deductibles, sublimits and other provisions of the policy. 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 of the Work has been achieved or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is earlier. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project, as their interests may appear.

§ 11.3.1.1 Property insurance shall insure against perils included within ISO Special Form, but shall be subject to all conditions, exclusions, qualifications, sublimits, terms and conditions of the property insurance policy. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents. The Owner's property insurance will not cover, and the Contractor shall be responsible for risk of loss to (and shall, either directly or through Subcontractors, insure for the full replacement value thereof), hoists, tools, scaffolding, staging, towers, forms or other materials or equipment belonging to or rented by the Contractor or any Subcontractor.

§ 11.3.1.2 [INTENTIONALLY OMITTED].

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs on paid claims not covered because of such deductibles, except to the extent that (a) the Contractor, any direct or lower tier subcontractor, or any other party for whom the Contractor is responsible caused the loss or (b) amounts are recoverable from insurance carried by the Contractor, any direct or lower tier subcontractor, or any other party for whom the Contractor is responsible; and to the extent either of these exceptions apply, the Contractor shall pay the deductible with its own funds (*i.e.*, outside of the Contract Sum or Guaranteed Maximum Price, as applicable).

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall cover the period following Substantial Completion of the Work as a whole and shall be subject to the exclusions, qualifications and limitations contained in such policy.

§ 11.3.3 [INTENTIONALLY OMITTED].

§ 11.3.4 [INTENTIONALLY OMITTED].

§ 11.3.5 [INTENTIONALLY OMITTED].

§ 11.3.6 Prior to Contractor's obligation to commence the Work, Owner shall provide Contractor a certified copy of the insurance policy providing the insurance set forth in section 11.3.1. The Owner will also furnish a completed ACORD Evidence of Commercial Property Insurance form evidencing the Owner's property insurance to the Contractor promptly following the Contractor's request therefore.

§ 11.3.7 WAIVERS OF SUBROGATION

Except as otherwise provided herein, the Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, employees, partners, members, managers, trustees and affiliates, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner in good faith. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Notwithstanding the foregoing, the Owner does not waive (a) its rights against the Contractor, any of its subcontractors, sub-subcontractors, agents or employees for damages to non-Project related property, real or personal or both, at or adjacent to the site of the Project, caused by the negligent, intentional or willful act or omission of the Contractor, any of its subcontractors, sub-subcontractors, agents or employees, (b) its rights against the Architect, Architect's consultants, separate contractors described in Article 6, if any, or any of their subcontractors, sub-subcontractors, agents or employees, for damages to non-Project related property, real or personal or both, at or adjacent to the site of the Project, caused by the negligent, intentional or willful act or omission of the Architect, Architect's consultants, separate contractors described in Article 6, if any, or any of their subcontractors, sub-subcontractors, agents or employees, (c) claims for occurrences first arising after Substantial Completion of the Work, and (d) claims for losses not covered by property insurance obtained pursuant to this Section 11.3.

§ 11.3.8 A loss insured under the property insurance shall be adjusted by the Owner in good faith and made payable to the Owner for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. Notwithstanding anything to the contrary, neither the Contractor nor any direct or lower tier subcontractor shall be named as loss payee under any policy of insurance purchased by the Owner with respect to the Project, and no draft or other instrument in payment of any loss shall name the Contractor or any direct or lower tier subcontractor as a joint payee. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 [INTENTIONALLY OMITTED].

§ 11.3.10 The Owner shall have power to adjust and settle a loss with insurers without the consent or involvement of the Contractor. The Owner shall, in the case of litigation, make settlement with insurers in accordance with directions of the court.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor and/or any Subcontractor to furnish and maintain throughout the life of the Contract and its guarantee periods performance, labor and materials payment, and statutory lien bonds in the full amount of the Contract Sum, Guaranteed Maximum Price or subcontract (as applicable), each signed by the Contractor or Subcontractor (as applicable) and a surety authorized to provide bonds in the jurisdiction where the Project is located and approved by the Owner. In addition, the sureties and any reinsuring companies shall be listed in the current Department of the Treasury Circular No. 570 with an underwriting limitation equal to or greater than the penal sum of the bonds to be furnished or have a rating of A-VIII or better by AM Best. Such bonds shall: (a) identify the Owner and any other party having an interest in the Project or the Project site identified by the Owner as co-obligees; (b) guarantee that the Contractor or Subcontractor (as applicable) will perform each and every part of the Contract or subcontract (as applicable), cover all guarantees called for and insure prompt payment to all persons furnishing materials or labor required in prosecution of the Work under the Contract or subcontract (as applicable); and (c) provide (i) for additions or deductions from the Work in any amount, (ii) that no notice of alterations, additions or omissions need be given to the surety, and (iii) that the Owner may occupy the Project at

any time. The payment and performance bonds shall be on mutually agreeable forms provided by, or approved in writing by, the Owner, the Contractor and the Contractor's Surety. The Contractor shall require the Attorney-in-Fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of such person's power of attorney. If the Owner requires the Contractor or any Subcontractor to furnish such bonds after the Contract Sum or the Guaranteed Maximum Price, as applicable, has been established, then the Contract Sum or the Guaranteed Maximum Price, as applicable, shall be increased by the increased cost to the Contractor of providing the bonds so required by the Owner. Notwithstanding anything to the contrary, no Contractor's Fee shall be paid with regard to the cost of providing such bonds. Costs of subcontractor bonds not required or approved in writing by the Owner shall be excluded from the Cost of the Work. The Owner hereby approves obtaining subcontractor bonds from the Subcontractors listed by trade or name in **Schedule N** of the Agreement.

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

§ 11.4.3 Pursuant to the Utah Procurement Code, the Contractor and/or any Subcontractor shall furnish and maintain throughout the life of the Contract the following bonds which shall become binding on the Contractor upon the execution of the Contract Documents:

§ 11.4.3.1 A performance bond satisfactory to the Owner that is in an amount equal to 100% of the price specified in the Contract Documents and is executed by a surety company authorized to do business in Utah or any other form satisfactory to the Owner.

§ 11.4.3.2 A payment bond satisfactory to the Owner that is in an amount equal to 100% of the price specified in the Contract Documents and is executed by a surety company authorized to do business in Utah or any other form satisfactory to the Owner, which is for the protection of each person supplying labor, service, equipment, or material for the performance of the work provided for in the Contract Documents.

§ 11.5 MISCELLANEOUS

The Contractor agrees and will require all Subcontractors to agree to assist in every manner possible in the reporting and investigation of any accident, and upon request will cooperate with the Owner and all interested insurance carriers in the handling of any claim by securing and giving evidence and obtaining the attendance of witnesses as required by the Owner or such insurance carriers.

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 or Owner's request or to requirements specifically expressed in the Contract Documents, including any governmental authority, it must, if requested in writing by such party, be uncovered for that party's examination and be replaced at the Contractor's expense without change in the Contract Time or Contract Sum.

§ 12.1.2 If a portion of the Work has been covered that the Architect, Owner or governmental authority has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Contractor subject to the approval of Owner. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or by the Owner for failing to conform to the requirements of the Contract Documents, whether discovered before Substantial Completion and whether or not fabricated, installed or completed. All costs arising in connection with correcting such rejected Work including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's

expenses made necessary thereby, shall be at the Contractor's expense. Roadways, pavements and curbs that are broken, damaged, settled or otherwise defective as a result of receiving, handling, storing of materials or the performing of any Work under the Contract Documents, shall be fully restored to the reasonable satisfaction of the Owner. Corrective Work shall be performed by qualified (and certified, where appropriate) personnel so as not to negatively impact the Owner's rights under manufacturer's warranties. These obligations shall survive the expiration of the Contract Documents.

§ 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 approved by the Owner or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall endeavor to give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. Any material, fixture, appliance, or equipment provided by the Contractor or any Subcontractor or supplier which requires excessive servicing during the applicable period of time stated above shall be considered defective, and shall be corrected by replacement or repair.

§ 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 be extended for corrective Work performed by the Contractor pursuant to this Section 12.2 by the period of time between Substantial Completion and the actual completion of the corrective Work.

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work (including with respect to any breach of Contractor's independent warranty obligations at Section 3.5). Nothing in this Section shall preclude Owner from pursuing any legal or equitable remedies allowed in the jurisdiction of the Project.

§ 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 (without regard to principles of conflicts of laws).

§ 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 or 13.2.3, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. The Contractor shall not assign the whole or any portion of its interest in the Contract Documents or any payments due or to become due under the Contract Documents without the prior written consent of Owner, which will be subject to its absolute discretion. No assignment by Contractor whether voluntary or involuntary shall be valid or effective without Owner's written consent. If the Contractor makes or suffers any such assignment, such shall be a breach of the Contract Documents by Contractor.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project. The Contractor shall execute all reasonable consents reasonably required to facilitate such assignment.

§ 13.2.3 The Owner may, without consent of the Contractor, assign the Contract to any entity controlling, controlled by, or under common control with Owner or, subject to Contractor's reasonable verification of adequate funding for payment of the amounts owed under the Agreement, to a party who acquires the Project in whole or in part (either in fee or leasehold). If the Owner sells or conveys the Project prior to final payment and the purchaser assumes responsibility for acts, events or omissions occurring on or after such sale, the Contractor will accept the purchaser as the "Owner" under the Contract Documents and will release the original Owner from any and all liabilities under the Contract Documents with respect to acts, events or omissions occurring after such sale so long as the purchaser has adequate assets to complete the Project. If the Owner sells or conveys the Project after final payment, any rights with respect to the property so conveyed which the Owner may have against the Contractor under Sections 3.5, Article 12 or otherwise shall automatically accrue to the benefit of, and be exercised directly by, such third party.

§ 13.3 WRITTEN NOTICE

Any notice provided for herein shall be in writing and shall be (i) delivered by hand, (ii) sent by certified mail (return receipt requested) or a nationally recognized delivery service that obtains delivery receipts, or (iii) sent by e-mail (accompanied by receipt confirmation); provided, however, that any notice alleging a default under the Contract Documents, seeking an increase in the Contract Sum or Guaranteed Maximum Price (as applicable) or seeking an extension of the Contract Time shall be sent by one of the methods listed in clauses (i) or (ii).

Notices to the Owner shall be sent to the following addresses:

Point Phase 1 Public Infrastructure District No. 1
c/o Pinnacle Consulting Group
550 W Eisenhower Blvd.
Loveland, CO 80537
Attention: Shannon McEvoy
shannonm@pcgi.com

With a copy to:

CLW Point Partners LLC
8111 Douglas Avenue, Suite 600
Dallas, TX 75225

WBA, PC
139 Hunter's Grv Ln., Suite 200
Lehi, UT 84043
Attention: Blair M. Dickhoner
bdickhoner@wbapc.com

Notices to the Contractor shall be sent to the Contractor's Representative at the following address:

Attention: Jared Adamson
Telephone: 801-803-1698
E-mail: jadamson@laytonconstruction.com

All notices to the Architect shall also be delivered to the Owner. Either party can change their address for notices by delivering written notice of such change to the other party. A hand-delivered notice shall be effective upon delivery; a notice sent by certified mail shall be effective three (3) days after mailing; a notice by overnight delivery service shall be effective as of the date of delivery as confirmed by the delivery receipt; and a notice sent by e-mail shall be effective as of the date of delivery as confirmed by the delivery receipt.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law. The express obligations of the Contractor hereunder (including, without limitation, the Contractor's obligation to perform the Work in accordance with the Contract Documents) arise out of contractual duties. To the greatest extent permitted by law, the failure of the Contractor to comply with any requirement or obligation of the Contract Documents shall constitute a breach of contract, not a tort, for the purpose of applicable statutes of limitation and repose.

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

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or orders of public authorities. Unless otherwise provided in the Specifications, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity selected or approved in writing by the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner and the Architect timely notice of when and where tests and inspections are to be made so that the Owner and/or the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded (except as provided in Section 13.5.3 or elsewhere in the Contract Documents), and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect and the Owner of when and where tests and inspections are to be made so that the Architect or Owner or both may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's and Owner's Project Manager's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents and except for testing and inspection services obtained by the Owner, be secured by the Contractor and promptly delivered to the Architect and the Owner. The Contractor shall obtain and deliver promptly to the Architect the final certificate of occupancy for the Project, certificates of final inspection of any part of the Work

and operating permits for any mechanical apparatus, such as elevators, escalators, boilers, air compressors, etc., which may be required by law to permit full use and occupancy of the premises by the Owner. Receipt of such permits or certificates by the Architect shall be a condition precedent to Final Completion of the Work.

§ 13.5.5 If the Architect and/or Owner is to observe tests, inspections or approvals required by the Contract Documents, the Architect and/or Owner will do so promptly and, where practicable, at the normal place of testing. The Contractor shall provide the Architect and the Owner with notice of scheduled desired dates and times for tests and inspections and approvals sufficiently in advance so that the Architect and/or Owner can advise the Contractor as to those that they intend to observe.

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

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate specified in the Agreement.

§ 13.7 PARTIAL INVALIDITY

Should any part of the Contract Documents or their application to any situation be invalidated or determined to be contrary to law, the remainder of such documents and the application to other situations of any provision found invalid as to any given situation, shall not be affected thereby.

§ 13.8 ADVERTISEMENT AND PUBLICATION; SIGNS

Neither the Contractor nor any Subcontractor shall (a) cause or allow the name of the Owner to be used in any advertising or promotional literature, or in any articles in any publication, without prior written approval by the Owner, or (b) place or maintain, or allow to be placed or maintained, any advertising matter, sign, bill, poster or similar item on or about the Project site, except as required by law or approved by the Owner in writing. The Contractor or Subcontractor will contact the Owner's Representative to request such approvals.

§ 13.9 PROJECT INFORMATION MANAGEMENT SYSTEM

The Contractor shall use an internet accessible project information management system as agreed upon by Owner and Contractor (the "PIMS"), which shall be fully accessible via internet by the Owner, the Architect and the Owner's designees at all times. The Contractor shall cause all relevant Project documentation to be stored within, and accessible by users of, the PIMS (including, without limitation, Drawings, Specifications, Supplemental Drawings and Specifications, proposed change orders, accepted change orders, requests for information, schedules and progress reports, subcontracts, purchase orders and similar vendor agreement, budget and costs reports, bid solicitation and procurement information, and other required report). The Owner shall have the right to obtain and retain copies of computer disks or other computer memory storage devices of all files and information from time to time posted on the PIMS, and copies thereof shall be delivered by the Contractor to the Owner promptly following the Owner's request therefor and at no cost to the Owner. The posting of any Drawings, Specifications or other information on the PIMS is not to be construed as publication in derogation of the intellectual property rights of the Architect or the Owner in such materials.

§ 13.10 CONFIDENTIALITY

The Contractor acknowledges that certain of the Owner's valuable, confidential and proprietary information may come into the Contractor's possession. Accordingly, the Contractor agrees to hold all information it obtains from or about the Owner in strictest confidence, not to use such information other than for the performance of the services, and to cause any of its employees, Subcontractors or consultants to whom such information is transmitted to be bound to the same obligation of confidentiality to which the Contractor is bound. Except to the extent necessary to carry out the Work required by the Contract Documents, the Contractor shall not communicate the Owner's information in any form to any third party without the Owner's prior written consent. In the event of any violation of this provision, the Owner shall be entitled to preliminary and permanent injunctive relief as well as an equitable accounting of all profits or benefits arising out of such violation, which remedy shall be in addition to any other rights or remedies to which the Owner may be entitled. The provisions of this Section shall survive the expiration or earlier termination of this Contract.

§ 13.11 [INTENTIONALLY OMITTED].**§ 13.12 EMPLOYEES**

All workers providing labor or performing services under the Contract Documents (a) shall be employees of the Contractor, a Subcontractor, a Sub-subcontractor or another party for whom the Contractor is responsible and (b) shall not, under any circumstances, be considered employees of the Owner. The Contractor shall provide and be responsible for all required services and benefits with respect to its employees, including, but not limited to, workers compensation and unemployment insurance.

§ 13.13 EQUAL EMPLOYMENT, NONDISCRIMINATION, HIRING AND PAYMENT LAWS

The Contractor shall comply, and shall cause all direct and lower tier subcontractors to comply, with all applicable equal employment, nondiscrimination, hiring and payment laws, regulations and legal requirements.

§ 13.14 NO SMOKING

The Contractor acknowledges and agrees that no smoking will be permitted at the Project site at any time.

§ 13.15 [INTENTIONALLY OMITTED].**§ 13.16 SPECIAL CONSIDERATIONS**

§ 13.16.1 The Contractor shall comply (and cause all direct and lower tier subcontractors and suppliers to comply) with all of the terms and conditions of the Contract Documents.

§ 13.16.2 No parking will be provided by the Owner.

§ 13.16.3 There will be no separate staging area available to the Contractor and its subcontractors outside of the Project site.

§ 13.16.4 The Contractor shall not permit any workers to use any existing facilities at the Project site (including, without limitation, lavatories, toilets, entrances and parking areas) other than those, if any, designated by the Owner in writing.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**§ 14.1 TERMINATION BY THE CONTRACTOR**

§ 14.1.1 If, without good cause, the Owner has not made payment of an undisputed amount owed to the Contractor under the Contract Documents within thirty (30) days of the date such payment was due, the Contractor may provide written notice to the Owner of such failure to pay. Such written notice shall constitute a "First Step Termination Notice" under Section 14.1.3.

§ 14.1.2 [INTENTIONALLY OMITTED].

§ 14.1.3 If, within the fifteen (15) days following the Owner's receipt of a First Step Termination Notice under Sections 14.1.1 or 14.1.2, the Owner fails to cure the condition giving rise to the First Step Termination Notice (either by making the undisputed payment described in the First Step Termination Notice delivered under Section 14.1.1 or ceasing the suspension by the Owner described in the First Step Termination Notice delivered under Section 14.1.2), the Contractor may deliver a second written notice (a "Second Step Termination Notice") of the condition described in Section 14.1.1 or 14.1.2, as applicable, and stating that the Owner's failure to cure such condition within an additional seven (7) day period shall entitle the Contractor to terminate the Contract. If the Owner fails to cure the condition described in a Second Step Termination Notice within seven (7) days following the Owner's receipt of such Second Step Termination Notice, the Contractor may thereafter terminate the Contract and recover from the Owner payment for Work (including the appropriate portion of the Contractor's Fee) properly executed in accordance with the Contract Documents (the basis for such payment shall be as provided in the Agreement) and for costs incurred by the Contractor directly related to the termination of the Work, including reasonable demobilization and cancellation charges provided such costs are authorized in advance by the Owner.

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 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 Substantial Completion.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may, without prejudice to any right or remedy of the Owner, terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make timely payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable Laws or disregards an instruction, order or decision of the Architect;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5 files a petition under any federal or state law concerning bankruptcy, reorganization, insolvency or relief from creditors, or if such a petition is filed against the Contractor without its consent, it is not dismissed within sixty (60) days;
- .6 is generally not paying its debts as they become due; or if the Contractor becomes insolvent; or if the Contractor consents to the appointment of a receiver, trustee, liquidator, custodian or the like of the Contractor or of all or any substantial portion of its assets; or if a receiver, trustee, liquidator, custodian or the like is appointed with respect to the Contractor or takes possession of all or any substantial portion of its assets and such appointment or possession is not terminated within sixty (60) days; or if the Contractor makes an assignment for the benefit of creditors; or
- .7 fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial Completion of the Work is achieved by the Required Substantial Completion Date.

§ 14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor seven days' written notice, terminate the services of the Contractor and may:

- .1 Exclude the Contractor from the site and/or take possession of all materials, equipment, tools, appliances, construction equipment and machinery, vehicles, offices and other facilities on the Project site, and all materials intended for the Work, wherever stored;
- .2 Accept assignment of those subcontracts that the Owner elects to accept pursuant to Section 5.4; and/or
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient.

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

§ 14.2.4 If the costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived (collectively, "Completion Costs and Damages"), exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner upon demand. The Owner shall be entitled to hold all amounts due the Contractor at the date of termination until all of the Owner's damages have been established, and to apply such amounts to such Completion Costs and Damages. If the unpaid balance of the Contract Sum exceeds the Completion Costs and Damages, such excess shall be paid to the Contractor to the extent necessary to reimburse the Contractor for Work properly executed by the Contractor in accordance with the Contract Documents prior to termination. The respective obligations of the Owner and the Contractor under this Section shall survive the 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 or Guaranteed Maximum Price, as applicable, and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment

of the Contract Sum or Guaranteed Maximum Price, as applicable, 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, for the Owner's convenience and without cause, terminate the Contractor's services for any portion of Work or any Subcontractor or all remaining Work by giving written notice to the Contractor specifying the portion of the Work or Subcontractor to be terminated and the effective date of termination. The Contractor shall continue to prosecute any portion(s) of the Work not terminated.

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

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions reasonably 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 except for the subcontracts, if any, that the Owner elects to assume, terminate all purchase orders except for the purchase orders, if any, that the Owner elects to assume, and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work properly executed in accordance with the Contract Documents (the basis for such payment shall be as provided in the Agreement) including the applicable portion of the Contractor's Fee for completed Work properly executed and for reasonable demobilization and cancellation charges payable to third parties provided such costs are authorized in advance by the Owner. Notwithstanding the foregoing provisions of this Section 14.4.3, no payment shall be made by the Owner to the extent that such Work or subcontract is, was, or could have been, terminated without payment to the Contractor under the Contract Documents or if an equitable adjustment is made or denied under another provision of the Contract Documents. In the event of termination for the Owner's convenience, the Owner will issue a Construction Change Directive or authorize a Change Order making any required adjustment(s) to the Contract Time, Construction Schedule and/or Contract Sum or Guaranteed Maximum Price, as applicable. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

§ 14.4.4 The Contractor shall not be entitled to consequential or incidental damages, including, but not limited to, damages for loss of anticipated profits on Work not performed, on account of any termination described in Section 14.4.1. Upon a determination by a court of competent jurisdiction that termination of Contractor's services pursuant to Section 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4.1 and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments for termination for convenience as set forth in this Section 14.4.

§ 14.4.5 In determining amounts due Contractor under this Section 14.4, Owner shall be credited for (1) payments previously made to Contractor for the terminated portion of the Work, (2) claims which Owner has against Contractor under the Contract Documents, and (3) the value of materials, supplies, equipment or other items to be used or disposed of by Contractor that are covered under the Contract Sum. If Contractor has, prior to the date of termination, collected sums toward the cost of the Work or Contractor's Fee in excess of the reimbursable amounts set forth above, Contractor shall promptly pay such excess to Owner or, at Owner's option, such excess shall be deducted from any amounts payable by Owner to Contractor. In the event of such termination by Owner, Owner may require Contractor to promptly assign all or some subcontracts, materials, tools, equipment and appliances previously acquired, rental agreements and any other commitments which Owner in Owner's absolute discretion elects to take by assignment, and in such event, Contractor shall promptly execute and deliver to Owner written assignments acceptable to Owner.

ARTICLE 15 CLAIMS AND DISPUTES**§ 15.1 CLAIMS****§ 15.1.1 DEFINITION**

A Claim is a written demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of 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.

§ 15.1.2 NOTICE OF CLAIMS

Except with respect to the notices required by Section 8.3.1 of these General Conditions, Claims by either the Owner or Contractor must be initiated by written notice, containing a clear statement of the basis of the Claim and the relief sought by the claimant, to the other party and, in the case of Claims by the Contractor only, with a copy sent to the Architect and the Owner's Project Manager. Claims by Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later, or such shorter period of time as may be provided for elsewhere in the Contract Documents; provided, however, that the Contractor shall use its best efforts to furnish the Architect and the Owner, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such Claim is recognized, and shall cooperate with the Architect and the Owner in an effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim. Rejection of a change order request shall be an event giving rise to a Claim. THE CONTRACTOR EXPRESSLY AGREES THAT FAILURE OF THE CONTRACTOR TO INITIATE A CLAIM WITHIN THE TIME LIMITS SPECIFIED IN THIS SECTION 15.1.2 SHALL RESULT IN SUCH CLAIM BEING WAIVED.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract (unless ordered by the Owner to suspend all or a portion of service hereunder) without any interruption or delay and the Owner shall continue to make payments which are not in dispute in accordance with the Contract Documents.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum or Guaranteed Maximum Price, as applicable, written notice as provided in Section 15.1.2 shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided in Section 15.1.2 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. The Contractor shall have the burden of demonstrating the effect of the claimed delay on the Contract Time, and shall furnish such documentation relating thereto as may be reasonably required by the Owner. No adjustment in the Contract Time shall be permitted, however, in connection with a concealed or unknown condition except as otherwise allowed under Section 3.7.4 of these General Conditions.

For all Claims for an extension of the Contract Times, the Contractor must furnish a written time impact analysis ("TIA") illustrating the influence of each change or delay on the Contract Time utilizing the Construction Schedule and establish that the change or delay will extend the date of Substantial Completion of the Work. Each TIA shall include a fragnet demonstrating how Contractor proposes to incorporate the change or delay into the Construction Schedule. The TIA shall also demonstrate the estimated time impact based upon the date the change was issued to Contractor, the events of the delay, the status of the Work at that point in time, and the event time computation of all activities affected by the change or delay. The event times used in the TIA shall be those included in the latest update of the Construction Schedule in effect at the time the change or delay was first encountered. The Construction Schedule must clearly display that Contractor has used, in full, all the float time available on the Critical Path for the work involved with any request for an extension of the Contract Times. The

determination as to the number of allowable days of Contract Time extension shall be based upon the Construction Schedule dates in effect for the time period in question and other factual supporting data.

§ 15.1.5.2 Notwithstanding anything to the contrary in any of the Contract Documents, the Contractor acknowledges and agrees that no extension of time shall be granted on account of weather conditions except to the extent provided in Section 8.3.5.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES.

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract and the Project, except as otherwise provided below in this paragraph. This mutual waiver includes, by way of example and not limitation and except as otherwise provided below in this paragraph:

- .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, for losses arising from inefficiency, lost productivity, lost opportunities, and for loss of profit except profit on Work properly performed.

This waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 or elsewhere in the Contract Documents shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. Notwithstanding anything to the contrary, nothing in the Contract Documents shall limit the Contractor's liability for: (a) damages (whether consequential or otherwise) which would be covered by available insurance in the absence of this paragraph or any other waiver contained in the Contract Documents; or (c) damages of Owner resulting from the fraud or willful misconduct of a Contractor Party.

§ 15.2 RESOLUTION OF CLAIMS AND DISPUTES

§ 15.2.1 General. Any Claim arising out of or relating to the interpretation, construction, or performance of this Agreement, or breach thereof, shall be resolved only in the manner set forth in Sections 15.2, 15.3 and 15.4. Unless ordered by the Owner to suspend all or any portion of the Work, the Contractor shall proceed with the performance of the Work without any interruption or delay during the pendency of any of the dispute resolution procedures in this Article 15 and shall comply with any orders which the Owner may issue regarding the acceleration of all or any portion of the Work in accordance with the terms of the Contract. During the pendency of any of the dispute resolution procedures in this Article 15, the Owner shall continue to make all payments which are not in dispute in accordance with the provisions of the Contract Documents.

§ 15.2.2 Direct Negotiation. Any Claim arising at any time during or after the construction of the Project shall be resolved, if possible, by negotiations between the parties designated as the Initial Negotiation Representatives in the Agreement. If the Initial Negotiation Representatives are unable to resolve any dispute within ten days after written notice of such dispute together with all relevant supporting documentation is given by either party to the other, the matter may be referred by either party to the parties designated as the Second Negotiation Representatives in the Agreement. If the Second Negotiation Representatives are unable to resolve any dispute within thirty days after the dispute is referred to them, the matter may be submitted by either party for mediation pursuant to Section 15.3.

§ 15.3 MEDIATION

§ 15.3.1 Any Claims arising out of or related to the Contract, except Claims waived hereunder, shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

§ 15.3.2 If the duly authorized representatives referenced in Section 15.2.2 fail to resolve any Claim within thirty (30) days after the dispute is referred to them, the matter may be submitted by either party to mediation. Unless the parties mutually agree otherwise, (a) the mediator shall be administered by the Las Vegas, NV office of JAMS in accordance with its current procedures for construction industry mediation matters and (b) the mediator shall be selected in accordance with such procedures. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with JAMS. The request for mediation may be made concurrently with the filing of a demand for legal or equitable proceedings but, in such event, mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed until the date that is thirty (30) days following the end of any

unsuccessful mediation (unless stayed for a longer period by agreement of the parties or court order). Each party shall bear its own attorney's fees and costs of the mediation and the parties shall share in the fees and expenses of the mediator. Except as may be required by law, neither a party nor a mediator may disclose the existence, content, or results of any mediation hereunder without the prior written consent of both parties. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any mediation company employees, are confidential, privileged and inadmissible for any purpose (including, without limitation, impeachment) in any litigation, arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.3.3 The mediation shall be held in Draper, UT 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 LITIGATION

§ 15.4.1 Any Claim which is not resolved by mediation in accordance with Section 15.3 shall be subject to litigation by either party. Any suit by either party shall be brought in the State where the Project is located. The parties hereto waive any argument that this venue is not appropriate or that the forum is inconvenient. EACH OF THE PARTIES ALSO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

§ 15.4.2 Unless ordered by the Owner to suspend all or a portion of service hereunder, the Contractor shall proceed with the performance of this Contract without any interruption or delay during the pendency of any of the foregoing dispute resolution procedures.

§ 15.4.3 The Owner and the Contractor agree that no Claim arising under this Contract at any time during or after the construction of the Project shall be brought before any court without first having been submitted to the procedures outlined in Sections 15.2, 15.3 and 15.4.; provided, however, that if any dispute shall arise or remain unresolved prior to the expiration of the periods for negotiation and mediation set forth in Sections 15.2 and 15.3 at a time when the applicable statute of limitations or repose would expire, suit may be instituted to satisfy the applicable statute of limitations or repose, but the parties agree that such action shall be stayed until the date that is the later of (a) 45 days from the date of filing of the request for mediation under Section 15.3 or (b) thirty (30) days following the end of any unsuccessful mediation under Section 15.3. The provisions of this Article 15 requiring negotiation prior to commencing mediation, and negotiation and mediation prior to commencing litigation, may be enforced by any court of competent jurisdiction (and any party seeking to enforce such provisions shall be entitled to an order for specific performance therefor), and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered.

§ 15.4.4 ATTORNEYS' FEES

In the event either party shall bring legal action for the breach of, to interpret or to enforce the Contract Documents, the substantially prevailing party shall be entitled to reasonable attorneys' fees, expenses and court costs, including without limitation, those relating to any appeal. The provisions of this Section shall survive the expiration or termination of this Agreement.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Notwithstanding anything to the contrary, (i) in the event of any mediation, arbitration, or legal proceeding between the Owner and any third party relating to the Project, the Contractor agrees that the Owner may join the Contractor in any such proceedings and that the Owner may consolidate any such proceedings with any proceeding between the Contractor and the Owner under this Contract, and (ii) the Owner may make persons other than the Owner and the Contractor parties to any mediation, arbitration, or legal proceeding hereunder with respect to any claim, dispute or other matter in question arising out of the Project.

ARTICLE 16 HANDLING OF VALUABLES

If, during demolition, excavation, disposal or any operation in the performance of the Work, the Contractor discovers or becomes aware of articles that are unusual by their physical nature, age, location, physical pattern or value, the ownership of such articles by the Owner is retained, and information regarding their discovery shall be immediately furnished to the Architect and the Owner. In such event, Work in the area shall be immediately discontinued until the Architect has consulted with the Owner and the Owner has decided the proper procedure to be followed. Any time lost shall be a condition for which the Contract Time may be extended. All costs incurred after the discovery in the salvaging of such articles shall be borne by the Owner.



SCHEDULE A-1

Activity ID		Activity Name		Original Duration	Start	Finish
The Point Event Venue						
Executive Summary						
Milestones						
M1300	Start Construction	0	08-Sep-26*			
M1330	Footings - Started	0	27-Oct-26			
M1490	Core & Shear Walls - Started	0	03-Dec-26			
M1500	West Cores & Shear Walls - Completed	0	18-Feb-27			
M1520	Structural Steel - Started	0	09-Mar-27			
M1480	Slab On Grade - Started	0	13-Apr-27			
M1510	Cores & Shear Walls - Completed	0	20-Apr-27			
M1550	Interior Framing - Started	0	11-May-27			
M1530	Structural Steel - Completed	0	09-Aug-27			
M1560	Interior Painting - Started	0	04-Nov-27			
M1570	Permanent Power	0	04-Nov-27			
M1540	Roofing - Completed	0	19-Nov-27			
M1580	Mechanical Start Up	0	29-Dec-27			
M1310	Subcontractor Completion	0	30-May-28			
M1320	Substantial Completion	0	27-Jul-28*			
Durations						
D1510	Duration - Preconstruction (Calendar Days)	161	03-Dec-25 A	09-Oct-26		
D1520	Duration - Construction (Calendar Days)	689	08-Sep-26	27-Jul-28		
Preconstruction						
Design & GMP						
PC660	GMP Owner Review - Round 2 (95% CDs)	15	30-Jul-26 A	03-Sep-26		
PC920	Buyout - Critical Trades	5	04-Sep-26	11-Sep-26		
PC930	Buyout - General	20	14-Sep-26	09-Oct-26		
Permitting						
PC940	Permitting - Building Permits	40	08-Jul-26 A	24-Sep-26		
Procurement						
Rebar						
PC2100	Rebar - A & E Review	10	31-Jul-26 A	28-Aug-26		
PC2110	Rebar - Fabrication & Delivery	20	31-Aug-26	28-Sep-26		
Anchor Bolts						
PC2300	Anchor Bolts - Fabrication & Delivery	15	17-Aug-26 A	10-Sep-26		
Embeds						
PC2320	Embeds - A & E Review	10	25-Aug-26 A	10-Sep-26		
PC2330	Embeds - Fabrication & Delivery	35	11-Sep-26	29-Oct-26		
Structural Steel - Sequence 1						
PC2060	Sequence 1 - Drawings & Submittals	21	26-Aug-26 A	24-Sep-26		
PC2070	Sequence 1 - A & E Review	10	25-Sep-26	08-Oct-26		
Remaining Level of Effort Actual Level of Effort Actual Work Remaining Work Critical Remaining Work ◆ Mile- ◆ Non- ◆ Actual ◆ Co- ◆ Mile- Data Date: 26-Aug-26 Run Date: 03-Sep-26 Project: 45100629 The Point Event Venue Layton Construction Company 26-Aug-26 Schedule Layton CONSTRUCTORS WITH INTEGRITY						

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Activity ID		Activity Name	Original Duration	Start	Finish	2027																								2028												2029
						g	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan							
	PC1250	Curtains - Fabrication & Delivery	100	26-Oct-26	19-Mar-27																																					
Theatrical Equipment																																										
	PC1500	Theatrical Equipment - Shop Drawings & Submittals	5	05-Oct-26	09-Oct-26																																					
	PC1525	Theatrical Equipment -A & E Review	10	12-Oct-26	23-Oct-26																																					
	PC1550	Theatrical Equipment - Fabrication & Delivery	115	26-Oct-26	09-Apr-27																																					
Stage Equipment																																										
	PC1900	Stage Equipment - Drawings & Submittals	5	05-Oct-26	09-Oct-26																																					
	PC1925	Stage Equipment -A & E Review	10	12-Oct-26	23-Oct-26																																					
	PC1950	Stage Equipment - Fabrication & Delivery	155	26-Oct-26	07-Jun-27																																					
Audio Visual																																										
	PC1300	AV - Drawings & Submittals	5	05-Oct-26	09-Oct-26																																					
	PC1325	AV - A & E Review	10	12-Oct-26	23-Oct-26																																					
	PC1350	AV - Fabrication & Delivery	75	26-Oct-26	12-Feb-27																																					
Aggregate Piers																																										
	PC2170	Aggregate Piers - Drawings & Submittals	10	26-Aug-26 A	23-Sep-26																																					
	PC2180	Aggregate Piers - A & E Review	10	24-Sep-26	07-Oct-26																																					
Construction																																										
Site Work																																										
	A4060	Clear & Grub	15	08-Sep-26	28-Sep-26																																					
	A1560	Site Fill & Rough Grade	15	29-Sep-26	19-Oct-26																																					
	A1590	Site Utilities - Sewer	15	29-Sep-26	19-Oct-26																																					
	A1580	Site Office & Fencing	3	20-Oct-26	22-Oct-26																																					
	A4070	SWPPP Install	2	23-Oct-26	26-Oct-26																																					
	A1570	Aggregate Piers	15	08-Oct-26	28-Oct-26																																					
	A1550	Site Utilities - Storm Drain	15	20-Oct-26	09-Nov-26																																					
	A6830	Site Utilities - Water & Irrigation Main	15	10-Nov-26	02-Dec-26																																					
	A1850	Underground Electrical & Data Service Feeds	15	10-Aug-27	30-Aug-27																																					
Footings & Foundations																																										
North West - Footings																																										
	NW 2610	Mat & Wall Footings - Excavate	5	20-Oct-26	26-Oct-26																																					
	NW 2620	Mat & Wall Footings - Form & Reinforce	10	27-Oct-26	06-Nov-26																																					
	NW 2680	Mat & Wall Footings - Pour	2	10-Nov-26	11-Nov-26																																					
	NW 2690	Mat & Shear Wall Footings - Strip Forms	3	12-Nov-26	16-Nov-26																																					
	NW 2630	Mat & Shear Wall Footings - Backfill	4	17-Nov-26	20-Nov-26																																					
	NW 2770	Spot Footings - Excavate	5	21-Jan-27	27-Jan-27																																					
	NW 2800	Spot Footings - Form & Reinforce	5	28-Jan-27	03-Feb-27																																					
	NW 2810	Spot Footings - Pour	5	04-Feb-27	10-Feb-27																																					
	NW 2830	Continuous Footings - Excavate	5	04-Feb-27	10-Feb-27																																					
	NW 2815	Spot Footings - Strip Forms	5	11-Feb-27	17-Feb-27																																					
	NW 2835	Continuous Footings - Form & Reinforce	5	11-Feb-27	17-Feb-27																																					
	NW 2820	Spot Footings - Backfill	3	18-Feb-27	22-Feb-27																																					
	NW 2840	Continuous Footings - Pour	3	18-Feb-27	22-Feb-27																																					
	NW 2845	Continuous Footings - Strip Form	3	23-Feb-27	25-Feb-27																																					
North West - Walls																																										
	NW 2650	Core & Shear Walls - Waterproofing	5	06-Jan-27	12-Jan-27																																					

Activity ID		Activity Name	Original Duration	Start	Finish	2027												2028												2029					
						g	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan
	NW 2660	Core & Shear Walls - Backfill	5	13-Jan-27	20-Jan-27																														
	NW 2665	Foundation Walls - Form & Reinforce	5	26-Feb-27	04-Mar-27																														
	NW 2850	Foundation Walls - Pour	3	05-Mar-27	09-Mar-27																														
	NW 2855	Foundation Walls - Strip Forms	3	10-Mar-27	12-Mar-27																														
	NW 2860	Foundation Walls - Waterproofing	4	15-Mar-27	18-Mar-27																														
	NW 2865	Foundation Walls - Backfill	4	19-Mar-27	24-Mar-27																														
South West - Footings																																			
	SW 2670	Mat & Shear Wall Footings - Excavate	4	29-Oct-26	03-Nov-26																														
	SW 2680	Mat & Shear Wall Footings - Form & Reinforce	7	04-Nov-26	12-Nov-26																														
	SW 2760	Mat & Shear Wall Footings - Pour	2	13-Nov-26	16-Nov-26																														
	SW 2770	Mat & Shear Wall Footings - Strip Forms	3	17-Nov-26	19-Nov-26																														
	SW 2690	Mat & Shear Wall Footings - Backfill	4	20-Nov-26	25-Nov-26																														
	SW 2650	Spot Footings - Excavate	5	13-Jan-27	20-Jan-27																														
	SW 2660	Spot Footings - Form & Reinforce	5	21-Jan-27	27-Jan-27																														
	SW 2665	Spot Footings - Pour	2	28-Jan-27	29-Jan-27																														
	SW 2675	Spot Footings - Strip Forms	3	01-Feb-27	03-Feb-27																														
	SW 2685	Continuous Footings - Excavate	5	01-Feb-27	05-Feb-27																														
	SW 2820	Spot Footings - Backfill	3	04-Feb-27	08-Feb-27																														
	SW 2840	Continuous Footings - Form & Reinforce	5	08-Feb-27	12-Feb-27																														
	SW 2845	Continuous Footings - Pour	2	15-Feb-27	16-Feb-27																														
	SW 2860	Continuous Footings - Strip Form	3	17-Feb-27	19-Feb-27																														
South West - Walls																																			
	SW 2710	Core & Shear Walls - Waterproofing	4	31-Dec-26	06-Jan-27																														
	SW 2720	Core & Shear Walls - Backfill	4	07-Jan-27	12-Jan-27																														
	SW 2725	Foundation Walls - Form & Reinforce	5	22-Feb-27	26-Feb-27																														
	SW 2735	Foundation Walls - Pour	3	01-Mar-27	03-Mar-27																														
	SW 2745	Foundation Walls - Strip Forms	3	04-Mar-27	08-Mar-27																														
	SW 2750	Foundation Walls - Waterproofing	5	09-Mar-27	15-Mar-27																														
	SW 2755	Foundation Walls - Backfill	5	16-Mar-27	22-Mar-27																														
South East - Footings																																			
	SE 2760	Mat & Shear Wall Footings - Excavate	5	04-Nov-26	10-Nov-26																														
	SE 2770	Mat & Shear Wall Footings - Form & Reinforce	12	11-Nov-26	30-Nov-26																														
	SE 2850	Mat & Shear Wall Footings - Pour	3	01-Dec-26	03-Dec-26																														
	SE 2860	Mat & Shear Wall Footings - Strip Forms	5	04-Dec-26	10-Dec-26																														
	SE 2780	Mat & Shear Wall Footings - Backfill	5	11-Dec-26	17-Dec-26																														
	SE 2690	Spot Footings - Excavate	5	29-Mar-27	02-Apr-27																														
	SE 2700	Spot Footings - Form & Reinforce	5	05-Apr-27	09-Apr-27																														
	SE 2730	Spot Footings - Pour	5	12-Apr-27	16-Apr-27																														
	SE 2830	Continuous Footings - Excavate	5	12-Apr-27	16-Apr-27																														
	SE 2740	Spot Footings - Strip Forms	5	19-Apr-27	23-Apr-27																														
	SE 2845	Continuous Footings - Form & Reinforce	5	19-Apr-27	23-Apr-27																														
	SE 2820	Spot Footings - Backfill	3	26-Apr-27	28-Apr-27																														
	SE 2855	Continuous Footings - Pour	3	26-Apr-27	28-Apr-27																														
	SE 2865	Continuous Footings - Strip Form	3	29-Apr-27	03-May-27																														
South East - Walls																																			

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Activity ID	Activity Name	Original Duration	Start	Finish	2027												2028												2029						
					g	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	
NW	NW 3015	Lift 4 - Core & Shear Walls -Pour	2	22-Jan-27	25-Jan-27																														
	NW 3025	Lift 4 - Core & Shear Walls -Strip Forms	1	26-Jan-27	26-Jan-27																														
	Lift 5 (85' -70')																																		
	NW 3035	Lift 5 -Core & Shear Walls -Form & Reinforce	4	27-Jan-27	01-Feb-27																														
	NW 3045	Lift 5 -Core & Shear Walls -Embeds	2	02-Feb-27	03-Feb-27																														
	NW 3055	Lift 5 -Core & Shear Walls -Pour	2	04-Feb-27	05-Feb-27																														
	NW 3065	Lift 5 -Core & Shear Walls -Strip Forms	1	08-Feb-27	08-Feb-27																														
	Lift 6 (70' -75')																																		
	NW 3075	Lift 6 -Core & Shear Walls -Form & Reinforce	3	09-Feb-27	11-Feb-27																														
	NW 3085	Lift 6 -Core & Shear Walls -Embeds	2	12-Feb-27	15-Feb-27																														
NW 3095	Lift 6 -Core & Shear Walls -Pour	2	16-Feb-27	17-Feb-27																															
NW 3105	Lift 6 -Core & Shear Walls -Strip Forms	1	18-Feb-27	18-Feb-27																															
South West																																			
Lift 1 (6' -10')																																			
SW 3115	Lift 1 - Core & Shear Walls -Form & Reinforce	4	30-Nov-26	03-Dec-26																															
SW 3125	Lift 1 - Core & Shear Walls -Embeds	2	04-Dec-26	07-Dec-26																															
SW 3135	Lift 1 - Core & Shear Walls -Pour	2	08-Dec-26	09-Dec-26																															
SW 3145	Lift 1 - Core & Shear Walls -Strip Forms	1	10-Dec-26	10-Dec-26																															
Lift 2 (10' -25')																																			
SW 3155	Lift 2 - Core & Shear Walls -Form & Reinforce	4	11-Dec-26	16-Dec-26																															
SW 3165	Lift 2 -Core & Shear Walls -Embeds	2	17-Dec-26	18-Dec-26																															
SW 3175	Lift 2 -Core & Shear Walls -Pour	2	21-Dec-26	22-Dec-26																															
SW 3185	Lift 2 -Core & Shear Walls -Strip Forms	1	23-Dec-26	23-Dec-26																															
Lift 3 (25' -40')																																			
SW 3195	Lift 3 -Core & Shear Walls -Form & Reinforce	4	24-Dec-26	30-Dec-26																															
SW 3205	Lift 3 -Core & Shear Walls -Embeds	2	31-Dec-26	04-Jan-27																															
SW 3215	Lift 3 -Core & Shear Walls -Pour	2	05-Jan-27	06-Jan-27																															
SW 3225	Lift 3 -Core & Shear Walls -Strip Forms	1	07-Jan-27	07-Jan-27																															
Lift 4 (40' -55')																																			
SW 3235	Lift 4 -Core & Shear Walls -Form & Reinforce	4	08-Jan-27	13-Jan-27																															
SW 3245	Lift 4 -Core & Shear Walls -Embeds	2	14-Jan-27	15-Jan-27																															
SW 3255	Lift 4 -Core & Shear Walls -Pour	2	19-Jan-27	20-Jan-27																															
SW 3265	Lift 4 -Core & Shear Walls -Strip Forms	1	21-Jan-27	21-Jan-27																															
Lift 5 (55' -70')																																			
SW 3275	Lift 5 -Core & Shear Walls -Form & Reinforce	4	22-Jan-27	27-Jan-27																															
SW 3285	Lift 5 -Core & Shear Walls -Embeds	2	28-Jan-27	29-Jan-27																															
SW 3295	Lift 5 -Core & Shear Walls -Pour	2	01-Feb-27	02-Feb-27																															
SW 3305	Lift 5 -Core & Shear Walls -Strip Forms	1	03-Feb-27	03-Feb-27																															
South East																																			
Lift 1 (6' -10')																																			
SE 3315	Lift 1 - Core & Shear Walls -Form & Reinforce	4	04-Feb-27	09-Feb-27																															
SE 3325	Lift 1 - Core & Shear Walls -Embeds	2	10-Feb-27	11-Feb-27																															
SE 3335	Lift 1 -Core & Shear Walls -Pour	2	12-Feb-27	15-Feb-27																															
SE 3345	Lift 1 -Core & Shear Walls -Strip Forms	1	16-Feb-27	16-Feb-27																															
Lift 2 (10' -25')																																			

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Activity ID		Activity Name	Original Duration	Start	Finish	2027												2028												2029																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																														
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	West 7695	L1: Interior - Wall Layout	3	04-May-27	06-May-27																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																							

Activity ID		Activity Name	Original Duration	Start	Finish	Page 18 of 29																														
						2027												2028												2029						
						g	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	
West 4680	L1: Lobby - Countertops	10	12-Jan-28	26-Jan-28																																
West 4690	L1: Lobby - Bar Display Shelving	5	27-Jan-28	02-Feb-28																																
West 4700	L1: Lobby - Bar Wall Lighting	5	03-Feb-28	09-Feb-28																																
West 4720	L1: Lobby - Bar Wall Tile	10	27-Jan-28	09-Feb-28																																
West 4710	L1: Lobby - Bar Metal Paneling	12	10-Feb-28	25-Feb-28																																
West 4755	L1: Lobby - Terrazzo Flooring	15	28-Feb-28	17-Mar-28																																
West 4770	L1: Lobby - Base Trim	4	20-Mar-28	23-Mar-28																																
West 4660	L1: Lobby - Interior Storefronts	5	20-Mar-28	24-Mar-28																																
West 4780	L1: Lobby - Wall Coverings	5	24-Mar-28	30-Mar-28																																
West 4790	L1: Lobby - Bar Curtains	3	31-Mar-28	04-Apr-28																																
West 4810	L1: Lobby - Security Finishes	5	05-Apr-28	11-Apr-28																																
West 4750	L1: Lobby - Electrical Finishes	10	31-Mar-28	13-Apr-28																																
West 4800	L1: Lobby - AV Finishes	10	05-Apr-28	18-Apr-28																																
West 4820	L1: Lobby - Branding Signage	10	19-Apr-28	02-May-28																																
Food Services																																				
West 4830	L1: Food Services - Pantry Stainless Flashing	5	18-Nov-27	24-Nov-27																																
West 4240	L1: Food Services - Pantry FRP	5	29-Nov-27	03-Dec-27																																
West 4840	L1: Food Services - Exhaust Hood	5	06-Dec-27	10-Dec-27																																
West 4850	L1: Food Services - Exhaust Hood - MEP	5	13-Dec-27	17-Dec-27																																
West 4860	L1: Food Services - Ceiling Grid	5	20-Dec-27	27-Dec-27																																
West 4870	L1: Food Services - Ceiling Finishes - Fire Sprinkler	5	28-Dec-27	04-Jan-28																																
West 4880	L1: Food Services - Ceiling Finishes - Electrical	5	05-Jan-28	11-Jan-28																																
West 4890	L1: Food Services - Ceiling Finishes - Mechanical	5	12-Jan-28	19-Jan-28																																
West 4900	L1: Food Services - Countertops	5	20-Jan-28	26-Jan-28																																
West 4910	L1: Food Services - Overhead Doors	5	27-Jan-28	02-Feb-28																																
West 4920	L1: Food Services - Kitchen Equipment	5	20-Mar-28	24-Mar-28																																
West 4930	L1: Food Services - Electrical Finishes	5	27-Mar-28	31-Mar-28																																
West 4940	L1: Food Services - Plumbing Finishes	5	03-Apr-28	07-Apr-28																																
Offices & Storage (OS)																																				
West 7755	L1: OS - Seal Concrete	4	18-Nov-27	23-Nov-27																																
West 5010	L1: OS - Anti-Static Vinyl Flooring	5	18-Nov-27	24-Nov-27																																
West 4950	L1: OS - Janitorial & Storage FRP	5	24-Nov-27	03-Dec-27																																
West 4970	L1: OS - Ceiling Grid	5	03-Dec-27	09-Dec-27																																
West 5020	L1: OS - Telecom AV Racks & Ladders	10	29-Nov-27	10-Dec-27																																
West 4980	L1: OS - Ceiling Finishes - Fire Sprinkler	5	10-Dec-27	16-Dec-27																																
West 5000	L1: OS - Ceiling Finishes - Electrical	5	17-Dec-27	23-Dec-27																																
West 4990	L1: OS - Ceiling Finishes - Mechanical	5	27-Dec-27	03-Jan-28																																
West 5030	L1: OS - Pull Low Voltage Cabling	15	13-Dec-27	04-Jan-28																																
West 5050	L1: OS - LVT & Carpet Flooring	5	04-Jan-28	10-Jan-28																																
West 7895	L1: OS - Telecom AV Equipment	10	30-Dec-27	13-Jan-28																																
West 5060	L1: OS - Lockers	5	11-Jan-28	18-Jan-28																																
West 7905	L1: OS - Terminate Low Voltage Cabling	15	14-Jan-28	04-Feb-28																																
Level 1 - East																																				
General																																				
East 5000	L1: Interior - Masonry Walls	10	23-Jul-27	05-Aug-27																																

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Activity ID		Activity Name	Original Duration	Start	Finish	2027																								2028												2029
						g	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan							
Level 2 - West																																										
General																																										
West 5120	L2: Interior - Wall Layout	3	29-Jun-27	01-Jul-27	L2: Interior - Wall Layout																																					
West 5125	L2: Interior - Mechanical Layout - Openings	2	02-Jul-27	06-Jul-27	L2: Interior - Mechanical Layout - Openings																																					
West 5130	L2: Interior - Wall Framing	10	07-Jul-27	20-Jul-27	L2: Interior - Wall Framing																																					
West 5135	L2: Interior - Vanity Tube Steel	3	16-Jul-27	20-Jul-27	L2: Interior - Vanity Tube Steel																																					
West 5140	L2: Interior - Overhead Rough-in: DWV Plumbing	8	21-Jul-27	30-Jul-27	L2: Interior - Overhead Rough-in: DWV Plumbing																																					
West 5145	L2: Interior - Overhead Rough-in: Mechanical	10	28-Jul-27	10-Aug-27	L2: Interior - Overhead Rough-in: Mechanical																																					
West 5170	L2: Interior - In Wall Rough-in: DWV Plumbing	8	02-Aug-27	11-Aug-27	L2: Interior - In Wall Rough-in: DWV Plumbing																																					
West 5155	L2: Interior - Overhead Rough-in: Water & Gas Plumbing	8	04-Aug-27	13-Aug-27	L2: Interior - Overhead Rough-in: Water & Gas Plumbing																																					
West 5190	L2: Interior - In Wall Rough-in: Mechanical	5	11-Aug-27	17-Aug-27	L2: Interior - In Wall Rough-in: Mechanical																																					
West 5160	L2: Interior - Overhead Rough-in: Fire Sprinkler	8	11-Aug-27	20-Aug-27	L2: Interior - Overhead Rough-in: Fire Sprinkler																																					
West 5150	L2: Interior - Overhead Rough-in: Electrical	8	16-Aug-27	25-Aug-27	L2: Interior - Overhead Rough-in: Electrical																																					
West 7765	L2: Interior - In Wall Rough-in: Water & Gas Plumbing	8	16-Aug-27	25-Aug-27	L2: Interior - In Wall Rough-in: Water & Gas Plumbing																																					
West 5180	L2: Interior - In Wall Rough-in: Electrical	8	26-Aug-27	07-Sep-27	L2: Interior - In Wall Rough-in: Electrical																																					
West 5200	L2: Interior - Drywall - Hang (one side)	8	08-Sep-27	17-Sep-27	L2: Interior - Drywall - Hang (one side)																																					
West 5210	L2: Interior - Insulation	5	20-Sep-27	24-Sep-27	L2: Interior - Insulation																																					
West 5220	L2: Interior - Drywall - Hang (second side)	8	27-Sep-27	06-Oct-27	L2: Interior - Drywall - Hang (second side)																																					
West 5240	L2: Interior - Hard Lid Ceiling - Framing	8	07-Oct-27	18-Oct-27	L2: Interior - Hard Lid Ceiling - Framing																																					
West 5250	L2: Interior - Hard Lid Ceiling - Fire Sprinkler Rough-in	5	19-Oct-27	25-Oct-27	L2: Interior - Hard Lid Ceiling - Fire Sprinkler Rough-in																																					
West 5260	L2: Interior - Hard Lid Ceiling - Electrical Rough-in	5	21-Oct-27	27-Oct-27	L2: Interior - Hard Lid Ceiling - Electrical Rough-in																																					
West 5270	L2: Interior - Hard Lid Ceiling - Mechanical Rough-in	5	25-Oct-27	29-Oct-27	L2: Interior - Hard Lid Ceiling - Mechanical Rough-in																																					
West 5280	L2: Interior - Drywall - Hang Ceilings	5	01-Nov-27	05-Nov-27	L2: Interior - Drywall - Hang Ceilings																																					
West 5230	L2: Interior - Drywall - Mud & Tape	10	03-Nov-27	16-Nov-27	L2: Interior - Drywall - Mud & Tape																																					
West 8000	L2: Interior - Plywood IT / Telecom Walls	3	17-Nov-27	19-Nov-27	L2: Interior - Plywood IT / Telecom Walls																																					
West 5290	L2: Interior - Paint	10	22-Nov-27	07-Dec-27	L2: Interior - Paint																																					
West 7775	L2: Interior - Acoustical Plaster	15	08-Dec-27	29-Dec-27	L2: Interior - Acoustical Plaster																																					
West 5300	L2: Interior - Specialties	5	25-Apr-28	01-May-28	L2: Interior - Specialties																																					
West 5310	L2: Interior - Doors & Hardware	5	04-May-28	10-May-28	L2: Interior - Doors & Hardware																																					
West 5320	L2: Interior - Wayfinding Signage	5	11-May-28	17-May-28	L2: Interior - Wayfinding Signage																																					
Suites																																										
West 7190	L2: Suites - Millwork	6	30-Dec-27	07-Jan-28	L2: Suites - Millwork																																					
West 7200	L2: Suites - Countertops	5	10-Jan-28	14-Jan-28	L2: Suites - Countertops																																					
West 7220	L2: Suites - Back Splash Tile	10	18-Jan-28	31-Jan-28	L2: Suites - Back Splash Tile																																					
West 7280	L2: Suites - Plumbing Finishes	4	01-Feb-28	04-Feb-28	L2: Suites - Plumbing Finishes																																					
West 7210	L2: Suites - Handrails	10	01-Feb-28	14-Feb-28	L2: Suites - Handrails																																					
West 7270	L2: Suites - Carpets	10	15-Feb-28	28-Feb-28	L2: Suites - Carpets																																					
West 7250	L2: Suites - Wall Coverings	6	29-Feb-28	07-Mar-28	L2: Suites - Wall Coverings																																					
West 7240	L2: Suites - Mechanical Finishes	6	08-Mar-28	15-Mar-28	L2: Suites - Mechanical Finishes																																					
West 7230	L2: Suites - Electrical Finishes	15	16-Mar-28	05-Apr-28	L2: Suites - Electrical Finishes																																					
Restrooms																																										
West 5090	L2: Restrooms - Countertops	5	08-Dec-27	14-Dec-27	L2: Restrooms - Countertops																																					
West 5330	L2: Restrooms - Tile	12	15-Dec-27	03-Jan-28	L2: Restrooms - Tile																																					
West 5340	L2: Restrooms - Partitions	8	04-Jan-28	13-Jan-28	L2: Restrooms - Partitions																																					
West 5350	L2: Restrooms - Plumbing Finishes	7	14-Jan-28	25-Jan-28	L2: Restrooms - Plumbing Finishes																																					

[illegible]

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Schedule A2 - Liquidated Damages

Calendar Days exceeding Substantial Completion	Rate
Calendar Day - 1 thru 30	Grace Period, \$0
Calendar Day - 31 thru 45	\$1,500/day
Calendar Day - 46 thru 60	\$3,000/day
Calendar Day – 61 thru 75	\$7,000/Day
Calendar Day – 76 thru Substantial Completion	\$12,000/Day

Except as set forth in the second paragraph of Section 4.4 of the Agreement, the Liquidated Damages that may be assessed against Contractor shall not exceed One Hundred percent (100%) of the Contractor's Fee listed in Schedule G.

Schedule B - Billable Equipment Rate Schedule

2026 Equipment Rates

Equipment Description	Month	Week
Trailers		
Flatbed Trailer 10' to 16'	\$400	\$150
7000 lb. Dump Trailer	\$450	\$160
Small Tool Trailer 16' to 20'	\$300	\$150
Semi Tool Trailer 45' to 53'	\$250	
Drills & Grinders		
Core Drill	\$700	\$450
Magnetic Drill Press	\$425	\$160
Large Hammer Drill	Repair Cost	
Floor Grinder (Blue Prep Master)	\$1,900	\$625
Floor Planer (White Shave Master)	\$2,750	\$925
Floor Surfer / Gas Planer	\$850	\$300
Ceiling Grinder	\$300	\$100
Ventilation		
Neg. Air Machine	\$100	
Ventilation Blower	\$75	
Fan	\$100	
Generators / Compressor		
5-6kw Generator	\$300	\$150
25 KVA Towable Generator	\$650	\$300
45 KVA Towable Generator	\$1,200	\$500
70 KVA Towable Generator	\$1,600	\$600
180 Amp Welder	\$400	\$200
Portable Gas Compressor	\$250	\$150
Portable Electric Compressor	\$265	\$80
100 CFM Towable Air Compressor	\$800	\$300
375 CFM Towable Air Compressor	\$800	\$300
Power Trowel		
48" Walk Behind Power Trowel / per use	200 PER USE	
10' Ride On Power Trowel / per use	900 PER USE	
8' Ride On Power Trowel / per use	600 PER USE	
6' Ride On Power Trowel / per use	600 PER USE	
24" Finish Trowel / per use	200 PER USE	
36" Finish Trowel / per use	200 PER USE	
Lura Screed	450 PER USE	
Walk Behind Floor Scrubber	350 PER USE	
Green Concrete Saws		
X-150 Soff-cut	\$ 200.00	-
X/G-2000 Soff-cut	\$ 275.00	-
X-4000 Soff-cut	\$ 300.00	-
Survey		
Robotic Survey Package Rate	\$32 per hour	
Builders Level	\$100	
Laser Level	\$100	
Theodolite	\$100	
Pumps / Pressure Washers		
Towable Pressure Washer	\$1,800	\$600
Cold Water Pressure Washer	\$400	\$150
300 Gallon Water Trailer w/pump	\$300	\$150

Grout Pump	\$100	
Material Handling		
Forklift Dumpster	\$100	
Crane Dump Cart	\$450	\$300
Crane Material Basket	\$450	\$150
Crane Man Basket	\$500	\$150
Gar-Bro Bucket	\$300	\$200
Electric Pallet Jack	\$450	\$150
Pallet Jack	\$75	
Lighting		
4000 Watt Towable Light Tower	\$650	\$300
Safety		
Handrail Stanchion	\$6	\$2
Blankets		
Concrete Blankets (reference policy)	\$90 Season	\$30 Month
Snow Tarp	\$240	\$80 Month
Misc. Equipment		
17" Floor Polisher	\$75	
100' S O Cord	\$100	
Spider Box	\$100	
Bandar	\$55	\$30
Gas Cut-Off Saw	\$500	\$300
Hilti PS1000 X-SCAN System	\$1,750	\$750
Hilti Ferrosan	\$650	\$225
Rebar Bender	\$55	\$30
Current Cert Fire Ext.	10lb \$39	20lb \$49
60 Lb. Elect. Jack Hammer	\$720	\$240
35 Lb. Elect. Chipping Hammer	\$585	\$195
14" Elect. Concrete Saw W/ Hepa Vacuum Kit	\$600	\$300
	+ Blade	+ Blade
16' Scaffold Plank	\$9	
K-Rails	\$100	
ALL deadmen	\$75	
Forming Equipment		
Footing Form Trailer		\$1.50 S/F
2'x4' Symon Form	\$12/each	
2'X6" Simon Form	\$14/each	
Tie Cart	\$100 per month	
K-Rail Lifter	\$800.00	\$500.00
Pressed Steel Wedge (Slipper)	\$0.25	-
One Piece Whaler	\$0.85	-
Turnbuckle	\$3.75	-
Jahn A's	\$0.45	-
Jahn A Scaffold Bracket	\$6.25	-
Shoring Material		\$9.00 S/F
Re-shoring Material		\$.75 S/F
Vibrators		
Back Pac Vibrator /per use	\$200	
Gas Vibratory Screed / per use	\$200	
Electric Vibratory Screed / per use	\$200	
External Wall Vibrator / per use	\$100	
Electric Concrete Vibrator		Repair Cost



Schedule C - Potential Deductive Alternates

The Point Event Venue - 95% CD Bid Update

Costs for items listed below are included in the GMP. Costs include supply and install.

Trade		Selected Subcontractor	Total Amount
11.40	Food Service Equipment		\$ 2,526,000
11.61	Demountable and Moveable Stages		\$ 330,539
11.62	Stage Curtains		\$ 175,000
11.82	Waste Compactors		\$ 145,202
12.66	Telescopic Seating		\$ 2,306,711
26.00	Video Boards		\$ 1,211,388
Total Potential Deductive Alternates			\$ 6,694,840

Schedule D - Allowances

The Point Event Venue - 95% CD Bid Update

GMP Allowances

Trade	Description	\$ 2,155,873
00.00	General	400,000
	Weather Conditions Allowance	400,000
06.40	Architectural Woodwork	187,645
	WD-51 Reclaimed Wood Paneling - Exterior Soffits Allowance for Unspecified Material (3,554 sf @ \$50/sf)	177,700
	WD-51 Reclaimed Wood Paneling - Interior Wall Panels Allowance for Unspecified Material (221 sf @ \$45/sf)	9,945
07.50	Roofing	20,000
	Painted Roof Sign Note 82/A1.050 Allowance	20,000
08.10	Doors, Frames, & Hardware	14,000
	Hardware Set #61 Not Specified (on openings 101, 108, 125, 136.4, 160.A, 160.B, and 160.C - Allowance (8 ea @ \$1750/ea)	14,000
09.20	Framing & Drywall	31,200
	F1B wall at elevator shaft allowance (3,900sf @ \$8.00/sf)	31,200
09.30	Tile	15,000
	Allowance for TL-19 Spec Ceramics Matrix Tile, Product Shown on Finish Schedule but Undefined in Elevations (500sf @ \$30/sf)	15,000
09.63	Resinous Matrix Terrazzo Flooring	196,163
	05/A9.001, A1.220 - 2" Terrazzo Build-Up @ Suite Center Bar (600sf @ \$60/sf)	36,000
	Epoxy Floor Fill per spec 09 66 23 section 3.2 C4 (1/4" Allowance over entire area)	160,163
10.00	Specialties	68,750
	Allowance for Smoke/Draft Curtains (RFI 036, 100sf @ \$485/sf)	48,500
	Allowance for Marker Boards (none shown)	5,250
	Allowance for Defibrillators and Cabinets (none shown, usually required by code)	15,000
10.14	Signage	1,223,115
	Interior/exterior signage	1,223,115
11.62	Stage Curtains	175,000
	Allowance for 11 61 43 - Stage Curtains (Rollup System - 200% Fullness into a Roller) (Track/Draw System - Location of Stored Curtains) (Coordination of Curtains in Venue Configurations)	175,000
12.20	Window Coverings	5,000
	Pocket Coordination Allowance (1ea. @ \$5,000/ea)	5,000
12.61	Fixed Audience Seating	60,480
	Terrace Lounge Lounger Seating Allowance (96ea seats @ \$630/seat)	60,480
26.00	Electrical	1,642,385
	Allowance for specified fixtures D1 & D4	236,000
	Roof Snowmelt System (Q/G1.001)	50,000
	DAS System (Public Safety Only)	83,015
	Owner-Direct Rigging Grid, Hoists, and Theatrical Fixtures (ETC System)	857,850
	Allowance for Street Lighting Not Currently Defined in Design, per Hunt Electric Photometric plan	415,520
31.10	Earthwork & Utilities	97,650
	Overex Pad 18" and Haul-Off Allowance Budget (3,320CY @ \$20.00/cy)	66,400
	Building Excavation Dewatering Allowance (125hrs @ \$250/hr)	31,250

Schedule E

The Point Event Venue - 95% CD Bid Update

Scope-Specific Clarifications

Tab	Trade	Description
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01.10 General

This GMP is based on the contract documents from Gensler dated 06.18.2026. Addendum #1 dated 07.15.2026 is included in this GMP.

Costs for monthly utility (power, gas, water) consumption for construction is assumed to be paid for by owner and not included in the GMP.

An allowance is used where the scope of work is not clearly defined. If the costs exceed the allowance, they will be reimbursed by change order by the Owner. If the costs are less than the allowance, the difference returns to the Owner at the end of the Project. See "Allowance Summary" for itemization of included allowances.

VE values are ROM costs only. Full design of VE items must be complete and priced before the VE costs can be incorporated into the GMP.

01.20 Specifications

Any and all reference to LEED requirements, LEED reporting procedures or LEED submittal information is excluded.

Spec Section 006002 Waste Management Plan Summary is excluded

Spec Section 006003 Waste Management Reporting is excluded

Spec Section 006011, 006013, 006015 are excluded

Spec Section 018113.14 Sustainable Design Requirements is excluded

Spec Section 018119 Indoor Air Quality Management is excluded

Spec Section 018133 Sustainable Design Requirements is excluded

04.00 Masonry

Brick Veneer material must be delivered in 2026 or there will be a price increase of 10% for brick material. Price increase not included GMP.

05.00 Steel

Cane detection barrier in detail 11 on A7.010 is called out as to be "PTD MTL-01". MTL-01 is a perforated metal ceiling. This finish is excluded and assumed in this GMP to be a powder coated cane rail.

Due to the manufacturing process of tempered glazing there are sharp edges. The top of rail B5 (tempered glass guardrail) is included with a #4 finish stainless steel top cap with a gasket to prevent cuts from the sharp tempered glazing edges.

06.10 Rough Carpentry

FSC requirements are excluded for rough carpentry as required in specification section 06 10 53 Part 2 section 2.1 A. No rough carpentry (nailers, backing, blocking) will be exposed to view.

07.42 Metal Panels

Oil canning or panel distortion is a possibility with a single skin wall panel system like the Morin F-12 system. We have made no allowance to mitigate this potential issue.

MT-51 Metal-Plate Wall Panels finish will be prefinished and then fabricated. This can cause "Crazing" of the finish which could be an undesirable effect to the finish. We have made no allowance to mitigate this potential issue and have discussed this potential issue with the Dry Design Sales Rep. We suggest the owner/design team to request a "4-way mock-up board" to review finish to determine if the finish meets the expectations of the design and ownership.

07.50 Roofing

We have included an allowance of \$20,000 for the painted roof sign. See note 82/A1.050. Backlit logo mounted on roof (keynote 82/A1.050) has been requested to be excluded in this GMP.

The Point Event Venue - 95% CD Bid Update

Scope-Specific Clarifications

08.10 Doors, Frames, & Hardware

Hardware set #11 calls for a Markar FM-300 continuous hinge in BSP (Black suede powder coat) finish. The only option for black is MPPC3 Powder Coat Semi-Gloss Black and has been included.

Hardware #34 does not have a series specified for the Sargent 422 closer. The series 422-CTB2 is included.

Opening 136.A is included as single acting not double acting to maintain the 45 minute fire rating.

08.40 Glass & Glazing

The type B5 glass guardrail does not have a height called out or elevated. 30" tall glazing is included.

09.30 Tile

Tile types TL-10,11, and 12 are shown in the finish schedule, but not found detailed in any finish plans or elevations. Because of this, these tile types are excluded from this GMP and can be priced upon request.

09.63 Resinous Matrix Terrazzo Flooring

Aluminum divider strips are included at all Terrazzo transitions as needed for install, except for in locations that MT-05 bronze divider strips are indicated on floor plans. MT-05 will be included in these locations only, not throughout.

The material for the MT-05 divider strips (bronze) available for Terrazzo flooring will not be an exact match to the MT-05 material called out in the finish schedule. We would recommend a sample be provided for review, and approval through submittal.

Epoxy floor underlayment is specified to be 5/8" thick for the purpose of floor leveling. 1/4" thick underlayment is included in this GMP, as installer feels this is sufficient to level the finished coating.

09.64 Wood Flooring

Basketball court shown on rendering on G8.103 is excluded and assumed FFE. This scope has been excluded in each cost estimate, and details for the installation and coordination of the court system cannot be found in the documents to pair with the specification section 09-6466 for Wood Flooring

10.00 Specialties

Hand dryers are not shown in plans, and therefore excluded.

10.14 Signage

Interior and Exterior signage package is included in our Allowances exhibit as design is not complete. Any changes to this package would impact price included in this GMP.

11.40 Food Service Equipment

Specs call for both Thermalrite and Bally as walk-in manufacturers. Base bid includes all boxes provided by Bally.

There is a discrepancy between the hood drawings and the food service drawings provided. Bid price based on the hood drawings provided from specified manufacturer.

Manitowoc 1900 Dice Cube Ice Maker is not available in single phase. It is only available in 3 phase for dice cubed 1900 units. We would have to change to either half-dice, or regular cube to go single phase.

Specified Manufacturer Perlick quoted different refrigerators per what's specified. They stated spec'd refrigerators were residential models and quoted commercial models instead. The commercial models are NSF approved where as the residential are not.

GMP costs exclude any stainless-steel work not listed in section 11400 or without an item number.

GMP costs exclude any anchoring / bracing and tethering other than those shown or referenced in section 11400.

11.66 Gymnasium Equipment

Portable Basketball Backstops are excluded from this GMP and assumed to be FFE.

The Point Event Venue - 95% CD Bid Update

Scope-Specific Clarifications

12.61 Fixed Audience Seating

Spec Section 12-6100 Fixed Audience Seating calls for Hussey Forte (or equal) Seats at the Suites and Mini Suites (144ea. Total). Seating design plan on G8.101 shows these seats as Hussey Camatic Activa (or equal) seats. GMP is based on seating plan matrix G8.101 for the Irwin Centura HB model chair as an equal to the Hussey Camatic Activa.

The 92ea. Total Dreamseat Loungers at the Terrace Loge Boxes are shown as FFE on sheet G8.101. An allowance for these seats has been included in the GMP and associated allowance exhibit.

Fixed bar stool seating shown in overall seating plans for the suites and center club are excluded from this GMP and assumed FFE (72 total in Suites/Mini Suites and 32 total in the Center Club) 32ea. Dreamseat seating loungers in Center Club are shown as FFE in seating calcs on G8.101 and are excluded.

Standing GA Floor and ADA Companion seats and carts are excluded from this GMP and assumed FFE (2,204 folding GA seats and 18 total ADA companion)

Spec Section 12-6100 Fixed Audience Seating calls for Hussey Camatic Activa (or equal) seats at the Terrace Level (412ea. Total) Seating design plan on G8.101 shows these seats as Hussey Forte (or equal), which is how this GMP is priced. Chair included in this GMP is the Irwin Signature Rocker as an equal to the Hussey Forte.

12.66 Telescopic Seating

ADA and Companion seat counts shown on G8.101 for telescopic seating sections are excluded and assumed to be open, free space for ADA access. No physical seat for these counts are included in this GMP.

Chairs in West Telescopic seating section included in this GMP are the Centura model chair from Irwin (basis of design mfg.).

14.20 Elevators

Spec section 14-2150 calls for a Schindler 5500 model MRL system cab. The Schindler 5000 model is the only model that includes class C3 loading for elevators S-1,2, and is thus what is included in this GMP.

Cab flooring finishes will need to be coordinated with elevator manufacturer to ensure weight is consistent with expected capacity and live loads.

2-way video communication is not included.

Elevator manufacturer does not accommodate interfacing with a building management system. Costs for this system are excluded from this GMP.

Spec section 14-2150.2.7.M calls for both emergency power operation and battery-operated rescue. These are mutually exclusive options. Emergency power provisions are included in this GMP due to the generator powering the elevators.

Standard built-in screens are included in this GMP. Provisions for separate diagnostic displays are excluded.

Stainless steel sills as defined in Section 14-2150.2.10.E are not available in this elevator model. Nickel silver sills are included in this GMP.

Access switches mounted in jambs will have faceplates. No provision is available in this cab model to be compliant with Section 14-2150.2.10.J.1.b

Three-speed blowers are not available in this product line. Standard single-speed cab ventilation fans are included in all cabs.

Cab ceiling finishes for Elevators S-1,2 will be stainless steel #4 LED downlights.

Bumper rails will be 2.5" x 1" as is the manufacturers standard.

Cab pads for Elevators S-1,2 will hang from the cab ceiling via hooks, not from buttons installed on the cab walls.

Two-way visual communication is not required in Utah, and thus excluded in this GMP.

Intercom system specified per Section 14-2150.2.16.A.4 is not required in Utah and is thus excluded. Manufacturer standard intercom system is included.

Control room monitoring and display system specified per section 14-2150.2.17.C is excluded.

22.00 Mechanical

Drain, Waste, and Vent Piping is included in this GMP as PVC underground, and above-ground in walls and chases, no-hub cast iron in plenums.

Grilles in Rooms 211 and 212 are assumed in this GMP to be square to match rooms 223 and 224.

The Point Event Venue - 95% CD Bid Update

Scope-Specific Clarifications

Built-In Soap Dispensers have been removed from the plumbing schedules and are thus excluded from this GMP.

Garbage Disposals in the Suite Sinks have been removed from the plumbing schedules and thus excluded in this GMP.

We are using welded black iron duct with grease wrap in lieu of double wall prefabricated grease duct.

Packaged Makeup Air Units are provided per the plans and specifications, thus, remote condensers are excluded from this equipment.

Smoke Exhaust Fans and system have no integration with the RTU's on the schedule. In the event of smoke exhaust fans activating, no makeup air will be provided to the building. Due to this provision, these smoke exhaust fans may need to be inspected at a higher frequency than other mechanical equipment. Costs for these continual inspections are excluded and assumed to be part of Owner's maintenance package.

26.00 Electrical

Neutral Host DAS system defined in Spec Section 27-5319 is excluded from this GMP per direction from Ownership in 05/06/2026 page turn. Provisions for Public Safety DAS testing and system are included as requested.

Pixel Pitch included for the Exterior Video Walls in the current GMP will be 10mm in lieu of the 4.4mm currently scheduled. This is recommended by the manufacturer (Daktronics).

Pixel Pitch included for the stage video walls in the current GMP will be 3.7mm in lieu of the 2.9mm currently scheduled. This is recommended by the manufacturer (Daktronics).

Pixel Pitch included for the Video Ribbon Boards in the current GMP will be 3.9mm in lieu of the 2.9mm currently scheduled. The maintenance access on these boards will also be from either top or front of the ribbon, in lieu of only front access included with the scheduled model. This is recommended by the manufacturer (Daktronics).

South and East Video Walls will have 7500 nits in lieu of 6000 nits scheduled in the price currently included in the GMP. This is recommended by the manufacturer (Daktronics).

31.16 Ground Improvements

Pricing does not include the removal of obstructions found during geopier installation.

Schedule F

Drawings, Specifications and Other Contract Documents

1. 2026-0618_POTM BP2 - Issue for Building Permit Volume 1
2. 2026-0618_POTM BP2 - Issue for Building Permit Volume 2
3. 2026-0715_POTM - Addendum 01
4. 2026-0618_POTM BP2 IFP Project Manual-Vol 1
5. 2026-0618_POTM BP2 IFP Project Manual-Vol 2
6. 2026-0618_POTM BP2 IFP Project Manual-Vol 3
7. REPORT GEOTECHNICAL STUDY – UPDATE NO. 2 PROPOSED THE POINT EVENT CENTER
APPROXIMATELY 14000 SOUTH 200 WEST DRAPER, UTAH (40.4934°, -111.8992°)
8. Isolated 3D Model Specifically for the Terrace-Level Chandelier (D1 Fixture) – See “Schedule D1 – Allowances” - Layton is holding a \$236,000.00 allowance in the GMP for lighting fixtures D1 & D4.



Schedule G
The Point Event Venue - 95% CD Bid Update
Cost Summary

Trade	Selected Subcontractor	Total Amount
01.10 Final Cleaning	Delta Professional Services	96,407
02.10 Surveying	Meridian Engineering	41,500
03.00 Concrete	Layton	4,841,580
04.00 Masonry	AK Masonry	485,972
05.00 Steel	Fineline	8,187,435
05.70 Ornamental Metals	All Metals Fabrication	612,444
06.10 Rough Carpentry	RJP	108,026
06.40 Architectural Woodwork	Boswell Wasatch	2,127,949
07.10 Waterproofing & Joint Sealants	Hooley	431,531
07.20 Insulation	Insulation From Hale	281,679
07.42 Metal Panels	Western Building Group	3,279,277
07.50 Roofing	Clarks	1,545,030
07.81 Fireproofing	Spray-On Solutions	358,360
08.10 Doors, Frames, & Hardware	ABS	1,017,136
08.30 Overhead Doors	Miner Ltd.	245,190
08.40 Glass & Glazing	B&D Glass	1,166,379
09.20 Framing & Drywall	K & L Acoustic Drywall	4,187,354
09.30 Tile	Spectra	826,243
09.50 Acoustical Ceilings	K&L Acoustic	3,425,865
09.60 Flooring	W Construction	233,113
09.63 Resinous Matrix Terrazzo Flooring	FW Specialties	1,849,401
09.64 Wood Flooring	FFE	-
09.90 Painting	Fisher Painting	461,745
10.00 Specialties	Architectural Components	418,787
10.14 Signage	Trademark Visual (allowance)	1,238,365
10.22 Operable Partitions	Architectural Components	132,661
11.13 Loading Dock Equipment	Miner LTD	31,571
11.40 Food Service Equipment	Kamran & Co.	2,538,600
11.61 Demountable and Moveable Stages	StageRight	338,667
11.62 Stage Curtains	Allowance	175,000
11.66 Gymnasium Equipment	FFE	-
11.81 Façade Maintenance Equipment	Diversified Fall Protection/Lorad	218,934
11.82 Waste Compactors	Pro Baler Services	168,602
12.20 Window Coverings	Midwest Division	28,588
12.61 Fixed Audience Seating	Irwin Seating	357,148
12.66 Telescopic Seating	Hussey Seating	2,348,631
14.20 Elevators	Schindler	1,134,400
21.00 Fire Sprinklers	Western Automatic Sprinkler	721,875
22.00 Mechanical	Comfort Systems USA	8,284,709
26.00 Electrical	Hunt Electric / Daktronics	20,595,228
31.10 Earthwork & Utilities	Siri Contracting	3,208,109
31.16 Ground Improvements	Geopier NW	156,900
31.25 SWPPP	Silver Leaf SWPPP	31,115
32.12 Asphalt	Morgan Asphalt	413,243
32.13 Site Concrete	AK Masonry	805,611
32.14 Unit Pavers	C&E Stone	371,700
32.30 Fencing & Gates	Mountain States Fence	173,125
32.80 Landscaping	Sinc	552,474
Subtotal - Trades		80,253,659
General Conditions	\$ 103,453 /mo	2,275,957
General Requirements	\$ 40,480 /mo	890,560
Subcontractor Default Insurance	1.10% of Trades	882,790
Contractor Contingency	2.00% of Total	1,817,712
Subtotal - Job Cost		86,120,678
General Liability	1.100% of Total	999,742
Builder's Risk		by owner
Payment & Performance Bond for Layton	0.625% of Total	568,035
Weather Conditions Allowance		400,000
Precon Fee		150,000
Contractor Fee	3.000% of Total (w/o Fee)	2,647,154
Total Contract		\$ 90,885,609



Schedule H – Components of Stated Rates for Contractor's Personnel

Personnel costs included in the stated general conditions and general requirements include burden, vehicle, fuel/maintenance, IT package (ie: phones, computers, etc.), all applicable taxes, social security, Medicare, insurances, and 401k costs.

The Point Event Center - Schedule I - Billable Rate Schedule

Layton Construction Company, LLC.

*Rates established Jan 2026 - Subject to change annually

2026 Rates		
Supervision	Rate Includes Burden	Unit
Project Executive	\$ 210.00	Hour
Construction Manager	\$ 166.00	Hour
Sr. Project Manager	\$ 130.00	Hour
Project Manager	\$ 105.00	Hour
Assistant Project Manager	\$ 88.00	Hour
Sr. Superintendent	\$ 127.00	Hour
Superintendent	\$ 112.00	Hour
Project Engineer / Field Engineer	\$ 76.00	Hour
Project Engineer - Intern	\$ 37.00	Hour
Safety Manager	\$ 112.00	Hour
Project Assistant	\$ 70.00	Hour
Virtual Modeling Manager	\$ 101.85	Hour
Sr Visualization Manager	\$ 127.05	Hour
Scheduler	\$ 96.60	Hour
Sr Scheduler	\$ 130.20	Hour
Project Accountant	\$ 71.40	Hour
Controller	\$ 122.85	Hour

Insurances & Markups

Subcontractor Default Insurance (SDI):	1.04%	Per Exhibit A - Proposal
Self-Perform Markup	10.00%	X Cost of Work
Change Order Fee	3.00%	X Cost of Work
GMP GC Fee	3.00%	X Cost of Work
Subcontractor Markup	10.00%	X Cost of Work
General Liability Insurance/CCIP:	1.13%	Per Exhibit A - Proposal
P&P Bond	0.632%	Per Exhibit A - Proposal
Builders Risk (Per Gallagher Quote 08.27.26)	0.328%	X Project Cost
Contingency	2.000%	Per Exhibit A - Proposal
Textura (Online Sub Pay Applications Fee)	0.03%	X Project Cost
Safety Program	0.35%	X Project Cost
Scheduling	0.15%	X Project Cost

Schedule J-1
The Point Event Venue
General Conditions

		Duration	23 Months			
Description		Quantity	Unit	Rate	Total	
General Conditions					\$	2,275,957
Project Executive		425	HR	210.00	\$	89,145
Sr. Project Manager		2,181	HR	130.00	\$	283,556
Project Manager		4,464	HR	105.00	\$	468,708
Sr. Superintendent		4,630	HR	127.00	\$	588,039
Superintendent		2,636	HR	112.00	\$	295,287
Project Engineer / Field Engineer		5,509	HR	76.00	\$	418,691
Project Assistant		709	HR	70.00	\$	49,657
Virtual Modeling Manager		669	HR	123.90	\$	82,874

Schedule J-2

The Point Event Venue

General Requirements

Duration 23 Months

Description	Quantity	Unit	Rate	Total
Temporary Facilities			\$	305,010
Mobilization	1	EA	4,000.00	\$ 4,000
Demobilization	1	EA	4,000.00	\$ 4,000
Office Trailer Setup/Takedown	1	LS	20,000.00	\$ 20,000
Office Trailer Takedown	1	LS	15,000.00	\$ 15,000
Office Trailer- Double Wide	25	MO	2,500.00	\$ 62,500
Office Furniture	23	MO	750.00	\$ 17,250
Office Copy Machine (Rental & Usage)	23	MO	550.00	\$ 12,650
Office Supplies	23	MO	500.00	\$ 11,500
Networking & Communication Package	23	MO	300.00	\$ 6,900
Purchase of Drone	1	LS	1,500.00	\$ 1,500
Drone Deploy Software	2	YR	5,500.00	\$ 11,000
Pyre Software	2	PRJ	1,000.00	\$ 2,000
Printing Expense	2	SET	250.00	\$ 500
Photo Expense	24	MO	500.00	\$ 12,000
Project Sign, Layton Signs & Branding	1	LS	5,000.00	\$ 5,000
Drinking Water & Ice	23	MO	120.00	\$ 2,760
Temporary Toilets /ea/mo (2 services per week)	28	MO	3,000.00	\$ 84,000
Temp Sanitary Sewer Setup (For Trailers Only)	1	LS	5,000.00	\$ 5,000
Temp Sewer Vault (For Trailers Only)	1	LS	5,000.00	\$ 5,000
Temp Water Setup (For Trailers Only)	1	LS	5,000.00	\$ 5,000
Temp Phone/Internet - Setup	1	EA	2,500.00	\$ 2,500
Temp Phone/Internet Use	23	MO	650.00	\$ 14,950
Temporary Utilities			\$	20,000
Temp Power Set Up - Jobsite	1	LS	7,500.00	\$ 7,500
Temp Power Set Up - Trailers	1	LS	7,500.00	\$ 7,500
Temp Power Setup Charges (Utility Company)	1	LS	5,000.00	\$ 5,000
Temporary Building Facilities			\$	16,400
20' Connex Box	24	MO	175.00	\$ 4,200
Interior Job Signage	1	LS	500.00	\$ 500
Temporary Floor Protection	20,000	SF	0.45	\$ 9,000
Disposable Booties (50 pairs)	20	BX	10.00	\$ 200
Remove Temporary Protection	1	LS	2,500.00	\$ 2,500
Temporary MEP Facilities			\$	26,382
Towable Generators 80 KW /mo	6	MO	1,947.00	\$ 11,682
Generator Fuel /mo	3	MO	400.00	\$ 1,200
Temporary Filtration Media (per sf of covered area)	60	SF	225.00	\$ 13,500
Temporary Site Facilities			\$	40,100
Temporary Fence - Project Site Perimeter	2,500	LF	10.00	\$ 25,000
Temporary Fence Double Gates	2	EA	300.00	\$ 600
Temporary Fence Large Truck Gates	2	EA	1,000.00	\$ 2,000
Layton Blue Screen Material for Temporary Fence	2,500	LF	5.00	\$ 12,500
Other			\$	482,668
Safety Allocation	1	EA	346,066.00	\$ 346,066
Scheduling Allocation	1	EA	136,605.00	\$ 136,602
Total General Requirements	23.0	MO	\$	890,560

Schedule K – Key Personnel

Dave Whimpey

Executive Vice President

Phone: 801.541.2115

Email: DWhimpey@laytonconstruction.com

Jeff Palmer

Executive Vice President

Phone: 801.231.7642

Email: JPalmer@laytonconstruction.com

Jared Adamson

Vice President

Phone: 801.803.1698

Email: JAdamson@laytonconstruction.com

Jordan Urrutia

Senior Project Manager

Phone: 801.707.0418

Email: JUrrutia@laytonconstruction.com

Justin Discoe

Superintendent

Phone: 760.822.7943

Email: JDiscoe@laytonconstruction.com

Eric Swenson

Preconstruction Manager

Phone: 385.910.5946

Email: eswenson@laytonconstruction.com

SCHEDULE L

[Not Used]

Schedule M

CONTRACTOR'S REPORTING REQUIREMENTS

Contractor shall comply with the following reporting obligations throughout the course of a Project:

- 1) Weekly Reports – These should be issued to Owner every week and should be a brief summary of the current state of a Project. It should include the summary of events for the given week, what is scheduled for the following week, the man count summary, and photographs with descriptions. Any other project information should be handled in the weekly meeting minutes.
- 2) Weekly OAC Meeting
 - a. Meeting Minutes.
 - b. PCO log (see note below).
 - c. RFI log.
 - d. Submittal log.
 - e. 4-week look-ahead schedule.
- 3) Monthly Reports – Monthly reports should be issued should include the following information:
 - a. Executive Summary – High level summary of the Project for the past month identifying any open issues, as well as providing a summary of design and construction progress for the month.
 - b. Buyout Log – This should be updated on a regular basis during buyout. All movement of funds should be tracked and overall buyout percentage should be clearly indicated.
 - c. Change Order Log.
 - d. PCO Log – The PCO log should show an estimated order of magnitude for PCO's that have yet to be submitted, but are being tracked. Once issued, the actual PCO amounts should be entered in a separate column.
 - e. Monthly Cash Flow Projection – This should estimate future cash flow based on the previous payment amounts and approved change orders. The last month should account for the retainage held throughout the Project.
 - f. Allowance Usage Log (if applicable).
 - g. Contingency Usage Log (if applicable).

- h. Updated Construction Schedule (including native file source) – Document all logic changes, changes in activities, and the critical path should be clearly indicated on the Construction Schedule.
- i. RFI Log.
- j. Submittal Log.
- k. Application and Certificate for Payment and all necessary backup – Contractor should breakout line items. Continuation sheets for various trades should be provided.



Schedule N

The Point Event Venue - 95% CD Bid Update

Cost Summary

Trade		Selected Subcontractor
01.10	Final Cleaning	Delta Professional Services
02.10	Surveying	Meridian Engineering
03.00	Concrete	Layton
04.00	Masonry	AK Masonry
05.00	Steel	Fineline
05.70	Ornamental Metals	All Metals Fabrication
06.10	Rough Carpentry	RJP
06.40	Architectural Woodwork	Boswell Wasatch
07.10	Waterproofing & Joint Sealants	Hooley
07.20	Insulation	Insulation From Hale
07.42	Metal Panels	Western Building Group
07.50	Roofing	Clarks
07.81	Fireproofing	Spray-On Solutions
08.10	Doors, Frames, & Hardware	ABS
08.30	Overhead Doors	Miner Ltd.
08.40	Glass & Glazing	B&D Glass
09.20	Framing & Drywall	K & L Acoustic Drywall
09.30	Tile	Spectra
09.50	Acoustical Ceilings	K&L Acoustic
09.60	Flooring	W Construction
09.63	Resinous Matrix Terrazzo Flooring	FW Specialties
09.64	Wood Flooring	FFE
09.90	Painting	Fisher Painting
10.00	Specialties	Architectural Components
10.14	Signage	Trademark Visual (allowance)
10.22	Operable Partitions	Architectural Components
11.13	Loading Dock Equipment	Miner LTD
11.40	Food Service Equipment	Kamran & Co.
11.61	Demountable and Moveable Stages	StageRight
11.62	Stage Curtains	Allowance
11.66	Gymnasium Equipment	FFE
11.81	Façade Maintenance Equipment	Diverisified Fall Protection/Lorad
11.82	Waste Compactors	Pro Baler Services
12.20	Window Coverings	Midwest Dvision
12.61	Fixed Audience Seating	Irwin Seating
12.66	Telescopic Seating	Hussey Seating
14.20	Elevators	Schindler
21.00	Fire Sprinklers	Western Automatic Sprinkler
22.00	Mechanical	Comfort Systems USA
26.00	Electrical	Hunt Electric / Daktronics
31.10	Earthwork & Utilities	Siri Contracting
31.16	Ground Improvements	Geopier NW
31.25	SWPPP	Silver Leaf SWPPP
32.12	Asphalt	Morgan Asphalt
32.13	Site Concrete	AK Masonry
32.14	Unit Pavers	C&E Stone
32.30	Fencing & Gates	Mountain States Fence
32.80	Landscaping	Sinc

SCHEDULE O

*[The CCIP Manual will be added to the contract
through a future contract amendment]*

EXHIBIT 1
CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Property Name: _____

Property Location: _____

Property Owner: _____

General Contractor: **Layton Construction Company, LLC** _____

Undersigned's Customer: _____

Invoice / Payment App. No.: _____

Payment Period Ending: _____

Payment Amount: _____

To the extent provided below, this document becomes effective to release and the undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38, Chapter 1a, Preconstruction and Construction Liens, or any bond right under Utah Code Ann., Tile 14, Contractors’ Bonds, or Section 63G-6a-1103 related to payment rights the undersigned has on the above described Property once:

- (1) The undersigned endorses a check in the above referenced Payment Amount payable to the undersigned; and
- (2) The check is paid by the depository institution on which it is drawn.

This waiver and release applies to a progress payment for the work, materials, equipment, or a combination of work, materials and equipment furnished by the undersigned to the Property or to the Undersigned’s Customer which are subject to the Invoice or Payment Application, but only to the extent of the Payment Amount. This waiver and release does not apply to any retention withheld; any items, modifications or changes pending approval; disputed items and claims; or items furnished or invoiced after the Payment Period.

The undersigned warrants that the undersigned either has already paid or will use the money the undersigned receives from this progress payment promptly to pay in full all the undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or combination of work, materials and equipment that are the subject of this waiver and release.

Signature: _____

Print Name: _____

Title: _____

Company: _____

Date: _____

* Waiver becomes unconditional if signer indicates paid status.

EXHIBIT 1
UTAH UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Property Name: _____

Property Location: _____

Property Owner: _____

General Contractor: Layton Construction Company, LLC

Undersigned's Customer: _____

Invoice / Payment App No.: _____

Paid Through: _____

Payment Amount: _____

In consideration for the cumulative sum as noted above, this document becomes effective to release and the undersigned is considered to waive any notice of lien, right to file a Notice of Preconstruction Service Lien, a Notice of Construction Service Lien, or other right under Utah Code Ann., Title 38, Chapter 1a, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors' Bonds, or Sections 63G-6a-1103 related to payment rights the undersigned has on the above described property.

This waiver and release applies to a progress payment for the work, materials, equipment, or a combination of work, materials and equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are subject to the Invoice or Payment Application, but only to the extent of the Payment Amount. This waiver and release does not apply to any retention withheld; any items, modifications or changes pending approval; disputed items and claims; or items furnished or invoiced after the Payment Period.

The undersigned warrants that the undersigned either has already paid or will use the money the undersigned receives from this progress payment promptly to pay in full all the undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or combination of work, materials and equipment that are the subject of this waiver and release.

Signature: _____

Print Name: _____

Title: _____

Company: _____

Date: _____

EXHIBIT 1
UTAH WAIVER AND RELEASE UPON FINAL PAYMENT

Property Name:

Property Location:

Property Owner:

General Contractor:

Layton Construction Company, LLC

Undersigned's Customer:

Invoice / Payment App. No.:

Payment Amount:

Paid [] Not Paid []

To the extent provided below, this document becomes effective to release and the undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38, Chapter 1a, Preconstruction and Construction Liens, or any bond right under Utah Code Ann., Title 14, Contractors’ Bonds, or Section 63-G-6a-1103 related to payment rights the undersigned has on the above described Property once:

- (1) The undersigned endorses a check in the above referenced Payment Amount payable to the undersigned; and
- (2) The check is paid by the depository institution on which it is drawn.

This waiver and release applies to the final payment for the work, materials, equipment, or combination of work, materials and equipment furnished by the undersigned to the Property or to the Undersigned’s Customer.

The undersigned warrants that the undersigned either has already paid or will use the money the undersigned receives from the final payment promptly to pay in full all the undersigned’s laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or combination of work, materials and equipment that are the subject of this waiver and release.

Signature:

Print Name:

Title:

Company:

Date:

* Waiver becomes unconditional if signer indicates "paid".

EXHIBIT 2
CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Property Name: _____

Property Location: _____

Property Owner: _____

General Contractor: **Layton Construction Company, LLC** _____

Undersigned's Customer: _____

Invoice / Payment App. No.: _____

Payment Period Ending: _____

Payment Amount: _____

To the extent provided below, this document becomes effective to release and the undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38, Chapter 1a, Preconstruction and Construction Liens, or any bond right under Utah Code Ann., Tile 14, Contractors’ Bonds, or Section 63G-6a-1103 related to payment rights the undersigned has on the above described Property once:

- (1) The undersigned endorses a check in the above referenced Payment Amount payable to the undersigned; and
- (2) The check is paid by the depository institution on which it is drawn.

This waiver and release applies to a progress payment for the work, materials, equipment, or a combination of work, materials and equipment furnished by the undersigned to the Property or to the Undersigned’s Customer which are subject to the Invoice or Payment Application, but only to the extent of the Payment Amount. This waiver and release does not apply to any retention withheld; any items, modifications or changes pending approval; disputed items and claims; or items furnished or invoiced after the Payment Period.

The undersigned warrants that the undersigned either has already paid or will use the money the undersigned receives from this progress payment promptly to pay in full all the undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or combination of work, materials and equipment that are the subject of this waiver and release.

Signature: _____

Print Name: _____

Title: _____

Company: _____

Date: _____

* Waiver becomes unconditional if signer indicates paid status.

EXHIBIT 2
UTAH UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Property Name: _____

Property Location: _____

Property Owner: _____

General Contractor: **Layton Construction Company, LLC** _____

Undersigned's Customer: _____

Invoice / Payment App No.: _____

Paid Through: _____

Payment Amount: _____

In consideration for the cumulative sum as noted above, this document becomes effective to release and the undersigned is considered to waive any notice of lien, right to file a Notice of Preconstruction Service Lien, a Notice of Construction Service Lien, or other right under Utah Code Ann., Title 38, Chapter 1a, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors' Bonds, or Sections 63G-6a-1103 related to payment rights the undersigned has on the above described property.

This waiver and release applies to a progress payment for the work, materials, equipment, or a combination of work, materials and equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are subject to the Invoice or Payment Application, but only to the extent of the Payment Amount. This waiver and release does not apply to any retention withheld; any items, modifications or changes pending approval; disputed items and claims; or items furnished or invoiced after the Payment Period.

The undersigned warrants that the undersigned either has already paid or will use the money the undersigned receives from this progress payment promptly to pay in full all the undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or combination of work, materials and equipment that are the subject of this waiver and release.

Signature: _____

Print Name: _____

Title: _____

Company: _____

Date: _____

EXHIBIT 2
UTAH WAIVER AND RELEASE UPON FINAL PAYMENT

Property Name: _____

Property Location: _____

Property Owner: _____

General Contractor: Layton Construction Company, LLC

Undersigned's Customer: _____

Invoice / Payment App. No.: _____

Payment Amount: _____ Paid [] Not Paid []

To the extent provided below, this document becomes effective to release and the undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38, Chapter 1a, Preconstruction and Construction Liens, or any bond right under Utah Code Ann., Title 14, Contractors’ Bonds, or Section 63-G-6a-1103 related to payment rights the undersigned has on the above described Property once:

- (1) The undersigned endorses a check in the above referenced Payment Amount payable to the undersigned; and
- (2) The check is paid by the depository institution on which it is drawn.

This waiver and release applies to the final payment for the work, materials, equipment, or combination of work, materials and equipment furnished by the undersigned to the Property or to the Undersigned’s Customer.

The undersigned warrants that the undersigned either has already paid or will use the money the undersigned receives from the final payment promptly to pay in full all the undersigned’s laborers, subcontractors, materialmen and suppliers for all work, materials, equipment or combination of work, materials and equipment that are the subject of this waiver and release.

Signature: _____

Print Name: _____

Title: _____

Company: _____

Date: _____

* Waiver becomes unconditional if signer indicates "paid".

EXHIBIT 3

[Form of Subcontract]



Master Subcontract Agreement 2015 Edition

We are pleased to present your company with a Master Subcontract Agreement ("Master"). This agreement will govern the general terms and conditions for all future projects. Please keep it available for reference on all our mutual projects. Layton has been using Master Subcontract Agreements since 2002 and has found them to be an excellent way to expedite the contracting process. Once the Master is executed all project contracts will be issued as Work Authorizations. An example of a project specific Work Authorization can be found on Attachment A of the attached Master.

This Master will replace any previous Master agreements between our companies. All previous versions of the Master have been retired and teams are prohibited from contracting under them. The 2015 edition accounts for, among other things, updates to meet industry standards and new laws. Previously, some of the divisions / branches of the company operated under different names and had separate Masters. All of Layton's branches and divisions have now formally changed to Layton Construction Company, LLC and there are no longer different Masters for each of these branches / divisions.

Instructions:

1. Full copy of the attached Master includes: (71 pages)

Document Title	No. Pages	Instructions
Master Subcontract Agreement	5	Initial bottoms of each page & sign page 5
Attachment A – Work Authorization (<u>SAMPLE</u>)	9	For reference only / Do not initial or sign
Exhibit G – Insurance Requirements w/ CCIP (<u>SAMPLE</u>)	10	For reference only / Do not initial or sign
Exhibit G – Insurance Requirements w/ CCIP GL ONLY (<u>SAMPLE</u>)	10	For reference only / Do not initial or sign
Exhibit G – Insurance Requirements w/out CCIP (<u>SAMPLE</u>)	5	For reference only / Do not initial or sign
Exhibit G – Insurance Requirements w/ GL OCIP & WC CCIP (<u>SAMPLE</u>)	10	For reference only / Do not initial or sign
Exhibit H – Design-Build Provisions (<u>SAMPLE</u>)	5	For reference only / Do not initial or sign
Attachment B – General Terms and Conditions	17	Initial the bottoms of each page

2. Review, initial and sign via DocuSign without mark-ups or changes.
 - a. If you find that a certain section of the agreement is not applicable to your typical scope of work, a modification to the Project Specific "Attachment A - Work Authorization" will be considered, but no changes to the Master itself will be allowed.
 - b. The Master will have references to Utah in several locations, please do not revise. Each State has its own addendum that adjusts the Master to the state laws where the project is located. The state addendum is issued with the project specific Work Authorization.
3. This contract must be signed/initialed where it has been tagged in DocuSign by an officer of your company. If you are not an officer, use the function in DocuSign to re-assign to one.
4. The Attachment A - Work Authorization and Exhibit G's and Exhibit H in this packet are just samples and do not need to be initialed/signed, but remain part of this packet as proof it was provided to your company for review.
5. DocuSign will email you an executed copy of the Master once all parties have signed and initialed.
 - a. Please note that the Master must be executed prior to receiving a project specific Work Authorization for any project.

If you have any questions regarding this agreement, please contact your project representative.
We look forward to working together for years to come and value our relationship with your company.



MASTER SUBCONTRACT AGREEMENT

THIS MASTER SUBCONTRACT AGREEMENT (this “**Agreement**”) is entered into effective as of the ____ day of _____, 20__ (the “**Effective Date**”) by and between LAYTON CONSTRUCTION COMPANY, LLC, a Utah limited liability company, f/k/a Layton Construction Co., Inc., a Utah corporation (the “**Contractor**”), and

SUBCONTRACTOR NAME
ADDRESS
CITY, STATE ZIP
PHONE: (XXX) XXX-XXXX
FAX: (XXX) XXX-XXXX

(the “**Subcontractor**”).

RECITALS

A. Contractor from time to time undertakes construction projects for various owners and requires the services of qualified subcontractors to provide and perform certain services, work, materials and equipment for such projects in accordance with the contract documents related to such project.

B. Subcontractor has extensive experience in the business of constructing, building and installing projects including, but not limited to, the construction, installation and improvement of facilities and systems on regular, fast-track and/or design-build schedules, and has the expertise and know-how required for the Subcontractor Work, as hereinafter defined, to be successfully performed as provided herein.

C. Contractor and Subcontractor desire to enter into an agreement pursuant to which Contractor may issue, and Subcontractor may accept, Work Authorization Notices, hereinafter defined, to perform certain work pursuant to the terms and conditions set forth in such Work Authorization Notices and this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants, conditions and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and Subcontractor agree as follows:

SECTION 1 NATURE OF THE AGREEMENT

This Agreement is a master agreement providing the terms and conditions upon which Subcontractor may provide services, work, materials and equipment on a number of separate projects to be authorized pursuant to the issuance of a Work Authorization Notice for each such Project (as defined below). This Agreement, including, Work Authorization Notices and change orders issued pursuant to the terms of this Agreement, shall remain in full force and effect until terminated as set forth herein. A default or breach of a Work Authorization Notice with respect to a Project shall not constitute a default or breach with respect to any other Project, each such Work Authorization Notice to be considered as a separate contract.

SECTION 2 TERM

The term of this Agreement (the “**Term**”) shall commence as of the Effective Date and expire thirty (30) days after the giving of written notice of termination by Contractor or Subcontractor to the other party, provided that Contractor may not terminate a Work Authorization Notice once a project commences, except as expressly provided in other Sections of this Agreement. Unless expressly agreed to the contrary by the parties hereto, this Agreement shall govern all Subcontract Documents (as defined below) and other agreements and understandings between the parties hereto entered into during the Term of this Agreement with respect to a Project that

 Layton Construction
 Initials

 Subcontractor
 Initials

is subject to a Work Authorization Notice. Notwithstanding the foregoing, the termination of this Agreement shall not extinguish, modify or affect in any way the rights and obligations of the parties with respect to any Work Authorization Notice or associated Subcontract Documents for an identified Project that were issued or entered into by the parties prior to the date of such expiration or termination, which shall remain in effect for the duration of the Project or, if applicable, the term of the Work Authorization Notice.

SECTION 3 WORK AUTHORIZATION NOTICE

3.1 Work Authorization Notice. From time to time, Contractor may issue to Subcontractor a Work Authorization Notice (each, a **“Work Authorization Notice”**) with respect to specified work (the **“Subcontractor Work”**) on a particular project (each, a **“Project”**). The Work Authorization Notice shall be substantially in the form of **Attachment A** hereto, modified only to reflect the information called for in the Work Authorization Notice and such other changes as Contractor and Subcontractor may agree upon in writing for the covered Project. If Subcontractor is in agreement with the terms and conditions set forth in the Work Authorization Notice, Subcontractor shall promptly sign and deliver the Work Authorization Notice to Contractor. Upon timely receipt of such signed Work Authorization Notice and the signing of the Work Authorization Notice by Contractor, such Work Authorization Notice shall constitute a contract for the performance of the Subcontractor Work called for therein, subject to all of the terms, conditions and provisions of the Subcontract Documents. Subcontractor shall not commence the performance of the Subcontractor Work specified in a Work Authorization Notice until such Work Authorization Notice has been signed by Contractor.

3.2 Purchase Orders. Contractor and Subcontractor may agree to execute a purchase order expressly incorporating the terms and conditions of this Agreement in lieu of a Work Authorization Notice for orders of goods, equipment and materials or other personal property (collectively, the **“Goods”**) without services (each a **“Purchase Order”**). In such event, such executed Purchase Order will be considered a Work Authorization Notice for purposes of this Agreement and shall be subject to the terms and conditions set forth in this Agreement. Further, for purposes of this Agreement, the Project location for any such Purchase Order shall be considered location to which the Goods are to be delivered. If Subcontractor is in agreement with the terms set forth in a submitted Purchase Order, Subcontractor shall sign and deliver the Purchase Order to Contractor or deliver the Goods pursuant to the same which shall be deemed to be Subcontractor's acceptance and execution of said Purchase Order. Upon full execution and delivery by the parties pursuant to the foregoing, such Purchase Order shall constitute a separate and independent contract for the purchase and sale of the Goods described therein, subject to all of the terms, conditions and provisions in this Agreement and such Purchase Order. As described above, all references in this Agreement to Work Authorization Notices include Purchase Orders entered into between the parties pursuant to this Agreement. **A Purchase Order submitted by Contractor to Subcontractor pursuant to the foregoing shall constitute an offer to purchase the Goods described upon the terms and conditions set forth therein and in this Agreement and Subcontractor may only accept such offer upon such terms and conditions. Unless agreed to in writing by Contractor in an amended Purchase Order, any and all additional or different terms proposed by Subcontractor in response to a Purchase Order submitted in accordance with the terms of this Agreement shall be considered material alterations of Subcontractor's offer and are hereby rejected and objected to by Contractor whether inserted by Subcontractor into a previously executed Purchase Order or included or referred to in a shipping release, order acceptance letter or confirmation or other preprinted forms, or elsewhere, and no such terms shall in any event be considered part of this Agreement, the Purchase Order or applicable to sales hereunder.** Subcontractor shall give Contractor prompt written notice of its rejection of any Purchase Order submitted by Contractor and the parties shall work together to negotiate mutually agreeable terms for the proposed Purchase Order. Upon such mutual agreement, Contractor shall submit a revised Purchase Order to Subcontractor reflecting the agreed upon terms.

3.3 Acceptance of Goods; Purchase Orders. To the extent the Subcontractor Work includes the procurement of Goods, delivery of such Goods shall not be deemed to be complete until actually received and accepted by Contractor at the location(s) designated in the Work Authorization Notice. Unless otherwise provided in a Work Authorization Notice or Purchase Order, all Goods are sold to Contractor f.o.b. job site at the location described in the Work Authorization Notice or Purchase Order, and title to and risk of loss or damage to such Goods shall remain with Subcontractor until such Goods are delivered to Contractor and, if applicable, incorporated into the Subcontractor Work. Goods delivered in error shall be returned to Subcontractor at Subcontractor's sole expense. All Goods shall be subject to inspection by Contractor prior to Contractor's acceptance of the same, and any Goods rejected by Contractor shall be promptly repaired or replaced, in Contractor's sole discretion, at Subcontractor's expense. Any and all reasonable costs incurred by Contractor in connection with the return of Goods rejected by Contractor as defective shall be paid by Subcontractor.

Layton Construction
Initials

Subcontractor
Initials

SECTION 4 SUBCONTRACT DOCUMENTS

Upon the signing of the Work Authorization Notice by Contractor and Subcontractor for a Project as identified in such Work Authorization Notice, unless otherwise specifically set forth in the Work Authorization Notice, Subcontractor and Contractor agree that the contract documents (the “**Subcontract Documents**”) for such Project shall consist of, and Subcontractor and Contractor shall be bound by, the following documents, which documents are hereby incorporated herein by reference:

- (a) The particular Work Authorization Notice and all attachments and exhibits thereto;
- (b) This Agreement and all attachments and exhibits hereto, including without limitation, the General Terms and Conditions set forth on **Attachment B** hereto (the “**General Terms and Conditions**”);
- (c) The contract between Contractor and the Owner of the Project as identified in the Work Authorization Notice (the “**Prime Contract**”);
- (d) **Addendum No. 1** for the applicable state in which the Project which relates to the Subcontractor Work to be performed under a particular Work Authorization Notice is located, in the respective form attached to this Agreement for such state;
- (e) All addenda issued prior to and all modifications issued after execution of the Prime Contract and/or the Work Authorization Notice;
- (f) Contractor’s Quality Control Quality Assurance Program (“**QA/QC Program**”); and
- (g) All technical and special terms and conditions and all other documents listed, or referred to, in the foregoing documents, if any; provided that items related to a specific Project as described in a Work Authorization Notice or any addenda or modifications thereto shall only apply to such Project.

The foregoing Subcontract Documents are as fully a part of the respective Work Authorization Notice as if attached to or repeated therein. All terms capitalized but not otherwise defined herein or in the Work Authorization Notice shall have the meaning set forth in the General Terms and Conditions or in the other attachments or exhibits hereto.

SECTION 5 MISCELLANEOUS PROVISIONS

5.1 **Entire Agreement.** This Agreement (including the attachments and documents referenced herein) constitutes the entire agreement and understanding between the parties hereto and supersedes and/or merges all prior agreements, understandings, representations, or conditions between Contractor and Subcontractor regarding the subject matter hereof, whether written, oral, or implied; provided that this Agreement shall not supersede any existing contracts entered into prior to the Effective Date between Contractor and Subcontractor relating to specific projects. The parties agree that the terms and conditions of this Agreement shall prevail, notwithstanding any contrary or additional terms in any of the parties’ preprinted documents. This Agreement may be amended only by written instrument signed by both Contractor and Subcontractor.

5.2 **Governing Law, Jurisdiction.** Except as may be provided in the Prime Contract, the validity, interpretation, and performance of this Agreement, including any breach hereof, shall be governed by and construed under the laws of the State of Utah, without regard to the conflicts or choice of law principles thereof (unless applicable law requires the application of the law of the State in which the Project is located, in which case the validity, interpretation and performance of the Subcontract Documents, including any alleged breach thereof, shall be governed and construed under the law of the State where the Project is located). Unless otherwise required by applicable law, (a) subject to the arbitration provisions of the Subcontract Documents, Subcontractor hereby consents to the personal jurisdiction of the courts of the State of Utah for any dispute involving this Agreement, and (b) subject to the provisions of the General Terms and Conditions set forth on **Attachment B** hereto, any action arising out of this Agreement shall be commenced and maintained exclusively in the state or federal courts located in the courts of the State of Utah and Subcontractor waives any objection to the forum on the grounds of venue, forum non-conveniens, or any similar ground. **THE PARTIES HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THE SUBCONTRACT DOCUMENTS.**

5.3 **Independent Contractor.** The relationship of the parties to this Agreement is that of contractor and independent contractor and not that of principal and agent, employer and employee, partners, or joint venturers. Subcontractor agrees that it is an independent contractor in the performance of any Subcontractor Work under the Subcontract Documents and that neither it nor its employees shall be considered employees of Contractor. Contractor shall not be responsible for the direct payment of any withholding taxes, union fees, social security payments, payments under worker’s compensation or other insurance premiums, or other charges of any kind, except as specifically stated herein. Subcontractor hereby warrants that it will deduct and pay over to the proper union or governmental authority any withholding taxes or similar assessment which an employer is required to deduct and pay over and

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Subcontractor accepts exclusive liability for any payroll taxes or contributions imposed by any union, federal, state or other governmental authority, covering its agents or employees. Subcontractor shall indemnify, defend and hold harmless Contractor from and against any losses, damages, claims, actions, costs or expenses (including attorneys' fees and court costs), of any kind arising in any way from Subcontractor's breach of the foregoing obligation.

5.4 Written Notice. All correspondence, change orders, and other communications in the ordinary course of performance shall be sent to Subcontractor and Contractor at their respective addresses noted below. Ordinary course communication forwarded to Contractor shall be personally delivered or sent by mail, first-class postage prepaid, to the attention of Contractor's project manager or his/her designee. All other notices, claims, demands, and other communications of similar import to be given by any party to this Agreement or to any other party hereto shall be in writing, and shall be given by personal delivery, facsimile transmission, receipted delivery service or by registered or certified mail, first class postage prepaid, return receipt requested, and shall be delivered or addressed as follows:

To Contractor at:

Layton Construction Company, LLC
9090 South Sandy Parkway
Sandy, Utah 84070
Phone: (801) 568-9090
Facsimile: (801) 569-5450

To Subcontractor at:

Subcontractor Name
Address
City, State Zip
Phone: (XXX) XXX-XXXX
Facsimile: (XXX) XXX-XXXX

The above addresses may be changed by giving written notice of such change to the other party. Notice for all purposes under this Agreement, regardless of the form in which given, shall be deemed given when actually received or refused at the intended address.

[Signature page follows]

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ATTACHMENT A
TO
MASTER SUBCONTRACT AGREEMENT

Job No.: **xxxxx**
Subcontract No.: **xxxxxx-SU**
Work Item: **xxxxxxx**

WORK AUTHORIZATION NOTICE

THIS WORK AUTHORIZATION NOTICE (the “**Work Authorization Notice**”) is made and entered into effective as of <<INSERT EARLIER OF DATE OF SIGNING OR DATE SUBCONTRACTOR WORK COMMENCED>> by and between LAYTON CONSTRUCTION COMPANY, LLC, a Utah limited liability company f/k/a Layton Construction Co., Inc., a Utah corporation (the “**Contractor**”) and

SUBCONTRACTOR NAME
ADDRESS
CITY, STATE ZIP
PHONE: (XXX) XXX-XXXX
FAX: (XXX) XXX-XXXX

(the “**Subcontractor**”).

RECITALS

A. Contractor has entered into a contract with <<INSERT OWNER NAME [ADDRESS OPTIONAL]>> (the “**Owner**”) for the performance of certain work according to the terms and conditions of said contract, including the General, Supplementary, Special and other Conditions and the general specifications, addenda, plans, drawings, maps and other documents made a part thereof, all of which are available for Subcontractor’s review and are herein collectively referred to as the “**Prime Contract**.” The project architect is <<INSERT ARCHITECT NAME>> (the “**Architect**”). The project (the “**Project**”) is generally described as follows:

<<INSERT PROJECT DESCRIPTION AND LOCATION>>
<<INSERT SCR ID NUMBER>>

B. Contractor and Subcontractor have entered into a Master Subcontract Agreement dated as of _____, 20__ (together with all attachments, Amendment No. 1 dated as of _____, 20__, exhibits and addenda thereto, the “**Master Subcontract**”) which provides that any Work Authorization Notices signed by Contractor and Subcontractor specifically referencing the Master Subcontract will be governed by the terms and conditions set forth in the Master Subcontract. Unless otherwise defined in this Work Authorization Notice, any term used in this Work Authorization Notice that is capitalized but not defined shall have the same meaning as set forth in the Master Subcontract (or any attachment or exhibit thereto).

C. Contractor and Subcontractor are desirous of entering into a subcontract whereby Subcontractor shall undertake the performance of a portion of the work to be done under the Prime Contract on the terms and conditions set forth in this Work Authorization Notice and the Master Subcontract.

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AGREEMENT

NOW, THEREFORE, in consideration of the promises and conditions set forth herein and in the Master Subcontract, Contractor and Subcontractor hereby agree as follows:

1. SUBCONTRACT DOCUMENTS

The Subcontract Documents, as defined in Section 4 of the Master Subcontract, shall consist of the following:

- 1.1 this Work Authorization Notice and Attachment 1 (Scope of Subcontractor Work; Drawings and Specifications) and Attachment 2 (Special Terms and Provisions) hereto;
- 1.2 the Master Subcontract, and all attachments, amendments, and exhibits thereto including but not limited to, the General Terms and Conditions;
- 1.3 the Prime Contract;
- 1.4 Addendum No. 1 for the applicable state in which the Project is located, in the respective form attached to this Work Authorization Notice for such state;
- 1.5 all addenda issued prior to and all modifications issued after execution of the Prime Contract and/or the Master Subcontract;
- 1.6 The following Exhibits to this Work Authorization Notice:
 - Exhibit A – Document List;
 - Exhibit B – Subcontractor/Supplier List;
 - Exhibit C – Safety Hazard Communication;
 - Exhibit D – Competent Person Form;
 - Exhibit E – Payment Request Instructions; Sub/Supplier Lien Waivers;
 - Exhibit F – Safety Declaration;
 - Exhibit G – Insurance Requirements
 - Exhibit H – Design-Build Provisions; and
- 1.7 All technical and special terms and conditions and all other documents listed, or referred to, in the foregoing documents, if any.

The foregoing Subcontract Documents are as fully a part of the respective Work Authorization Notice as if attached to or repeated therein. All terms capitalized but not otherwise defined herein or in the Work Authorization Notice shall have the meaning set forth in the General Terms and Conditions or in the other attachments or exhibits hereto. References to the Work Authorization Notice in the Master Subcontract shall mean and refer to this Work Authorization Notice. Any references to a quote or proposal submitted or prepared by Subcontractor by number or otherwise in this Work Authorization Notice shall not incorporate any general terms and conditions attached to such quote or proposal (or referred to therein) and the same shall not be part of this Work Authorization Notice.

2. WORK TO BE PERFORMED

Subcontractor, for the Subcontract Price (as defined below), shall furnish all supervision and labor and furnish, supply and install all equipment, materials, and supplies and do all things necessary to fully perform and complete that portion of the work provided for in the Prime Contract (the “**Subcontractor Work**”) consisting of Work identified in **Attachment 1**.

The Subcontractor Work to be completed in strict conformity with the scope of work, plans, specifications and drawings identified on **Attachment 1** (Scope of Subcontractor Work; Drawings and Specifications) hereto and the requirements set forth in the Subcontract Documents, including without limitation all applicable Laws and Governmental Authorizations and any applicable standards set forth on **Attachment 1** (Scope of Subcontractor Work; Drawings and Specifications) hereto.

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3. SUBCONTRACT PRICE

Contractor shall pay to Subcontractor, and Subcontractor agrees to receive, as full compensation for the strict and satisfactory performance of Subcontractor Work in conformance with the terms and conditions of the Master Subcontract the total sum of \$<<INSERT SUBCONTRACT PRICE>> or if Subcontractor's compensation is on a unit price basis, the compensation to Subcontractor shall be in accordance with the unit price schedule described in the Scope of Work provided for in Section 2 hereof (the "**Subcontract Price**"), which amount shall be paid as set forth in the General Terms and Conditions. The Subcontract Price shall be subject to additions and deductions for changes in the Subcontractor Work only as authorized by written change order and other adjustments as provided for in the Master Subcontract.

4. SCHEDULE

Subcontractor shall initiate Subcontractor Work whenever any or all of such Subcontractor Work becomes available or in any event, within forty-eight (48) hours after receiving notification from Contractor, and shall thereafter proceed and complete performance of Subcontractor Work promptly, diligently and in such a manner and sequence as to assure the timely completion of other work dependent thereon and to permit completion of Subcontractor Work within the time provided by the Prime Contract and within the work progress schedule formulated by Contractor for the Project (the "**Work Progress Schedule**"). **SUBCONTRACTOR MUST MEET CONTRACTOR'S BUILDING SCHEDULE, QUALITY CONTROL/QUALITY ASSURANCE PROGRAM, AND SAFETY REQUIREMENTS.**

5. SPECIAL TERMS AND CONDITIONS

The special terms and provisions set forth on **Attachment 2** (Special Terms and Provisions) hereto, if any, shall only apply to the Subcontractor Work described in the Work Authorization Notice and shall control to the extent inconsistent with the Master Subcontract.

6. UNION RELEASE

If Subcontractor or any lower-tier subcontractor or supplier who provides labor or materials to the Project pursuant to a contract with or at the request of Subcontractor (the "**Second Tiers**") is affiliated with a union(s) (the "**Union**"), and organizations, entities, or trusts affiliated with the Union (collectively with the Union, the "**Organization**") may have the right under various agreements and governing law to lien or otherwise make claims on projects on which the Subcontractor and/or the Second Tiers work if Subcontractor and/or Second Tiers do not remit to the Organization portions of payments earned for work performed or materials supplied on projects, including the Project, Subcontractor will be required, and hereby agrees, to submit with each of its pay applications a lien release valid under governing state law (in a form acceptable to the Contractor) executed by the Organization which releases all claims, lien, and bond rights the Organization otherwise might have through a previous date specified by Contractor related to the Subcontractor's or the Second Tiers' work on the Project (the "**Organization Lien Release**"). No payment otherwise due to Subcontractor in connection with a pay application shall be due until Contractor receives the Organization Lien Release for that pay period.

7. CONTRACTOR POLICIES AND PROCEDURES

BY EXECUTING THIS ATTACHMENT A, SUBCONTRACTOR REPRESENTS AND WARRANTS THAT IT HAS SUCCESSFULLY DOWNLOADED THE MOST RECENT VERSIONS OF CONTRACTOR'S HEALTH, SAFETY, ENVIRONMENTAL AND OTHER POLICIES AND PROCEDURES, INCLUDING CONTRACTOR'S CCIP MANUAL (THE "CCIP MANUAL") AND THE CONTRACTOR'S QUALITY MANAGEMENT MANUAL (THE "QAQC MANUAL") FROM THE "TRADE PARTNERS" TAB ON THE FOLLOWING WEBPAGE:

<http://www.laytonconstruction.com/>

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SUBCONTRACTOR HAS REVIEWED THE SAME AND ANY OTHER CONTRACTOR POLICIES AND PROCEDURES OTHERWISE PROVIDED BY CONTRACTOR TO SUBCONTRACTOR, HAS ASKED QUESTIONS AND RECEIVED ANSWERS WITH RESPECT TO SUCH POLICIES AS NEEDED, AND HAS FULLY READ AND UNDERSTANDS ALL SUCH POLICIES AND PROCEDURES. SUBCONTRACTOR AGREES TO PROVIDE THE SUBCONTRACTOR WORK IN COMPLIANCE WITH SUCH POLICIES AND PROCEDURES. SUBCONTRACTOR AGREES TO PRINT AND MAINTAIN COPIES OF ALL SUCH POLICIES AND PROCEDURES IN ITS MAIN OFFICE AND AT ALL PROJECT LOCATIONS AND EDUCATE ITS EMPLOYEES AND ALL SUB-SUBCONTRACTORS REGARDING THE REQUIREMENTS SET FORTH THEREIN. SUBCONTRACTOR AGREES TO CHECK THE ABOVE-REFERENCED WEBSITE ON A REGULAR BASIS FOR UPDATES.

8. SUBCONTRACTOR DRUG AND ALCOHOL TESTING COMPLIANCE PROGRAM

Subcontractor represents that it has, and at all times during the performance of the Subcontractor Work, shall have a drug and alcohol testing compliance program in place for its employees and subcontractors which satisfies all of the requirements of Contractor, the Owner and applicable Law.

9. MODIFICATIONS

Notwithstanding anything herein to the contrary, any modification, change or alteration of the printed terms of this Work Authorization Notice or any other Subcontract Document shall not be binding on Contractor unless and until agreed to in writing by the designated representative of Contractor. Unless and until so agreed to by Contractor, the printed terms of the Subcontract Documents shall govern the rights and obligations of the parties hereto without regard to such attempted modification, change or alteration.

10. ENTIRE AGREEMENT

The Subcontract Documents constitute the entire agreement and understanding between the parties hereto and supersede and/or merge all prior agreements, understandings, representations, or conditions between Contractor and Subcontractor regarding the Project and the Subcontractor Work, whether written, oral, or implied. Subcontractor hereby represents and warrants that, by signing this Work Authorization Notice, Subcontractor has and shall, and the Subcontractor Work shall, comply with all of the terms and conditions of the Subcontract Documents. The parties agree that the terms and conditions of the Subcontract Documents shall prevail, notwithstanding any contrary or additional terms in any of the Subcontractor's preprinted documents. Subcontractor further represents and warrants that the written information provided to Contractor pursuant to Contractor's pre-qualification procedure in connection with the execution of the Master Subcontract has not materially changed since the Effective Date of the Master Subcontract. This Work Authorization Notice may be amended only by written instrument signed by both Contractor and Subcontractor.

[Remainder of page intentionally blank; Signature page follows]

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IN WITNESS WHEREOF, the parties hereto have executed this Work Authorization Notice as of the day and year first above written, intending to be legally bound pursuant to the terms hereof.

CONTRACTOR:

LAYTON CONSTRUCTION COMPANY, LLC

SUBCONTRACTOR:

SUBCONTRACTOR NAME

By: _____
Title: _____
Name: _____
Date: _____

By: _____
Title: _____
Name: _____
Date: _____

Contractor’s License No.:

<u>State:</u>	<u>Number:</u>
AL	51346
AK	108785
AR	0212100515
AZ	304255
CA	795238
CT	MCO.0902929
DE	2013100427
FL	CGC1507011
GA	GCCO002604
HI	BC 34753
ID	RCE-6233 / PWC-C-15034-Unlimited-3
LA	68687
MT	148061
NE	47164
NM	396243
NV	0053556
NC	76736
ND	46841
OR	209126
RI	39975
SC	G117792
TN	69817
UT	4616944-5501
VA	2705159826
WA	CC LAYTOCC842B5

Subcontractor’s License Information:

<u>State:</u>	<u>Number:</u>	<u>Exp. Date:</u>
---------------	----------------	-------------------

*If license is held by a subtier enter their information below.

2T Company Name
Street Address
City, State Zip
Phone: (XXX) XXX-XXXX
Fax: (XXX) XXX-XXXX

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**ATTACHMENT 1
TO
WORK AUTHORIZATION NOTICE**

Scope of Subcontractor Work; Drawings and Specifications

1. **SPECIFIC SCOPE OF SUBCONTRACTOR WORK.** The scope of Subcontractor Work, drawings and specifications include the following and any revisions, modifications, clarifications or addenda issued by the Architect, Owner and/or Contractor and approved by Contractor:

- A. General: As agreed upon in the Master Subcontract.
- B. Specific: Subcontractor shall provide the following:

**<<INSERT SCOPE OF WORK/DETAILED DESCRIPTION OF THE SERVICES
AND/OR GOODS TO BE PROVIDED>>**

in strict accordance with the following:

- (1) Project documents entitled **<<INSERT PROJECT NAME>>** dated **<<INSERT DATE>>**, as prepared by **<<INSERT NAME OF ENTITY WHO PREPARED THE DOCUMENTS>>**; and
- (2) Drawing List identified in **Exhibit A.**

Definition:
The word “provide” is intended to be inclusive, as applicable, to furnish, fabricate, receive, unload, store, layout, install, erect, prepare substrate, protect, start-up, clean, etc. such that the material or system or other deliverable is complete and operational and is in its permanent location ready to be accepted and used the Owner.

2. **EXCLUDED WORK.** The Subcontractor Work does not include the following which will be provided or performed, if at all, by others:

[END OF ATTACHMENT NO. 1]

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**ATTACHMENT 2
TO
WORK AUTHORIZATION NOTICE**

Special Terms and Conditions

1. Textura. Unless otherwise directed or authorized, in writing, by Contractor, all Applications for Payment and all supporting documents (including but not limited to lien waivers, sworn statements, and the like) for Subcontractor, shall be in electronic format and shall be submitted to Contractor using the Oracle Textura Payment Management (TPM) system prescribed by Contractor. Subcontractor shall be responsible for the fees and costs associated with Subcontractor's use of the TPM. Subcontractor is responsible to submit billing requests when invited to the draw each month and project all costs through the last day of the month. Failure to follow this procedure may delay the payment of monies owed to Subcontractor until the following draw. Unless otherwise provided in the Work Authorization Notice, Contractor will apply to Owner for progress payment draws only once each calendar month.
 - a. "Approved Change Orders" is for WRITTEN APPROVED change orders only, which means extra work that has been issued a signed "Layton Construction Change Order."
 - b. Reduction of Retention is subject to approval by Project Manager.
 - c. Questions should be directed as follows:

Regarding:	Department:
Submission of Draw Documents	Textura Customer Support (866) 839-8872
Change Orders / Project % Complete	Project Manager –
Contract and Insurance Paperwork	Project Assistant –
Lien Waivers / Payment Date	Project Assistant –

Fees will be based on the value of the Subcontractor Work at the rate of 0.22%* of contract value (plus applicable taxes), with a maximum fee of \$5,000. The fee will be collected when the Work Authorization Notice is accepted by Subcontractor on the TPM.

*This rate is effective as of January 19, 2023. The rate is subject to change at Textura's discretion in the future.

2. Verification of Right to Work. It is the Contractor's intention to allow only individuals authorized to work in the United States to provide labor, tools or equipment to the Project. Accordingly, the Subcontractor agrees to ensure that all Subcontractor Work complies with all provisions of all local, state and federal immigration laws, statutes, rules, codes, orders and regulations, including, without limitation, the Immigration Reform and Control Act of 1986, as amended, the Immigration and Nationality Act, as amended, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended, and any successor statutes, laws, rules and regulations thereto (collectively, the "Immigration Laws"). Subcontractor agrees to indemnify, defend, and hold harmless any and all Indemnified Parties from any and all liability, including fines, attorneys' fees and court costs, assessed due to noncompliance with the Immigration Laws by Subcontractor or any of its sub-subcontractors. Subcontractor shall, on a bi-annual basis during the term of the Subcontract Documents, conduct an internal I-9 audit of the I-9 Forms for its employees and shall promptly correct any defects or deficiencies which are identified as a result of such audit. Contractor may, in its sole discretion, terminate this Contract immediately if, at any time during the term, Subcontractor violates or is in breach of any provision of this paragraph or the USCIS determines that Subcontractor has not complied with the Immigration Laws.

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3. In addition to all other requirements contained in the Subcontract Documents:

- .1 If a surety bond is required of Subcontractor under this Work Authorization Notice, Subcontractor must deliver such bond to Contractor upon execution of this Work Authorization Notice but, in any event, prior to the commencement of the Subcontractor Work. Subcontractor is not permitted to commence the Subcontractor Work unless and until Subcontractor has delivered all requisite surety bonds to Contractor. Any delay in commencement of the Subcontractor Work caused by Subcontractor's failure to deliver a requisite surety bond shall constitute a delay by Subcontractor and Contractor shall have the right to pursue all remedies provided under the Subcontract Documents and provided as law and in equity, including but not limited to those rights and remedies provided to Contractor in Section 4.2, 4.6, 8.1, and 11 of the General Terms and Conditions. If Subcontractor fails to deliver a requisite surety bond within seven (7) days of the execution of this Work Authorization Notice, then, in addition to all other rights and remedies permitted to Contractor under the Subcontract Documents, title of ownership to any materials (raw or fabricated) and equipment possessed by Subcontractor (both on and off site) shall immediately, and without further action, be vested in Contractor. In the event the Subcontractor Work is terminated by Contractor, possession of said materials and equipment shall be immediately transferred to Contractor upon demand.
- .2 In the event of a default under Section 8.1 of the General Terms and Conditions, Contractor's right to take over all tools, equipment, materials, and supplies of Subcontractor extends to all tools, equipment, materials, and supplies away from the jobsite or in transit.
- .3 Upon execution of this Work Authorization, but, in any event, prior to the commencement of the Subcontractor Work, Subcontractor must deliver to Contractor any certificates of insurance or additional insured endorsements required under Exhibit G to this Work Authorization.
- .4 Subcontractor shall not be entitled to payment by Contractor under this Work Authorization Notice until and unless Subcontractor has provided all additional insured endorsements required under Exhibit G to this Work Authorization Notice.

4. Other Special Terms and Conditions.

- .1 Subcontractor shall provide and have on site an iPad, with cellular internet access, so that drawings, RFIs, ASIs, and any other project documentation can be accessed, in real-time from this device, via a website link.

<<INSERT OTHER SPECIAL TERMS AND CONDITIONS AS AGREED UPON>>

[END OF ATTACHMENT NO. 2]

Attachment 2

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**LIST OF EXHIBITS
TO THIS
WORK AUTHORIZATION NOTICE**

EXHIBIT A
Document List

EXHIBIT B
Subcontractor/Supplier List

EXHIBIT C
Safety Hazardous Communication

EXHIBIT D
Competent Person Form

EXHIBIT E
**Payment Request Instructions;
Sub/Supplier Lien Waivers**

EXHIBIT F
Safety Declaration

EXHIBIT G
Insurance Requirements

EXHIBIT H
Design-Build Provisions

[END OF LIST OF EXHIBITS]

List of Exhibits

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EXHIBIT G

Insurance Requirements

[with CCIP]

SECTION I – GENERAL INSURANCE REQUIREMENTS

A. **CCIP.** Contractor has implemented a Contractor Controlled Insurance Program (“**CCIP**”) to furnish certain insurance for the Subcontractor Work to be performed at the Project Site. The insurance included in the CCIP is generally described in Section III of this Exhibit. No type of insurance other than that set forth in Section III and in the CCIP Manual, described below, is furnished by Contractor for the benefit of Subcontractor.

B. **Subcontractor-Furnished Insurance for all Enrolled Subcontractors.** Notwithstanding the CCIP, prior to the start of the Subcontractor Work, each Subcontractor who is enrolled in the CCIP shall, at its sole cost and expense and without limiting its obligations or liabilities under the Subcontract Documents, obtain and maintain in effect, and provide evidence to Contractor that the same is in effect, the minimum insurance coverages, terms, riders and amendments set forth in Section II of this Exhibit, with an insurance company or companies licensed to do business as required by Applicable Law and otherwise acceptable to Contractor. Workers’ Compensation, Employers’ Liability, General Liability and Excess Liability coverages shall apply to exposures occurring *off-site* of the Project Site. Contractor may withhold progress payments if these insurance requirements are not met. Such insurance shall have annually renewing minimum policy limits and terms required by Section II.

C. **Subcontractor-Furnished Insurance for all Non-Enrolled Subcontractors.** Notwithstanding the CCIP, prior to the start of the Subcontractor Work, each Subcontractor who is not enrolled in the CCIP shall, at its sole cost and expense and without limiting its obligations or liabilities under the Subcontract Documents, obtain and maintain in effect, and provide evidence to Contractor that the same is in effect, the minimum insurance coverages, terms, riders and amendments set forth in Section II, with an insurance company or companies licensed to do business as required by Applicable Law and otherwise acceptable to Contractor. Contractor may withhold progress payments if these insurance requirements are not met. Such insurance shall have annually renewing minimum policy limits and terms required by Section II. In the event that Subcontractor is not eligible to participate in the CCIP, Subcontractor’s general liability and excess liability policies must not have exclusions related to the Project.

SECTION II - SUBCONTRACTOR-FURNISHED INSURANCE

A. **Minimum Required Coverages.** Subcontractor shall obtain and maintain the following minimum coverages:

1. **Workers’ Compensation and Employer’s Liability Insurance.** Workers’ compensation insurance shall be provided covering all employees, workers and sole-proprietors of Subcontractor directly or indirectly engaged in any on-site and off-site activities in connection with the Agreement in accordance with all statutory requirements (whether now existing or hereafter imposed) of all states with jurisdiction over such employee-employer relationship. Such insurance shall be written for the required statutory amounts and be endorsed to include voluntary compensation and all states coverage. Where applicable, coverage shall include United States Longshoremen & Harborworkers Act coverage and Jones Act/Maritime Employer’s Liability coverage. In addition, employer’s liability insurance, including occupational disease coverage, shall be provided with policy limits of not less than the following limits:

US \$500,000 Each Accident - Bodily Injury by accident
US \$500,000 Each Employee - Bodily Injury by disease
US \$500,000 Policy Limit - Bodily Injury by disease

If the Subcontractor leases one or more employees through the use of a payroll, employee management, or other similar company, then the Subcontractor must procure worker’s compensation insurance written on an “if any” policy form, including an endorsement providing coverage for alternate employer/leased employee liability. Such insurance shall be in addition to the workers’ compensation coverage provided to the leased employee by the payroll, employee management, or other similar company.

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2. Commercial General Liability Insurance. Commercial general liability insurance shall be provided on ISO Coverage Form CG 00 01 04 13 or broader policy, on an occurrence basis, providing standard coverage up to the policy limits for all sums which the insureds shall become legally obliged to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of any operations carried on in connection with the Agreement.

Minimum Limits:\$1,000,000	Each Occurrence;
\$1,000,000	Personal & Advertising Injury;
\$2,000,000	Products/Completed Operations Aggregate;
\$2,000,000	General Aggregate

Such policy will include but not be limited to:

- (1) General Aggregate Limit applies per project
- (2) Premises and Operations Coverage
- (3) Products and Completed Operations Coverage
- (4) Blanket contractual coverage
- (5) Broad Form Property Damage coverage
- (6) Separation of Insureds Clause (Severability of Interests)
- (7) An endorsement affording thirty (30) days' notice of cancellation to Contractor of cancellation or reduction in coverage.
- (8) An endorsement providing that such insurance as is afforded under Subcontractor's policy is primary insurance as respects Contractor and that any other insurance maintained by Contractor is excess and non-contributing with the insurance required hereunder.
- (9) An additional insured endorsement adding as an additional insured the Additional Insureds as respects liabilities arising out of Subcontractor Work (including Products/Completed Operations) on the ISO CGL Endorsement CG 20 10 04 13 plus CG 20 37 04 13, or equivalent, extending coverage to products & completed operations for General Liability.

The policy will not contain a subsidence or punitive damages exclusion, except in states where legally allowable. Modified Occurrence Liability Policies are not acceptable. Claims made general liability policies are not acceptable.

3. Comprehensive Automobile Liability Insurance. A comprehensive automobile liability policy shall be provided on a standard form providing coverage for bodily injury, property damage and uninsured motorists for all occurrences whether occurring at Owner's or Contractor's property or elsewhere. Such insurance shall cover the use of all owned, borrowed, non-owned and hired vehicles used in connection with the Subcontractor Work and shall be endorsed for contractual liability. If Subcontractor's scope of services includes the transportation of hazardous materials to or from the Project site, Subcontractor shall be required to include pollution coverage by procuring and continuously maintaining current editions of endorsements MCS-90 and CA 9948, or their equivalents.

Minimum Limits:US \$1,000,000 combined single limit

4. Aircraft/Watercraft and Liability Insurance. If Subcontractor or any of its Sub-subcontractors or agents will operate aircraft or watercraft in the scope of the Work, a policy of aircraft and watercraft insurance shall be provided on a standard form providing coverage for bodily injury (including death) and property damage for aircraft and watercraft applicable to all owned, non-owned and hired aircraft and watercraft.

Minimum Limits:US \$5,000,000 combined single limit per occurrence

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If Subcontractor or any of its Sub-subcontractors or agents will operate an Unmanned Aerial Vehicle (“UAV”), a policy of UAV insurance shall be provided on a standard form providing coverage for bodily injury (including death) and property damage on an “occurrence” basis with a combined single limit per occurrence of \$5,000,000. This coverage may also be provided by endorsement to a Commercial General Liability policy.

5. Professional Liability Insurance. If Subcontractor or any of its Sub-subcontractors or agents will provide any design, engineering or other professional services under the Subcontract Documents, professional liability insurance shall be provided covering Subcontractor and Sub-subcontractors, and their respective professionals, for liability for negligent acts, errors, or omissions, arising out of the performance of the Subcontractor Work. The policy shall contain a blanket endorsement for contractual liability and afford coverage on a claims made basis:

Minimum Limits:US \$1,000,000 combined single limit for each occurrence
US \$2,000,000 annual aggregate limit

All coverage shall be retroactive to the earlier of the date of the Agreement or the commencement of any services furnished under the Agreement and shall be maintained for a period of three (3) years after the date of final payment under the Agreement. Retroactive date of such policy must be on or before the date Subcontractor or its Sub-subcontractors began offering professional services.

6. Excess Liability Insurance. An excess liability insurance policy will be provided on a following form basis. The policy shall have annually renewing minimum policy limits per occurrence of not less than:

Minimum Limits:US \$5,000,000 per occurrence and annual aggregate limits
(includes general liability coverage for Premises & Operations, Independent Contractors, Completed Operations; Occurrence policy form. Does not exclude X, C, or U (Explosion, Collapse or Underground)

When approved in advance by Contractor, the policies provided for in this **Exhibit** may have policy limits lower than indicated above if the excess liability insurance policy limits provided by Subcontractor, when combined with the corresponding underlying policy limits, total at least the sum of all required minimum policy limits required by this **Exhibit**.

7. EIFS Work. If the Subcontractor is performing EIFS or synthetic stucco work, the Subcontractor’s general liability and excess liability insurance policies must include coverage for EIFS or synthetic stucco work.

8. Other Insurance. If additional insurance coverage or greater policy limits are required by the Prime Contract or Work Authorization Notice, said provisions of the Prime Contract or Work Authorization Notice shall control.

B. Additional Provisions. All insurance maintained by Subcontractor or any Sub-subcontractor shall comply with the following:

1. Deductibles. Deductible levels for all required insurance will be commercially reasonable and subject to Contractor’s reasonable approval. Without limiting the foregoing, unless approved in writing by Contractor, Subcontractor represents that its deductibles and self-insured retention limits, if any, under the insurance policies required to be obtained by Subcontractor by this Exhibit, do not together exceed U.S. \$25,000. Subcontractor shall be solely responsible for the payment of all deductibles (including, without limitation, deductibles for builder’s risk policies carried by Contractor or Owner for occurrences caused by Subcontractor) and all self-insured retention amounts retained by Subcontractor. Any self-insured retention must be clearly identified as such on the Certificate of Insurance and is subject to Contractor’s prior approval. Contractor shall have the right and ability to satisfy any self-insured retention requirements.

2. Primary, Non-Contributing Insurance. All insurance policies required to be provided by Subcontractor shall be endorsed to provide that they are primary without right of contribution from Contractor or Owner or by any insurance otherwise maintained by Contractor or Owner, and not in excess of any insurance issued to Contractor or Owner.

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3. **Additional Insureds.** All policies required to be provided by Subcontractor (except worker's compensation and professional liability insurance policies) shall list as additional insureds (the "**Additional Insureds**") Contractor, Owner and all parties required by the Prime Contract.

Any endorsements providing coverage for the Additional Insureds in accordance with this Section shall be on CG20 10 04 13, or equivalent, endorsement forms and shall not exclude the Additional Insureds from the policies' products and completed operations hazard coverage. The Additional Insureds' status shall continue without interruption through the statute of repose or statute of limitations in the state in which construction occurs.

4. **Waiver of Subrogation.** Subcontractor, for itself and all of its Sub-subcontractors, and all of their respective agents and employees, waives all rights of subrogation, and Subcontractor shall cause each insurer, to waive their rights of subrogation as to Contractor, Owner, the Project architect and engineers, the Additional Insureds and their respective contractors, consultants, agents and employees. Without limiting the foregoing, all of Subcontractor's policies of insurance (except for professional liability insurance), shall be endorsed to provide a complete waiver for the benefit of Contractor and Owner of (i) any right of recovery which the insurer may have or acquire against Contractor or Owner or any of its affiliates, or its or their employees, officers or directors for payments made or to be made under such policies and (ii) any lien or right of subrogation which the insurer may have or acquire for payments made or to be made to any person or entity who asserts a claim against Contractor or Owner or any of its affiliates, or its or their employees, officers or directors.

5. **Self-Insurance.** Without limiting the foregoing, Subcontractor's insurance obligations hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions approved in advance in writing by Contractor, in its sole discretion, provided that such programs and retentions shall not in any way limit liabilities assumed by Subcontractor under the Subcontract Documents.

6. **Cross-Severability Clause.** The policies required of this Exhibit (excluding workers' compensation and professional liability insurance policies) shall be endorsed to state that the inclusion of more than one insured under such insurance shall not operate to impair the rights of one insured against another insured and (except for the applicable aggregate policy limits) the coverage afforded by each insurance policy shall apply as though a separate policy had been issued to each insured.

7. **Sub-subcontractor Insurance.** Unless otherwise agreed in writing by the parties hereto, should any of the Subcontractor Work be sublet, Subcontractor shall require each of its Sub-subcontractors of any tier to carry the aforementioned coverages, including the requirement to add the Additional Insureds as additional insureds with the forms specified, or Subcontractor may insure Sub-subcontractors under its own policies, and shall provide evidence of the same to Contractor prior to commencing the Subcontractor Work. It is also required that the Additional Insureds be indemnified by every Sub-subcontractor at every tier using the exact wording agreed to in the indemnity sections of the Subcontract Documents.

8. **Evidence of Coverage.** Prior to furnishing any Subcontractor Work, Subcontractor shall have the insurance companies prepare, execute and deliver to Contractor a Certificate of Insurance in form reasonably acceptable to Contractor certifying that all coverages and terms required herein have been obtained. Such Certificates of Insurance shall evidence that the policies affording these coverages shall not be terminated, cancelled, or changed in a material manner by the insurers without thirty (30) days prior written notice to Contractor, and indicate that the Additional Insureds have been named as additional insureds, and that the policies provide for a waiver of subrogation in favor of such Additional Insureds. In addition, a certified copy of the policy or policies, detailed binders and/or endorsements shall be provided to Contractor on request. The approval of insurance or such verification shall neither relieve nor decrease the liability of Subcontractor.

9. **Insurance Term.** All required coverages, except workers' compensation and automobile liability, including the Additional Insured coverage, will be maintained by Subcontractor and its Sub-subcontractors for the period of the Statute of Repose in the State where the Project is located.

10. **Cancellation of Insurance.** Subcontractor shall immediately notify Contractor regarding the occurrence of any of the following events: (i) the cancellation or non-renewal of any policy; (ii) the failure to pay any premium payment; (iii) the failure, for

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any reason, to maintain any policy required to be maintained by this Exhibit; or (iv) any material change in any insurance policy or coverage. If Subcontractor fails or neglects to obtain or renew the required insurance and furnish evidence thereof to Contractor with an acceptable Certificate of Insurance form, Contractor shall have the right (but not the obligation) without any notice and cure period:

(a) to procure such insurance and reduce any amount payable to Subcontractor by the cost thereof, or alternatively, collect such amount from Subcontractor; or (b) to deem such failure or neglect on the part of Subcontractor as a material breach of the Subcontract. Subcontractor shall not intentionally do, allow or permit anything to be done that will affect, impair or contravene any policies of insurance that may be in force hereunder. Subcontractor shall be solely responsible for and promptly pay when due, any and all premiums for all such insurance.

11. Qualifying Insurers. All coverages shall be issued by insurance companies selected by Subcontractor but acceptable to Contractor. Insurers shall be licensed in the state in which the services or work is to take place, of recognized good standing and hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by Contractor. If such rating for an insurer ever falls below AM Best A-VII, a replacement insurer shall be obtained and a new certificate of insurance shall be provided to Contractor within thirty (30) days at Subcontractor's expense.

12. Minimum Requirements. The types of coverages and minimum limits of liability to be provided by Subcontractor and described in this Exhibit are a separate obligation of Subcontractor, and are based on current economic conditions. Contractor reserves the right from time to time to require reasonable additions to or increases in such coverage that it deems necessary. Coverages under blanket policies may be extended by endorsements provided the insurers meet the requirement stipulated herein. If Subcontractor has greater limits than required by the Contract, Contractor will have access to full limits and not be limited to these requirements.

13. Approval By Contractor. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Subcontractor and any approval of said insurance by Contractor or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Subcontractor pursuant to the Subcontract Documents, including but not limited to the provisions concerning indemnification.

14. Right to Withhold Payments. Contractor reserves the right to withhold payments to Subcontractor in the event of material noncompliance with the insurance requirements outlined in this Exhibit.

15. Failure to Pay. Irrespective of the requirements for insurance to be secured and maintained hereunder; the insolvency, bankruptcy or failure of any insurance company carrying insurance of Subcontractor; or the failure of any insurance company to pay claims accruing, shall not affect, negate or waive any of the provisions of the Subcontract Documents including, without exception, the indemnity obligations of Subcontractor.

16. Claims. If Contractor notifies Subcontractor in writing of the need for Subcontractor to make a claim on any of its insurance policies, and the particulars of such claim, Subcontractor shall make such a claim with its insurer.

17. Non-waiver. No insurance maintained by Subcontractor or any Sub-subcontractor and nothing contained in the insurance provisions of the Subcontract Documents or this Exhibit shall in any way limit or waive Subcontractor's or a Sub-subcontractor's liability or responsibility. Failure of Subcontractor to comply with the foregoing insurance requirements shall in no way waive its obligations or liabilities under the Subcontract Documents or the rights of Contractor against Subcontractor.

SECTION III – CONTRACTOR-PROVIDED INSURANCE

A. CCIP. Contractor, at Contractor's sole option and cost, has implemented a Contractor Controlled Insurance Program ("**CCIP**") to furnish certain insurance for the Subcontractor Work to be performed on the Project site. The insurance included in the CCIP is generally described on **Attachment A** to this Exhibit. No type of insurance other than that set forth in **Attachment A** and in the CCIP Manual is furnished by Contractor for the benefit of Subcontractor.

B. Contractor Policies and Procedures. **BY EXECUTING THIS EXHIBIT, SUBCONTRACTOR REPRESENTS AND WARRANTS THAT IT HAS SUCCESSFULLY DOWNLOADED THE MOST RECENT VERSIONS OF CONTRACTOR'S**

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HEALTH, SAFETY, ENVIRONMENTAL AND OTHER POLICIES AND PROCEDURES, INCLUDING CONTRACTOR'S CCIP MANUAL (THE "CCIP MANUAL") FROM THE "SUBCONTRACTOR" TAB ON THE FOLLOWING WEBPAGE:

<http://www.laytonconstruction.com/>

HAS REVIEWED THE SAME AND ANY OTHER CONTRACTOR POLICIES AND PROCEDURES OTHERWISE PROVIDED BY CONTRACTOR TO SUBCONTRACTOR, HAS ASKED QUESTIONS AND RECEIVED ANSWERS WITH RESPECT TO SUCH POLICIES AS NEEDED, AND HAS FULLY READ AND UNDERSTANDS ALL SUCH POLICIES AND PROCEDURES. SUBCONTRACTOR AGREES TO PROVIDE THE SUBCONTRACTOR WORK IN COMPLIANCE WITH SUCH POLICIES AND PROCEDURES. SUBCONTRACTOR AGREES TO PRINT AND MAINTAIN COPIES OF ALL SUCH POLICIES AND PROCEDURES IN ITS MAIN OFFICE AND AT ALL PROJECT LOCATIONS AND EDUCATE ITS EMPLOYEES AND ALL SUB-SUBCONTRACTORS REGARDING THE REQUIREMENTS SET FORTH THEREIN. SUBCONTRACTOR AGREES TO CHECK THE ABOVE-REFERENCED WEBSITE ON A REGULAR BASIS FOR UPDATES AND AGREES TO BE BOUND BY AND COMPLY WITH SUCH UPDATES SO LONG AS THEY DO NOT MATERIALLY AND ADVERSELY AFFECT THE COST TO SUBCONTRACTOR OF PERFORMING THE SUBCONTRACTOR WORK.

C. **Coverage.** The description of CCIP insurance coverages set forth in this Exhibit is for informational purposes only; the specific terms and conditions or coverage are set forth in the respective insurance policies comprising the CCIP which shall control the rights and obligations of the "insured" parties in the CCIP. Subcontractor has the responsibility to review and obtain appropriate insurance and legal counsel regarding the CCIP. Contractor makes no representations regarding the nature, quality or limits of the CCIP and Subcontractor expressly acknowledges the lack of reliance upon any representations made by Contractor or its representatives regarding the nature, quality or limits of insurance provided by the CCIP. Subcontractor shall hold Contractor and its representatives, including, but not limited to, insurance brokers and/or agents, risk managers and attorneys, free and harmless from any and all claims asserting or alleging that the type and/or amount of coverage provided under the CCIP is inadequate or insufficient. The CCIP is intended to be the primary source of coverage for the risks covered and shall assume primary position to Subcontractor's insurance in the covered areas of risk. Any higher limits or other coverage that Subcontractor or its Sub-subcontractor's may be required by law to carry or may need for their protection, shall be at their own expense.

D. **Covered Persons.** The CCIP is for the benefit of Contractor and its Subcontractors of all tiers who have employees or subcontractors at the Project site and are enrolled in the CCIP, but only with respect to the Subcontractor Work performed at the Project site. The CCIP does not extend to the activities or products of suppliers, vendors, material dealers, haulers and transporters whose work location is at a location other than the Project site, or who are engaged solely in the loading, unloading, stocking, testing or hauling of equipment, supplies or materials at the Project site. If, however, such suppliers, vendors or materials dealers install their goods or contract with subcontractors to install their goods on the Project site, those employees or subcontractor's employees must be enrolled in the CCIP. The CCIP does not include fabrication, manufacturing or other operations away from the Project site. Any person providing professional services for a Project, and any abatement contractors, surveyors, and design and testing firms, are not covered by the CCIP. Such persons or entities are required to provide their own insurance. Notwithstanding the foregoing, Contractor reserves the right, in its sole discretion, to exclude any Subcontractor or Sub-subcontractor from the CCIP.

E. **Enrollment.** Prior to providing any Subcontractor Work at the Project site, Subcontractor shall satisfy all requirements for enrollment in the CCIP, including completing and submitting to the CCIP administrator (as designated by Contractor from time to time, the "**CCIP Administrator**") the CCIP Enrollment Worksheets contemplated by the CCIP Manual (the "**Enrollment Worksheet(s)**"). Subcontractor shall be responsible to ensure that it and its Sub-subcontractors comply in all respects with the enrollment requirements for the CCIP before any onsite activities occur at the Project site. Subcontractor represents and warrants that the information provided in Enrollment Worksheets submitted to the CCIP Administrator is true, correct and complete in all respects. Upon the request of Contractor or the CCIP Administrator, Subcontractor shall provide copies of insurance records, policies, declaration pages of policies, endorsement page showing deductible amounts, insurance rating information, certificates of self-insurance, and such other documents as may be requested by the CCIP Administrator in order to assure the truth, accuracy and completeness of Subcontractor's insurance information and data. If these items are not timely furnished to the reasonable satisfaction of Contractor and the CCIP Administrator, the Subcontractor will be charged 3.25% to offset costs incurred by Contractor for Subcontractor's participation in the CCIP.

F. **Subcontract Price; Etc.**

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1. Subcontractor represents and warrants that it has included in its bid for the Subcontractor Work, and will include in any Change Order for the Subcontractor Work, the cost of all insurance for both onsite and offsite work *as if the CCIP did not exist*, with the same coverages and limits as are set forth in Section II to this Exhibit. In consideration for the Contractor's agreement to include Subcontractor in the CCIP and pay the premiums for such coverage as provided in this Exhibit, Subcontractor will pay Contractor a monthly amount estimated to equal the cost of the insurance for onsite activities that Subcontractor, and its lower tier subcontractors, would otherwise have paid for such coverage for the immediately preceding month (the "**Premium Credit**"). At Contractor's option, such payment shall be made by Subcontractor in either cash or as credit against amounts otherwise payable to Subcontractor. The CCIP Administrator shall calculate the Premium Credit based on payroll, labor hours, contract value, or any other method Contractor deems to be consistent with the rating basis of Subcontractor's own insurance policies.

2. The CCIP Administrator will independently calculate the value of insurance premiums included within the Subcontractors' bid including its lower tier contractors. Subcontractor agrees to promptly pay to Contractor the incremental amount of any increased insurance premiums imposed on Contractor as a result of said information, data and/or audit(s), and any approved change orders issued in connection with the Subcontractor Work.

G. **Audit Rights.** Contractor, the CCIP Administrator and/or the CCIP insurance carrier(s) may, but are not required to, audit the records of Subcontractor and its Sub-subcontractors to confirm the truth, correctness and accuracy of the Enrollment Worksheet(s), payroll reports, and all referenced information and data. Contractor, the CCIP Administrator and insurance company(ies) and their respective representatives, may, among other things, use such information for the purpose of unit statistical filing by the insurer with the industry groups or other reporting agencies.

H. **Cooperation.** Subcontractor and its Sub-subcontractors shall cooperate with Contractor and the CCIP Administrator with regard to CCIP administration and operation. Such obligation shall include, but not be limited to, the following:

1. Complete and provide to the CCIP Administrator all forms and exposure information necessary to enroll in the CCIP. Subcontractor will be a CCIP participant upon completion of all enrollment requirements set forth in this Exhibit and in the CCIP Manual. Subcontractor will, whenever possible, use the CCIP Administrator's online system to complete enrollment, including uploading required enrollment documents;

2. Provide certificates of insurance for coverage required of Subcontractor as required by this Exhibit;

3. Notify Contractor in advance of its intent to award any contract to a Sub-subcontractor, and require any Sub-subcontractor providing any of the Subcontractor Work at the Project site to enroll in the CCIP. It is Contractor's intent to enroll in the CCIP all Subcontractors and Sub-subcontractors, other than those expressly excluded by the CCIP;

4. Bind each of its respective Sub-subcontractors to the insurance, indemnity and hold harmless provisions of the Subcontract Documents, including the provisions of the CCIP;

5. Not violate or knowingly permit violation of any conditions of the CCIP policies or insurance, and at all times satisfy the requirements of the insurance companies issuing them;

6. No later than the fifth (5th) day of each calendar month prior to final completion of the Subcontractor Work, Subcontractor shall timely furnish Contractor and the CCIP Administrator, or their designees, with accurate monthly payroll data, actual hours worked, and other information for itself and its Sub-subcontractors related to the Project, and permit its books and records related to the Project to be audited by the CCIP Administrator and insurance company(ies) or their respective representatives. Subcontractor agrees to maintain separate payroll records and retain them for 3 years after final completion of the Subcontractor Work;

7. Comply with the applicable loss control (safety) and claim-reporting procedures;

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8. Furnish to Contractor, the CCIP Administrator and Contractor's insurance carriers any additional information and documentation which may be required from time to time in connection with the issuance of any policies and renewal policies pursuant to the CCIP program; and

9. Promptly comply with the requirements, obligations and recommendations of Contractor, the CCIP Administrator or any insurance carrier, so that the CCIP may be properly administered and so that the Contractor's insurance carriers will continue to provide coverage under the CCIP.

If Subcontractor fails to comply with any such requirement, obligation or recommendation, or fails to submit information, data and documents as required by Contractor in the CCIP Manual, Contractor may, in addition to its other rights and remedies, withhold any payments due the Subcontractor until such time as Subcontractor has remedied such failure. Failure to supply all requested insurance documents will result in a flat 3.25% charge against the entire Subcontract Price to the Subcontractor.

I. **Claims.** Should a claim against an entity enrolled in the CCIP be made, Contractor, in consultation with the insurance carriers, shall have unilateral authority and entitlement to select counsel to represent the insureds' interests. Subcontractor hereby waives any potential or actual conflict of interest in the selection of counsel by Contractor. Subcontractor shall assist and cooperate in every manner possible in connection with the adjustment of all claims arising out of or related to the Subcontractor Work and shall cooperate with Contractor, the CCIP Administrator and insurance carriers in the adjustment, settlement, arbitration or litigation of all said claims, including but not limited to providing light or modified duty for injured workers, appearances in arbitration or court proceedings and/or participating in settlement conferences as may be required. Failure to comply with the Accident Reporting and Claims Procedures outlined in the CCIP Manual will result in a flat fee of \$5,000 to be paid by the Subcontractor to Contractor for costs incurred to manage the claim.

J. **Loss Sharing.** Each enrolled Subcontractor involved in a claim covered by the Commercial General Liability Policy under the CCIP will be responsible to share in all costs associated with the investigation and settlement of said claim insured by the CCIP, including defense costs for losses to the extent caused in whole or in part by Subcontractor or a Subcontractor Party. Subcontractor shall pay the amount of the deductible under Subcontractor's Commercial General Liability Policy at the time the Subcontract is issued giving rise to claim is issued to the extent of the fault of any of the Subcontractor Parties, as determined by Contractor, with a minimum payment due of \$2,500.

K. **Application to Sub-subcontractors.** Subcontractor agrees to include this Exhibit and accompanying CCIP Manual, in their entirety, in any lower-tier subcontract executed by Subcontractor for any part of the Subcontractor Work and agree to enforce all requirements, obligations and recommendations as specified in this Exhibit, including but not limited to the completion of all required and necessary CCIP enrollment forms, change order forms, insurance applications, prompt and full compliance with all audit requests, claim reporting and adjustment/settlement procedures and full participation in and compliance with safety, loss prevention and control programs implemented by or at the request of Contractor, the CCIP Administrator and insurance company(ies) or their respective representatives, and/or as required by any local, state or federal laws. Subcontractor is responsible for its Sub-subcontractors compliance with the requirements of this Exhibit and the CCIP Manual.

L. **Termination/Modification of CCIP.** While it is the intent of Contractor to keep the CCIP in force throughout the performance of the Subcontractor Work, insurance marketplace conditions or other circumstances beyond Contractor's control, as determined by Contractor in its sole discretion, may require termination or modification of the CCIP. In such event, Contractor reserves the right to terminate or modify the CCIP or any portion thereof. To exercise this option, Contractor shall provide at least forty-five (45) days' advance written notice to Subcontractor and, at Contractor's option, will provide replacement coverage or will require Subcontractor to obtain replacement insurance coverage as required. If Contractor requires Subcontractor to obtain replacement insurance, Subcontractor and its Sub-subcontractors will be required to immediately obtain replacement insurance coverage and the reasonable actual auditable cost of such approved replacement insurance will be reimbursed by Contractor. Subcontractor shall submit to Contractor written evidence satisfactory to Contractor that such insurance is in force prior to the actual termination date of the CCIP.

M. **Liabilities and Obligations.** The CCIP is not intended to and will not in any manner limit or qualify the duties, liabilities and obligations assumed by Subcontractor under the Subcontract Documents. Losses and claims against Subcontractor that are within

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the Loss Sharing provisions, are in excess of the policy limits, or are excluded from the insurance policies described in the CCIP are for the account of Subcontractor, to the extent of Subcontractor’s duties, liabilities and obligations under the Subcontract Documents, including without limitation Subcontractor’s indemnification obligations under the Subcontract Documents.

IN WITNESS WHEREOF, the parties have entered into this Exhibit as of the ____ day of _____, 20____, intending to be legally bound, and acknowledging and agreeing that except as expressly modified by this Exhibit, the terms and conditions of the Subcontract Documents remain in full force and effect.

CONTRACTOR:
LAYTON CONSTRUCTION COMPANY, LLC

SUBCONTRACTOR:
SUBCONTRACTOR NAME

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

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**Attachment A
TO
EXHIBIT G**

CCIP Coverage

The “CCIP” referred to in the foregoing Exhibit includes the following generally described insurance coverages:

- A. The CCIP provides to enrolled Subcontractors and Sub-subcontractors the following insurance coverages with the following limits:
- **On-Site Workers’ Compensation/Employers’ Liability:**
 - Statutory Workers’ Compensation
 - \$1,000,000 Bodily Accident by Accident
 - \$1,000,000 Bodily Accident by Disease – Each Employee
 - \$1,000,000 Bodily Accident by Disease – Policy Limit
 - **On-Site General Liability with limits specific to this Project:**
 - \$2 million per Occurrence
 - \$4 million General Aggregate
 - \$4 million Products/Completed Operations Aggregate

The General Aggregate reinstates annually.
There is a separate annual cap of \$20 Million for the General Aggregate
 - **On-Site Excess Liability Insurance on a form following basis**
 - \$75,000,000 Each Occurrence
 - \$75,000,000 Per Project Annual Aggregate
 - \$75,000,000 Per Project Products/Completed Operations Aggregate
 - 10 year completed operations tail following Substantial Completion or Statute of Repose, whichever is less.
 - The CCIP Manual provides a more detailed summary of policy terms and conditions. In addition, copies of policies are available to Subcontractor upon written request sent to the CCIP Administrator.

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EXHIBIT G

Insurance Requirements

[with GL Only CCIP]

SECTION I – GENERAL INSURANCE REQUIREMENTS

A. **CCIP.** Contractor has implemented a Contractor Controlled Insurance Program (“**CCIP**”) to furnish certain insurance for the Subcontractor Work to be performed at the Project Site. The insurance included in the CCIP is generally described in Section III of this Exhibit. No type of insurance other than that set forth in Section III and in the CCIP Manual, described below, is furnished by Contractor for the benefit of Subcontractor.

B. **Subcontractor-Furnished Insurance for all Enrolled Subcontractors.** Notwithstanding the CCIP, prior to the start of the Subcontractor Work, each Subcontractor who is enrolled in the CCIP shall, at its sole cost and expense and without limiting its obligations or liabilities under the Subcontract Documents, obtain and maintain in effect, and provide evidence to Contractor that the same is in effect, the minimum insurance coverages, terms, riders and amendments set forth in Section II of this Exhibit, with an insurance company or companies licensed to do business as required by Applicable Law and otherwise acceptable to Contractor. General Liability and Excess Liability coverage shall apply to exposures occurring *off-site* of the Project Site. Contractor may withhold progress payments if these insurance requirements are not met. Such insurance shall have annually renewing minimum policy limits and terms required by Section II.

C. **Subcontractor-Furnished Insurance for all Non-Enrolled Subcontractors.** Notwithstanding the CCIP, prior to the start of the Subcontractor Work, each Subcontractor who is not enrolled in the CCIP shall, at its sole cost and expense and without limiting its obligations or liabilities under the Subcontract Documents, obtain and maintain in effect, and provide evidence to Contractor that the same is in effect, the minimum insurance coverages, terms, riders and amendments set forth in Section II, with an insurance company or companies licensed to do business as required by Applicable Law and otherwise acceptable to Contractor. Contractor may withhold progress payments if these insurance requirements are not met. Such insurance shall have annually renewing minimum policy limits and terms required by Section II. In the event that Subcontractor is not eligible to participate in the CCIP, Subcontractor’s general liability and excess liability policies must not have exclusions related to the Project.

SECTION II - SUBCONTRACTOR-FURNISHED INSURANCE

A. **Minimum Required Coverages.** Subcontractor shall obtain and maintain the following minimum coverages:

1. **Workers’ Compensation and Employer’s Liability Insurance.** Workers’ compensation insurance shall be provided covering all employees, workers and sole proprietors of Subcontractor directly or indirectly engaged in any on-site and off-site activities in connection with the Agreement in accordance with all statutory requirements (whether now existing or hereafter imposed) of all states with jurisdiction over such employee-employer relationship. Such insurance shall be written for the required statutory amounts and be endorsed to include voluntary compensation and all states coverage. Where applicable, coverage shall include United States Longshoremen & Harborworkers Act coverage and Jones Act/Maritime Employer’s Liability coverage. In addition, employer’s liability insurance, including occupational disease coverage, shall be provided with policy limits of not less than the following limits:

US \$500,000 Each Accident - Bodily Injury by accident
 US \$500,000 Each Employee - Bodily Injury by disease
 US \$500,000 Policy Limit - Bodily Injury by disease

If the Subcontractor leases one or more employees through the use of a payroll, employee management, or other similar company, then the Subcontractor must procure worker’s compensation insurance written on an “if any” policy form, including an endorsement providing coverage for alternate employer/leased employee liability. Such insurance shall be in addition to the workers’ compensation coverage provided to the leased employee by the payroll, employee management, or other similar company.

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Exhibit G – GL Only CCIP; Rev. 2022.09.13
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2. Commercial General Liability Insurance. Commercial general liability insurance shall be provided on ISO Coverage Form CG 00 01 04 13 or broader policy, on an occurrence basis, providing standard coverage up to the policy limits for all sums which the insureds shall become legally obliged to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of any operations carried on in connection with the Agreement.

Minimum Limits:\$1,000,000	Each Occurrence;
\$1,000,000	Personal & Advertising Injury;
\$2,000,000	Products/Completed Operations Aggregate;
\$2,000,000	General Aggregate

Such policy will include but not be limited to:

- (1) General Aggregate Limit applies per project
- (2) Premises and Operations Coverage
- (3) Products and Completed Operations Coverage
- (4) Blanket contractual coverage
- (5) Broad Form Property Damage coverage
- (6) Separation of Insureds Clause (Severability of Interests)
- (7) An endorsement affording thirty (30) days' notice of cancellation to Contractor of cancellation or reduction in coverage.
- (8) An endorsement providing that such insurance as is afforded under Subcontractor's policy is primary insurance as respects Contractor and that any other insurance maintained by Contractor is excess and non-contributing with the insurance required hereunder.
- (9) An additional insured endorsement adding as an additional insured the Additional Insureds as respects liabilities arising out of Subcontractor Work (including Products/Completed Operations) on the ISO CGL Endorsement CG 20 10 04 13 plus CG 20 37 04 13, or equivalent, extending coverage to products & completed operations for General Liability.

The policy will not contain a subsidence or punitive damages exclusion, except in states where legally allowable. Modified Occurrence Liability Policies are not acceptable. Claims made general liability policies are not acceptable.

3. Comprehensive Automobile Liability Insurance. A comprehensive automobile liability policy shall be provided on a standard form providing coverage for bodily injury, property damage and uninsured motorists for all occurrences whether occurring at Owner's or Contractor's property or elsewhere. Such insurance shall cover the use of all owned, borrowed, non-owned and hired vehicles used in connection with the Subcontractor Work and shall be endorsed for contractual liability. If Subcontractor's scope of services includes the transportation of hazardous materials to or from the Project site, Subcontractor shall be required to include pollution coverage by procuring and continuously maintaining current editions of endorsements MCS 90 and CA 9948, or their equivalents.

Minimum Limits: US \$1,000,000 combined single limit

4. Aircraft/Watercraft and Liability Insurance. If Subcontractor or any of its Sub-subcontractors or agents will operate aircraft or watercraft in the scope of the Work, a policy of aircraft and watercraft insurance shall be provided on a standard form providing coverage for bodily injury (including death) and property damage for aircraft and watercraft applicable to all owned, non-owned and hired aircraft and watercraft.

Minimum Limits: US \$5,000,000 combined single limit per occurrence

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If Subcontractor or any of its Sub-subcontractors or agents will operate an Unmanned Aerial Vehicle ("UAV"), a policy of UAV insurance shall be provided on a standard form providing coverage for bodily injury (including death) and property damage on an "occurrence" basis with a combined single limit per occurrence of \$5,000,000. This coverage may also be provided by endorsement to a Commercial General Liability policy.

5. Professional Liability Insurance. If Subcontractor or any of its Sub-subcontractors or agents will provide any design, engineering or other professional services under the Subcontract Documents, professional liability insurance shall be provided covering Subcontractor and Sub-subcontractors, and their respective professionals, for liability for negligent acts, errors, or omissions, arising out of the performance of the Subcontractor Work. The policy shall contain a blanket endorsement for contractual liability and afford coverage on a claims made basis:

Minimum Limits: US \$1,000,000 combined single limit for each occurrence
US \$2,000,000 annual aggregate limit

All coverage shall be retroactive to the earlier of the date of the Agreement or the commencement of any services furnished under the Agreement and shall be maintained for a period of three (3) years after the date of final payment under the Agreement. Retroactive date of such policy must be on or before the date Subcontractor or its Sub-subcontractors began offering professional services.

6. Excess Liability Insurance. An excess liability insurance policy will be provided on a following form basis. The policy shall have annually renewing minimum policy limits per occurrence of not less than:

Minimum Limits: US \$5,000,000 per occurrence and annual aggregate limits
(includes general liability coverage for Premises & Operations, Independent Contractors, Completed Operations; Occurrence policy form. Does not exclude X, C, or U (Explosion, Collapse or Underground))

When approved in advance by Contractor, the policies provided for in this *Exhibit* may have policy limits lower than indicated above if the excess liability insurance policy limits provided by Subcontractor, when combined with the corresponding underlying policy limits, total at least the sum of all required minimum policy limits required by this *Exhibit*.

7. EIFS Work. If the Subcontractor is performing EIFS or synthetic stucco work, the Subcontractor's general liability and excess liability insurance policies must include coverage for EIFS or synthetic stucco work.

8. Other Insurance. If additional insurance coverage or greater policy limits are required by the Prime Contract or Work Authorization Notice, said provisions of the Prime Contract or Work Authorization Notice shall control.

B. Additional Provisions. All insurance maintained by Subcontractor or any Sub-subcontractor shall comply with the following:

1. Deductibles. Deductible levels for all required insurance will be commercially reasonable and subject to Contractor's reasonable approval. Without limiting the foregoing, unless approved in writing by Contractor, Subcontractor represents that its deductibles and self-insured retention limits, if any, under the insurance policies required to be obtained by Subcontractor by this Exhibit, do not together exceed U.S. \$25,000. Subcontractor shall be solely responsible for the payment of all deductibles (including, without limitation, deductibles for builder's risk policies carried by Contractor or Owner for occurrences caused by Subcontractor) and all self-insured retention amounts retained by Subcontractor. Any self-insured retention must be clearly identified as such on the Certificate of Insurance and is subject to Contractor's prior approval. Contractor shall have the right and ability to satisfy any self-insured retention requirements.

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2. Primary, Non-Contributing Insurance. All insurance policies required to be provided by Subcontractor shall be endorsed to provide that they are primary without right of contribution from Contractor or Owner or by any insurance otherwise maintained by Contractor or Owner, and not in excess of any insurance issued to Contractor or Owner.
3. Additional Insureds. All policies required to be provided by Subcontractor (except worker's compensation and professional liability insurance policies) shall list as additional insureds (the "Additional Insureds") Contractor and Owner and all parties required by the Prime Contract.

Any endorsements providing coverage for the Additional Insureds in accordance with this Section shall be on CG 20 10 04 13, or equivalent endorsement forms, and shall not exclude the Additional Insureds from the policies' products and completed operations hazard coverage. The Additional Insureds' status shall continue without interruption through the statute of repose or statute of limitations in the state in which construction occurs.

4. Waiver of Subrogation. Subcontractor, for itself and all of its Sub-subcontractors, and all of their respective agents and employees, waives all rights of subrogation, and Subcontractor shall cause each insurer, to waive their rights of subrogation as to Contractor, Owner, the Project architect and engineers, the Additional Insureds and their respective contractors, consultants, agents and employees. Without limiting the foregoing, all of Subcontractor's policies of insurance (except for professional liability insurance), shall be endorsed to provide a complete waiver for the benefit of Contractor and Owner of (i) any right of recovery which the insurer may have or acquire against Contractor or Owner or any of its affiliates, or its or their employees, officers or directors for payments made or to be made under such policies and (ii) any lien or right of subrogation which the insurer may have or acquire for payments made or to be made to any person or entity who asserts a claim against Contractor or Owner or any of its affiliates, or its or their employees, officers or directors.
5. Self-Insurance. Without limiting the foregoing, Subcontractor's insurance obligations hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions approved in advance in writing by Contractor, in its sole discretion, provided that such programs and retentions shall not in any way limit liabilities assumed by Subcontractor under the Subcontract Documents.
6. Cross-Severability Clause. The policies required of this Exhibit (excluding workers' compensation and professional liability policies) shall be endorsed to state that the inclusion of more than one insured under such insurance shall not operate to impair the rights of one insured against another insured and (except for the applicable aggregate policy limits) the coverage afforded by each insurance policy shall apply as though a separate policy had been issued to each insured.
7. Sub-subcontractor Insurance. Unless otherwise agreed in writing by the parties hereto, should any of the Subcontractor Work be sublet, Subcontractor shall require each of its Sub-subcontractors of any tier to carry the aforementioned coverages, including the requirement to add the Additional Insureds as additional insureds with the forms specified, or Subcontractor may insure Sub-subcontractors under its own policies, and shall provide evidence of the same to Contractor prior to commencing the Subcontractor Work. It is also required that the Additional Insureds be indemnified by every Sub-subcontractor at every tier using the exact wording agreed to in the indemnity sections of the Subcontract Documents.
8. Evidence of Coverage. Prior to furnishing any Subcontractor Work, Subcontractor shall have the insurance companies prepare, execute and deliver to Contractor a Certificate of Insurance in form reasonably acceptable to Contractor certifying that all coverages and terms required herein have been obtained. Such Certificates of Insurance shall evidence that the policies affording these coverages shall not be terminated, cancelled, or changed in a material manner by the insurers without thirty (30) days prior written notice to Contractor, and indicate that the Additional Insureds have been named as additional insureds, and that the policies provide for a waiver of subrogation in favor of such Additional Insureds. In addition, a certified copy of the policy or policies, detailed

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binders and/or endorsements shall be provided to Contractor on request. The approval of insurance or such verification shall neither relieve nor decrease the liability of Subcontractor.

9. Insurance Term. All required coverages, except workers' compensation and automobile liability, including the Additional Insured coverage, will be maintained by Subcontractor and its Sub-subcontractors for the period of the Statute of Repose in the State where the Project is located.
10. Cancellation of Insurance. Subcontractor shall immediately notify Contractor regarding the occurrence of any of the following events: (i) the cancellation or non-renewal of any policy; (ii) the failure to pay any premium payment; (iii) the failure, for any reason, to maintain any policy required to be maintained by this Exhibit; or (iv) any material change in any insurance policy or coverage. If Subcontractor fails or neglects to obtain or renew the required insurance and furnish evidence thereof to Contractor with an acceptable Certificate of Insurance form, Contractor shall have the right (but not the obligation) without any notice and cure period: (a) to procure such insurance and reduce any amount payable to Subcontractor by the cost thereof, or alternatively, collect such amount from Subcontractor; or (b) to deem such failure or neglect on the part of Subcontractor as a material breach of the Subcontract. Subcontractor shall not intentionally do, allow or permit anything to be done that will affect, impair or contravene any policies of insurance that may be in force hereunder. Subcontractor shall be solely responsible for and promptly pay when due, any and all premiums for all such insurance.
11. Qualifying Insurers. All coverages shall be issued by insurance companies selected by Subcontractor but acceptable to Contractor. Insurers shall be licensed in the state in which the services or work is to take place, of recognized good standing and hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by Contractor. If such rating for an insurer ever falls below AM Best A-VII, a replacement insurer shall be obtained and a new certificate of insurance shall be provided to Contractor within thirty (30) days at Subcontractor's expense.
12. Minimum Requirements. The types of coverages and minimum limits of liability to be provided by Subcontractor and described in this Exhibit are a separate obligation of Subcontractor, and are based on current economic conditions. Contractor reserves the right from time to time to require reasonable additions to or increases in such coverage that it deems necessary. Coverages under blanket policies may be extended by endorsements provided the insurers meet the requirement stipulated herein. If Subcontractor has greater limits than required by the Contract, Contractor will have access to full limits and not be limited to these requirements.
13. Approval By Contractor. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Subcontractor and any approval of said insurance by Contractor or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Subcontractor pursuant to the Subcontract Documents, including but not limited to the provisions concerning indemnification.
14. Right to Withhold Payments. Contractor reserves the right to withhold payments to Subcontractor in the event of material noncompliance with the insurance requirements outlined in this Exhibit.
15. Failure to Pay. Irrespective of the requirements for insurance to be secured and maintained hereunder; the insolvency, bankruptcy or failure of any insurance company carrying insurance of Subcontractor; or the failure of any insurance company to pay claims accruing, shall not affect, negate or waive any of the provisions of the Subcontract Documents including, without exception, the indemnity obligations of Subcontractor.
16. Claims. If Contractor notifies Subcontractor in writing of the need for Subcontractor to make a claim on any of insurance policies, and the particulars of such claim, Subcontractor shall make such a claim with its insurer.

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17. Non-waiver. No insurance maintained by Subcontractor or any Sub-subcontractor and nothing contained in the insurance provisions of the Subcontract Documents or this Exhibit shall in any way limit or waive Subcontractor's or a Sub-subcontractor's liability or responsibility. Failure of Subcontractor to comply with the foregoing insurance requirements shall in no way waive its obligations or liabilities under the Subcontract Documents or the rights of Contractor against Subcontractor.

SECTION III – CONTRACTOR-PROVIDED INSURANCE

- A. CCIP. Contractor, at Contractor's sole option and cost, has implemented a Contractor Controlled Insurance Program ("CCIP") to furnish certain insurance for the Subcontractor Work to be performed on the Project site. The insurance included in the CCIP is generally described on *Attachment A* to this Exhibit. No type of insurance other than that set forth in *Attachment A* and in the CCIP Manual is furnished by Contractor for the benefit of Subcontractor.
- B. Contractor Policies and Procedures. **BY EXECUTING THIS EXHIBIT, SUBCONTRACTOR REPRESENTS AND WARRANTS THAT IT HAS SUCCESSFULLY DOWNLOADED THE MOST RECENT VERSIONS OF CONTRACTOR'S HEALTH, SAFETY, ENVIRONMENTAL AND OTHER POLICIES AND PROCEDURES, INCLUDING CONTRACTOR'S CCIP MANUAL (THE "CCIP MANUAL") FROM THE "SUBCONTRACTOR" TAB ON THE FOLLOWING WEBPAGE: <https://www.laytonconstruction.com/> HAS REVIEWED THE SAME AND ANY OTHER CONTRACTOR POLICIES AND PROCEDURES OTHERWISE PROVIDED BY CONTRACTOR TO SUBCONTRACTOR, HAS ASKED QUESTIONS AND RECEIVED ANSWERS WITH RESPECT TO SUCH POLICIES AS NEEDED, AND HAS FULLY READ AND UNDERSTANDS ALL SUCH POLICIES AND PROCEDURES. SUBCONTRACTOR AGREES TO PROVIDE THE SUBCONTRACTOR WORK IN COMPLIANCE WITH SUCH POLICIES AND PROCEDURES. SUBCONTRACTOR AGREES TO PRINT AND MAINTAIN COPIES OF ALL SUCH POLICIES AND PROCEDURES IN ITS MAIN OFFICE AND AT ALL PROJECT LOCATIONS AND EDUCATE ITS EMPLOYEES AND ALL SUB-SUBCONTRACTORS REGARDING THE REQUIREMENTS SET FORTH THEREIN. SUBCONTRACTOR AGREES TO CHECK THE ABOVE-REFERENCED WEBSITE ON A REGULAR BASIS FOR UPDATES AND AGREES TO BE BOUND BY AND COMPLY WITH SUCH UPDATES SO LONG AS THEY DO NOT MATERIALLY AND ADVERSELY AFFECT THE COST TO SUBCONTRACTOR OF PERFORMING THE SUBCONTRACTOR WORK.**
- C. Coverage. The description of CCIP insurance coverages set forth in this Exhibit is for informational purposes only; the specific terms and conditions or coverage are set forth in the respective insurance policies comprising the CCIP which shall control the rights and obligations of the "insured" parties in the CCIP. Subcontractor has the responsibility to review and obtain appropriate insurance and legal counsel regarding the CCIP. Contractor makes no representations regarding the nature, quality or limits of the CCIP and Subcontractor expressly acknowledges the lack of reliance upon any representations made by Contractor or its representatives regarding the nature, quality or limits of insurance provided by the CCIP. Subcontractor shall hold Contractor and its representatives, including, but not limited to, insurance brokers and/or agents, risk managers and attorneys, free and harmless from any and all claims asserting or alleging that the type and/or amount of coverage provided under the CCIP is inadequate or insufficient. The CCIP is intended to be the primary source of coverage for the risks covered and shall assume primary position to Subcontractor's insurance in the covered areas of risk. Any higher limits or other coverage that Subcontractor or its Sub-subcontractor's may be required by law to carry or may need for their protection, shall be at their own expense.
- D. Covered Persons. The CCIP is for the benefit of Contractor and its Subcontractors of all tiers who have employees or subcontractors at the Project site and are enrolled in the CCIP, but only with respect to the Subcontractor Work performed at the Project site. The CCIP does not extend to the activities or products of suppliers, vendors, material dealers, haulers and transporters whose work location is at a location other than the Project site, or who are engaged solely in the loading, unloading, stocking, testing or hauling of equipment, supplies or materials at the Project site. If, however, such suppliers, vendors or materials dealers install their goods or contract with subcontractors to install their goods on the Project site, those employees or subcontractor's employees must be enrolled in the CCIP. The CCIP does not include fabrication, manufacturing or other operations away from the Project site. Any person providing professional services for a Project, and any abatement contractors, surveyors, and design and testing firms, are not covered by the CCIP. Such persons or entities are required to provide their own insurance. Notwithstanding the foregoing, Contractor reserves the right, in its sole discretion, to exclude any Subcontractor or Sub-subcontractor from the CCIP.

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- E. Enrollment. Prior to providing any Subcontractor Work at the Project site, Subcontractor shall satisfy all requirements for enrollment in the CCIP, including completing and submitting to the CCIP administrator (as designated by Contractor from time to time, the "**CCIP Administrator**") the CCIP Enrollment Worksheets contemplated by the CCIP Manual (the "**Enrollment Worksheet(s)**"). Subcontractor shall be responsible to ensure that it and its Sub-subcontractors comply in all respects with the enrollment requirements for the CCIP before any onsite activities occur at the Project site. Subcontractor represents and warrants that the information provided in Enrollment Worksheets submitted to the CCIP Administrator is true, correct and complete in all respects. Upon the request of Contractor or the CCIP Administrator, Subcontractor shall provide copies of insurance records, policies, declaration pages of policies, endorsement page showing deductible amounts, insurance rating information, certificates of self-insurance, and such other documents as may be requested by the CCIP Administrator in order to assure the truth, accuracy and completeness of Subcontractor's insurance information and data. If these items are not timely furnished to the reasonable satisfaction of Contractor and the CCIP Administrator, the Subcontractor will be charged 3.25% to offset costs incurred by Contractor for Subcontractor's participation in the CCIP.
- F. Subcontract Price; Etc.
1. Subcontractor represents and warrants that it has included in its bid for the Subcontractor Work, and will include in any Change Order for the Subcontractor Work, the cost of all insurance for both onsite and offsite work *as if the CCIP did not exist*, with the same coverages and limits as are set forth in Section II to this Exhibit. In consideration for the Contractor's agreement to include Subcontractor in the CCIP and pay the premiums for such coverage as provided in this Exhibit, Subcontractor will pay Contractor a monthly amount estimated to equal the cost of the insurance for onsite activities that Subcontractor, and its lower tier subcontractors, would otherwise have paid for such coverage for the immediately preceding month (the "**Premium Credit**"). At Contractor's option, such payment shall be made by Subcontractor in either cash or as credit against amounts otherwise payable to Subcontractor. The CCIP Administrator shall calculate the Premium Credit based on payroll, labor hours, contract value, or any other method Contractor deems to be consistent with the rating basis of Subcontractor's own insurance policies.
 2. The CCIP Administrator will independently calculate the value of insurance premiums included within the Subcontractors' bid, including its lower tier contractors. Subcontractor agrees to promptly pay to Contractor the incremental amount of any increased insurance premiums imposed on Contractor as a result of said information, data and/or audit(s), and any approved change orders issued in connection with the Subcontractor Work.
- G. Audit Rights. Contractor, the CCIP Administrator and/or the CCIP insurance carrier(s) may, but are not required to, audit the records of Subcontractor and its Sub-subcontractors to confirm the truth, correctness and accuracy of the Enrollment Worksheet(s), payroll reports, and all referenced information and data. Contractor, the CCIP Administrator and insurance company(ies) and their respective representatives, may, among other things, use such information for the purpose of unit statistical filing by the insurer with the industry groups or other reporting agencies.
- H. Cooperation. Subcontractor and its Sub-subcontractors shall cooperate with Contractor and the CCIP Administrator with regard to CCIP administration and operation. Such obligation shall include, but not be limited to, the following:
1. Complete and provide to the CCIP Administrator all forms and exposure information necessary to enroll in the CCIP. Subcontractor will be a CCIP participant upon completion of all enrollment requirements set forth in this Exhibit and in the CCIP Manual. Subcontractor will, whenever possible, use the CCIP Administrator's online system to complete enrollment, including uploading required enrollment documents;
 2. Provide certificates of insurance for coverage required of Subcontractor as required by this Exhibit;

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3. Notify Contractor in advance of its intent to award any contract to a Sub-subcontractor, and require any Sub-subcontractor providing any of the Subcontractor Work at the Project site to enroll in the CCIP. It is Contractor's intent to enroll in the CCIP all Subcontractors and Sub-subcontractors, other than those expressly excluded by the CCIP;
4. Bind each of its respective Sub-subcontractors to the insurance, indemnity and hold harmless provisions of the Subcontract Documents, including the provisions of the CCIP;
5. Not violate or knowingly permit violation of any conditions of the CCIP policies or insurance, and at all times satisfy the requirements of the insurance companies issuing them;
6. No later than the fifth (5th) day of each calendar month prior to final completion of the Subcontractor Work, Subcontractor shall timely furnish Contractor and the CCIP Administrator, or their designees, with accurate monthly payroll data, actual hours worked, and other information for itself and its Sub-subcontractors related to the Project, and permit its books and records related to the Project to be audited by the CCIP Administrator and insurance company(ies) or their respective representatives. Subcontractor agrees to maintain separate payroll records and retain them for 3 years after final completion of the Subcontractor Work;
7. Comply with the applicable loss control (safety) and claim-reporting procedures;
8. Furnish to Contractor, the CCIP Administrator and Contractor's insurance carriers any additional information and documentation which may be required from time to time in connection with the issuance of any policies and renewal policies pursuant to the CCIP program; and
9. Promptly comply with the requirements, obligations and recommendations of Contractor, the CCIP Administrator or any insurance carrier, so that the CCIP may be properly administered and so that the Contractor's insurance carriers will continue to provide coverage under the CCIP.

If Subcontractor fails to comply with any such requirement, obligation or recommendation, or fails to submit information, data and documents as required by Contractor in the CCIP Manual, Contractor may, in addition to its other rights and remedies, withhold any payments due the Subcontractor until such time as Subcontractor has remedied such failure. Failure to supply all requested insurance documents will result in a flat 3.25% charge against the entire Subcontract Price to the Subcontractor.

- I. Claims. Should a claim against an entity enrolled in the CCIP be made, Contractor, in consultation with the insurance carriers, shall have unilateral authority and entitlement to select counsel to represent the insureds' interests. Subcontractor hereby waives any potential or actual conflict of interest in the selection of counsel by Contractor. Subcontractor shall assist and cooperate in every manner possible in connection with the adjustment of all claims arising out of or related to the Subcontractor Work and shall cooperate with Contractor, the CCIP Administrator and insurance carriers in the adjustment, settlement, arbitration or litigation of all said claims, including but not limited to appearances in arbitration or court proceedings and/or participating in settlement conferences as may be required.

Failure to comply with the Accident Reporting and Claims Procedures outlined in the CCIP Manual will result in a flat fee of \$5,000 to be paid by the Subcontractor to Contractor for costs incurred to manage the claim.

- J. Loss Sharing. Each enrolled Subcontractor involved in a claim covered by the Commercial General Liability Policy under the CCIP will be responsible to share in all costs associated with the investigation and settlement of said claim insured by the CCIP, including defense costs for losses to the extent caused in whole or in part by Subcontractor or a Subcontractor Party. Subcontractor shall pay the amount of the deductible under Subcontractor's Commercial General Liability Policy at the time the Subcontract is issued, to the extent of the fault of any of the Subcontractor Parties, as determined by Contractor, with a minimum payment due of \$2,500.
- K. Application to Sub-subcontractors. Subcontractor agrees to include this Exhibit and accompanying CCIP Manual, in their

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entirety, in any lower-tier subcontract executed by Subcontractor for any part of the Subcontractor Work and agree to enforce all requirements, obligations and recommendations as specified in this Exhibit, including but not limited to the completion of all required and necessary CCIP enrollment forms, change order forms, insurance applications, prompt and full compliance with all audit requests, claim reporting and adjustment/settlement procedures and full participation in and compliance with safety, loss prevention and control programs implemented by or at the request of Contractor, the CCIP Administrator and insurance company(ies) or their respective representatives, and/or as required by any local, state or federal laws. Subcontractor is responsible for its Sub-subcontractors compliance with the requirements of this Exhibit and the CCIP Manual.

- L. Termination/Modification of CCIP. While it is the intent of Contractor to keep the CCIP in force throughout the performance of the Subcontractor Work, insurance marketplace conditions or other circumstances beyond Contractor’s control, as determined by Contractor in its sole discretion, may require termination or modification of the CCIP. In such event, Contractor reserves the right to terminate or modify the CCIP or any portion thereof. To exercise this option, Contractor shall provide at least forty-five (45) days’ advance written notice to Subcontractor and, at Contractor’s option, will provide replacement coverage or will require Subcontractor to obtain replacement insurance coverage as required. If Contractor requires Subcontractor to obtain replacement insurance, Subcontractor and its Sub-subcontractors will be required to immediately obtain replacement insurance coverage and the reasonable actual auditable cost of such approved replacement insurance will be reimbursed by Contractor. Subcontractor shall submit to Contractor written evidence satisfactory to Contractor that such insurance is in force prior to the actual termination date of the CCIP.
- M. Liabilities and Obligations. The CCIP is not intended to and will not in any manner limit or qualify the duties, liabilities and obligations assumed by Subcontractor under the Subcontract Documents. Losses and claims against Subcontractor that are within the Loss Sharing provisions, are in excess of the policy limits, or are excluded from the insurance policies described in the CCIP are for the account of Subcontractor, to the extent of Subcontractor’s duties, liabilities and obligations under the Subcontract Documents, including without limitation Subcontractor’s indemnification obligations under the Subcontract Documents.

IN WITNESS WHEREOF, the parties have entered into this Exhibit as of the _____ day of _____, 20____, intending to be legally bound, and acknowledging and agreeing that except as expressly modified by this Exhibit, the terms and conditions of the Subcontract Documents remain in full force and effect.

CONTRACTOR: LAYTON CONSTRUCTION COMPANY, LLC	SUBCONTRACTOR: SUBCONTRACTOR NAME
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

**Attachment A
TO
EXHIBIT G**

CCIP Coverage

The “CCIP” referred to in the foregoing Exhibit includes the following generally described insurance coverages:

- A. The CCIP provides to enrolled Subcontractors and Sub-subcontractors the following insurance coverages with the following limits:
- **On-Site General Liability with limits specific to this Project:**
 - \$2 million per Occurrence
 - \$4 million General Aggregate
 - \$4 million Products/Completed Operations Aggregate

The General Aggregate reinstates annually.

There is a separate annual cap of \$20 Million for the General Aggregate.
 - **On-Site Excess Liability Insurance on a form following basis**
 - \$75,000,000 Each Occurrence
 - \$75,000,000 Per Project Annual Aggregate
 - \$75,000,000 Per Project Products/Completed Operations Aggregate
 - 10 year completed operations tail following Substantial Completion, or Statute of Repose, whichever is less.
 - The CCIP Manual provides a more detailed summary of policy terms and conditions. In addition, copies of policies are available to Subcontractor upon written request sent to the CCIP Administrator.

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EXHIBIT G**Insurance Requirements****[without CCIP]****SECTION I – GENERAL INSURANCE REQUIREMENTS**

A. **CCIP.** Notwithstanding anything in the Subcontract Documents to the contrary, Contractor has not implemented and will not be implementing any Contractor Controlled Insurance Program related to Subcontractor Work performed either on or off the Project Site.

B. **Subcontractor-Furnished Insurance for all Subcontractors.** Prior to the start of the Subcontractor Work, each Subcontractor shall, at its sole cost and expense and without limiting its obligations or liabilities under the Subcontract Documents, obtain and maintain in effect, and provide evidence to Contractor that the same is in effect, the minimum insurance coverages, terms, riders and amendments set forth in Section II of this Exhibit, with an insurance company or companies licensed to do business as required by Applicable Law and otherwise acceptable to Contractor. Contractor may withhold progress payments if these insurance requirements are not met. Such insurance shall have annually renewing minimum policy limits and terms required by Section II. Subcontractor's general liability and excess liability policies must not have exclusions related to the Project.

SECTION II - SUBCONTRACTOR-FURNISHED INSURANCE

A. **Minimum Required Coverages.** Subcontractor shall obtain and maintain the following minimum coverages:

1. **Workers' Compensation and Employer's Liability Insurance.** Workers' compensation insurance shall be provided covering all employees, workers and sole-proprietors of Subcontractor directly or indirectly engaged in any on-site and off-site activities in connection with the Agreement in accordance with all statutory requirements (whether now existing or hereafter imposed) of all states with jurisdiction over such employee-employer relationship. Such insurance shall be written for the required statutory amounts and be endorsed to include voluntary compensation and all states coverage. Where applicable, coverage shall include United States Longshoremen & Harborworkers Act coverage and Jones Act/Maritime Employer's Liability coverage. In addition, employer's liability insurance, including occupational disease coverage, shall be provided with policy limits of not less than the following limits:

US \$500,000 Each Accident - Bodily Injury by accident
 US \$500,000 Each Employee - Bodily Injury by disease
 US \$500,000 Policy Limit - Bodily Injury by disease

If the Subcontractor leases one or more employees through the use of a payroll, employee management, or other similar company, then the Subcontractor must procure worker's compensation insurance written on an "if any" policy form, including an endorsement providing coverage for alternate employer/leased employee liability. Such insurance shall be in addition to the workers' compensation coverage provided to the leased employee by the payroll, employee management, or other similar company.

2. **Commercial General Liability Insurance.** Commercial general liability insurance shall be provided on ISO Coverage Form CG 00 01 04 13 or broader policy, on an occurrence basis, providing standard coverage up to the policy limits for all sums which the insureds shall become legally obliged to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of any operations carried on in connection with the Agreement.

Minimum Limits:\$1,000,000	Each Occurrence;
\$1,000,000	Personal & Advertising Injury;
\$2,000,000	Products/Completed Operations Aggregate;
\$2,000,000	General Aggregate

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Such policy will include but not be limited to:

- (1) General Aggregate Limit applies per project
- (2) Premises and Operations Coverage
- (3) Products and Completed Operations Coverage with no time limit on coverage
- (4) Blanket contractual coverage
- (5) Broad Form Property Damage coverage
- (6) Separation of Insureds Clause (Severability of Interests)
- (7) An endorsement affording thirty (30) days' notice of cancellation to Contractor of cancellation or reduction in coverage.
- (8) An endorsement providing that such insurance as is afforded under Subcontractor's policy is primary insurance as respects Contractor and that any other insurance maintained by Contractor is excess and non-contributing with the insurance required hereunder.
- (9) An additional insured endorsement adding as an additional insured the Additional Insureds as respects liabilities arising out of Subcontractor Work (including Products/Completed Operations) on the ISO CGL Endorsement CG 20 10 04 13 plus CG 20 37 04 13, or equivalent, extending coverage to products & completed operations for General Liability.

The policy will not contain a subsidence or punitive damages exclusion, except in states where legally allowable. Modified Occurrence Liability Policies are not acceptable. Claims made general liability policies are not acceptable.

3. Comprehensive Automobile Liability Insurance. A comprehensive automobile liability policy shall be provided on a standard form providing coverage for bodily injury, property damage and uninsured motorists for all occurrences whether occurring at Owner's or Contractor's property or elsewhere. Such insurance shall cover the use of all owned, borrowed, non-owned and hired vehicles used in connection with the Subcontractor Work and shall be endorsed for contractual liability. If Subcontractor's scope of services includes the transportation of hazardous materials to or from the Project site, Subcontractor shall be required to include pollution coverage by procuring and continuously maintaining current editions of endorsements MCS-90 and CA 9948, or their equivalents.

Minimum Limits: US \$1,000,000 combined single limit

4. Aircraft/Watercraft and Liability Insurance. If Subcontractor or any of its Sub-subcontractors or agents will operate aircraft or watercraft in the scope of the Work, a policy of aircraft and watercraft insurance shall be provided on a standard form providing coverage for bodily injury (including death) and property damage for aircraft and watercraft applicable to all owned, non-owned and hired aircraft and watercraft.

Minimum Limits: US \$5,000,000 combined single limit per occurrence

If Subcontractor or any of its Sub-subcontractors or agents will operate an Unmanned Aerial Vehicle ("UAV"), a policy of UAV insurance shall be provided on a standard form providing coverage for bodily injury (including death) and property damage on an "occurrence" basis with a combined single limit per occurrence of \$5,000,000. This coverage may also be provided by endorsement to a Commercial General Liability policy.

5. Professional Liability Insurance. If Subcontractor or any of its Sub-subcontractors or agents will provide any design, engineering or other professional services under the Subcontract Documents, professional liability insurance shall be provided covering Subcontractor and Sub-subcontractors, and their respective professionals, for liability for negligent acts, errors, or omissions, arising out of the performance of the Subcontractor Work. The policy shall contain a blanket endorsement for contractual liability and afford coverage on a claims made basis:

Minimum Limits: US \$1,000,000 combined single limit for each occurrence
US \$2,000,000 annual aggregate limit

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All coverage shall be retroactive to the earlier of the date of the Agreement or the commencement of any services furnished under the Agreement and shall be maintained for a period of three (3) years after the date of final payment under the Agreement. Retroactive date of such policy must be on or before the date Subcontractor or its Sub-subcontractors began offering professional services.

6. Excess Liability Insurance. An excess liability insurance policy will be provided on a following form basis. The policy shall have annually renewing minimum policy limits per occurrence of not less than:

Minimum Limits: US \$5,000,000 per occurrence and annual aggregate limits

(includes general liability coverage for Premises & Operations, Independent Contractors, Completed Operations; Occurrence policy form. Does not exclude X, C, or U (Explosion, Collapse or Underground)

When approved in advance by Contractor, the policies provided for in this **Exhibit** may have policy limits lower than indicated above if the excess liability insurance policy limits provided by Subcontractor, when combined with the corresponding underlying policy limits, total at least the sum of all required minimum policy limits required by this **Exhibit**.

7. EIFS Work. If the Subcontractor is performing EIFS or synthetic stucco work, the Subcontractor's general liability and excess liability insurance policies must include coverage for EIFS or synthetic stucco work.

8. Other Insurance. If additional insurance coverage or greater policy limits are required by the Prime Contract or Work Authorization Notice, said provisions of the Prime Contract or Work Authorization Notice shall control.

B. Additional Provisions. All insurance maintained by Subcontractor or any Sub-subcontractor shall comply with the following:

1. Deductibles. Deductible levels for all required insurance will be commercially reasonable and subject to Contractor's reasonable approval. Without limiting the foregoing, unless approved in writing by Contractor, Subcontractor represents that its deductibles and self-insured retention limits, if any, under the insurance policies required to be obtained by Subcontractor by this Exhibit, do not together exceed U.S. \$25,000. Subcontractor shall be solely responsible for the payment of all deductibles (including, without limitation, deductibles for builder's risk policies carried by Contractor or Owner for occurrences caused by Subcontractor) and all self-insured retention amounts retained by Subcontractor. Any self-insured retention must be clearly identified as such on the Certificate of Insurance and is subject to Contractor's prior approval. Contractor shall have the right and ability to satisfy any self-insured retention requirements.

2. Primary, Non-Contributing Insurance. All insurance policies required to be provided by Subcontractor shall be endorsed to provide that they are primary without right of contribution from Contractor or Owner or by any insurance otherwise maintained by Contractor or Owner, and not in excess of any insurance issued to Contractor or Owner.

3. Additional Insureds. All policies required to be provided by Subcontractor (except worker's compensation and professional liability insurance policies) shall list as additional insureds (the "Additional Insureds") Contractor, Owner and all parties required by the Prime Contract.

Any endorsements providing coverage for the Additional Insureds in accordance with this Section shall be on CG20 10 04 13, or equivalent, endorsement forms and shall not exclude the Additional Insureds from the policies' products and completed operations hazard coverage. The Additional Insureds' status shall continue without interruption through the statute of repose or statute of limitations in the state in which construction occurs.

4. Waiver of Subrogation. Subcontractor, for itself and all of its Sub-subcontractors, and all of their respective agents and employees, waives all rights of subrogation, and Subcontractor shall cause each insurer, to waive their rights of subrogation as to Contractor, Owner, the Project architect and engineers, the Additional Insureds and their respective contractors, consultants, agents

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and employees. Without limiting the foregoing, all of Subcontractor's policies of insurance (except for professional liability insurance), shall be endorsed to provide a complete waiver for the benefit of Contractor and Owner of (i) any right of recovery which the insurer may have or acquire against Contractor or Owner or any of its affiliates, or its or their employees, officers or directors for payments made or to be made under such policies and (ii) any lien or right of subrogation which the insurer may have or acquire for payments made or to be made to any person or entity who asserts a claim against Contractor or Owner or any of its affiliates, or its or their employees, officers or directors.

5. Self-Insurance. Without limiting the foregoing, Subcontractor's insurance obligations hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions approved in advance in writing by Contractor, in its sole discretion, provided that such programs and retentions shall not in any way limit liabilities assumed by Subcontractor under the Subcontract Documents.

6. Cross-Severability Clause. The policies required of this Exhibit (excluding the workers' compensation and professional liability insurance policies) shall be endorsed to state that the inclusion of more than one insured under such insurance shall not operate to impair the rights of one insured against another insured and (except for the applicable aggregate policy limits) the coverage afforded by each insurance policy shall apply as though a separate policy had been issued to each insured.

7. Sub-subcontractor Insurance. Unless otherwise agreed in writing by the parties hereto, should any of the Subcontractor Work be sublet, Subcontractor shall require each of its Sub-subcontractors of any tier to carry the aforementioned coverages, including the requirement to add the Additional Insureds as additional insureds with the forms specified, or Subcontractor may insure Sub-subcontractors under its own policies, and shall provide evidence of the same to Contractor prior to commencing the Subcontractor Work. It is also required that the Additional Insureds be indemnified by every Sub-subcontractor at every tier using the exact wording agreed to in the indemnity sections of the Subcontract Documents.

8. Evidence of Coverage. Prior to furnishing any Subcontractor Work, Subcontractor shall have the insurance companies prepare, execute and deliver to Contractor a Certificate of Insurance in form reasonably acceptable to Contractor certifying that all coverages and terms required herein have been obtained. Such Certificates of Insurance shall evidence that the policies affording these coverages shall not be terminated, cancelled, or changed in a material manner by the insurers without thirty (30) days prior written notice to Contractor, and indicate that the Additional Insureds have been named as additional insureds, and that the policies provide for a waiver of subrogation in favor of such Additional Insureds. In addition, a certified copy of the policy or policies, detailed binders and/or endorsements shall be provided to Contractor on request. The approval of insurance or such verification shall neither relieve nor decrease the liability of Subcontractor.

9. Insurance Term. All required coverages, except workers' compensation and automobile liability, including the Additional Insured coverage, will be maintained by Subcontractor and its Sub-subcontractors for the period of the Statute of Repose in the State where the Project is located.

10. Cancellation of Insurance. Subcontractor shall immediately notify Contractor regarding the occurrence of any of the following events: (i) the cancellation or non-renewal of any policy; (ii) the failure to pay any premium payment; (iii) the failure, for any reason, to maintain any policy required to be maintained by this Exhibit; or (iv) any material change in any insurance policy or coverage. If Subcontractor fails or neglects to obtain or renew the required insurance and furnish evidence thereof to Contractor with an acceptable Certificate of Insurance form, Contractor shall have the right (but not the obligation) without any notice and cure period:

(a) to procure such insurance and reduce any amount payable to Subcontractor by the cost thereof, or alternatively, collect such amount from Subcontractor; or (b) to deem such failure or neglect on the part of Subcontractor as a material breach of the Subcontract. Subcontractor shall not intentionally do, allow or permit anything to be done that will affect, impair or contravene any policies of insurance that may be in force hereunder. Subcontractor shall be solely responsible for and promptly pay when due, any and all premiums for all such insurance.

11. Qualifying Insurers. All coverages shall be issued by insurance companies selected by Subcontractor but acceptable to Contractor. Insurers shall be licensed in the state in which the services or work is to take place, of recognized good standing and hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by Contractor. If such rating for an insurer ever falls below

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AM Best A-VII, a replacement insurer shall be obtained and a new certificate of insurance shall be provided to Contractor within thirty (30) days at Subcontractor's expense. All forms of insurance policies shall be acceptable to Contractor.

12. Minimum Requirements. The types of coverages and minimum limits of liability to be provided by Subcontractor and described in this Exhibit are a separate obligation of Subcontractor, and are based on current economic conditions. Contractor reserves the right from time to time to require reasonable additions to or increases in such coverage that it deems necessary. Coverages under blanket policies may be extended by endorsements provided the insurers meet the requirement stipulated herein. If Subcontractor has greater limits than required by Contract, Contractor will have access to full limits and not be limited to these requirements.

13. Approval By Contractor. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Subcontractor and any approval of said insurance by Contractor or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Subcontractor pursuant to the Subcontract Documents, including but not limited to the provisions concerning indemnification.

14. Right to Withhold Payments. Contractor reserves the right to withhold payments to Subcontractor in the event of material noncompliance with the insurance requirements outlined in this Exhibit.

15. Failure to Pay. Irrespective of the requirements for insurance to be secured and maintained hereunder; the insolvency, bankruptcy or failure of any insurance company carrying insurance of Subcontractor; or the failure of any insurance company to pay claims accruing, shall not affect, negate or waive any of the provisions of the Subcontract Documents including, without exception, the indemnity obligations of Subcontractor.

16. Claims. If Contractor notifies Subcontractor in writing of the need for Subcontractor to make a claim on any of its insurance policies, and the particulars of such claim, Subcontractor shall make such a claim with its insurer.

17. Non-waiver. No insurance maintained by Subcontractor or any Sub-subcontractor and nothing contained in the insurance provisions of the Subcontract Documents or this Exhibit shall in any way to limit or waive Subcontractor's or a Sub-subcontractor's liability or responsibility. Failure of Subcontractor to comply with the foregoing insurance requirements shall in no way waive its obligations or liabilities under the Subcontract Documents or the rights of Contractor against Subcontractor.

IN WITNESS WHEREOF, the parties have entered into this Exhibit as of the ____ day of _____, 20____, intending to be legally bound, and acknowledging and agreeing that except as expressly modified by this Exhibit, the terms and conditions of the Subcontract Documents remain in full force and effect.

CONTRACTOR:
LAYTON CONSTRUCTION COMPANY, LLC

SUBCONTRACTOR:
SUBCONTRACTOR NAME

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

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EXHIBIT G

Insurance Requirements

[with GL OCIP and WC CCIP]

SECTION I – GENERAL INSURANCE REQUIREMENTS

A. **OCIP.** The Owner has arranged to provide insurance brokerage and insurance policy placement services and to administer an Owner Controlled Insurance Program (“OCIP”). The OCIP and other insurance coverages are more fully described in the OCIP Insurance Manual for the Project (the “Insurance Manual”) that is incorporated in this Exhibit and in the Agreement or other applicable contract documents by this reference. Contractor, Subcontractors of all tiers and other parties performing labor or services at the Project Site (as described in the insurance policy forms) are required to enroll in the OCIP unless they are Excluded Parties. The OCIP will provide to Enrolled Parties Commercial General Liability insurance and Umbrella/Excess Liability insurance (the “OCIP Coverages”), as described in the Contract documents and the Insurance Manual, in connection with the performance of covered onsite operations. The term “Contractor” includes Construction Manager, those persons, firms, joint venture entities, corporations, or other parties that enter into a contract with Sponsor, Construction Manager, or a subcontractor to perform Work at the Project Site. Where appropriate, when this exhibit refers to “Contractor” it also includes subcontractors of any tier. The OCIP terms and conditions are outlined in the contract between Contractor and Owner.

B. **CCIP.** Additionally, Contractor has implemented a Contractor Controlled Insurance Program (“CCIP”) to furnish certain insurance for the Subcontractor Work to be performed at the Project Site. The insurance included in the CCIP is generally described in Section III of this Exhibit. No type of insurance other than that set forth in Section III and in the CCIP Manual, described below, is furnished by Contractor for the benefit of Subcontractor. Subcontractor will be required to enroll separately in both the OCIP provided by Owner and the CCIP provided by Contractor.

C. **Subcontractor-Furnished Insurance for all Enrolled Subcontractors.** Notwithstanding the OCIP or the CCIP, prior to the start of the Subcontractor Work, each Subcontractor who is enrolled in the OCIP or the CCIP shall, at its sole cost and expense and without limiting its obligations or liabilities under the Subcontract Documents, obtain and maintain in effect, and provide evidence to Contractor that the same is in effect, the minimum insurance coverages, terms, riders and amendments set forth in Section II of this Exhibit, with an insurance company or companies licensed to do business as required by Applicable Law and otherwise acceptable to Contractor, but such coverage shall apply to exposures occurring *off-site* of the Project Site. Contractor may withhold progress payments if these insurance requirements are not met. Such insurance shall have annually renewing minimum policy limits and terms required by Section II.

D. **Subcontractor-Furnished Insurance for all Non-Enrolled Subcontractors.** Notwithstanding the OCIP or the CCIP, prior to the start of the Subcontractor Work, each Subcontractor who is not enrolled in the OCIP or the CCIP shall, at its sole cost and expense and without limiting its obligations or liabilities under the Subcontract Documents, obtain and maintain in effect, and provide evidence to Contractor that the same is in effect, the minimum insurance coverages, terms, riders and amendments set forth in Section II, with an insurance company or companies licensed to do business as required by Applicable Law and otherwise acceptable to Contractor. Contractor may withhold progress payments if these insurance requirements are not met. Such insurance shall have annually renewing minimum policy limits and terms required by Section II. In the event that Subcontractor is not eligible to participate in the OCIP, Subcontractor’s general liability and excess liability policies must not have exclusions related to the Project.

SECTION II - SUBCONTRACTOR-FURNISHED INSURANCE

A. **Minimum Required Coverages.** Subcontractor shall obtain and maintain the following minimum coverages:

1. **Workers’ Compensation and Employer’s Liability Insurance.** Workers’ compensation insurance shall be provided covering all employees, workers and sole proprietors of Subcontractor directly or indirectly engaged in any on-site and off-site activities in connection with the Agreement in accordance with all statutory requirements (whether now existing or hereafter imposed) of all states with jurisdiction over such employee-employer relationship. Such insurance shall be written for the required statutory

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amounts and be endorsed to include voluntary compensation and all states coverage. Where applicable, coverage shall include United States Longshoremen & Harborworkers Act coverage and Jones Act/Maritime Employer's Liability coverage. In addition, employer's liability insurance, including occupational disease coverage, shall be provided with policy limits of not less than the following limits:

US \$500,000 Each Accident - Bodily Injury by accident
 US \$500,000 Each Employee - Bodily Injury by disease
 US \$500,000 Policy Limit - Bodily Injury by disease

If the Subcontractor leases one or more employees through the use of a payroll, employee management, or other similar company, then the Subcontractor must procure worker's compensation insurance written on an "if any" policy form, including an endorsement providing coverage for alternate employer/leased employee liability. Such insurance shall be in addition to the workers' compensation coverage provided to the leased employee by the payroll, employee management, or other similar company.

2. Commercial General Liability Insurance. Commercial general liability insurance shall be provided on ISO Coverage Form CG 00 01 04 13 or broader policy, on an occurrence basis, providing standard coverage up to the policy limits for all sums which the insureds shall become legally obliged to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of any operations carried on in connection with the Agreement.

Minimum Limits:	\$1,000,000	Each Occurrence;
	\$1,000,000	Personal & Advertising Injury;
	\$2,000,000	Products/Completed Operations Aggregate;
	\$2,000,000	General Aggregate

Such policy will include but not be limited to:

- (1) General Aggregate Limit applies per project
- (2) Premises and Operations Coverage
- (3) Products and Completed Operations Coverage with no time limit on coverage
- (4) Blanket contractual coverage
- (5) Broad Form Property Damage coverage
- (6) Separation of Insureds Clause (Severability of Interests)
- (7) An endorsement affording thirty (30) days' notice of cancellation to Contractor of cancellation or reduction in coverage.
- (8) An endorsement providing that such insurance as is afforded under Subcontractor's policy is primary insurance as respects Contractor and that any other insurance maintained by Contractor is excess and non-contributing with the insurance required hereunder.
- (9) An additional insured endorsement adding as an additional insured the Additional Insureds as respects liabilities arising out of Subcontractor Work (including Products/Completed Operations) on the ISO CGL Endorsement CG 20 10 04 13 plus CG 20 37 04 13), or equivalent, extending coverage to products & completed operations for General Liability.

The policy will not contain a subsidence or punitive damages exclusion, except in states where legally allowable. Modified Occurrence Liability Policies are not acceptable. Claims made general liability policies are not acceptable.

3. Comprehensive Automobile Liability Insurance. A comprehensive automobile liability policy shall be provided on a standard form providing coverage for bodily injury, property damage and uninsured motorists for all occurrences whether occurring at Owner's or Contractor's property or elsewhere. Such insurance shall cover the use of all owned, borrowed, non-owned and hired vehicles used in connection with the Subcontractor Work and shall be endorsed for contractual liability. If Subcontractor's scope of services includes the transportation of hazardous materials to or from the Project site, Subcontractor shall be required to

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include pollution coverage by procuring and continuously maintaining current editions of endorsements MCS-90 and CA 9948, or their equivalents.

Minimum Limits: US \$1,000,000 combined single limit

4. Aircraft/Watercraft and Liability Insurance. If Subcontractor or any of its Sub-subcontractors or agents will operate aircraft or watercraft in the scope of the Work, a policy of aircraft and watercraft insurance shall be provided on a standard form providing coverage for bodily injury (including death) and property damage for aircraft and watercraft applicable to all owned, non-owned and hired aircraft and watercraft.

Minimum Limits: US \$5,000,000 combined single limit per occurrence

If Subcontractor or any of its Sub-subcontractors or agents will operate an Unmanned Aerial Vehicle ("UAV"), a policy of UAV insurance shall be provided on a standard form providing coverage for bodily injury (including death) and property damage on an "occurrence" basis with a combined single limit per occurrence of \$5,000,000. This coverage may also be provided by endorsement to a Commercial General Liability policy.

5. Professional Liability Insurance. If Subcontractor or any of its Sub-subcontractors or agents will provide any design, engineering or other professional services under the Subcontract Documents, professional liability insurance shall be provided covering Subcontractor and Sub-subcontractors, and their respective professionals, for liability for negligent acts, errors, or omissions, arising out of the performance of the Subcontractor Work. The policy shall contain a blanket endorsement for contractual liability and afford coverage on a claims made basis:

Minimum Limits: US \$1,000,000 combined single limit for each occurrence
US \$2,000,000 annual aggregate limit

All coverage shall be retroactive to the earlier of the date of the Agreement or the commencement of any services furnished under the Agreement and shall be maintained for a period of three (3) years after the date of final payment under the Agreement. Retroactive date of such policy must be on or before the date Subcontractor or its Sub-subcontractors began offering professional services.

6. Excess Liability Insurance. An excess liability insurance policy will be provided on a following form basis. The policy shall have annually renewing minimum policy limits per occurrence of not less than:

Minimum Limits: US \$5,000,000 per occurrence and annual aggregate limits
(includes general liability coverage for Premises & Operations, Independent Contractors, Completed Operations; Occurrence policy form. Does not exclude X, C, or U (Explosion, Collapse or Underground))

When approved in advance by Contractor, the policies provided for in this **Exhibit** may have policy limits lower than indicated above if the excess liability insurance policy limits provided by Subcontractor, when combined with the corresponding underlying policy limits, total at least the sum of all required minimum policy limits required by this **Exhibit**.

7. EIFS Work. If the Subcontractor is performing EIFS or synthetic stucco work, the Subcontractor's general liability and excess liability insurance policies must include coverage for EIFS or synthetic stucco work.

8. Other Insurance. If additional insurance coverage or greater policy limits are required by the Prime Contract or Work Authorization Notice, said provisions of the Prime Contract or Work Authorization Notice shall control.

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B. **Additional Provisions.** All insurance maintained by Subcontractor or any Sub-subcontractor shall comply with the following:

1. **Deductibles.** Deductible levels for all required insurance will be commercially reasonable and subject to Contractor's reasonable approval. Without limiting the foregoing, unless approved in writing by Contractor, Subcontractor represents that its deductibles and self-insured retention limits, if any, under the insurance policies required to be obtained by Subcontractor by this Exhibit, do not together exceed U.S. \$25,000. Subcontractor shall be solely responsible for the payment of all deductibles (including, without limitation, deductibles for builder's risk policies carried by Contractor or Owner, for occurrences caused by subcontractor) and all self-insured retention amounts retained by Subcontractor. Any self-insured retention must be clearly identified as such on the Certificate of Insurance and is subject to Contractor's prior approval. Contractor shall have the right and ability to satisfy any self-insured retention requirements.

2. **Primary, Non-Contributing Insurance.** All insurance policies required to be provided by Subcontractor shall be endorsed to provide that they are primary without right of contribution from Contractor or Owner or by any insurance otherwise maintained by Contractor or Owner, and not in excess of any insurance issued to Contractor or Owner.

3. **Additional Insureds.** All policies required to be provided by Subcontractor (except worker's compensation and professional liability insurance policies) shall list as additional insureds (the "**Additional Insureds**") Contractor, Owner and all parties required by the Prime Contract.

Any endorsements providing coverage for the Additional Insureds in accordance with this Section shall be on CG20 10 04 13, or equivalent, endorsement forms and shall not exclude the Additional Insureds from the policies' products and completed operations hazard coverage. The Additional Insureds' status shall continue without interruption through the statute of repose or statute of limitations in the state in which construction occurs.

4. **Waiver of Subrogation.** Subcontractor, for itself and all of its Sub-subcontractors, and all of their respective agents and employees, waives all rights of subrogation, and Subcontractor shall cause each insurer, to waive their rights of subrogation as to Contractor, Owner, the Project architect and engineers, the Additional Insureds and their respective contractors, consultants, agents and employees. Without limiting the foregoing, all of Subcontractor's policies of insurance (except for professional liability insurance), shall be endorsed to provide a complete waiver for the benefit of Contractor and Owner of (i) any right of recovery which the insurer may have or acquire against Contractor or Owner or any of its affiliates, or its or their employees, officers or directors for payments made or to be made under such policies and (ii) any lien or right of subrogation which the insurer may have or acquire for payments made or to be made to any person or entity who asserts a claim against Contractor or Owner or any of its affiliates, or its or their employees, officers or directors.

5. **Self-Insurance.** Without limiting the foregoing, Subcontractor's insurance obligations hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions approved in advance in writing by Contractor, in its sole discretion, provided that such programs and retentions shall not in any way limit liabilities assumed by Subcontractor under the Subcontract Documents.

6. **Cross-Severability Clause.** The policies required of this Exhibit (excluding workers' compensation and professional liability insurance policies) shall be endorsed to state that the inclusion of more than one insured under such insurance shall not operate to impair the rights of one insured against another insured and (except for the applicable aggregate policy limits) the coverage afforded by each insurance policy shall apply as though a separate policy had been issued to each insured.

7. **Sub-subcontractor Insurance.** Unless otherwise agreed in writing by the parties hereto, should any of the Subcontractor Work be sublet, Subcontractor shall require each of its Sub-subcontractors of any tier to carry the aforementioned coverages, including the requirement to add the Additional Insureds as additional insureds with the forms specified, or Subcontractor may insure Sub-subcontractors under its own policies, and shall provide evidence of the same to Contractor prior to commencing the Subcontractor Work. It is also required that the Additional Insureds be indemnified by every Sub-subcontractor at every tier using the exact wording agreed to in the indemnity sections of the Subcontract Documents.

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8. Evidence of Coverage. Prior to furnishing any Subcontractor Work, Subcontractor shall have the insurance companies prepare, execute and deliver to Contractor a Certificate of Insurance in form reasonably acceptable to Contractor certifying that all coverages and terms required herein have been obtained. Such Certificates of Insurance shall evidence that the policies affording these coverages shall not be terminated, cancelled, or changed in a material manner by the insurers without thirty (30) days prior written notice to Contractor, and indicate that the Additional Insureds have been named as additional insureds, and that the policies provide for a waiver of subrogation in favor of such Additional Insureds. In addition, a certified copy of the policy or policies, detailed binders and/or endorsements shall be provided to Contractor on request. The approval of insurance or such verification shall neither relieve nor decrease the liability of Subcontractor.

9. Insurance Term. All required coverages, except workers' compensation and automobile liability, including the Additional Insured coverage, will be maintained by Subcontractor and its Sub-subcontractors for the period of the Statute of Repose in the State where the Project is located.

10. Cancellation of Insurance. Subcontractor shall immediately notify Contractor regarding the occurrence of any of the following events: (i) the cancellation or non-renewal of any policy; (ii) the failure to pay any premium payment; (iii) the failure, for any reason, to maintain any policy required to be maintained by this Exhibit; or (iv) any material change in any insurance policy or coverage. If Subcontractor fails or neglects to obtain or renew the required insurance and furnish evidence thereof to Contractor with an acceptable Certificate of Insurance form, Contractor shall have the right (but not the obligation) without any notice and cure period:

(a) to procure such insurance and reduce any amount payable to Subcontractor by the cost thereof, or alternatively, collect such amount from Subcontractor; or (b) to deem such failure or neglect on the part of Subcontractor as a material breach of the Subcontract. Subcontractor shall not intentionally do, allow or permit anything to be done that will affect, impair or contravene any policies of insurance that may be in force hereunder. Subcontractor shall be solely responsible for and promptly pay when due, any and all premiums for all such insurance.

11. Qualifying Insurers. All coverages shall be issued by insurance companies selected by Subcontractor but acceptable to Contractor. Insurers shall be licensed in the state in which the services or work is to take place, of recognized good standing and hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by Contractor. If such rating for an insurer ever falls below AM Best A-VII, a replacement insurer shall be obtained and a new certificate of insurance shall be provided to Contractor within thirty (30) days at Subcontractor's expense.

12. Minimum Requirements. The types of coverages and minimum limits of liability to be provided by Subcontractor and described in this Exhibit are a separate obligation of Subcontractor, and are based on current economic conditions. Contractor reserves the right from time to time to require reasonable additions to or increases in such coverage that it deems necessary. Coverages under blanket policies may be extended by endorsements provided the insurers meet the requirement stipulated herein. If Subcontractor has greater limits than required by the Contract, Contractor will have access to full limits and not be limited to these requirements.

13. Approval By Contractor. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Subcontractor and any approval of said insurance by Contractor or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Subcontractor pursuant to the Subcontract Documents, including but not limited to the provisions concerning indemnification.

14. Right to Withhold Payments. Contractor reserves the right to withhold payments to Subcontractor in the event of material noncompliance with the insurance requirements outlined in this Exhibit.

15. Failure to Pay. Irrespective of the requirements for insurance to be secured and maintained hereunder; the insolvency, bankruptcy or failure of any insurance company carrying insurance of Subcontractor; or the failure of any insurance company to pay claims accruing, shall not affect, negate or waive any of the provisions of the Subcontract Documents including, without exception, the indemnity obligations of Subcontractor.

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16. Claims. If Contractor notifies Subcontractor in writing of the need for Subcontractor to make a claim on any of its insurance policies, and the particulars of such claim, Subcontractor shall make such a claim with its insurer.

17. Non-waiver. No insurance maintained by Subcontractor or any Sub-subcontractor and nothing contained in the insurance provisions of the Subcontract Documents or this Exhibit shall in any way limit or waive Subcontractor's or a Sub-subcontractor's liability or responsibility. Failure of Subcontractor to comply with the foregoing insurance requirements shall in no way waive its obligations or liabilities under the Subcontract Documents or the rights of Contractor against Subcontractor.

SECTION III – CONTRACTOR-PROVIDED INSURANCE

A. CCIP. Contractor, at Contractor's sole option and cost, has implemented a Contractor Controlled Insurance Program ("CCIP") to furnish certain insurance for the Subcontractor Work to be performed on the Project site. The insurance included in the CCIP is generally described on *Attachment A* to this Exhibit. No type of insurance other than that set forth in *Attachment A* and in the CCIP Manual is furnished by Contractor for the benefit of Subcontractor.

B. Contractor Policies and Procedures. BY EXECUTING THIS EXHIBIT, SUBCONTRACTOR REPRESENTS AND WARRANTS THAT IT HAS SUCCESSFULLY DOWNLOADED THE MOST RECENT VERSIONS OF CONTRACTOR'S HEALTH, SAFETY, ENVIRONMENTAL AND OTHER POLICIES AND PROCEDURES, FROM THE "SUBCONTRACTOR" TAB ON THE FOLLOWING WEBSITE:

<http://www.laytonconstruction.com/>

HAS REVIEWED THE SAME AND ANY OTHER CONTRACTOR POLICIES AND PROCEDURES OTHERWISE PROVIDED BY CONTRACTOR TO SUBCONTRACTOR, HAS ASKED QUESTIONS AND RECEIVED ANSWERS WITH RESPECT TO SUCH POLICIES AS NEEDED, AND HAS FULLY READ AND UNDERSTANDS ALL SUCH POLICIES AND PROCEDURES. SUBCONTRACTOR AGREES TO PROVIDE THE SUBCONTRACTOR WORK IN COMPLIANCE WITH SUCH POLICIES AND PROCEDURES. SUBCONTRACTOR AGREES TO PRINT AND MAINTAIN COPIES OF ALL SUCH POLICIES AND PROCEDURES IN ITS MAIN OFFICE AND AT ALL PROJECT LOCATIONS AND EDUCATE ITS EMPLOYEES AND ALL SUB-SUBCONTRACTORS REGARDING THE REQUIREMENTS SET FORTH THEREIN. SUBCONTRACTOR AGREES TO CHECK THE ABOVE-REFERENCED WEBSITE ON A REGULAR BASIS FOR UPDATES AND AGREES TO BE BOUND BY AND COMPLY WITH SUCH UPDATES SO LONG AS THEY DO NOT MATERIALLY AND ADVERSELY AFFECT THE COST TO SUBCONTRACTOR OF PERFORMING THE SUBCONTRACTOR WORK.

C. Coverage. The description of CCIP insurance coverages set forth in this Exhibit is for informational purposes only; the specific terms and conditions or coverage are set forth in the respective insurance policies comprising the CCIP which shall control the rights and obligations of the "insured" parties in the CCIP. Subcontractor has the responsibility to review and obtain appropriate insurance and legal counsel regarding the CCIP. Contractor makes no representations regarding the nature, quality or limits of the CCIP and Subcontractor expressly acknowledges the lack of reliance upon any representations made by Contractor or its representatives regarding the nature, quality or limits of insurance provided by the CCIP. Subcontractor shall hold Contractor and its representatives, including, but not limited to, insurance brokers and/or agents, risk managers and attorneys, free and harmless from any and all claims asserting or alleging that the type and/or amount of coverage provided under the CCIP is inadequate or insufficient. The CCIP is intended to be the primary source of coverage for the risks covered and shall assume primary position to Subcontractor's insurance in the covered areas of risk. Any higher limits or other coverage that Subcontractor or its Sub-subcontractor's may be required by law to carry or may need for their protection, shall be at their own expense.

D. Covered Persons. The CCIP is for the benefit of Contractor and its Subcontractors of all tiers who have employees or subcontractors at the Project site and are enrolled in the CCIP, but only with respect to the Subcontractor Work performed at the Project site. The CCIP does not extend to the activities or products of suppliers, vendors, material dealers, haulers and transporters whose work location is at a location other than the Project site, or who are engaged solely in the loading, unloading, stocking, testing or hauling of equipment, supplies or materials at the Project site. If, however, such suppliers, vendors or materials dealers install their goods or contract with subcontractors to install their goods on the Project site, those employees or subcontractor's employees must be enrolled in the CCIP. The CCIP does not include fabrication, manufacturing or other operations away from the Project site. Any

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person providing professional services for a Project, and any abatement contractors, surveyors, and design and testing firms, are not covered by the CCIP. Such persons or entities are required to provide their own insurance. Notwithstanding the foregoing, Contractor reserves the right, in its sole discretion, to exclude any Subcontractor or Sub-subcontractor from the CCIP.

E. **Enrollment.** Prior to providing any Subcontractor Work at the Project site, Subcontractor shall satisfy all requirements for enrollment in the CCIP, including completing and submitting to the CCIP administrator (as designated by Contractor from time to time, the “**CCIP Administrator**”) the CCIP Enrollment Worksheets contemplated by the CCIP Manual (the “**Enrollment Worksheet(s)**”). Subcontractor shall be responsible to ensure that it and its Sub-subcontractors comply in all respects with the enrollment requirements for the CCIP before any onsite activities occur at the Project site. Subcontractor represents and warrants that the information provided in Enrollment Worksheets submitted to the CCIP Administrator is true, correct and complete in all respects. Upon the request of Contractor or the CCIP Administrator, Subcontractor shall provide copies of insurance records, policies, declaration pages of policies, insurance rating information, certificates of self-insurance, and such other documents as may be requested by the CCIP Administrator in order to assure the truth, accuracy and completeness of Subcontractor’s insurance information and data. If these items are not timely furnished to the reasonable satisfaction of Contractor and the CCIP Administrator, the Subcontractor will be charged 3.25% to offset costs incurred by Contractor for Subcontractor’s participation in the CCIP.

F. **Subcontract Price; Etc.**

1. Subcontractor represents and warrants that it has included in its bid for the Subcontractor Work, and will include in any Change Order for the Subcontractor Work, the cost of all insurance for both onsite and offsite work *as if the CCIP did not exist*, with the same coverages and limits as are set forth in Section II to this Exhibit. In consideration for the Contractor’s agreement to include Subcontractor in the CCIP and pay the premiums for such coverage as provided in this Exhibit, Subcontractor will pay Contractor a monthly amount estimated to equal the cost of the insurance for onsite activities that Subcontractor, and its lower tier subcontractors, would otherwise have paid for such coverage for the immediately preceding month (the “**Premium Credit**”). At Contractor’s option, such payment shall be made by Subcontractor in either cash or as credit against amounts otherwise payable to Subcontractor. The CCIP Administrator shall calculate the Premium Credit based on payroll, labor hours, contract value, or any other method Contractor deems to be consistent with the rating basis of Subcontractor’s own insurance policies.

2. The CCIP Administrator will independently calculate the value of insurance premiums included within the Subcontractors’ bid, including its lower tier contractors. Subcontractor agrees to promptly pay to Contractor the incremental amount of any increased insurance premiums imposed on Contractor as a result of said information, data and/or audit(s), and any approved change orders issued in connection with the Subcontractor Work.

G. **Audit Rights.** Contractor, the CCIP Administrator and/or the CCIP insurance carrier(s) may, but are not required to, audit the records of Subcontractor and its Sub-subcontractors to confirm the truth, correctness and accuracy of the Enrollment Worksheet(s), payroll reports, and all referenced information and data. Contractor, the CCIP Administrator and insurance company(ies) and their respective representatives, may, among other things, use such information for the purpose of unit statistical filing by the insurer with the industry groups or other reporting agencies.

H. **Cooperation.** Subcontractor and its Sub-subcontractors shall cooperate with Contractor and the CCIP Administrator with regard to CCIP administration and operation. Such obligation shall include, but not be limited to, the following:

1. Complete and provide to the CCIP Administrator all forms and exposure information necessary to enroll in the CCIP. Subcontractor will be a CCIP participant upon completion of all enrollment requirements set forth in this Exhibit and in the CCIP Manual. Subcontractor will, whenever possible, use the CCIP Administrator’s online system to complete enrollment, including uploading required enrollment documents;

2. Provide certificates of insurance for coverage required of Subcontractor as required by this Exhibit;

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3. Notify Contractor in advance of its intent to award any contract to a Sub-subcontractor, and require any Sub-subcontractor providing any of the Subcontractor Work at the Project site to enroll in the CCIP. It is Contractor's intent to enroll in the CCIP all Subcontractors and Sub-subcontractors, other than those expressly excluded by the CCIP;

4. Bind each of its respective Sub-subcontractors to the insurance, indemnity and hold harmless provisions of the Subcontract Documents, including the provisions of the CCIP;

5. Not violate or knowingly permit violation of any conditions of the CCIP policies or insurance, and at all times satisfy the requirements of the insurance companies issuing them;

6. No later than the fifth (5th) day of each calendar month prior to final completion of the Subcontractor Work, Subcontractor shall timely furnish Contractor and the CCIP Administrator, or their designees, with accurate monthly payroll data, actual hours worked, and other information for itself and its Sub-subcontractors related to the Project, and permit its books and records related to the Project to be audited by the CCIP Administrator and insurance company(ies) or their respective representatives. Subcontractor agrees to maintain separate payroll records and retain them for 3 years after final completion of the Subcontractor Work;

7. Comply with the applicable loss control (safety) and claim-reporting procedures;

8. Furnish to Contractor, the CCIP Administrator and Contractor's insurance carriers any additional information and documentation which may be required from time to time in connection with the issuance of any policies and renewal policies pursuant to the CCIP program; and

9. Promptly comply with the requirements, obligations and recommendations of Contractor, the CCIP Administrator or any insurance carrier, so that the CCIP may be properly administered and so that the Contractor's insurance carriers will continue to provide coverage under the CCIP.

If Subcontractor fails to comply with any such requirement, obligation or recommendation, or fails to submit information, data and documents as required by Contractor in the CCIP Manual, Contractor may, in addition to its other rights and remedies, withhold any payments due the Subcontractor until such time as Subcontractor has remedied such failure. Failure to supply all requested insurance documents will result in a flat 3.25% charge against the entire Subcontract Price to the Subcontractor.

I. **Claims.** Should a claim against an entity enrolled in the CCIP be made, Contractor, in consultation with the insurance carriers, shall have unilateral authority and entitlement to select counsel to represent the insureds' interests. Subcontractor hereby waives any potential or actual conflict of interest in the selection of counsel by Contractor. Subcontractor shall assist and cooperate in every manner possible in connection with the adjustment of all claims arising out of or related to the Subcontractor Work and shall cooperate with Contractor, the CCIP Administrator and insurance carriers in the adjustment, settlement, arbitration or litigation of all said claims, including but not limited to providing light or modified duty for injured workers, appearances in arbitration or court proceedings and/or participating in settlement conferences as may be required. Failure to comply with the Accident Reporting and Claims Procedures outlined in the CCIP Manual will result in a flat fee of \$5,000 to be paid by the Subcontractor to Contractor for costs incurred to manage the claim.

J. **Application to Sub-subcontractors.** Subcontractor agrees to include this Exhibit and accompanying CCIP Manual, in their entirety, in any lower-tier subcontract executed by Subcontractor for any part of the Subcontractor Work and agree to enforce all requirements, obligations and recommendations as specified in this Exhibit, including but not limited to the completion of all required and necessary CCIP enrollment forms, change order forms, insurance applications, prompt and full compliance with all audit requests, claim reporting and adjustment/settlement procedures and full participation in and compliance with safety, loss prevention and control programs implemented by or at the request of Contractor, the CCIP Administrator and insurance company(ies) or their respective representatives, and/or as required by any local, state or federal laws. Subcontractor is responsible for its Sub-subcontractors compliance with the requirements of this Exhibit and the CCIP Manual.

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K. **Termination/Modification of CCIP.** While it is the intent of Contractor to keep the CCIP in force throughout the performance of the Subcontractor Work, insurance marketplace conditions or other circumstances beyond Contractor’s control, as determined by Contractor in its sole discretion, may require termination or modification of the CCIP. In such event, Contractor reserves the right to terminate or modify the CCIP or any portion thereof. To exercise this option, Contractor shall provide at least forty-five (45) days’ advance written notice to Subcontractor and, at Contractor’s option, will provide replacement coverage or will require Subcontractor to obtain replacement insurance coverage as required. If Contractor requires Subcontractor to obtain replacement insurance, Subcontractor and its Sub-subcontractors will be required to immediately obtain replacement insurance coverage and the reasonable actual auditable cost of such approved replacement insurance will be reimbursed by Contractor. Subcontractor shall submit to Contractor written evidence satisfactory to Contractor that such insurance is in force prior to the actual termination date of the CCIP.

L. **Liabilities and Obligations.** The CCIP is not intended to and will not in any manner limit or qualify the duties, liabilities and obligations assumed by Subcontractor under the Subcontract Documents. Losses and claims against Subcontractor that are within the Loss Sharing provisions, are in excess of the policy limits, or are excluded from the insurance policies described in the CCIP are for the account of Subcontractor, to the extent of Subcontractor’s duties, liabilities and obligations under the Subcontract Documents, including without limitation Subcontractor’s indemnification obligations under the Subcontract Documents.

IN WITNESS WHEREOF, the parties have entered into this Exhibit as of the _____ day of _____, 20____, intending to be legally bound, and acknowledging and agreeing that except as expressly modified by this Exhibit, the terms and conditions of the Subcontract Documents remain in full force and effect.

CONTRACTOR: LAYTON CONSTRUCTION COMPANY, LLC	SUBCONTRACTOR: SUBCONTRACTOR NAME
_____	_____
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Attachment A
TO
EXHIBIT G

CCIP Coverage

The “CCIP” referred to in the foregoing Exhibit includes the following generally described insurance coverages:

- A. The CCIP provides to enrolled Subcontractors and Sub-subcontractors the following insurance coverages with the following limits:
- **On-Site Workers’ Compensation/Employers’ Liability:**
 - Statutory Workers’ Compensation
 - \$1,000,000 Bodily Accident by Accident
 - \$1,000,000 Bodily Accident by Disease – Each Employee
 - \$1,000,000 Bodily Accident by Disease – Policy Limit
 - The CCIP Manual provides a more detailed summary of policy terms and conditions. In addition, copies of policies are available to Subcontractor upon written request sent to the CCIP Administrator.

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EXHIBIT H
TO
WORK AUTHORIZATION NOTICE

Design-Build Provisions

If the Subcontractor Work provided for in the Subcontractor Work Authorization Notice includes any Design Services, as defined below, the following additional provisions apply:

1. Definitions. As used in this Exhibit H, the following terms have the indicated meanings:

1.1 “**Design Consultant(s)**” means properly licensed design or engineering professionals who are or may be employed by Subcontractor or is procured by Subcontractor as a Sub-Subcontractor to perform all or any part of the Design Services.

1.2 “**Design Services**” means any act of consulting, investigating, evaluating, planning, designing, and design coordination, the adequate performance of which requires architectural or engineering education, training, and experience, including the application of special knowledge of the mathematical, physical, applied and/or engineering sciences, and the relevant requirements of law, and that concerns the safeguarding of life, health, property, economic interests, the public welfare and the environment, and includes, but is not limited to, those architectural and engineering services for which a license is required under applicable law.

1.3 “**Instruments of Service**” means representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by or on behalf of Contractor and Subcontractor. Instruments of Service may include, but not be limited to, studies, surveys, models, sketches, drawings, specifications and other similar materials.

2. Design Services.

2.1 Provision of Design Services. Subcontractor shall provide Design Services to the extent specifically required by the Subcontract Documents for the Subcontractor Work or if the Subcontractor otherwise needs to provide such Design Services to carry out Subcontractor’s responsibilities for construction means, methods, techniques, sequences and procedures. Any provision of Design Services by Subcontractor must ensure a “complete working system” in that Subcontractor will ensure that any scope of work that is connected to, coordinated with, dependent or based upon, or otherwise related to the Design Services will have all necessary details, instructions, and information to adequately and accurately complete that scope of work. If Design Services related to systems, materials, or equipment are specifically required of Subcontractor by the Subcontract Documents, Subcontractor shall satisfy any performance criteria related thereto as required by the Subcontract Documents. Subcontractor, to the extent of the Design Services to be performed under this Work Authorization Notice, assumes toward Contractor all applicable obligations and responsibilities that Contractor assumes toward Owner under the Prime Contract with respect to such Design Services.

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2.2 Use of Design Consultants. Subcontractor shall cause Design Services to be provided and performed by a Design Consultant, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals prepared by such professional. Any shop drawings and other submittals that are prepared by others but are related to the Subcontractor Work designed by the Design Consultant shall bear the Design Consultant's written approval when submitted to Contractor. Subcontractor shall not use a Design Consultant that is not competent, qualified, able, legally authorized and properly licensed or registered, if necessary, to perform their portion of the Design Services, or to whom Owner or Contractor has made reasonable and timely objection. Subcontractor shall disclose in advance to Contractor the existence and extent of any financial interest, whether direct or indirect, the Subcontractor or any of its principals or employees have in any Design Consultant engaged or that Subcontractor proposes to engage for the Design Services. If requested, Subcontractor shall furnish evidence, satisfactory to Contractor, showing that a Design Consultant is competent, qualified, able, legally authorized, and properly licensed or registered to perform the applicable portion of the Design Services. Subcontractor shall incorporate the requirements of the Subcontract, including but not limited to this Work Authorization Notice, in all agreements with Design Consultants, of any tier. Subcontractor shall be responsible and liable for the services furnished by its Design Consultant, regardless of tier, including but not limited to the Design Consultant's errors, omissions, negligent acts and/or misconduct.

2.3 Certifications. Subcontractor shall obtain from every Design Consultant, and shall deliver to Contractor, written certifications with respect to the Design Services or Instruments of Service provided by the Design Consultant that (a) to the best of the Design Consultant's knowledge, information and belief, the Design Services or Instruments of Service to which such certifications relate (i) are consistent with the criteria provided by Owner or Contractor, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards and the Subcontract, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the Design Services and Instruments of Service, and (b) Owner, Contractor and their design professionals shall be entitled to rely upon the representations and statements contained in such certifications.

2.4 No Conflict of Interest. Design Services of Subcontractor and Subcontractor's Design Consultants shall be performed in the sole interest, and for the exclusive benefit, of Contractor and Owner. Except with Contractor's knowledge and written consent, neither Subcontractor nor its Design Consultants shall engage in any activity, or accept any employment, interest or contribution, that would create a conflict of interest with respect to this Project.

2.5 No Obligation to Award Additional Work. The award of the Design Services pursuant to the Work Authorization Notice to which this Exhibit H is attached shall not directly or indirectly obligate or entitle Subcontractor to perform any portion of the construction or installation work to which such Design Services relate, except as may be provided in Attachment 1 (Scope of Subcontractor Work) to the Work Authorization Notice.

3. Tests, Inspections, and Surveys.

3.1 Tests and Inspections. Subcontractor shall provide, if not required by the Subcontract Documents to be provided by the Contractor, the results and reports of tests, inspections or investigations conducted for the Project involving structural or mechanical systems;

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chemical, air and water pollution; hazardous materials or environmental and subsurface conditions; and information regarding the presence of pollutants at the Project site. Such tests and inspections include but are not limited to the following types:

- Fire hydrant flow test
- Locating of existing utilities
- Electrical panel metering
- Infrared testing of electrical panels
- Testing of transfer switches
- Load bank testing of generator(s), NFPA 110 compliance report, Verification of alarms (i.e. low fuel, fail to start, etc.), Fuel storage requirements 96 hours or does state health require more
- Energy code survey and compliance
- Preliminary T&B, to include survey of hydronic piping system, controls, boiler(s), humidifiers, AHU testing and analysis/survey
- Medical gas survey of system by a medical gas certifier, verification of alarm panels that they are working and in proper monitoring locations, zone valve locations
- Chiller testing and verification
- Boiler certifications and testing results
- Verification/testing of facilities soft water and water treatment system(s)
- Fire sprinkler survey, correct coverage, type of heads on system, seismic braising
- Fire sprinkler system hydro test
- Fire alarm and damper testing/ Building envelope survey

3.2 Geotechnical Services. Unless required by the Subcontract Documents to be provided by the Contractor, Subcontractor shall, upon request from the Contractor, furnish the services of geotechnical engineers or other consultants for subsoil, air and water conditions when such services are deemed reasonably necessary by the Contractor to properly carry out the design services, if any, to be provided by the Subcontractor. In such event, the Contractor shall specify the services required. Such services may include, but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

3.3 Surveys. Subcontractor shall be responsible to provide surveys, if not required by the Subcontract Documents to be provided by the Contractor, describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site.

3.4 Expense and Accuracy. The services, information, surveys and reports required to be provided by Subcontractor under this Section 3 shall be furnished at Subcontractor's expense, and the Contractor and Owner shall be entitled to rely upon the accuracy and completeness thereof, except as otherwise specifically provided in the Subcontract Documents.

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4. **Design Services Included in Subcontract Price.** Subcontractor agrees that the Subcontract Price represents adequate and sufficient compensation for its timely provision of all Design Services set forth in the Attachment 1 (Scope of Subcontractor Work).

5. **Standard of Care for Design Services and Applicability of Warranties.**

5.1 **Standard of Care for Design Services.** Subcontractor shall provide and cause its Design Consultant to provide all Design Services consistent with the professional skill and care ordinarily provided by design or engineering professionals practicing in the same or similar locality under the same or similar circumstances, and who have experience on projects of a similar size, character, and budget to that of the Project. Subcontractor shall cause the Design Services to be performed as expeditiously and consistent with such professional skill and care and the orderly progress of the Project. Subcontractor shall not be relieved of the obligation to perform the Design Services or any other part of the Subcontractor Work by the activities, tests, inspections or approvals of Owner or Contractor or their representatives. Subcontractor hereby represents that it (and any Design Consultant it retains for this Project) are licensed to practice architecture or engineering as required by law in the state in which the Project is located. Nothing in this Work Authorization Notice shall be construed to authorize performance by Subcontractor or any Design Consultant at a standard of care that is reduced from that which is required by law and which is expected of architects or engineers practicing under similar circumstances and conditions. Notwithstanding anything to the contrary contained in the Subcontract Documents, Contractor shall be entitled to recover from Subcontractor any and all damages incurred as a result of any errors, omissions and/or any other default of any term or representation of this Work Authorization Notice and/or the Subcontract Documents, and to set off such damages against amounts otherwise due or to become due to Subcontractor under the Subcontract or any other agreement. Further, Subcontractor shall provide at its sole cost and expense any additional Design Services required because of errors or omissions in the professional services caused by Subcontractor or by its Design Consultant, of any tier, and shall promptly correct any such defective designs or specifications.

5.2 **Applicability of Warranties.** Contractor and Subcontractor agree that as to the performance of the Design Services, the warranties set forth in Section 3.1(a) and the second sentence of Section 6.1 of the General Terms and Conditions shall not apply to the Design Services; but in lieu thereof, the standard of care provided for in Section 5.1 of this Exhibit H shall apply to performance of the Design Services.

6. **Subcontractor's Instruments of Service.**

6.1 **Ownership and Assignment.**

6.1.1 **Controlling Provisions in Prime Contract.** To the extent that the Prime Contract controls ownership and use of any part of the Subcontract Documents, including any Instruments of Service created by Subcontractor or Subcontractor's Design Consultant, the Prime Contract shall govern such ownership and use. Subcontractor, on behalf of itself and Subcontractor's Design Consultant hereby agrees to be bound by such terms and conditions.

6.1.2 **Provisions When Prime Contract Does Not Control.** To the extent that the Prime Contract does not control ownership and use of the Subcontract Documents, including any Instruments of Service, Subcontractor and Subcontractor's Design

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Consultant agree that all reports, drawings, data sheets, recommendations, photographs, computer print-outs, design criterion, calculations and materials of a similar nature covered by payments hereunder are the property of Contractor and as such are not to be revealed or distributed to other parties, except as otherwise directed by Contractor. All documents and information prepared or provided by Subcontractor or its Design Consultant are and shall be the property of Contractor. In addition, Contractor shall have the right without limitation, to access and use all computer aided design data and programs (CADD) and Building Information Model (BIM) utilized by the Subcontractor or its Design Consultant in the performance of Design Services or Subcontractor Work performed or provided, or to be performed or provided, in connection with this Work Authorization Notice. All materials and information that are the property of Contractor and all copies or duplications thereof shall be delivered to Contractor by Subcontractor, if requested by Contractor, upon completion of the Design Services or any termination of this Work Authorization Notice. Contractor may retain one complete set of reproducible copies of all such design data, drawings, estimates, calculations and specifications. Subcontractor shall comply with all reasonable requests of Contractor so that Contractor may protect and preserve all property interests herein conveyed.

6.2 Confidentiality. Subcontractor and its Design Consultant shall maintain the confidentiality of all Project documents and information and shall not publish or in any way disseminate or distribute any Project-related documents, including, but not limited to, correspondence, estimates, drawings, specifications, photographs, or any other material relating to the Project without the express written authorization of Contractor.

7. Indemnification. Contractor and Subcontractor agree that notwithstanding anything in Section 8.3 of the General Terms and Conditions to the contrary, the indemnity provided for in subpart (a) and (b) of Section 8.3 of the General Terms and Conditions for a Claim arising out of the Design Services shall be limited to those Claims arising out of or resulting from the negligent acts or omissions of Subcontractor or any Design Consultant providing such Design Services. The obligations under Section 8.3 of the General Terms and Conditions shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts, and shall not be limited or affected in any way by insurance coverage.

8. Requests for Information. In connection with the Design Services included in the Subcontractor Work, Subcontractor shall review requests by Contractor and others for additional information about the Subcontract Documents relating to the Design Services. If requested by Contractor, Subcontractor and its Design Consultant shall prepare, reproduce and distribute supplemental drawings and specifications in response to such requests for information. Unless otherwise directed by Contractor, Subcontractor shall acknowledge the receipt of each Contractor or Contractor generated Request for Information (RFI) no later than seven (7) days after receiving it. Subcontractor shall issue a written answer for each RFI simultaneously to the person requesting such clarification and Contractor (along with necessary descriptive drawings, specifications, or other documents) within the timeframe required by the Prime Agreement or, if no timeframe is provided, with the promptness necessary to avoid unnecessary delay or cost to the Project, but in no case more than ten (10) days after the RFI is received by Subcontractor.

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**ATTACHMENT B
TO
MASTER SUBCONTRACT AGREEMENT**

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS AND SUBCONTRACTOR WORK

1.1 Each capitalized term herein has the same meaning as such term in the Work Authorization Notice issued by Contractor and agreed to by Subcontractor (the “**Work Authorization Notice**”) pursuant to that certain Master Subcontract Agreement to which these General Terms and Conditions are attached (the “**Master Subcontract**”), unless otherwise defined herein or unless such meaning is clearly precluded by the context in which the term is used.

1.2 Unless the context otherwise expressly requires, the word “law” includes federal, state and municipal laws, ordinances, statutes, rules and regulations and administrative or judicial rules, regulations, directives or orders; the word “Sub-subcontractor” means any subcontractor, supplier, vendor or other person of any tier providing or performing any portion of the Subcontractor Work by, through or under Subcontractor; the words “herein,” “hereto,” “hereunder,” and other words of similar import refer to the Subcontract Documents as a whole and not to a particular article or portion thereof; and the word “including” means “including, but not limited to”; the word “Owner” includes any representative of Owner; the word “Architect” includes the architect or engineer, if any, for the Project; and words which have well-known technical or construction industry meanings are used in the Subcontract Documents in accordance with such recognized meanings unless otherwise defined in the Subcontract Documents.

1.3 Subcontractor acknowledges that prior to executing the Work Authorization Notice it has had the opportunity to review the Prime Contract and has satisfied itself as to the requirements set forth in such Prime Contract applicable to the Subcontractor Work. Subcontractor shall be bound and obligated to Contractor by the terms of the Subcontract Documents, and Subcontractor assumes toward Contractor all obligations, liabilities and responsibilities that Contractor by the Prime Contract has assumed toward Owner. Contractor shall further have the benefit of all rights, remedies and limitations in respect to Subcontractor which Owner and its agents have against Contractor under the Prime Contract or by law. Any and all decisions by Owner or its agents relative to interpretation of the Prime Contract or any ambiguity or discrepancy therein shall be binding on Subcontractor to the same extent such are binding on Contractor.

1.4 The intent of the Subcontract Documents is to include all labor, equipment, materials, goods, services and other items necessary for the proper execution and completion of the Subcontractor Work. The Subcontract Documents are complementary, and what is required by any one shall be as binding as if required by all with respect to the Subcontractor Work. Any work not explicitly covered in the Subcontract Documents shall be performed by Subcontractor as a part of the Subcontract Price so long as it is consistent therewith and is reasonably inferable therefrom as being necessary or desirable to produce the intended results. The Prime Contract and the other Subcontract Documents shall be interpreted together and in harmony with one another. In the event of conflict between the Prime Contract and the other Subcontract Documents, the Prime Contract shall be controlling except with respect to the relationship between Contractor and Subcontractor which shall be governed by the Work Authorization Notice and other Subcontract Documents. In the event of any inconsistency or conflict between the terms of these General Terms and Conditions and the terms of any other Subcontract Documents, the terms of these General Terms and Conditions shall prevail except with respect to the terms set forth in the Work Authorization Notice which shall prevail; *provided, however* that the terms set forth on Addendum No. 1 for the state in which the Project is located shall prevail over any of the other Subcontract Documents.

1.5 SUBCONTRACTOR HEREBY REPRESENTS AND ACKNOWLEDGES THAT IT HAS REVIEWED AND INSPECTED ALL OF THE SUBCONTRACT DOCUMENTS AND HAS COMPARED ALL DOCUMENTS DIRECTLY OR INDIRECTLY RELATING TO THE PERFORMANCE OF THE SUBCONTRACTOR WORK AND TO ALL SITE CONDITIONS, AND ANY AND ALL ERRORS, AMBIGUITIES AND INCONSISTENCIES HAVE BEEN REPORTED TO CONTRACTOR IN WRITING AND RESOLVED TO SUBCONTRACTOR’S COMPLETE SATISFACTION.

1.6 In the event of any doubt or question arising between Contractor and Subcontractor with respect to the plans and specifications, the decision of the Architect shall be conclusive and binding. If there is no supervising architect over the Subcontractor Work, then the matter in question shall be determined as provided in Section 10 hereof.

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2. PAYMENTS

2.1 Subject to Section 2.7 hereof, unless otherwise indicated in the Work Authorization Notice, the Subcontract Price shall be fixed sum. If the Subcontract Price is other than fixed sum, the Subcontract Price and terms shall be set forth in the Work Authorization Notice. Subcontractor assumes the risk during the performance of the Subcontractor Work of all wage, price and material increases and shall not be entitled to any additional payment on account thereof. Contractor agrees to pay Subcontractor for the full and complete performance of the Subcontractor Work and other obligations under the Subcontract Documents, the Subcontract Price set forth in the Work Authorization Notice. The Subcontract Price constitutes full compensation for all equipment, materials and tools, and all of Subcontractor's installation costs, labor, services, overhead, profit, handling costs and other costs and expenses necessary for the completion of the Subcontractor Work. The Subcontract Price may be changed only by a written change order signed by Subcontractor and Contractor.

2.2 After receipt of a progress payment therefor from Owner, Contractor will pay to Subcontractor the amount which the estimate of Owner or Contractor shows Subcontractor has earned during the period covered by the application for payment, less such amounts as Contractor shall determine as being properly withheld as allowed in the Subcontract Documents. Contractor shall reduce each payment to Subcontractor, except final payment, by the maximum amount for such retainage allowed by law or, in the absence of such a limitation, five percent (5%), and Contractor will retain the balance of the payment to be released to Subcontractor only upon satisfaction of the requirements set forth in Section 2.10 hereof. The estimates of Owner as to the amount of the Subcontractor Work completed by Subcontractor (or Contractor if Owner makes no separate estimate of such Subcontractor Work) shall be binding upon the parties and shall conclusively establish the amount of the Subcontractor Work performed by Subcontractor. Approval and payment of Subcontractor's monthly estimate is specifically agreed to not constitute or imply acceptance by Contractor or Owner of any portion of the Subcontractor Work.

2.2.1 If Subcontractor fails to timely submit its application for payment in form and content satisfactory to Contractor, a progress payment may not be included in Contractor's application for payment to Owner, and in such case Subcontractor shall not be entitled to payment until the next payment application cycle if Subcontractor then has provided a properly-supported application for payment.

2.2.2 Except with the Contractor's prior written approval, the Subcontractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

2.2.3 In taking action on the Subcontractor's Applications for Payment, the Owner Designated Representative ("ODR") and Contractor shall be entitled to rely on the accuracy and completeness of the information furnished by the Subcontractor and shall not be deemed to represent that they have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 2.3 and 2.10 or other supporting data, that they have made exhaustive or continuous on-site inspections, or that they have made examinations to ascertain how or for what purposes the Subcontractor has used amounts previously paid on account of the Subcontract. Such examinations, audits and verifications, if required by the Owner or Contractor, will be performed by the Contractor's or Owner's auditors acting in the sole interest of the Owner and/or Contractor.

2.3 Subcontractor, upon the request of Contractor, and on such date as Contractor shall designate, shall submit to Contractor, in form and content acceptable to Contractor, an itemized application for payment supported by such data substantiating Subcontractor's right to payment as Contractor may require. If Subcontractor fails to timely submit its application for payment in form and content satisfactory to Contractor, a progress payment may not be included in Contractor's application for payment to Owner or Contractor may include in its monthly estimate to Owner for Subcontractor Work performed during the preceding month such amount as it shall deem proper for the Subcontractor Work for the preceding month and Subcontractor agrees to accept such approved portion thereof as its regular monthly payment.

2.4 As a further condition precedent to payment of any Subcontractor payment application, Subcontractor shall provide to Contractor valid lien and bond claim waivers for all labor, materials and supplies provided through the billing date, signed by Subcontractor and its Sub-subcontractors with each monthly progress billing. Such waivers shall be particular waivers for specified dollar amounts and dated prior to payment and shall be in form and substance acceptable to Contractor. In addition to the foregoing, at any time before final payment, Subcontractor shall, on request of Contractor, furnish to Contractor evidence satisfactory to Contractor of payment for all materials and labor furnished or used in performance of the Subcontractor Work, and payment of taxes, insurance, F.I.C.A., any withholding taxes, equipment rental and all other expenses incurred by Subcontractor and its Sub-subcontractors in respect

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to the Subcontract Documents. If Subcontractor or any lower-tier subcontractor or supplier who provides labor or materials to the Project pursuant to a contract with or at the request of Subcontractor (the “Second Tiers”) is affiliated with a union(s) (the “Union”), and organizations, entities, or trusts affiliated with the Union (collectively, the “Organization”) may have the right under various agreements and/or governing law to lien or otherwise make claims on projects on which the Subcontractor and/or the Second Tiers work if Subcontractor and/or Second Tiers do not remit to the Organization portions of payments earned for work performed or materials supplied on projects, including the Project, Subcontractor will be required, and hereby agrees, to submit with each of its pay applications a lien release valid under governing state law (in a form acceptable to the Contractor) executed by the Organization which releases all claims, lien, and bond rights the Organization otherwise might have through a previous date specified by the Contractor related to the Subcontractor’s or the Second Tiers’ work on the Project. No right to any payment shall accrue until Subcontractor has furnished such lien waivers and evidence. Failure to require any lien waivers or evidence described in this Section on one or more occasions shall not constitute a waiver by Contractor of its rights hereunder. Because the Project is owned by a political subdivision of the State of Utah, no mechanics lien rights exist against the Project site under Utah Code Title 38, Chapter 1a, and that Subcontractor’s sole security for nonpayment is a claim against Contractor’s payment bond (if any), subject to the notice and time-bar requirements of Utah Code §§ 14-1-18 et seq., 38-1-32, and 63G-6-504 et seq.

2.5 Contractor may withhold from Subcontractor payments otherwise due, in whole or in part, or may nullify, in whole or in part, any approval previously made by Contractor on account of (a) defective materials or defective Subcontractor Work not remedied; (b) Subcontractor’s failure to comply with any of the terms or conditions of the Subcontract Documents; (c) claims filed or reasonable evidence indicating probability of filing of claims (including a claim of lien or stop notice) arising from any Sub-subcontractor or labor union or claimed to have arisen out the Subcontractor Work; (d) failure of Subcontractor to timely make the required payments to its Sub-subcontractors or for material, supplies or labor; (e) a reasonable doubt that the Subcontractor Work can be completed for the balance of the Subcontract Price then unpaid; (f) a reasonable belief that the Subcontractor Work will not be completed in accordance with the Work Progress Schedule (as defined below) for such work; (g) incomplete or non-conforming application for payment; (h) any breach or threatened breach of the Subcontract Documents, or (i) any reason set forth in the Subcontract Documents pertaining to Owner’s withholding of payments to Contractor. If the foregoing causes are promptly removed or corrected to Contractor’s satisfaction, the withheld payments shall be made. If such causes are not promptly removed or corrected, Contractor may rectify the same at Subcontractor’s expense including reasonable attorneys’ fees and costs incurred, including taking such steps as it deems necessary to assure absolutely that the money paid with any progress payment will be utilized to the full extent necessary to pay labor, material, and all other bills incurred in the performance of the Subcontractor Work. These provisions shall be applicable even though Subcontractor has posted a full payment and performance bond.

2.6 Subcontractor warrants that (a) title to all the Subcontractor Work covered by an application for payment will pass to Contractor upon the first to occur of incorporation in the construction or upon the receipt of payment therefor by Subcontractor, free and clear of all liens, claims, security interests or encumbrances, and (b) no Subcontractor Work covered by an application for payment will have been acquired by Subcontractor, or by any other person performing the Subcontractor Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by Subcontractor or such other person.

2.7 Notwithstanding anything to the contrary in this Agreement or elsewhere, Contractor shall have no obligation to pay Subcontractor for any Subcontractor Work performed under the Subcontract Documents if Contractor has not been paid for such Subcontractor Work by Owner in at least the amounts payable to Subcontractor on account of the Subcontractor Work completed by Subcontractor. Such payment by Owner is an express condition precedent to any obligation owing by Contractor to Subcontractor to pay for any Subcontractor Work, including changed or extra work performed by Subcontractor. As further condition precedent to any payment by Contractor to Subcontractor, and in addition to any other requirements contained in the Subcontract Documents, Subcontractor shall not be entitled to any payment until a Work Authorization Notice to Subcontractor from Contractor for the Project has been properly executed and all documents and information to be furnished by Subcontractor have been supplied to Contractor, including an unconditional waiver and release in form required by Contractor for any previous payment made to Subcontractor and the certificate of insurance required under Exhibit G to the Work Authorization Notice. Subcontractor relies solely on the credit of Owner not Contractor for any payments to be made hereunder, Subcontractor expressly agrees to accept the risk that it will not be paid for the Subcontractor Work performed by it in the event that Contractor, for whatever reason, is not paid by Owner for such Subcontractor Work. Money received by Subcontractor for the performance of the Subcontractor Work shall be held in trust and used solely for the benefit of persons supplying labor, materials, supplies, tools, machinery, equipment, plant or services by, through or under Subcontractor exclusively for the Project. Nothing set forth herein is intended to effect a waiver of Subcontractor’s lien rights, if any, against Owner’s property related to a failure of such payment.

2.8 In the event it appears to Contractor that the labor, material, and other bills incurred in the performance of the Subcontractor Work are not being currently paid by Subcontractor, Contractor may take such steps as it deems necessary to assure absolutely that the

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money paid with any progress payment will be utilized to the full extent necessary to pay labor, material, and all other bills incurred in the performance of the Subcontractor Work. Contractor may deduct from any amounts due or to become due to Subcontractor any sum or sums owing by Subcontractor to Contractor; and in the event of any breach by Subcontractor of any provision or obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien against Contractor or Contractor's surety or the premises arising out of Subcontractor's performance of this Agreement, Contractor shall have the right, but is not required, to retain out of any payments due or to become due to Subcontractor an amount sufficient to completely protect Contractor from any and all loss, damage, or expense therefrom, until the situation has been remedied or adjusted by Subcontractor to the satisfaction of Contractor. These provisions shall be applicable even though Subcontractor has posted a full payment and performance bond.

2.9 In the event Subcontractor desires to receive payment for any material stored off site for the Project and in the event that Contractor, Owner and Owner's lender, in their sole discretion, agree to make such payment, Subcontractor shall submit evidence that title to such material has passed to Contractor and that the quantities for which payment is requested have actually been received at such storage location. This shall be done by submitting a bonded warehouse receipt or by other means acceptable to Contractor, Owner and Owner's lender.

2.10 In addition to the requirements of Section 2.3 above, final payment to Subcontractor shall not be due until the following additional conditions have been satisfied. Upon complete and satisfactory performance of the Subcontractor Work by Subcontractor, final approval and acceptance of the Subcontractor Work by Owner and after receipt by Contractor of payment from Owner for such Subcontractor Work, Contractor will make final payment to Subcontractor of the balance due under the Subcontract Documents provided Subcontractor, upon the request of Contractor, has provided to Contractor (1) an affidavit that all payrolls, bills for material and equipment and other indebtedness connected with the Subcontractor Work for which Contractor or Owner or their property might in any way be responsible, have been paid or otherwise satisfied; (2) consent of surety, if any, to final payment; (3) other data establishing payment or satisfaction of all such obligations to the extent and in such form as may be required by Owner or Contractor; (4) in form satisfactory to Contractor, a general release in favor of Contractor and Owner; (5) waivers and/or release of liens, notices to withhold or other claims against the land, improvements, or funds involved in the Project, in form satisfactory to Contractor or required by the Prime Contract or law, as applicable; and (6) all other documents required by the Subcontract Documents as a condition to final payment. If any Sub-subcontractor refuses to furnish a release or waiver required by Owner or Contractor, Subcontractor shall, upon the request of Contractor, furnish a bond satisfactory to Owner and Contractor to indemnify them against any such claim or lien. Should the existence of any unsatisfied or undischarged claim, obligation or lien arising in conjunction with the Subcontractor Work become known after final payment is received from Contractor, Subcontractor shall promptly pay on demand all amounts Contractor and/or Owner pay in bonding around, satisfying, discharging or defending any such claim, obligation or lien, including all costs and attorneys' fees incurred in connection therewith. Retainage held under this Section shall be released to Subcontractor within forty-five (45) days of the later of the events specified in Utah Code § 13-8-5, as amended, or as otherwise required by applicable law.

2.11 Subcontractor shall keep, and shall cause its Sub-subcontractors to keep, such full and detailed books, records and accounts as may be necessary for compliance with its obligations under the Subcontract Documents for a period of five (5) years after final completion the Subcontractor Work or termination of a Work Authorization Notice. Such records must show the breakdown of labor, materials, overhead, and profit, each separately stated with respect to the Subcontract Price for the Subcontractor Work. Subcontractor shall keep such books, records and accounts at Subcontractor's principal place of business. Contractor shall (by itself or through a representative) have the right to audit Subcontractor's books and records in the event of termination or cancellation or to verify costs in connection with a Change Order or any portion of the Subcontractor Work priced on a cost plus basis. Contractor shall have no right to audit Subcontractor's costs of performing the fixed price or lump sum portions of the Subcontractor Work.

2.12 Subcontractor shall promptly pay, in accordance with law and the terms and conditions set forth in its respective sub-subcontracts, each Sub-subcontractor the amount to which said Sub-subcontractor is entitled. Such payments by Subcontractor shall fully discharge any obligations, costs and expenses through the period covered by the application for payment upon which Contractor made payment to Subcontractor. Applications for payment shall not include amounts for any Subcontractor Work that Subcontractor does not intend to immediately pay because of retention, dispute or other reason. Subcontractor shall, by written agreement with each Sub-subcontractor, require each Sub-subcontractor to timely make payments to sub-subcontractors, vendors, suppliers, materialmen and the like in similar manner. Subcontractor shall furnish satisfactory evidence to Contractor within five (5) days after Contractor's written request, to verify compliance with the provisions of this Section 2.12. Subcontractor, and not Contractor, shall be obligated to pay or see to the payment of money to Sub-subcontractors and third parties for the Work; provided, that Contractor shall have the right, but not the obligation, without liability to Subcontractor to verify by direct communication with any person that such person is being timely paid for any portion of the Subcontractor Work.

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2.13 Subcontractor agrees and covenants that money received by it for the performance under the Subcontract Documents shall be used solely for the benefit of persons and entities supplying labor, equipment and materials exclusively for the Subcontractor Work in connection with the Subcontract Documents and that any such money shall immediately become and constitute a trust fund for the benefit of such persons and entities and shall not in any instance be diverted by Subcontractor to any other purpose until all obligations and claims arising hereunder have been fully discharged.

3. QUALITY OF SUBCONTRACTOR WORK

3.1 Subcontractor represents and warrants to Contractor and Owner that (a) all Subcontractor Work shall be performed strictly in accordance with the Subcontract Documents and in a good and workmanlike manner and to the best of industry standards, free from faults or defects, and shall be fit for its intended use both as to workmanship and materials, (b) all materials and equipment furnished by Subcontractor shall be new and of the best description and quality of their respective kinds, unless otherwise specified in the Subcontract Documents, and (c) all materials and equipment furnished and work performed will strictly comply with the Prime Contract and the Subcontract Documents, and shall be satisfactory to Owner, Architect and Contractor. All Subcontractor Work not conforming to these standards may be considered defective. This warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or the Subcontract Documents.

3.2 Subcontractor shall make no substitutions with respect to any materials or equipment to be used or incorporated in the Subcontractor Work unless a specific written request for substitution has been submitted to and approved in writing by Contractor and, if required by the Subcontract Documents, the Architect or Owner. Requests for substitution when submitted by Subcontractor to Contractor are understood to mean that Subcontractor: (a) represents that it has investigated the proposed substitute material or equipment and determined that it is equal or superior in all respects to that specified; (b) will provide the same guarantee for the material to be substituted that Subcontractor would for that specified; (c) warrants that the cost data presented is complete and includes all related costs and that Subcontractor waives all claims for and agrees to indemnify Contractor and Owner against any and all additional costs related to the substitution which subsequently become apparent; and (d) will coordinate the installation of the accepted substitute, making such changes as may be required for the Subcontractor Work to be complete in all respects. If a substitution results in additional costs to Contractor or any other subcontractor or a supplier of Contractor, Subcontractor shall promptly pay said costs for its own account, or Contractor may setoff or recoup such additional costs against any payment due Subcontractor.

3.3 Contractor, Owner, Architect and Owner's lender, or their designated representatives, and any public authorities, shall have the right to inspect the Subcontractor Work at all times and Subcontractor shall permit and facilitate such inspection. In the event that any part of the Subcontractor Work or any material is determined by Contractor, Owner, Architect or Owner's lender, to be improper, defective or otherwise fails to conform to the Subcontract Documents, either during the performance of the Subcontractor Work or during any guarantee period provided in the Prime Contract or other Subcontract Documents or for a period of one (1) year from completion and acceptance of the Project by Owner, whichever last occurs, Subcontractor shall within forty-eight (48) hours after notification by Contractor to do so, proceed to remove, dispose of and replace the same, and make good all Subcontractor Work damaged or destroyed by or as a result of such defective, improper or nonconforming Subcontractor Work or materials or by the taking down, removal or replacement thereof, at its own cost and expense. If Subcontractor shall fail within such forty-eight (48) hour period to replace or correct improper, defective or non-conforming Subcontractor Work or material promptly and completely, Contractor, at its option, may replace or correct the same. Subcontractor agrees to pay to Contractor all costs, expenses (including consultants' and attorneys' fees), liabilities and consequential damages incurred by Contractor in connection with said replacements or corrections, whether said replacements or corrections are removed, disposed of and replaced by Subcontractor or Contractor or by others. Subcontractor shall execute and deliver to Contractor any special guarantees as provided by the terms of the Subcontract Documents prior to and as a condition of final payment. The foregoing period shall apply only to Subcontractor's obligation to correct the Subcontractor Work and shall not otherwise affect Contractor's rights or remedies for breach of any warranty or covenant by Subcontractor hereunder.

3.4 Subcontractor agrees to submit and revise as necessary all shop drawings, submittals and brochures, and to obtain approval before any purchase and installation thereof, in a timely and diligent manner so that no delay will result in the progress of the Project.

3.5 Subcontractor represents and warrants that it is and will be at all times fully licensed, qualified and capable of performing the Subcontractor Work in accordance with the Subcontract Documents, is an expert in the trade or profession which is the subject of its Subcontractor Work, and acknowledges that Contractor has retained Subcontractor to perform such work precisely because Subcontractor holds itself out as having such expertise. Subcontractor acknowledges that it will use its expertise and experience to

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perform and complete the Subcontractor Work in a good and workmanlike manner and agrees that Contractor will not be responsible for instructing Subcontractor regarding the means and methods by which Subcontractor should complete its work, which shall remain solely the responsibility and obligation of Subcontractor, regardless of direction or input provided by Contractor.

4. PROSECUTION OF WORK, DELAYS, ETC.

4.1 Subcontractor agrees that time is of the essence in the performance of the Subcontractor Work. By executing a Work Authorization Notice, Subcontractor agrees that (a) the period of time for the performance of the Subcontractor Work set forth in the Work Authorization Notice or in the Work Progress Schedule is adequate for the orderly and proper performance of the Subcontractor Work, (b) Subcontractor has sufficient financial resources, labor and equipment to fully and timely perform the Subcontractor Work strictly in accordance with the Work Progress Schedule, and (c) there is no existing delay to the Subcontractor Work.

4.2 (a) Subcontractor shall prosecute the Subcontractor Work in a prompt and diligent manner whenever such Subcontractor Work, or any part of it, becomes available, or at such other time or times as Contractor may direct and shall thereafter proceed and complete performance of the Subcontractor Work promptly, diligently and in such a manner and sequence as to assure the timely completion of other work dependent thereon and to permit completion of the Subcontractor Work within the time provided by the Prime Contract and within the work progress schedule formulated by Contractor for the Project, as adjusted or amended by Contractor from time to time to reflect changes and adjustments in the Project (the “**Work Progress Schedule**”). Any time specified for completion of the Prime Contract, or time requirement for Subcontractor Work under the Work Progress Schedule, is a material provision of the Subcontract Documents; time being of the essence of such Subcontractor Work.

(b) Except as otherwise directed by Contractor, Subcontractor shall, within five (5) days after the date of the Work Authorization Notice, or within such other time as may be specified by Contractor, prepare and submit to Contractor for review a proposed schedule, showing the order in which Subcontractor proposes to carry out all major activities and indicating the dates on which the several activities representing the complete performance of the Subcontractor Work (including procurement of materials, plant and equipment) may be started and finished. This schedule shall list the sequence of activities anticipated by Subcontractor and the anticipated duration of each activity. Where Contractor has made available to Subcontractor a Work Progress Schedule for the Project, Subcontractor shall schedule and sequence the Subcontractor Work in an integrated manner with the Work Progress Schedule for the Project.

(c) Provided Contractor has timely received Subcontractor’s proposed schedule for its performance of the Subcontractor Work (if required), Contractor shall prepare the Work Progress Schedule incorporating Subcontractor’s scheduling information to the extent Contractor deems feasible. Should any aspect of the Work Progress Schedule be at variance with the desired sequencing or duration of Subcontractor Work, Subcontractor shall notify Contractor in writing of such variation within five (5) days of its receipt of the Work Progress Schedule. Thereafter, the parties shall meet in a good faith effort to resolve any scheduling differences. However, Subcontractor shall abide by a final determination made by Contractor, in its sole discretion, with respect to the scheduling of the Subcontractor Work including the sequencing and duration of the Subcontractor Work. Subcontractor’s failure to submit its proposed schedule, if and when required, or to notify Contractor in writing of any variation or conflict between Subcontractor’s proposed schedule and the Work Progress Schedule shall preclude Subcontractor from receiving either extensions of the time and/or activity completion dates specified in the Work Progress Schedule or an increase in the Subcontract Price. Subcontractor further acknowledges that, as construction progresses, it may be necessary for Contractor to change the sequential order and duration of various activities, including those contemplated by the Work Authorization Notice, to reflect unanticipated delays, occurrences and other factors which act to alter the Work Progress Schedule. Contractor may require Subcontractor to prosecute the Subcontractor Work in such sequence as Contractor may reasonably require in order to maintain the progress of other subcontractors and of the Work Progress Schedule. Contractor may, from time to time, revise and update the Work Progress Schedule so as to reflect the actual progress of the Subcontractor Work.

(d) So as to promote the general progress of the entire Project, Subcontractor shall not, by delay or otherwise, interfere with or hinder the work of Contractor or any other subcontractor. In the event that Subcontractor or its employees or Sub-subcontractors (i) neglects and/or fails to supply the necessary labor and/or materials, tools, implements, equipment, etc., in the opinion of Contractor, to timely complete the Subcontractor Work, (ii) is unable to perform because of strikes, picketing, or boycotting of any kind which result in Subcontractor or its employees or Sub-subcontractors being unable or unwilling to enter on the job and timely complete the Subcontractor Work or any part thereof, (iii) refuses to work after having been requested by Contractor to proceed with the Subcontractor Work or any part thereof, or (iv) fails to remove, dispose of and replace improper, defective or nonconforming Subcontractor Work, then Contractor shall notify Subcontractor in writing setting forth the deficiency and/or delinquency. Forty-eight (48) hours after the date of such written notice, Contractor shall have the right, if it so desires, to take over the Subcontractor Work in full and exclude

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Subcontractor from any further participation in the Subcontractor Work or, at its option, Contractor may take over such portion of the Subcontractor Work as Contractor shall deem to be in the best interest of Contractor and require Subcontractor to continue with the remaining portions of the Subcontractor Work. Whichever method Contractor might elect to pursue, Subcontractor agrees to release to Contractor, for Contractor's use, without recourse or cost, any materials, tools, implements, equipment, etc., on the Project, belonging to or in the possession of Subcontractor, for the benefit of Contractor, in completing the Subcontractor Work or any part thereof. Subcontractor shall pay to Contractor all costs, expenses (including consultants' and attorneys' fees), liabilities, incidental and other damages incurred by Contractor in connection with said replacements or corrections, whether said replacements or corrections are removed, disposed of and replaced by Subcontractor or Contractor or by others. Subcontractor shall execute and deliver to Contractor any special guarantees as provided by the terms of the Subcontract Documents. Any costs incurred by Contractor in doing any such portion of the Subcontractor Work shall be charged against any monies due or to become due under the terms of the Subcontract Documents, and in the event the total amount due or to become due, under the terms of the Subcontract Documents shall be insufficient to cover the costs incurred by Contractor in completing the Subcontractor Work or any part thereof, then Subcontractor and its sureties, if any, shall be bound and liable to immediately pay to Contractor for the difference.

4.3 Subcontractor shall coordinate its Subcontractor Work with that of Contractor and other subcontractors as Contractor may reasonably require. Subcontractor shall at all times furnish and have available such sufficient and satisfactory equipment, materials, supplies and workmen to perform the Subcontractor Work to meet the Work Progress Schedule in the opinion of Contractor. In the event Subcontractor fails to perform the Subcontractor Work in accordance with the Work Progress Schedule, to the extent such failure is not the result of a delay for which Subcontractor is entitled to an extension of time hereunder in which to perform the Subcontractor Work, Subcontractor, at its own expense, shall provide additional equipment, work force overtime or additional shifts so as to meet the Work Progress Schedule. All expenses and damages incurred by Contractor resulting from the failure of Subcontractor to meet the Work Progress Schedule, or abide by the Contractor's instructions with regard to said Work Progress Schedule, will be paid by Subcontractor to Contractor upon demand. Subcontractor shall keep itself apprised concerning Contractor's Work Progress Schedule for performance of the Subcontractor Work, as such Work Progress Schedule is amended from time to time.

4.4 If the proper, workmanlike and accurate performance of any Subcontractor Work depends wholly or partially upon the proper workmanlike or accurate performance of any work or materials furnished by Contractor or other contractors or subcontractors on the Project, Subcontractor agrees to use all means necessary to discover any such defects and report the same in writing to Contractor before proceeding with the Subcontractor Work which is so dependent; and shall allow Contractor a reasonable time in which to remedy such defects. In the event it does not so report to Contractor in writing, then it shall be assumed that Subcontractor has fully accepted the work of others as being satisfactory and it shall be fully responsible thereafter for the satisfactory performance of the Subcontractor Work, regardless of the defective work of others.

4.5 Subcontractor shall clean up and remove from the Project as directed by Contractor all rubbish and debris resulting from its work. Failure to clean up rubbish and debris shall serve as cause for withholding further payment to Subcontractor until such time as this condition is corrected to the satisfaction of Contractor. Subcontractor shall also clean up to the satisfaction of the inspectors all dirt, grease marks, etc., from walls, ceilings, floors, fixtures, etc., deposited or placed thereon as a result of the Subcontractor Work. If Subcontractor refuses or fails to perform this cleaning as directed by Contractor, Contractor shall have the right and authorization to proceed with such cleaning, and Subcontractor will on demand repay to Contractor the actual cost of said labor plus fifteen percent (15%) of such cost to cover supervision, insurance, overhead, etc.

4.6 Subcontractor acknowledges that it has reviewed the provisions of the Prime Contract regarding liquidated damages, and agrees to reimburse Contractor for any and all liquidated damages that may be assessed against and collected from Contractor by Owner which are attributable to or caused by Subcontractor's failure to furnish and perform the Subcontractor Work required by the Subcontract Documents within the time fixed in the manner provided for herein or therein, regardless of the cause from which the delay occurred, except to the extent caused by the wrongful acts or omissions of Contractor not otherwise permitted by the Subcontract Documents and which occur without the fault or failure of Subcontractor. In addition thereto, Subcontractor agrees to pay to Contractor such other or additional damages as Contractor may sustain by reason of such delay by Subcontractor. The payment of such damages shall not release Subcontractor from its obligation to otherwise fully perform its obligations under the Subcontract Documents.

4.7 Whenever it may be useful or necessary to Contractor to do so, Contractor shall be permitted to occupy and/or use any portion of the Subcontractor Work which has been either partially or fully completed by Subcontractor before final inspection and acceptance thereof by Owner, but such use and/or occupation shall not relieve Subcontractor of its guarantee of the Subcontractor's Work and

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materials nor of its obligation to make good at its own expense any defect in materials and workmanship which may occur or develop prior to Contractor's release from responsibility to Owner; provided, however, Subcontractor shall not be responsible for the maintenance of such portion of the Subcontractor Work as may be used and/or occupied by Contractor or Owner, nor any damage thereto to the extent due to or caused by the negligence of Contractor, Owner, or other subcontractors of Contractor during such period of use.

4.8 Subcontractor shall be responsible for its own work, property and/or materials until completion and final acceptance of the Project by Owner and shall bear the risk of any loss or damage until such acceptance. In the event of loss or damage, Subcontractor shall proceed promptly to make repairs, or replacement of the damaged work, property and/or materials, at its own expense, as directed by Contractor. Subcontractor waives all rights Subcontractor might have against Owner and Contractor for loss or damage to the Subcontractor Work, or any equipment, property or materials owned or leased to Subcontractor.

4.9 It is agreed that Subcontractor, at the option of Contractor, may be considered as disabled from performing its obligations under the Subcontract Documents whenever a petition in bankruptcy or the appointment of a receiver is filed by or against it.

4.10 Subcontractor shall pay reasonable and proportionate costs for hoisting services provided by Contractor. Unless otherwise provided herein, the Subcontract Documents do not include the use of any of Owner's or Contractor's equipment, hoisting services, facilities or storage, and if they are used by Subcontractor, such use shall be at Subcontractor's own risk and only with Contractor's or Owner's written consent as appropriate. Subcontractor agrees to hold Owner and Contractor harmless from any and all damages of every kind whatsoever resulting from such use and shall return all such equipment, facilities or storage space to Contractor in as good a condition as when received, upon demand by Contractor, or at the completion of the Subcontractor Work, whichever first occurs.

5. SURETY BOND

5.1 If required pursuant to the Work Authorization Notice, or otherwise by Contractor, Subcontractor shall furnish to Contractor, at Subcontractor's expense, a surety bond guaranteeing the faithful performance of its obligations under the Subcontract Documents including the payment of all labor and material bills in connection with the execution of the Subcontractor Work. The bond shall (a) be written by a surety company designated or approved by Contractor, and in a form entirely satisfactory to Contractor; (b) be in the amount of one hundred percent (100%) of the Subcontract Price guaranteeing full performance of the Subcontract Documents and that Subcontractor will promptly and fully pay for all work, labor and materials and other charges or costs in connection with the Subcontractor Work; (c) provide that no change, alteration or modification in or deviation from the Subcontract Documents, their terms, conditions, plans or specifications, or in the manner, time or amount of payment as provided herein or therein, whether or not made in the manner as herein or therein provided, shall release or exonerate, in whole or in part, such surety on any bond given in connection with the Subcontractor Work; and (d) provide that the surety under any such bond shall not be relieved of any responsibility under said bond to Contractor if Subcontractor shall become insolvent or shall make an assignment for the benefit of creditors or be subject to any proceeding in bankruptcy. Subcontractor's failure to comply with any of the terms of this Section 5 shall be deemed a material breach of the Subcontract Documents. Contractor may, at its sole discretion, provide Subcontractor Default Insurance (or similar) in lieu of the bonding requirements of this Section 5, in which case, Subcontractor agrees that it shall enroll in and strictly comply with all of the requirements of such insurance program.

6. COMPLIANCE WITH LAW; PERMITS, LICENSE, FEES, TAXES, ETC.

6.1 In the performance of the Subcontractor Work under the Subcontract Documents, Subcontractor shall, and shall require its Sub-subcontractors to, ascertain and comply with applicable laws and applicable governmental authorizations. To the fullest extent provided by law, Subcontractor agrees to indemnify, defend, and hold harmless any and all Indemnified Parties from and against any and all fines, penalties, related costs and expenses (including reasonable attorneys' fees, costs and expenses) attributable to any failure of Subcontractor (or any Sub-subcontractor) to comply with such laws and governmental authorizations in connection with the performance of the Subcontractor Work.

6.2 Subcontractor shall, at its own cost and expense, apply and pay for and obtain all necessary licenses and assist Contractor or Owner in obtaining required governmental permits for the installation or performance of the Subcontractor Work. Subcontractor shall, at no extra cost to Contractor, conform strictly to the laws, building codes, and other ordinances in force in the locality where the Project is located.

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6.3 Subcontractor warrants that it is an independent contractor in fact, and also within the scope of the United States Internal Revenue Code, the Federal Social Security Act, together with present and future amendments thereto, and any and all applicable unemployment insurance laws, rules and regulations. The Subcontract Price includes, and Subcontractor shall promptly pay, all of its Sub-subcontractors and all costs of performing its obligations hereunder and all taxes, including sales or use tax, assessments, fees and charges, unemployment insurance, old age benefits, pensions or annuities imposed or required by any government, or by any labor agreement to which Subcontractor is a party, levied, incurred or payable on or in respect to Subcontractor's acts or transactions or things used by it in performing such obligations. Subcontractor shall not represent or hold itself out to be an agent of Contractor. Neither the Subcontract Documents nor any course of conduct between Contractor and Subcontractor creates any contractual relationship between any parties other than Contractor and Subcontractor. Subcontractor represents that it is fully experienced and properly qualified as an expert to perform the class of the Subcontractor Work provided for in the Subcontract Documents, shall finance its own operations required for the performance of the Subcontractor Work and is properly equipped and organized to properly and timely handle the Subcontractor Work. Subcontractor, by its execution of the Work Authorization Notice, represents that its entry into the Subcontract Documents is in reliance on its own investigation and has not been induced either wholly or in part by any promises, representations or statements by Contractor or its agents or representatives other than those set forth in the Subcontract Documents.

7. INSURANCE

7.1 Upon execution of the Work Authorization Notice and, in any event, before commencing the Subcontractor Work, Subcontractor, shall procure, and maintain in full force and effect at Subcontractor's expense, so long as may be necessary to fully protect Owner and Contractor and, in any event, at least until the completion and acceptance by Owner of the Subcontractor Work as a whole and including any required warranty period, the insurance coverages required by Exhibit G to the Work Authorization Notice. Unless otherwise provided in a Work Authorization Notice, Contractor has implemented a Contractor Controlled Insurance Program ("CCIP") to furnish certain insurance for the Subcontractor Work to be performed at the Project site. The insurance included in the CCIP is generally described on Exhibit G to the Work Authorization Notice. No type of insurance other than that set forth in Exhibit G to the Work Authorization Notice is furnished by Contractor for the benefit of Subcontractor. Subcontractor represents that it has reviewed Exhibit G to the Work Authorization Notice and will strictly comply with all of its provisions.

8. DEFAULT BY SUBCONTRACTOR

8.1 Immediately upon the request of Contractor, Subcontractor shall provide Contractor with satisfactory assurances of its ability to perform the conditions hereof, or, in lieu thereof, statements of credit worthiness, either of which shall be subject to the sole satisfaction of Contractor. The occurrence of any of the following shall constitute a material default by Subcontractor:

- (a) upon the request of Contractor, Subcontractor fails to commence promptly or to prosecute the Subcontractor Work required hereunder diligently or to make the progress required by Owner or Contractor;
- (b) Subcontractor fails to provide Contractor with satisfactory assurances of its ability to perform or statements of credit worthiness;
- (c) Subcontractor becomes insolvent, makes a general assignment for the benefit of creditors or becomes subject to any proceeding in bankruptcy;
- (d) Subcontractor becomes involved in labor difficulties;
- (e) Subcontractor fails to provide bonds and/or maintain policies of insurance (or proof thereof) as required in the Subcontract Documents;
- (f) Subcontractor fails to timely initiate appropriate measures for the correction of faulty Subcontractor Work;
- (g) Subcontractor fails to pay payroll when due or payments to union trust funds in a timely manner;
- (h) Subcontractor fails to promptly pay or discharge in full or provide adequate security for the payment of all claims of any persons, or entities furnishing or claiming to have furnished labor, materials, equipment or incidentals used in, upon or

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for the Subcontractor Work, whether or not, as to any such claim, a lien or right of enforcement is established or attempted to be established upon or against the Project, the real property upon which the Project is situated, upon any bond furnished by Contractor or upon any monies payable to Contractor by Owner;

- (i) Subcontractor fails to pay any sums owed to any union or to any of Subcontractor's lower tier subcontractors or suppliers for the Project when due; or
- (j) Subcontractor fails to perform any other obligation of Subcontractor under the Subcontract Documents.

If any of the foregoing defaults occur, then in each case Contractor shall have the right, if it so elects and without prejudice to any other rights it may have under Section 4.2(d) hereof or at law or in equity, by giving forty-eight (48) hours written notice to Subcontractor of its election, to take over all Subcontractor Work, or any part thereof, and all tools, equipment, materials and supplies of Subcontractor at the jobsite and finish the Subcontractor Work by whatever method it deems expedient. Subcontractor shall not be entitled to receive any further payment until the Project is finished. If the unpaid balance of the Subcontract Price hereunder exceeds Contractor's expense of finishing the Subcontractor Work, including all legal, professional, consultant and court fees and expenses incurred in connection therewith, such excess shall be paid to Subcontractor. If such expense exceeds such unpaid balance, Subcontractor shall promptly pay the difference to Contractor on demand. The expense of completion, including all legal, professional, consultant and court fees and expenses incurred in connection therewith, shall be certified to by Contractor and shall be binding on the parties.

8.2 If Subcontractor fails to furnish or supply sufficient skilled workers, suitable materials, supplies, or adequate equipment, Contractor shall have the right, in addition and without prejudice to the exercise of the foregoing remedy or other remedies for the same default, to expedite deliveries of and to procure and furnish such labor, materials, supplies or equipment and charge the entire cost of expediting, procuring or furnishing the same, including Contractor's overhead, profit and all legal, professional, consultants and court fees and expenses incurred in connection therewith, to Subcontractor and deduct such amounts from any amount payable to Subcontractor, or, upon Contractor's demand, Subcontractor agrees to immediately pay Contractor all such fees, costs and expenses.

8.3 To the fullest extent permitted by law, Subcontractor shall and does hereby agree to indemnify, defend and hold harmless Contractor, Owner, Architect, Architect's consultants, and their respective affiliates, parents, subsidiaries, directors, officers, agents, employees, successors and assigns, individually and collectively, (the "**Indemnified Parties**"), from, against and in respect of any and all claims, demands, suits, proceedings, attachments, levies, penalties, damages and losses, liabilities, liens, claims for indemnification or contribution, and any other matter whatsoever, and all damages, costs and expenses incurred in connection therewith, including attorney's fees (collectively, "**Claims**"), arising out of or resulting from (a) injuries to, or sickness, disease or death of, any person and for damage, injury, destruction or loss of property, arising directly or indirectly, in whole or in part, out of or in any way relating to the performance of the Subcontractor Work or the Subcontract Documents by Subcontractor or any of its Sub-subcontractors, employees, agents, successors or assigns, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable (collectively, the "**Subcontractor Parties**"), or (b) any act or omission of Subcontractor or any of the Subcontractor Parties, or (c) any breach of the provisions or covenants of the Subcontract Documents by Subcontractor or any of the Subcontractor Parties. The indemnity set forth above shall not be limited in any way by any limitation on the amount or type of proceeds, damages, compensation or benefits payable under insurance policies, workers compensation acts, disability benefit or other employee benefit acts. Subcontractor shall defend all Claims and pay all costs and expenses incidental thereto, but any of the Indemnified Parties shall have the right, at its option, to participate in such defense without relieving Subcontractor of any obligation hereunder.

8.4 The indemnity provided for in Section 8.3 shall not apply to any damages arising out of bodily injury to a person, damage to property, or economic loss to the extent caused by or resulting from the fault of any Indemnified Party; provided that to the fullest extent permitted by law, in any action under the Prime Contract if Contractor, Subcontractor or any other contractor, construction manager, general contractor, subcontractor, sub-subcontractor or supplier, or any combination of them, (each, a "**Construction Party**"; collectively the "**Construction Parties**") is required to indemnify the Owner for any fault of the Owner or the Owner's agents or employees, such fault shall be apportioned among the Construction Parties pro rata based on the proportional share of fault of each of such Construction Parties, if (a) the damages are caused in part by the Owner, and (b) the cause of such damages did not arise at the time and during the phase of the project when the Owner was operating as a Construction Party.

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8.5 The obligations for indemnification herein required are severable. The unenforceability of any portion of the obligation for indemnification hereunder due to the effect of any statute, court decision, or any other reason, shall not nullify, reduce or limit other obligations set forth herein. All other obligations arising under this Section 8 shall remain in full force and effect.

8.6 In the event Subcontractor is in default under any agreement or other obligation to Contractor, Contractor may setoff or recoup any damages, costs or expenses arising as a result of such default against any payment due Subcontractor under any Work Authorization Notice, and such recoupment or set off shall operate to reduce the Subcontract Price and the amount otherwise payable to Contractor hereunder.

9. CHANGES, ADDITIONS, AND DEDUCTIONS

9.1 (a) Without invalidating the Subcontract Documents and without notice to any surety, Contractor may, at any time or from time to time, order additions, deletions or revisions in the Subcontractor Work to be performed by Subcontractor. In the event Owner shall order changes in the Project, which affect the Subcontractor Work or order additional work, adjustment of compensation due Subcontractor hereunder and/or extensions of time in which Subcontractor will be required to perform the Subcontractor Work, will be made only and to the extent a commensurate adjustment in compensation or time is made by Owner to Contractor for the account of Subcontractor. The adjustment in compensation to Subcontractor shall, in such circumstances, be limited in the same manner and to the appropriate proportionate extent as Contractor's compensation under the Prime Contract is adjusted by Owner for the account of Subcontractor. Any changes so made in the amount of work involved, or any other parts of the Subcontract Documents, shall be by a written amendment hereto setting forth in detail the changes involved. Subcontractor agrees to proceed with the Subcontractor Work as changed when so ordered in writing by Contractor so as not to delay the progress of the Subcontractor Work, as changed, and pending any determination of the value thereof.

(b) In the event any condition beyond the control of either party hereto shall arise and, by reason thereof, claims shall be made by Subcontractor for adjustment in compensation due under the Subcontract Documents or an extension of time in which to perform the Subcontractor Work, in any such event compensation and/or the time in which Subcontractor is required to perform its Subcontractor Work, shall be considered for adjustment only if Subcontractor has given written notice of its claim to Contractor sufficiently in advance of the time Contractor is required to submit such a claim to Owner (but in no event greater than seventy-two (72) hours from the occurrence of the event giving rise to the claim) so as to allow Contractor adequate time to prepare and submit to Owner the claim on behalf of Subcontractor. In the event Contractor is allowed an adjustment by Owner by reason of such event, the adjustment in the compensation to Subcontractor shall be limited in the same manner and to the appropriate proportionate extent as Contractor's compensation under the Prime Contract as adjusted by Owner for the account of Subcontractor. Any extension of time in which Subcontractor shall be required to perform the Subcontractor Work granted by Owner shall be commensurate with the time extension granted to Contractor by Owner for the Subcontractor Work.

(c) In addition to changes made or additional Subcontractor Work ordered by Owner under the Prime Contract, Contractor reserves the right to make any change, including additions or omissions, in the Subcontractor Work. If any such change by Contractor's written order materially affects the cost or time of performance of the Subcontractor Work and notice of a claim for additional compensation therefor is given to Contractor by Subcontractor within six (6) days of receipt by Subcontractor of Contractor's written change order, an equitable adjustment therefor shall be agreed upon in writing by the parties hereto. No claim by Subcontractor for additional compensation, either on account of extra labor or materials furnished, changes or otherwise shall be made or paid unless the same are furnished under a written order signed by Contractor prior to the furnishing of same and unless within six (6) days after receipt of such written order Subcontractor has given written notice of its claim for additional compensation.

(d) Upon the request of Contractor, Subcontractor shall promptly, or within the time specified, submit to Contractor a detailed estimate of the cost or value of changes made or contemplated pursuant to this Section 9, including quantities, unit prices, labor rates, manufacturers' and suppliers' quotations and all other information requested by Contractor for a complete analysis of the proposal. If the proposed change will affect the length of time Subcontractor requires to complete the Subcontractor Work, Subcontractor shall set forth the amount of any time increase, as well as the scheduling considerations, if any, applicable to such change, in Subcontractor's proposal. If Subcontractor fails to submit proposed cost adjustments to the Subcontract Price and/or detail adjustments to the Subcontractor's work schedule accurately and promptly or within any time specified in Contractor's request for such information, or within sufficient time, in Contractor's discretion, to allow such changed work to proceed without additional cost or schedule impact, Contractor shall be entitled to

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estimate the effect of proposed changes on the Subcontractor Work in finalizing change orders with Owner. Any adjustment of the Subcontract Price or Work Progress Schedule resulting from Contractor's estimate shall be binding on Subcontractor.

9.2 Subcontractor shall not be entitled to receive any compensation for extra work or materials or changes of any kind regardless of whether the same was ordered by Contractor and Subcontractor performed same if Subcontractor does not receive a written order therefor signed by an authorized representative of Contractor. In the absence of a written change order signed by Contractor, Subcontractor shall be deemed to have waived any claim for extra compensation, regardless of any written or verbal protests or claims by Subcontractor. Subcontractor shall be responsible for any costs incurred by Contractor for changes of any kind made by Subcontractor that increase the cost of the work for either Contractor or other subcontractors when Subcontractor proceeds with such changes without a written order therefor.

9.3 Notwithstanding any other provision, if the work for which Subcontractor claims extra compensation is determined by Owner or Architect not to entitle Contractor to a change order or extra compensation, Contractor shall not be liable to Subcontractor for any extra compensation for such work.

9.4 In the event any acts or omissions by or of Subcontractor delay Contractor in the performance of the Prime Contract and result in Contractor being subjected to any penalties, liabilities or liquidated damages under the Prime Contract, to the fullest extent allowable at law, Subcontractor agrees to indemnify and save and hold Contractor harmless against any liability for and to promptly pay to Contractor any penalties, liabilities or liquidated damages so incurred and such other or additional damages, claims, costs or expenses, including attorneys' fees, Contractor may sustain by reason of Subcontractor's delay or failure to perform. The payment of such damages shall not release Subcontractor from its obligation to otherwise fully perform the Subcontractor Work. Performance under the Subcontract Documents shall be subject to such extensions of time as are deemed justifiable for delays or failures to perform due to strikes, lockouts, acts of God or war, to the extent allowed by Owner in accordance with the Prime Contract.

9.5 If Subcontractor shall be delayed in the completion of the Subcontractor Work by any act or neglect of Owner or Owner's architect, or by agents or representatives of either, or by changes ordered in the Subcontractor Work, or by fire, unavoidable casualties, national emergency, adverse weather conditions not reasonably anticipatable, or by any cause other than the intentional interference of Contractor or for reasons beyond Subcontractor's control and without Subcontractor's fault or negligence (collectively and individually, "**Non-Subcontractor Delays**"), Subcontractor shall be entitled, as Subcontractor's exclusive remedy, to an extension of time reasonably necessary to compensate for the time lost solely due to the Non-Subcontractor Delays, but only if Subcontractor shall have notified Contractor in writing of the existence of the delay within forty-eight (48) hours of the occurrence of the event giving rise to the delay, and, only to the extent that an equivalent extension of time is granted to Contractor by Owner. Subcontractor shall have the burden of proving the impact of the delay and justifying the time extension requested.

9.6 In no event shall Contractor become obligated to pay Subcontractor any amount in excess of the Subcontract Price as a result of delays, disruptions, interferences, hindrances or inefficiencies to the Subcontractor Work, excepting only delays, disruptions, interferences, hindrances or inefficiencies for which Contractor, on behalf of Subcontractor, has received from Owner an increase in the contract price under the Prime Contract and/or delays, disruptions, interferences, hindrances or inefficiencies resulting from Contractor's intentional interference with the Subcontractor Work. Contractor's exercise of any of its rights under this Section 9, regardless of the extent or number of such changes, or Owner's exercise of any of its remedies of suspension of the Subcontractor Work or Contractor's requirement that Subcontractor correct or re-execute any defective Subcontractor Work, shall not, under any circumstances, be construed as intentional interference with Subcontractor's performance of the Subcontractor Work.

9.7 Subcontractor shall keep on a daily and current basis separate, accurate and careful records of all manhours, equipment, supplies, materials and tools that it claims it used and/or lost (and the value thereof) as a result of any breach of the Subcontract Documents by Contractor or Owner or as a result of any obstruction, delay or interference by Contractor or Owner or otherwise claimed by Subcontractor to have been caused by Contractor or Owner.

9.8 With respect to each and every day that Subcontractor claims it has incurred any losses or increased costs or suffered any damages as a result of any breach of the Subcontract Documents by Contractor or Owner or as a result of any obstruction, direction, delay or interference by Contractor or Owner or otherwise incurred because of Contractor or Owner, Subcontractor shall deliver to Contractor on a weekly basis, or more often if requested by Contractor, a written notice setting forth and describing in detail the breach,

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obstruction, direction, delay, interference and/or any other matter claimed by Subcontractor to have been caused by Contractor or Owner and the amount of the loss and/or damage claimed by Subcontractor for said period.

9.9 If any arbitrator, court of competent jurisdiction or appellate court determines that Contractor is liable to Subcontractor as a result of any breach, obstruction, delay, interference or for any other reason, the amount for which Contractor is liable shall not exceed the actual direct field costs incurred by Subcontractor for the use and/or loss of the manhours, equipment, supplies, materials and tools resulting from the breach, obstruction, delay, interference or other reason plus reasonable overhead and profit not to exceed in any event the percentage mark-up for overhead and profit in the Prime Contract or Work Authorization Notice, whichever is less. In no event shall such direct field costs exceed the actual daily direct field costs reflected in the records kept by Subcontractor pursuant to Sections 9.7 and 9.8 above and delivered to Contractor pursuant to Section 9.8 above.

9.10 Contractor shall not be liable to Subcontractor for any costs, expenses, losses or damages of any kind incurred, suffered or claimed by Subcontractor to have resulted from any breach, obstruction, interference, delay or any other reason with respect to which Subcontractor did not comply with the provisions of this Section 9, all of which Subcontractor hereby waives and forever releases.

9.11 In the event Subcontractor commences an arbitration or other proceeding against Contractor seeking recovery of damages or losses for breach of the Subcontract Documents, interference, delay or other reasons caused by Contractor, Subcontractor waives any claim based on, and shall be precluded from proving its costs and damages by use of "total cost," "quantum meruit," "equitable adjustment," or in any way other than specifically identifying and proving the direct field costs that resulted each day from each separate breach, obstruction, interference, delay or other cause.

9.12 In no event shall Contractor be liable to Subcontractor for any overhead (except as provided in Section 9.9 hereof), interest, loss of profit, nor for any indirect, special, or consequential damages.

10. DISPUTE RESOLUTION

10.1 Any dispute resolution procedure in the Prime Contract is hereby incorporated into the Subcontract Documents and shall apply to any disputes arising under any of the Subcontract Documents, except disputes not involving the acts, omissions or otherwise the responsibility of Owner under the Prime Contract ("Owner Disputes"), those which have been waived by the making or acceptance of final payment, and questions regarding the licensure of Subcontractor. With respect to Owner Disputes, Contractor's sole obligation is to present any timely filed claims by Subcontractor to Owner under such procedure, and to pay to Subcontractor the proportionate part of any sums paid by Owner to which Subcontractor is entitled hereunder.

10.2 Subject to Section 10.1, the following procedures shall be observed as a pre-condition to filing of any legal action or proceeding by either party, whether judicial, administrative or otherwise:

10.2.1 All disputes and claims of Subcontractor relating to the interpretation of the Subcontract Documents, the performance of Contractor under the Subcontract Documents, the Subcontractor Work and its progress, any changes on scope, or payment of the Subcontract Price, shall be referred promptly in writing to Contractor's project manager, whose interpretation and decision thereon shall be reduced to writing and a copy thereof shall be furnished to Subcontractor within five (5) business days after the dispute is so referred. The decision of Contractor's project manager shall be final, conclusive and binding upon Subcontractor. Subcontractor has the right to appeal the decision of the project manager. If it chooses to appeal, Subcontractor must within five (5) days from the date of the receipt of the project manager's decision, give written notice of appeal to the project manager, stating clearly and in detail all bases thereof.

10.2.2 If Subcontractor so appeals, a joint meeting shall be held within ten (10) business days from the date of such appeal, or such other date as the parties may mutually agree, at which time Subcontractor and Contractor shall each be afforded an opportunity to present evidence in support of their respective positions. Such joint meeting shall be conducted by one officer or principal representing Subcontractor and one officer or principal representing Contractor. Such individuals shall have decision-making authority and, to the extent possible, shall not have had substantive involvement in the matters of the dispute, unless the parties otherwise agree. The final decision by Subcontractor and Contractor shall be made within ten (10) calendar days after presentation of all evidence affecting the dispute and shall be reduced to writing. If a resolution is reached, it shall be final, conclusive and binding upon Contractor and Subcontractor without any right to appeal or to file a lawsuit with any judicial, administrative or other body.

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10.2.3 If Subcontractor and Contractor cannot reach a unanimous decision within such ten (10)-day period, the parties shall endeavor to resolve the claim by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association (“AAA”) currently in effect. Request for mediation shall be filed in writing with the other party to the Agreement and with the AAA. The request may be made concurrently with the filing of a lawsuit but, in such event, mediation shall proceed in advance of such legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless otherwise agreed by the parties. The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in Salt Lake City, Utah, unless another location is mutually agreed upon by the parties. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

10.2.4 If Subcontractor and Contractor cannot reach a resolution of such claims in mediation, the dispute shall be resolved by litigation in a court of competent jurisdiction in the State of Utah (unless applicable law requires such litigation to be conducted in the jurisdiction where the Project is located, in which case such litigation shall be commenced and conducted in the jurisdiction in which the Project is located), unless Contractor elects binding arbitration by written notice to Subcontractor, in which event binding arbitration shall be conducted pursuant to the Construction Industry Arbitration Rules of the AAA in Salt Lake City, Utah, unless (a) another location is mutually agreed upon by the parties or (b) applicable law requires that the location be where the Project is located (in which case the arbitration shall be commenced and conducted in the jurisdiction where the Project is located).

10.3 If the Prime Contract contains an arbitration provision for disputes not involving Owner Disputes, or the provisions of Section 10.2 require mediation or arbitration, the following shall apply:

10.3.1 For arbitration under the Prime Contract or demanded by Contractor hereunder, notice of the demand for arbitration shall be provided in writing to the other party and shall conform to any applicable requirements of the arbitration provision set forth in the Prime Contract. The demand for arbitration shall be made within a reasonable time after written notice of the claim, dispute or other matter in question has been given, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim dispute or other matter in question would be barred by applicable provisions under the Prime Contract or any statute of limitations or repose. The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. The arbitration proceedings shall be held at such place as the parties may mutually agree upon, or in the event of their failure to agree, they shall be held in Salt Lake City, Utah unless otherwise required by the Prime Contract or applicable law, in which case such proceedings shall be commenced and maintained in the state in which the Project is located.

10.3.2 To the extent not prohibited by the Prime Contract or by their contracts with others, the claims and disputes of Owner, Contractor, Subcontractor and other subcontractors, suppliers and/or material men involving a common question of fact or law shall be heard by the same mediators or arbitrators in a single proceeding. In this event, it shall be the responsibility of Subcontractor to prepare and present Subcontractor’s case to the extent the proceedings are related to the Subcontract Documents. If Contractor is a party to litigation, arbitration or mediation with Owner or others regarding matters relating to the Subcontract Documents, Subcontractor shall be bound by the result of such proceedings to the same degree as Contractor.

10.4 Subcontractor shall give written notice to Contractor as soon as reasonably practicable, but in no case longer than twenty-one (21) calendar days after discovery by Subcontractor of the occurrence of the event giving rise to any claim by Subcontractor. Subcontractor shall submit with its claim such information, costs, documents and data in such detail and specificity as may be required by Contractor to justify and substantiate such claims. The parties acknowledge that timely notice is required so that all matters can be remedied or resolved promptly. If Subcontractor fails to comply with such notice requirement, then the claim for which notice is not timely given may, in the sole discretion of Contractor, be considered waived by Subcontractor.

10.5 Pending final resolution of any such dispute, Subcontractor shall proceed diligently with the performance of the Subcontractor Work including, if requested by Contractor, any disputed portion, and maintain the Work Progress Schedule, and Contractor shall make all payments required hereunder in accordance with the Subcontract Documents.

11. TERMINATION

11.1 If Owner for any cause or without cause (including force majeure events) terminates or suspends or substantially changes the scope of the Subcontractor Work under the Prime Contract, Contractor may order Subcontractor to terminate or suspend its performance of the Subcontractor Work and Contractor shall not be liable in any way for any such termination or suspension, provided, however,

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that in the event that Contractor is compensated by Owner by reason of such termination or suspension, then in such event Contractor shall pay to Subcontractor an equitable portion of said sum based upon the Subcontractor Work performed.

11.2 In addition to Contractor's right to terminate or suspend the Subcontractor Work under Section 11.1 hereof, Contractor may, at any time and for any reason or for no reason, terminate or suspend performance of the Subcontractor Work by Subcontractor at Contractor's convenience, with or without cause (including force majeure events), by delivery of written notice to Subcontractor. Upon receipt of such notice, Subcontractor shall, unless the notice directs otherwise, immediately discontinue the Subcontractor Work and placing of orders for materials, facilities and supplies in connection with the performance of the Subcontract Documents, and shall, unless otherwise directed, make every effort to procure cancellation of all existing orders or contracts upon terms satisfactory to Contractor, or at the option of Contractor, give Contractor the right to assume those obligations directly, including all benefits to be derived therefrom. Subcontractor shall thereafter do only such Subcontractor Work as may be necessary to preserve and protect the Subcontractor Work already in progress and to protect material and equipment on the job site or in transit thereto.

11.3 Upon such termination, as its exclusive remedy Subcontractor shall be entitled to payment in accordance with Section 2 hereof, only as follows: (1) the actual cost of the Subcontractor Work completed in strict conformity with the Subcontract Documents but not paid for as of the termination date, including any mark-up thereto for overhead and profit at the rates provided for in the Subcontract Documents; plus (2) such other unavoidable actual termination costs incurred by Subcontractor and approved in advance by Contractor; plus (3) reasonable overhead and profit on the amounts set forth in subpart (2) of this Section 11.3, such overhead and profit not to exceed in any event the percentage mark-up for overhead and profit in the Prime Contract or in the Work Authorization Notice, whichever is less. Termination costs to be paid to Subcontractor shall be subject to Contractor's right to withhold as set forth herein, and subject to all other terms of the Subcontract Documents, including but not limited to Section 2.7 hereof.

12. EQUAL EMPLOYMENT OPPORTUNITY

12.1 During the performance of the Subcontractor Work, Subcontractor shall not discriminate against any employee because of race, color, creed, or national origin as outlined in the Equal Opportunity Clause of the Regulations of Executive Order 10924 of March 6, 1961 as amended by Executive Order 11114 of June 22, 1963. The executive order and the respective regulations are made a part of the Subcontract Documents by reference.

12.2 Subcontractor shall fully comply with the requirements of (1) the Equal Employment Opportunity Clause contained in Section 202 of Executive Order 11246 (1965) and as contained in and required by 41 CFR 60.1-4 "Equal Opportunity Duties of Government Contractors" (1978) CFR 60-4; (2) Section 402 of the Vietnam Era Veterans Readjustment Act of 1974; and (3) Section 503 of the Rehabilitation Act of 1973, EEO Duties of Government Contractors (all of which are incorporated herein by reference) in all instances where such requirements are applicable.

12.3 Subcontractor shall fully comply with all wage-hour and equal opportunity regulations and shall take vigorous affirmative action, including the submittal of a written affirmative action program, to employ minority employees whenever so required -- and is encouraged to do so in the absence of such requirements.

13. SAFETY

13.1 Subcontractor shall provide its employees with safe appliances and equipment, provide them with a safe place to work and perform the Subcontractor Work in a safe manner with high regard for the safety of its employees and others. Subcontractor shall take all necessary precautions to secure and protect the Subcontractor Work, to protect persons on the Project, and to protect the property of Owner, and others, and property on or near to the Project site, from damage, loss, injury, or death caused by Subcontractor's operations, and Subcontractor shall be liable for all such injuries, deaths, and damages and all resulting losses incurred. Further, in performing the Subcontractor Work, Subcontractor shall comply with and conform to all safety regulations and policies issued by Contractor, construction manager (if any), and/or Owner, and all applicable safety and health laws, ordinances, requirements, rules and regulations promulgated by any governmental authority, including without limitation, the requirements of Occupational Safety Health Act of 1972, as amended from time to time ("**OSHA**"), and regulatory standards or state plan equivalents. Subcontractor shall indemnify and hold harmless Contractor for, from and against any and all liabilities, losses, damages, costs claims, awards, judgments, fines, penalties, and expenses (including, without limitations, litigation expenses, reasonable attorneys' fees, claims or liabilities for harm to person or property, OSHA fines, and OSHA penalties) arising out of or connected with Subcontractor's failure to comply with all such laws, ordinances, requirements, rules and regulations, or Subcontractor's failure to fulfill the covenants or obligations set forth in this Section

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13. Without limiting the foregoing, Subcontractor shall continuously inspect the Subcontractor Work to discover and determine any conditions which pose a risk of bodily harm to its employees or others or a risk of damage to property, including the property of Owner and Contractor. Subcontractor shall promptly take all precautions which are necessary and adequate to protect against and/or correct any such conditions upon their discovery. Subcontractor shall cooperate and comply with all safety measures initiated by Contractor, shall comply with the latest editions of The Layton Companies Safety Handbook, any occupational safety and health acts and all other applicable laws for the safety of persons or property, and shall be totally responsible for the safety of both persons and equipment. If a fine is levied, the responsible party will be liable for payment of any fines. If such fines are not promptly paid by Subcontractor, Contractor may pay for and deduct the amount of the fine due from any moneys then or subsequently owing to Subcontractor under the Subcontract Documents.

13.1.1 Subcontractor shall immediately inform Contractor of any notices, warnings, communications or asserted violations issued by any government body related in any way to Subcontractor's performance of the Subcontract Documents and shall provide Contractor with a copy thereof. Subcontractor shall also immediately advise Contractor of any scheduled or unscheduled governmental inspections or site visits, and the results of such inspections and/or site visits related to the Subcontractor Work and shall provide Contractor with any copies thereof. Where advance notice is given of an inspection or site visit, Subcontractor shall immediately advise Contractor in advance of such inspection or visit. Where no advance notice is given, Subcontractor shall immediately advise Contractor of such inspection or site visit upon the arrival of the inspector.

13.1.2 Contractor may deny access to the site by Subcontractor and its employees if, in Contractor's sole judgment, such action is justified on the basis of safety. Contractor may also suspend work at any time or terminate the Subcontract Documents for cause in the event of Subcontractor's repeated failure to adhere to safety laws and regulations or Contractor's established on-site safety procedures. The foregoing reservation of such rights shall not give rise to a duty by Contractor to exercise such right for the benefit of any person and shall not relieve Subcontractor of its obligations for safety hereunder.

13.1.3 Subcontractor shall maintain current records covering safety and health including training for employees working on the project, such records to be kept and maintained by Subcontractor for the duration of the Subcontract Documents. Subcontractor shall make such records available to Contractor for review at any time and from time to time upon Contractor's request for a period of at least three (3) years after the completion of the Project.

13.2 If hazardous substances of a type of which an employer is required by law to notify its employees are being used on the site by Subcontractor or its Sub-subcontractor(s), or anyone directly or indirectly employed by them, Subcontractor shall, prior to harmful exposure of any employees or persons on the site to such substance, give written notice of the chemical composition thereof to Contractor in sufficient detail and time to permit compliance with such laws by Contractor, other subcontractors and other employers on the site.

13.3 In the event Subcontractor encounters on the site material reasonably believed to be hazardous materials including, but not limited to, asbestos or polychlorinated biphenyl ("**PCB**") which has not been rendered harmless, Subcontractor shall immediately stop work in the area affected and report the condition to Contractor in writing. The Subcontractor Work in the affected area shall resume in the absence of all hazardous materials including, but not limited to, asbestos or PCB or when it has been rendered harmless, by written agreement between Contractor and Subcontractor, or in accordance with a final determination by the Architect on which arbitration has not been demanded, or by arbitration as provided in the Subcontract Documents. Subcontractor shall not be required to perform, without its consent, any work relating to all hazardous materials, including but not limited to asbestos or PCB.

14. **ADDITIONAL PROVISIONS**

14.1 This Agreement shall inure to the benefit of and shall be binding upon Contractor and Subcontractor and their respective successors and permitted assigns. Subcontractor shall not subcontract, delegate, transfer, pledge, or assign its rights or obligations under the Subcontract Documents or any part thereof without written consent of Contractor in each instance, which may be withheld or conditional in Contractor's sole discretion. Any such subcontracting, assignment or hypothecation of any amount due or payable hereunder without the prior written consent of Contractor in each instance shall be void. Contractor may assign its rights under the Subcontract Documents at any time in Contractor's sole discretion, and Subcontractor releases Contractor from any and all liabilities related hereto to the extent assumed by an assignee thereof.

14.2 Subcontractor hereby agrees to follow and adhere to any and all applicable laws, codes, regulations, ordinances and standards whether federal, state, county or city.

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14.3 As-built drawings, when required, shall be accurately maintained by Subcontractor for its portion of the work and turned over to Contractor in an acceptable manner before final payment is made to Subcontractor.

14.4 Except as may be provided in the Prime Contract, the validity, interpretation and performance of the Subcontract Documents, including any alleged breach thereof, shall be governed by and construed under the laws of the State of Utah, without regard to the conflicts or choice of law principles thereof (unless applicable law requires the application of the laws of the State in which the Project is located, in which case the validity, interpretation and performance of the Subcontract Documents, including any alleged breach thereof, shall be governed and construed under the laws of the State where the Project is located). Subject to the arbitration provisions hereof, Subcontractor hereby consents to the personal jurisdiction of the courts of the State of Utah for any dispute involving the Subcontract Documents and, subject to the provisions of Section 10 hereof, any action arising out of the Subcontract Documents shall be commenced and maintained exclusively in the courts of the State of Utah unless applicable law requires that the action be commenced and maintained exclusively in the courts of the jurisdiction where the Project is located.

14.5 Unless otherwise indicated in the Work Authorization Notice, all notices required or desired under or in connection with the Subcontract Documents shall be sufficient if given by certified mail, return receipt requested or receipted facsimile transmission directed to a party at the address of the party stated in the Work Authorization Notice or Master Subcontract.

14.6 Neither written acceptance of the Subcontractor Work, assent, or acquiescence by Contractor to Subcontractor's late performance, or review, consent, approval, inspection, or notice on the part of Contractor given or required to be given by the Subcontract Documents, shall be deemed to diminish or extinguish, or operate as relieving Subcontractor from, any covenant, obligation, or liability of Subcontractor to be performed or fulfilled, all of which covenants, obligations, and liabilities shall continue to be binding upon Subcontractor until the same have been fulfilled or fully discharged by Subcontractor as provided in the Subcontract Documents. Either party may, by notice delivered in the manner provided in the Subcontract Documents, but shall be under no obligation to, waive any of its rights or conditions to its rights hereunder, or any duty, obligation, or covenant of the other party. Such waiver shall not affect or alter the other provisions of the Subcontract Documents.

14.7 Nothing contained in the Subcontract Documents shall create a contractual relationship with or a cause of action in favor of a third party against either Owner, Contractor, or Subcontractor. Furthermore, the Subcontract Documents are not intended and shall not be construed to create any rights in any parties other than Contractor and Subcontractor, and no other person shall have any rights as a third party beneficiary hereunder.

14.8 If more than one person or entity is named in the Work Authorization Notice as Subcontractor, their obligations shall be joint and several. The parties and their respective assigns, legal representatives and other successors in interest will be bound hereby.

14.9 If any part, term or provision of this Agreement is held by final judgment of any arbitrator or court of competent jurisdiction to be illegal, invalid or unenforceable, the validity of the remaining portions or provisions shall not be impaired or affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be illegal, invalid or unenforceable.

14.10 Any reference to Articles, Sections, Exhibits and Appendices are, unless otherwise stated, references to Articles, Sections, Exhibits and Appendices of or to these General Terms and Conditions.

14.11 Any obligations and duties, which by their nature extend beyond the expiration or earlier termination of this Agreement and/or the completion of each Project shall survive any such expiration or termination and remain in effect.

END OF GENERAL TERMS AND CONDITIONS

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INDEMNIFICATION AGREEMENT

Commercial Sewer Connection Agreement — Point of the Mountain Event Venue

This **INDEMNIFICATION AGREEMENT** (this “Agreement”) is entered into as of the ____ day of _____, 20____, by and among **POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Utah (“**PID**”); **STATE OF UTAH DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT**, an agency of the State of Utah (“**DFCM**”); and **POINT OF THE MOUNTAIN STATE LAND AUTHORITY**, an independent entity of the State of Utah (“**POMSLA**”). **PID**, **DFCM**, and **POMSLA** may be referred to individually as a “Party” and collectively as the “Parties.” **DFCM** and **POMSLA** may be referred to collectively as the “Indemnitees.”

RECITALS

- A. **POMSLA** is an independent entity of the State of Utah with development-related responsibility for certain real property in Draper City, Salt Lake County, Utah, commonly known as “The Point” (formerly the site of the Utah State Prison), and **DFCM** is an agency of the State of Utah that holds or administers state real property interests at The Point, including the real property described in the **CSCA** (as defined below);
- B. **PID** is a quasi-municipal corporation and political subdivision of the State of Utah organized, among other purposes, to plan, finance, and provide for the construction, acquisition, and delivery of public infrastructure serving the portion of The Point known as Point Phase 1;
- C. Pursuant to that certain Ground Lease Agreement dated June 12, 2025, by and between **POMSLA**, as lessor, and **PID**, as lessee (the “Ground Lease”), **POMSLA** leased to **PID** that certain real property consisting of approximately 4.74 acres and more particularly described in the Ground Lease, being Lot 5, The Point Phase 1 (the “Leased Premises”), for the development and operation of an event center, parking area, and related and ancillary uses (the “Event Venue Project”);
- D. The development of the Event Venue Project requires the connection of sewer improvements serving the Leased Premises to the sanitary sewer system owned and operated by Jordan Basin Improvement District, a local district and political subdivision of the State of Utah (“**JBID**”);
- E. Because **PID**'s interest in the Leased Premises is limited to its leasehold estate under the Ground Lease, **JBID** has required that the agreement governing such sewer connection be executed by the record owner(s) of the Leased Premises, rather than by **PID**;
- F. Accordingly, **DFCM**, as “Owner,” and **POMSLA** have executed, or are concurrently executing, that certain Commercial Sewer Connection Agreement with **JBID** relating to the Point of the Mountain Event Venue project (together with the exhibits thereto, the

“CSCA”), a copy of which is attached as Exhibit A, pursuant to which DFCM (and POMSLA, as a signatory) have assumed certain obligations to JBID, including without limitation the design, construction, and installation of Sewer Improvements, the payment of impact fees and other fees and charges, and an indemnification of JBID with respect to Pretreatment Facilities, all as more particularly described in the CSCA;

G. The Sewer Improvements and the other obligations under the CSCA are being undertaken for the benefit of the Event Venue Project, and DFCM and POMSLA have agreed to execute the CSCA as an accommodation to PID and the Event Venue Project, on the condition that PID indemnify DFCM and POMSLA for the obligations and liabilities they assume under the CSCA; and

H. PID is willing to provide such indemnification on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. **Definitions; Incorporation of Recitals.** The recitals set forth above are incorporated into this Agreement by this reference. As used in this Agreement, “Claims” means any and all obligations, liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees. “CSCA” means the Commercial Sewer Connection Agreement described in Recital F, in the form attached as Exhibit A, together with any amendments thereto approved in writing by PID.
2. **Indemnification.** Subject to Section 3 below, PID shall indemnify, defend, and hold harmless DFCM and POMSLA, and their respective officers, employees, agents, and representatives, from and against any and all Claims arising out of, relating to, or in connection with the CSCA, including without limitation:
 - (i) payment when due of all impact fees, connection fees, service charges, and other fees and charges payable to JBID under the CSCA;
 - (ii) all costs of designing, constructing, installing, testing, connecting, maintaining, and repairing the Sewer Improvements and any Pretreatment Facilities required under the CSCA;
 - (iii) the indemnification obligations owed by DFCM to JBID under Section 3(d) of the CSCA relating to Pretreatment Facilities, and the lateral ownership, maintenance, and sewer-backup responsibilities described in Section 3(c) of the CSCA;
 - (iv) any liability, cost, or expense arising from a default by DFCM or POMSLA under the CSCA, including attorneys' fees payable to JBID under Section 6 of the CSCA; and

- (v) any other obligation or liability of DFCM or POMSLA arising under or in connection with the CSCA.
3. **Limitations on Indemnification.** PID's indemnification obligations under Section 2 shall not extend to Claims to the extent arising from the gross negligence or willful misconduct of DFCM or POMSLA, or from the breach by DFCM or POMSLA of an obligation under the CSCA that DFCM or POMSLA has agreed, in a writing separate from this Agreement, to perform independent of PID's development of the Event Venue Project.
 4. **Representations of PID.** PID represents and warrants to DFCM and POMSLA that: (a) PID has reviewed the CSCA and is familiar with the obligations imposed on DFCM and POMSLA thereunder; (b) PID has full power and authority to enter into and perform its obligations under this Agreement; and (c) the individual executing this Agreement on behalf of PID is duly authorized to do so.
 5. **Direct Payment; Right to Perform.** At PID's election, PID may pay amounts due to JBID under the CSCA, or perform other obligations of DFCM or POMSLA under the CSCA, directly to or in favor of JBID. Any such direct payment or performance by PID shall not relieve PID of its indemnification obligations under this Agreement with respect to any amount or obligation not fully and timely paid or performed.
 6. **Notice and Defense of Claims.** Promptly after DFCM or POMSLA (each, an "Indemnatee") receives notice of any Claim, or any demand, invoice, or notice of default from JBID under the CSCA, the Indemnatee shall provide written notice thereof to PID; provided that the failure to provide such notice promptly shall not relieve PID of its obligations under this Agreement except to the extent PID is materially prejudiced by the delay. PID shall have the right, at its sole cost and expense and with counsel reasonably acceptable to the applicable Indemnatee, to assume and control the defense or settlement of any Claim; provided that PID shall not settle or compromise any Claim that imposes any liability, obligation, or admission on an Indemnatee without that Indemnatee's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Each Indemnatee shall have the right to participate in the defense of any Claim with counsel of its own choosing, at its own expense, unless the Indemnatee reasonably determines that a conflict of interest exists between the Indemnatee and PID, in which case PID shall pay the reasonable fees and expenses of such separate counsel.
 7. **Reimbursement.** If an Indemnatee pays any amount, or incurs any cost or expense, that is subject to indemnification under this Agreement, PID shall reimburse the Indemnatee within thirty (30) days after written demand therefor, together with reasonably detailed supporting documentation.
 8. **Term.** This Agreement shall be effective as of the effective date of the CSCA and shall continue in full force and effect until all obligations of DFCM and POMSLA under the CSCA have been fully paid, performed, and discharged, or until the CSCA is terminated and DFCM and POMSLA have no further obligation or liability thereunder. PID's obligations under this Agreement shall survive any expiration or termination of this Agreement with respect to Claims arising, or obligations accruing, before such expiration or termination.

9. **Assignment.** PID may assign its rights and obligations under this Agreement, in whole or in part, to any Subtenant or Transferee (as such terms are used in the Ground Lease referenced above) or other successor in interest to PID's leasehold estate in the Leased Premises, without the consent of DFCM or POMSLA, provided PID gives DFCM and POMSLA prior written notice of the assignment. Except as provided in the preceding sentence, this Agreement may not be assigned by any Party without the prior written consent of the other Parties, which consent shall not be unreasonably withheld.
10. **Amendment.** This Agreement may be amended only by a written instrument signed by all Parties.
11. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without regard to conflict-of-laws principles. Venue for any action arising under this Agreement shall lie in a court of competent jurisdiction in Salt Lake County, Utah, unless otherwise required by law.
12. **Governmental Immunity.** Nothing in this Agreement shall be construed as a waiver of any protection, limitation, defense, or immunity available to PID, DFCM, or POMSLA under the Governmental Immunity Act of Utah, Title 63G, Chapter 7, Utah Code, or other applicable law.
13. **Severability.** If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect, and the invalid or unenforceable provision shall be reformed to the minimum extent necessary to render it valid and enforceable in a manner consistent with the Parties' intent.
14. **Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Electronic signatures shall be treated as original signatures for all purposes.
15. **Notices.** All notices required or permitted under this Agreement shall be in writing and shall be delivered personally, by certified U.S. mail with return receipt requested, or by nationally recognized overnight courier, to the following addresses (or such other address as a Party may designate by written notice to the others):

To PID:

Point Phase 1 Public Infrastructure District No. 1

c/o White Bear Ankele Tanaka & Waldron

350 E. 400 S., #2301

Salt Lake City, Utah 84111

Attn: [■ NAME ■]

Email: [■ EMAIL ■]

To DFCM:

Division of Facilities Construction and Management

4315 South 2700 West, Floor 3

Taylorsville, Utah 84129-2128

Attn: [■ NAME, TITLE ■]

To POMSLA:

Point of the Mountain State Land Authority

P.O. Box 692

Draper, Utah 84020

Attn: Michael Ambre, Executive Director

Email: michaelambre@utah.gov

With a copy to:

Ballard Spahr LLP

201 South Main Street, Suite 800

Salt Lake City, Utah 84111

Attn: Steven Mehr

16. **Attorneys' Fees.** In the event of any litigation between the Parties concerning the subject matter of this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party its reasonable costs and attorneys' fees incurred in such litigation, in addition to any other relief awarded.
17. **Further Assurances.** Each Party shall execute and deliver such further documents and instruments, and take such further actions, as may be reasonably necessary to carry out the purposes and intent of this Agreement.
18. **No Waiver.** No waiver of any provision of this Agreement shall be deemed a waiver of any other provision, nor shall a waiver in one instance constitute a continuing waiver or a waiver in any other instance. No waiver shall be effective unless in writing and signed by the waiving Party.

19. **No Third-Party Beneficiaries.** This Agreement is entered into solely for the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement is intended to, or shall, create any right or benefit in favor of JBID or any other third party, or modify any right or obligation of DFCM or POMSLA to JBID under the CSCA.
20. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties regarding the subject matter of this Agreement and supersedes all prior discussions, understandings, or agreements regarding that subject matter. This Agreement may be amended only as provided in Section 10 above.

IN WITNESS WHEREOF, the Parties have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first written above.

“PID”

POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Utah

ATTEST:

[■ NAME ■], Secretary

By: _____

Jay Hardy, Chair

APPROVED AS TO FORM:

Attorney for the PID

“DFCM”

STATE OF UTAH DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, an
agency of the State of Utah

By: _____

[■ NAME ■], [■ TITLE ■]

APPROVED AS TO FORM:

[■ NAME ■], Assistant Attorney General

“POMSLA”

POINT OF THE MOUNTAIN STATE LAND AUTHORITY, an independent entity of the State of Utah

By: _____

Michael Ambre, Executive Director

EXHIBIT A

Commercial Sewer Connection Agreement (Point of the Mountain Event Venue)

[Attach copy of the fully executed Commercial Sewer Connection Agreement between DFCM, POMSLA, and JBID relating to the Point of the Mountain Event Venue project.]

INDEMNIFICATION AGREEMENT

Commercial Sewer Connection Agreement — The Point Promenade

This **INDEMNIFICATION AGREEMENT** (this “Agreement”) is entered into as of the ____ day of _____, 20____, by and among **POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Utah (“**PID**”); **STATE OF UTAH DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT**, an agency of the State of Utah (“**DFCM**”); and **POINT OF THE MOUNTAIN STATE LAND AUTHORITY**, an independent entity of the State of Utah (“**POMSLA**”). **PID**, **DFCM**, and **POMSLA** may be referred to individually as a “Party” and collectively as the “Parties.” **DFCM** and **POMSLA** may be referred to collectively as the “Indemnitees.”

RECITALS

- A. **POMSLA** is an independent entity of the State of Utah with development-related responsibility for certain real property in Draper City, Salt Lake County, Utah, commonly known as “The Point” (formerly the site of the Utah State Prison), and **DFCM** is an agency of the State of Utah that holds or administers state real property interests at The Point, including the real property described in the **CSCA** (as defined below);
- B. **PID** is a quasi-municipal corporation and political subdivision of the State of Utah organized, among other purposes, to plan, finance, and provide for the construction, acquisition, and delivery of public infrastructure serving the portion of The Point known as Point Phase 1;
- C. **PID** holds a leasehold or other interest in that certain real property more particularly described as Lots 14 and 15, The Point Phase 1 (the “Leased Premises”), pursuant to a ground lease or other agreement between **POMSLA**, as lessor, and **PID**, as lessee [TO BE CONFIRMED — IDENTIFY GROUND LEASE OR OTHER GOVERNING AGREEMENT FOR THIS PARCEL, IF ANY, INCLUDING DATE] (the “Ground Lease”), for the development and operation of retail and related and ancillary uses (the “Promenade Project”);
- D. The development of the Promenade Project requires the connection of sewer improvements serving the Leased Premises to the sanitary sewer system owned and operated by Jordan Basin Improvement District, a local district and political subdivision of the State of Utah (“**JBID**”);
- E. Because **PID**'s interest in the Leased Premises is limited to its leasehold or other interest referenced above, **JBID** has required that the agreement governing such sewer connection be executed by the record owner(s) of the Leased Premises, rather than by **PID**;
- F. Accordingly, **DFCM**, as “Owner,” and **POMSLA** have executed, or are concurrently executing, that certain Commercial Sewer Connection Agreement with **JBID** relating to

The Point Promenade project (together with the exhibits thereto, the “CSCA”), a copy of which is attached as Exhibit A, pursuant to which DFCM (and POMSLA, as a signatory) have assumed certain obligations to JBID, including without limitation the design, construction, and installation of Sewer Improvements, the payment of impact fees and other fees and charges, and an indemnification of JBID with respect to Pretreatment Facilities, all as more particularly described in the CSCA;

- G. The Sewer Improvements and the other obligations under the CSCA are being undertaken for the benefit of the Promenade Project, and DFCM and POMSLA have agreed to execute the CSCA as an accommodation to PID and the Promenade Project, on the condition that PID indemnify DFCM and POMSLA for the obligations and liabilities they assume under the CSCA; and
- H. PID is willing to provide such indemnification on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. **Definitions; Incorporation of Recitals.** The recitals set forth above are incorporated into this Agreement by this reference. As used in this Agreement, “Claims” means any and all obligations, liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees. “CSCA” means the Commercial Sewer Connection Agreement described in Recital F, in the form attached as Exhibit A, together with any amendments thereto approved in writing by PID.
2. **Indemnification.** Subject to Section 3 below, PID shall indemnify, defend, and hold harmless DFCM and POMSLA, and their respective officers, employees, agents, and representatives, from and against any and all Claims arising out of, relating to, or in connection with the CSCA, including without limitation:
 - (i) payment when due of all impact fees, connection fees, service charges, and other fees and charges payable to JBID under the CSCA;
 - (ii) all costs of designing, constructing, installing, testing, connecting, maintaining, and repairing the Sewer Improvements and any Pretreatment Facilities required under the CSCA;
 - (iii) the indemnification obligations owed by DFCM to JBID under Section 3(d) of the CSCA relating to Pretreatment Facilities, and the lateral ownership, maintenance, and sewer-backup responsibilities described in Section 3(c) of the CSCA;
 - (iv) any liability, cost, or expense arising from a default by DFCM or POMSLA under the CSCA, including attorneys' fees payable to JBID under Section 6 of the CSCA; and

- (v) any other obligation or liability of DFCM or POMSLA arising under or in connection with the CSCA.
3. **Limitations on Indemnification.** PID's indemnification obligations under Section 2 shall not extend to Claims to the extent arising from the gross negligence or willful misconduct of DFCM or POMSLA, or from the breach by DFCM or POMSLA of an obligation under the CSCA that DFCM or POMSLA has agreed, in a writing separate from this Agreement, to perform independent of PID's development of the Promenade Project.
 4. **Representations of PID.** PID represents and warrants to DFCM and POMSLA that: (a) PID has reviewed the CSCA and is familiar with the obligations imposed on DFCM and POMSLA thereunder; (b) PID has full power and authority to enter into and perform its obligations under this Agreement; and (c) the individual executing this Agreement on behalf of PID is duly authorized to do so.
 5. **Direct Payment; Right to Perform.** At PID's election, PID may pay amounts due to JBID under the CSCA, or perform other obligations of DFCM or POMSLA under the CSCA, directly to or in favor of JBID. Any such direct payment or performance by PID shall not relieve PID of its indemnification obligations under this Agreement with respect to any amount or obligation not fully and timely paid or performed.
 6. **Notice and Defense of Claims.** Promptly after DFCM or POMSLA (each, an "Indemnatee") receives notice of any Claim, or any demand, invoice, or notice of default from JBID under the CSCA, the Indemnatee shall provide written notice thereof to PID; provided that the failure to provide such notice promptly shall not relieve PID of its obligations under this Agreement except to the extent PID is materially prejudiced by the delay. PID shall have the right, at its sole cost and expense and with counsel reasonably acceptable to the applicable Indemnatee, to assume and control the defense or settlement of any Claim; provided that PID shall not settle or compromise any Claim that imposes any liability, obligation, or admission on an Indemnatee without that Indemnatee's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Each Indemnatee shall have the right to participate in the defense of any Claim with counsel of its own choosing, at its own expense, unless the Indemnatee reasonably determines that a conflict of interest exists between the Indemnatee and PID, in which case PID shall pay the reasonable fees and expenses of such separate counsel.
 7. **Reimbursement.** If an Indemnatee pays any amount, or incurs any cost or expense, that is subject to indemnification under this Agreement, PID shall reimburse the Indemnatee within thirty (30) days after written demand therefor, together with reasonably detailed supporting documentation.
 8. **Term.** This Agreement shall be effective as of the effective date of the CSCA and shall continue in full force and effect until all obligations of DFCM and POMSLA under the CSCA have been fully paid, performed, and discharged, or until the CSCA is terminated and DFCM and POMSLA have no further obligation or liability thereunder. PID's obligations under this Agreement shall survive any expiration or termination of this Agreement with respect to Claims arising, or obligations accruing, before such expiration or termination.

9. **Assignment.** PID may assign its rights and obligations under this Agreement, in whole or in part, to any Subtenant or Transferee (as such terms are used in the Ground Lease referenced above) or other successor in interest to PID's leasehold estate in the Leased Premises, without the consent of DFCM or POMSLA, provided PID gives DFCM and POMSLA prior written notice of the assignment. Except as provided in the preceding sentence, this Agreement may not be assigned by any Party without the prior written consent of the other Parties, which consent shall not be unreasonably withheld.
10. **Amendment.** This Agreement may be amended only by a written instrument signed by all Parties.
11. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without regard to conflict-of-laws principles. Venue for any action arising under this Agreement shall lie in a court of competent jurisdiction in Salt Lake County, Utah, unless otherwise required by law.
12. **Governmental Immunity.** Nothing in this Agreement shall be construed as a waiver of any protection, limitation, defense, or immunity available to PID, DFCM, or POMSLA under the Governmental Immunity Act of Utah, Title 63G, Chapter 7, Utah Code, or other applicable law.
13. **Severability.** If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect, and the invalid or unenforceable provision shall be reformed to the minimum extent necessary to render it valid and enforceable in a manner consistent with the Parties' intent.
14. **Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Electronic signatures shall be treated as original signatures for all purposes.
15. **Notices.** All notices required or permitted under this Agreement shall be in writing and shall be delivered personally, by certified U.S. mail with return receipt requested, or by nationally recognized overnight courier, to the following addresses (or such other address as a Party may designate by written notice to the others):

To PID:

Point Phase 1 Public Infrastructure District No. 1

c/o White Bear Ankele Tanaka & Waldron

350 E. 400 S., #2301

Salt Lake City, Utah 84111

Attn: [■ NAME ■]

Email: [■ EMAIL ■]

To DFCM:

Division of Facilities Construction and Management

4315 South 2700 West, Floor 3

Taylorsville, Utah 84129-2128

Attn: [■ NAME, TITLE ■]

To POMSLA:

Point of the Mountain State Land Authority

P.O. Box 692

Draper, Utah 84020

Attn: Michael Ambre, Executive Director

Email: michaelambre@utah.gov

With a copy to:

Ballard Spahr LLP

201 South Main Street, Suite 800

Salt Lake City, Utah 84111

Attn: Steven Mehr

16. **Attorneys' Fees.** In the event of any litigation between the Parties concerning the subject matter of this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party its reasonable costs and attorneys' fees incurred in such litigation, in addition to any other relief awarded.
17. **Further Assurances.** Each Party shall execute and deliver such further documents and instruments, and take such further actions, as may be reasonably necessary to carry out the purposes and intent of this Agreement.
18. **No Waiver.** No waiver of any provision of this Agreement shall be deemed a waiver of any other provision, nor shall a waiver in one instance constitute a continuing waiver or a waiver in any other instance. No waiver shall be effective unless in writing and signed by the waiving Party.

19. **No Third-Party Beneficiaries.** This Agreement is entered into solely for the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement is intended to, or shall, create any right or benefit in favor of JBID or any other third party, or modify any right or obligation of DFCM or POMSLA to JBID under the CSCA.
20. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties regarding the subject matter of this Agreement and supersedes all prior discussions, understandings, or agreements regarding that subject matter. This Agreement may be amended only as provided in Section 10 above.

IN WITNESS WHEREOF, the Parties have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first written above.

“PID”

POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Utah

ATTEST:

[■ NAME ■], Secretary

By: _____

Jay Hardy, Chair

APPROVED AS TO FORM:

Attorney for the PID

“DFCM”

STATE OF UTAH DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, an
agency of the State of Utah

By: _____

[■ NAME ■], [■ TITLE ■]

APPROVED AS TO FORM:

[■ NAME ■], Assistant Attorney General

“POMSLA”

POINT OF THE MOUNTAIN STATE LAND AUTHORITY, an independent entity of the State of Utah

By: _____

Michael Ambre, Executive Director

EXHIBIT A

Commercial Sewer Connection Agreement (The Point Promenade)

[Attach copy of the fully executed Commercial Sewer Connection Agreement between DFCM, POMSLA, and JBID relating to The Point Promenade project.]

INDEMNIFICATION AGREEMENT

Impact Fee Agreement — Point of the Mountain Event Venue

This **INDEMNIFICATION AGREEMENT** (this “Agreement”) is entered into as of the ____ day of _____, 20____, by and among **POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Utah (“**PID**”); **STATE OF UTAH DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT**, an agency of the State of Utah (“**DFCM**”); and **POINT OF THE MOUNTAIN STATE LAND AUTHORITY**, an independent entity of the State of Utah (“**POMSLA**”). **PID**, **DFCM**, and **POMSLA** may be referred to individually as a “Party” and collectively as the “Parties.” **DFCM** and **POMSLA** may be referred to collectively as the “Indemnitees.”

RECITALS

- A. **POMSLA** is an independent entity of the State of Utah with development-related responsibility for certain real property in Draper City, Salt Lake County, Utah, commonly known as “The Point” (formerly the site of the Utah State Prison), and **DFCM** is an agency of the State of Utah that holds or administers state real property interests at The Point, including the real property described in the IFA (as defined below);
- B. **PID** is a quasi-municipal corporation and political subdivision of the State of Utah organized, among other purposes, to plan, finance, and provide for the construction, acquisition, and delivery of public infrastructure serving the portion of The Point known as Point Phase 1;
- C. Pursuant to that certain Ground Lease Agreement dated June 12, 2025, by and between **POMSLA**, as lessor, and **PID**, as lessee (the “Ground Lease”), **POMSLA** leased to **PID** that certain real property consisting of approximately 4.74 acres and more particularly described in the Ground Lease, being Lot 5, The Point Phase 1 (the “Leased Premises”), for the development and operation of an event center, parking area, and related and ancillary uses (the “Event Venue Project”);
- D. The development of the Event Venue Project requires connection to the sanitary sewer system owned by Jordan Basin Improvement District, a local district and political subdivision of the State of Utah (“**JBID**”), and the payment of impact fees calculated on the basis of estimated sewage flow from the Event Venue Project;
- E. Because **PID**'s interest in the Leased Premises is limited to its leasehold estate under the Ground Lease, **JBID** has required that the agreement governing such impact fees be executed by the record owner(s) of the Leased Premises, rather than by **PID**;
- F. Accordingly, **DFCM**, as “Developer,” and **POMSLA** have executed, or are concurrently executing, that certain Impact Fee Agreement with **JBID** relating to the Point of the Mountain Event Venue project (together with the exhibits thereto, the “IFA”), a copy of

which is attached as Exhibit A, pursuant to which DFCM has agreed to pay JBID an initial impact fee of \$1,267,085.40 (calculated at 42,420 gallons per day at \$29.87 per gallon), to install and maintain a water meter, to provide monthly meter readings, to pay monthly service charges, and to pay or receive a refund of additional impact fees based on actual demand, all as more particularly described in the IFA;

G. The obligations under the IFA are being undertaken for the benefit of the Event Venue Project, and DFCM and POMSLA have agreed to execute the IFA as an accommodation to PID and the Event Venue Project, on the condition that PID indemnify DFCM and POMSLA for the obligations and liabilities they assume under the IFA; and

H. PID is willing to provide such indemnification on the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. **Definitions; Incorporation of Recitals.** The recitals set forth above are incorporated into this Agreement by this reference. As used in this Agreement, "Claims" means any and all obligations, liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees. "IFA" means the Impact Fee Agreement described in Recital F, in the form attached as Exhibit A, together with any amendments thereto approved in writing by PID.
2. **Indemnification.** Subject to Section 3 below, PID shall indemnify, defend, and hold harmless DFCM and POMSLA, and their respective officers, employees, agents, and representatives, from and against any and all Claims arising out of, relating to, or in connection with the IFA, including without limitation:
 - (i) payment when due of the initial impact fee of \$1,267,085.40 described in Section 1 of the IFA, and any additional impact fees payable under Section 3 of the IFA;
 - (ii) the installation, maintenance, and accurate monthly reading of the water meter required under Section 2 of the IFA;
 - (iii) payment when due of all monthly service charges billed by JBID under Section 4 of the IFA;
 - (iv) any liability, cost, or expense arising from a default by DFCM or POMSLA under the IFA; and
 - (v) any other obligation or liability of DFCM or POMSLA arising under or in connection with the IFA.
3. **Limitations on Indemnification.** PID's indemnification obligations under Section 2 shall not extend to Claims to the extent arising from the gross negligence or willful misconduct

of DFCM or POMSLA, or from the breach by DFCM or POMSLA of an obligation under the IFA that DFCM or POMSLA has agreed, in a writing separate from this Agreement, to perform independent of PID's development of the Event Venue Project. PID shall be entitled to the benefit of, and to receive directly or through DFCM and POMSLA, any refund of impact fees paid to DFCM or POMSLA by JBID under Section 3 of the IFA.

4. **Representations of PID.** PID represents and warrants to DFCM and POMSLA that: (a) PID has reviewed the IFA and is familiar with the obligations imposed on DFCM and POMSLA thereunder; (b) PID has full power and authority to enter into and perform its obligations under this Agreement; and (c) the individual executing this Agreement on behalf of PID is duly authorized to do so.
5. **Direct Payment; Right to Perform.** At PID's election, PID may pay amounts due to JBID under the IFA, or perform other obligations of DFCM or POMSLA under the IFA, directly to or in favor of JBID. Any such direct payment or performance by PID shall not relieve PID of its indemnification obligations under this Agreement with respect to any amount or obligation not fully and timely paid or performed.
6. **Notice and Defense of Claims.** Promptly after DFCM or POMSLA (each, an "Indemnatee") receives notice of any Claim, or any demand, invoice, or notice of default from JBID under the IFA, the Indemnatee shall provide written notice thereof to PID; provided that the failure to provide such notice promptly shall not relieve PID of its obligations under this Agreement except to the extent PID is materially prejudiced by the delay. PID shall have the right, at its sole cost and expense and with counsel reasonably acceptable to the applicable Indemnatee, to assume and control the defense or settlement of any Claim; provided that PID shall not settle or compromise any Claim that imposes any liability, obligation, or admission on an Indemnatee without that Indemnatee's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Each Indemnatee shall have the right to participate in the defense of any Claim with counsel of its own choosing, at its own expense, unless the Indemnatee reasonably determines that a conflict of interest exists between the Indemnatee and PID, in which case PID shall pay the reasonable fees and expenses of such separate counsel.
7. **Reimbursement.** If an Indemnatee pays any amount, or incurs any cost or expense, that is subject to indemnification under this Agreement, PID shall reimburse the Indemnatee within thirty (30) days after written demand therefor, together with reasonably detailed supporting documentation.
8. **Term.** This Agreement shall be effective as of the effective date of the IFA and shall continue in full force and effect until all obligations of DFCM and POMSLA under the IFA have been fully paid, performed, and discharged, or until the IFA is terminated and DFCM and POMSLA have no further obligation or liability thereunder. PID's obligations under this Agreement shall survive any expiration or termination of this Agreement with respect to Claims arising, or obligations accruing, before such expiration or termination.
9. **Assignment.** PID may assign its rights and obligations under this Agreement, in whole or in part, to any Subtenant or Transferee (as such terms are used in the Ground Lease referenced above) or other successor in interest to PID's leasehold estate in the Leased

Premises, without the consent of DFCM or POMSLA, provided PID gives DFCM and POMSLA prior written notice of the assignment. Except as provided in the preceding sentence, this Agreement may not be assigned by any Party without the prior written consent of the other Parties, which consent shall not be unreasonably withheld.

10. **Amendment.** This Agreement may be amended only by a written instrument signed by all Parties.
11. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without regard to conflict-of-laws principles. Venue for any action arising under this Agreement shall lie in a court of competent jurisdiction in Salt Lake County, Utah, unless otherwise required by law.
12. **Governmental Immunity.** Nothing in this Agreement shall be construed as a waiver of any protection, limitation, defense, or immunity available to PID, DFCM, or POMSLA under the Governmental Immunity Act of Utah, Title 63G, Chapter 7, Utah Code, or other applicable law.
13. **Severability.** If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect, and the invalid or unenforceable provision shall be reformed to the minimum extent necessary to render it valid and enforceable in a manner consistent with the Parties' intent.
14. **Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Electronic signatures shall be treated as original signatures for all purposes.
15. **Notices.** All notices required or permitted under this Agreement shall be in writing and shall be delivered personally, by certified U.S. mail with return receipt requested, or by nationally recognized overnight courier, to the following addresses (or such other address as a Party may designate by written notice to the others):

To PID:

Point Phase 1 Public Infrastructure District No. 1

c/o White Bear Ankele Tanaka & Waldron

350 E. 400 S., #2301

Salt Lake City, Utah 84111

Attn: [■ NAME ■]

Email: [■ EMAIL ■]

To DFCM:

Division of Facilities Construction and Management

4315 South 2700 West, Floor 3

Taylorsville, Utah 84129-2128

Attn: [■ NAME, TITLE ■]

To POMSLA:

Point of the Mountain State Land Authority

P.O. Box 692

Draper, Utah 84020

Attn: Michael Ambre, Executive Director

Email: michaelambre@utah.gov

With a copy to:

Ballard Spahr LLP

201 South Main Street, Suite 800

Salt Lake City, Utah 84111

Attn: Steven Mehr

16. **Attorneys' Fees.** In the event of any litigation between the Parties concerning the subject matter of this Agreement, the prevailing Party shall be entitled to recover from the non-prevailing Party its reasonable costs and attorneys' fees incurred in such litigation, in addition to any other relief awarded.
17. **Further Assurances.** Each Party shall execute and deliver such further documents and instruments, and take such further actions, as may be reasonably necessary to carry out the purposes and intent of this Agreement.
18. **No Waiver.** No waiver of any provision of this Agreement shall be deemed a waiver of any other provision, nor shall a waiver in one instance constitute a continuing waiver or a waiver in any other instance. No waiver shall be effective unless in writing and signed by the waiving Party.
19. **No Third-Party Beneficiaries.** This Agreement is entered into solely for the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement is intended to, or shall, create any right or benefit in favor of JBID or any other

third party, or modify any right or obligation of DFCM or POMSLA to JBID under the IFA.

20. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties regarding the subject matter of this Agreement and supersedes all prior discussions, understandings, or agreements regarding that subject matter. This Agreement may be amended only as provided in Section 10 above.

IN WITNESS WHEREOF, the Parties have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first written above.

“PID”

POINT PHASE 1 PUBLIC INFRASTRUCTURE DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Utah

ATTEST:

[■ NAME ■], Secretary

By: _____

Jay Hardy, Chair

APPROVED AS TO FORM:

Attorney for the PID

“DFCM”

STATE OF UTAH DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT, an
agency of the State of Utah

By: _____

[■ NAME ■], [■ TITLE ■]

APPROVED AS TO FORM:

[■ NAME ■], Assistant Attorney General

“POMSLA”

POINT OF THE MOUNTAIN STATE LAND AUTHORITY, an independent entity of the State of Utah

By: _____

Michael Ambre, Executive Director

EXHIBIT A

Impact Fee Agreement (Point of the Mountain Event Venue)

[Attach copy of the fully executed Impact Fee Agreement between DFCM, POMSLA, and JBID relating to the Point of the Mountain Event Venue project.]