

**AGENDA**  
**BOARD OF TRUSTEES**  
**APRIL 01, 2025**  
**SPECIAL Meeting 6:00pm**  
**Town Hall – 1010 High Street**  
**Collbran, Colorado**

**The Public Is Encouraged To Attend**

*Zoom link available by contacting Town Hall prior to meeting.*

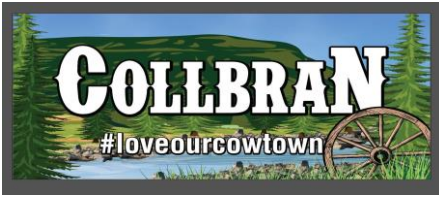
1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Changes or Deletions to Agenda
5. Persons not on the agenda
  - a. Please limit comments to three (3) minutes and address your comments directly to the Mayor.
  - b. Identify yourself by name and address when making comments.
  - c. Comments should be courteous, civil and constructive.
  - d. Town Board will make no decision nor take action, except to direct the Town Manager or Town Attorney.
6. Approval of Items Necessary to Complete the PVSD Waterline Construction Project
  - a. Notice to Proceed with Conditions: PVSD Waterline Project Construction
  - b. Colorado Department of Transportation Utility Permit Mayoral Signatory Approval for the PVSD Waterline Project
7. Approval of Pioneer Excavating, LLC Water Valve Replacement Contract
8. Approval of Request for Proposal (RFP): Hiring a Town Water Attorney
9. Approval of Items Necessary to Complete the Collbran Broadband Project
10. Adjournment

**Possible Board Work Session may Follow Regular Meetings**

Work Sessions are for the purpose of Board members informally receiving reports and discussing town business. No formal action shall occur at a work session. Any decisions proposed during a work session shall be approved at a subsequent board meeting in the appropriate manner.

NOTICE TO READERS: Town Council meeting packets are prepared several days prior to the meetings. Timely action and short discussion on agenda items does not reflect lack of thought or analysis on the Trustee's part as issues have been discussed by Trustees in workshop or committee meetings which are open to the public. **The Board of Trustees may take action on any of the agenda items as presented or modified prior to or during the meeting, and items necessary or convenient to effectuate the agenda items.**

**PUBLIC INVITED TO ATTEND:** The Public will be limited to three minutes each unless prior arrangements have been made with the Town Clerk or Administrator. Town Trustees may not respond to your comments on this evening, rather, they may take your comments and suggestions under advisement and your questions will be directed to the appropriate person or department for follow-up.



## Board of Trustees Memorandum Agenda Item: 6

**TITLE:** Notice to Proceed: PVSD Waterline Project Construction

**ATTACHMENTS:** **A** – Notice to Proceed with Conditions  
**B** – Notice to Proceed, Exhibit A  
**C** – CDOT Utility Permit

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**BACKGROUND:**

In November of 2024, through a competitive grant application process, the Town of Collbran was awarded a generous \$1,000,000 grant (50%/50% match) from the Department of Local Affairs (DOLA), Energy/Mineral Impact Assistance Fund (EIAF) to complete the Collbran Plateau Valley School Water Extension project. The project will be completed by FCI Constructors, Inc., a company selected through a competitive bidding process by the School District, and approved by the Town Board on November 02, 2024, for Cooperative Purchasing per the Town of Collbran Municipal Code 2.24.090. The project has been in the contracting phase since November 2024, which has been delayed due to recent staffing transitions at the Town resulting in DOLA concerns about the continuity of project management oversight and grant management.

At the March 4, 2025 Board meeting the Trustees approved four (4) documents: the (1) Plateau Valley School District/Town of Collbran Water Extension IGA, the (2) Mesa County/Town of Collbran Water Extension IGA for Grant Management Assistance, the (3) Easement Deed and Agreement, and a (4) Task order 2404-00219-03 with KLJ Engineering for waterline construction observation and management. Now that those agreements have been executed, the construction can begin upon the issuance of the attached Notice to Proceed. In addition the attached CDOT Utility Permit allows the contractor to do necessary work for the waterline project in the CDOT owned right of way.

**RECOMMEND ACTION:**

Approval of and for the Mayor to sign the Notice to Proceed for the PVSD Waterline Project Construction, and the CDOT Utility Permit as presented.

Respectfully Submitted,

Angie Sprang  
Interim Town Administrator

## NOTICE TO PROCEED WITH CONDITIONS

FCI Constructors, Inc.  
Attn: Marc Litzen, Project Director  
P.O. Box 1767  
Grand Junction, Colorado 81502

Dear Mr. Litzen,

On behalf of both the Plateau Valley School District (“PVSD”) and the Town of Collbran, Colorado (the “Town”), you are hereby notified that FCI Constructors, Inc. (“FCI”) is authorized to begin construction on construction of a new water storage tank and water service line (the “Water Project”) to provide water service to the new PK-12 public school facility being constructed by FCI on PVSD’s existing Plateau Valley School campus. Said work is authorized to begin on April 2, 2025, pursuant to the specific terms and conditions outlined in the existing agreement between PVSD and FCI, attached hereto as **Exhibit A** and incorporated herein by this reference (the “Construction Contract”). Upon completion of the Water Project, ownership of the Water Project facilities will be transferred from PVSD to the Town pursuant to a separate agreement between the Town and PVSD, attached hereto as **Exhibit B** and incorporated herein by this reference (the “PVSD-Collbran IGA”). As such, the Town is an intended beneficiary of the Construction Contract with regard to construction of the Water Project (but not as to any other Work within the scope of such Construction Contract). To guarantee the Town’s beneficial interest in the Water Project, it is the mutual intent and understanding of FCI, PVSD, and the Town (hereinafter, the “Parties”) that any duties owed by FCI to PVSD, and any rights or remedies benefitting PVSD pursuant to the Construction Contract also inure to the Town, including without limitation:

- Any insurance policies required to be maintained by FCI shall include both PVSD and the Town as additional insured;
- The Town shall have the right to collect against the Performance Bond and Payment Bond required by the Construction Contract to the extent necessary to protect the Town’s interest in the Water Project; and
- Any substantial modifications to the Water Project, including either a Change Order or Construction Change Directive – as those terms are defined in the Construction Contract – must be approved by the Town Engineer, which approval shall not be unreasonably delayed or withheld except to the extent that the Town Engineer determines that such a Change Order or Construction Change Directive would cause the Water Project to fail to meet the Town’s standards for the construction of public improvements.

Additionally, please be aware that as outlined in more detail in the PVSD Collbran IGA, the Town will be obtaining grant funds from the Department of Local Affairs (“DOLA”) to reimburse certain eligible expenses paid by PVSD to complete the Water Project under the Construction Contract.

By signing this Notice, each of the undersigned Parties agrees to be bound by the Conditions contained herein, in addition to all terms and conditions of the Construction Contract and PVSD-Collbran IGA. This Notice shall become effective upon the latest of the last signature among the Parties.

AUTHORIZATION TO PROCEED

PLATEAU VALLEY SCHOOL DISTRICT NO. 50

By: \_\_\_\_\_

Date: \_\_\_\_\_

TOWN OF COLLBRAN, COLORADO

By: \_\_\_\_\_

Date: \_\_\_\_\_

ACCEPTANCE OF NOTICE AND CONDITIONS

FCI CONSTRUCTORS, INC.

By: \_\_\_\_\_

Date: \_\_\_\_\_

 **AIA**® Document A133® – 2019

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

**AGREEMENT** made as of the 22nd day of September in the year 2023  
(*In words, indicate day, month, and year.*)

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

Plateau Valley School District 50  
56600 HWY 330  
Collbran, CO 81624

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

FCI Constructors, Inc.  
3070 I-70 Business Loop, Building A  
Grand Junction, CO 81504

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

pk-12 School Replacement Project  
56600 HWY 330  
Collbran, CO 81624

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

TreanorHL Inc.  
1755 Blake Street, Suite 400  
Denver, CO 80202

The Owner and Construction Manager agree as follows.

**ADDITIONS AND DELETIONS:**

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

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

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

EXHIBIT A  
CONSTRUCTION CONTRACT

TABLE OF ARTICLES

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

**EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT- TBD**

**EXHIBIT B INSURANCE AND BONDS**

**ARTICLE 1 INITIAL INFORMATION**

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

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

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

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

Per TreanorHL Schematic Design Documents and Scope and Proposal documents included in Exhibit C

§ 1.1.2 The Project's physical characteristics:

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

Per TreanorHL Schematic Design Documents and Scope and Proposal documents included in Exhibit C

Init.

**EXHIBIT A  
CONSTRUCTION CONTRACT**

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

Per TreanorHL Schematic Design Documents and Scope and Proposal documents included in Exhibit C

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

.1 Design phase milestone dates, if any:

100% Design Development: 3/1/2024  
100% Construction Documents: August 2024

.2 Construction commencement date:

May 1<sup>st</sup>, 2024

.3 Substantial Completion date or dates:

Building Substantial Completion: November 18<sup>th</sup>, 2025  
Site Substantial Completion: June 25, 2026

.4 Other milestone dates:

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

Per Schedule included in Exhibit C

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

Green Globes – Targeting 3 Globes

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

§ 1.1.7 Other Project information:  
*(Identify special characteristics or needs of the Project not provided elsewhere.)*

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

Dynamic Program Management  
PO Box 726  
Eagle, CO 81631

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User Notes:

(1249265002)

EXHIBIT A  
CONSTRUCTION CONTRACT

Email:

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

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

Mr. Trevor Long, Superintendent  
56600 HWY 330  
Collbran, CO 81624

§ 1.1.10 The Owner shall retain the following consultants and contractors:

*(List name, legal status, address, and other contact information.)*

.1 Geotechnical Engineer:

Ground Engineering

.2 Civil Engineer:

By Architect

.3 Other, if any:

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

Surveyor – Clark Land Surveying  
Construction Material Testing – Ground Engineering  
Commissioning Agent – Bowman  
FF&E - TBD

§ 1.1.11 The Architect's representative:

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

Adam Braunstein,  
1755 Blake Street, Suite 400  
Denver, CO 80202  
Email:

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

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

Marc Litzen, Project Manager  
3070 I-70 Business Loop, Building A

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(1249265002)



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Grand Junction, CO 81504  
Email:

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

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

N/A

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

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

Refer to Section 3.1.11.2

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

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

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

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

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

### § 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests and as is consistent with reasonable professional skill and care and the orderly progress of the Project. All such time periods and deadlines are of the essence. The Construction Manager warrants that the services shall be performed in a good and workmanlike manner and shall be suitable and fit for the purposes for which they are intended. The Owner agrees to furnish or approve, in a timely manner, information required

**EXHIBIT A**  
**CONSTRUCTION CONTRACT**

by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

**§ 2.3 General Conditions**

*(Paragraph deleted)*

**§ 2.3.1** The parties expressly acknowledge that the General Conditions set forth in AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended and supplemented by the Supplementary Conditions, are adopted by the parties the date hereof and referred to herein as "A201-2017". Where reference is made in this Agreement to a provision of A201–2017, or other Contract Document, the reference refers to that provision as amended or supplemented by the Supplementary Conditions. For the Preconstruction Phase, A201–2017 shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

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

**ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, but in no case until the contingency specified in Section 14.5.38 has been met and the Owner authorizes Construction Manager to proceed into this phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The Construction Manager is expected to be reasonably familiar with applicable local and state building codes and requirements, and to bring to the Owner's and Architect's attention any discrepancy or compliance issue Construction Manager suspects or becomes aware of during the course of the Project.

**§ 3.1 Preconstruction Phase**

**§ 3.1.1 Extent of Responsibility**

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

For any Work that is specified as design build systems by the Architect (e.g. Fire Sprinkler, Fire Alarm, etc...) The Construction Manager is required to ascertain that its subcontractors' drawings and specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

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

**§ 3.1.3 Consultation**

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

**§ 3.1.3.2** The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations

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# EXHIBIT A CONSTRUCTION CONTRACT

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

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

## § 3.1.4 Project Schedule

The Project Schedule is attached hereto as Exhibit C, and shall not be modified without prior authorization of the Owner. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

## § 3.1.5 Phased Construction

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

## § 3.1.6 Cost Estimates

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

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

§ 3.1.6.3 Not Used.

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

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

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

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

Init.

**EXHIBIT A**  
**CONSTRUCTION CONTRACT**

**§ 3.1.11 Subcontractors and Suppliers**

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

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

The Construction Manager shall establish a process, to be reviewed and approved by the Owner, to qualify a list of local subcontractors provided by the Owner and will use its commercially reasonable best efforts to provide those subcontractors opportunities to bid on Work associated with the Project. As working drawings and specifications are completed, Construction Manager will establish bidding schedules and conduct pre-bid conferences to familiarize bidders with bidding documents, management techniques and any special systems, materials or methods. Construction Manager will prepare scope packages for each trade which clearly identify the bid scope, including general conditions items such as cleanup and safety. Construction Manager will review scope packages with the Owner and Architect prior to issuing same to subcontractors. Construction manager will analyze all bids and prepare; (1) a bid matrix and scoring method (approved in advance by the Owner), (2) written bid analysis, (3) review bids and bid analysis with the Owner and Architect, (4) make recommendations for contract awards, and (5) award subcontracts.

The subcontractor selected for an award will be the subcontractor whose bid, as presented in the response to the bidding documents, is the most advantageous to the Owner. The Owner is not bound to accept the lowest priced bid if that proposal is not in the best interests of the Owner as determined by the Owner.

**§ 3.1.11.3** If the Construction Manager or a "related party" (as defined in Section 7.8) desires to perform or self-perform ANY portion of the Work on the Project, then the Construction Manager shall identify such portion with particularity to the Owner and Architect at the time of the review conducted pursuant to Section 3.1.11.2 above, and comply with Section 7.8.2. regarding any such related party.

**§ 3.1.11.4** In an effort to incentivize all qualified subcontractors to submit a competitive bid proposal on a portion of the Work which the Construction Manager or a "related party" desires to perform, the bid documents for that portion of the Work shall clearly communicate to all bid participants the following procedure:

- .1 All participants, other than the Construction Manager and "related party," shall submit their bid proposals directly, and only, to the Owner's Representative no later than the published deadline, with a contemporaneous submittal to the Owner.
- .2 The Construction Manager and any "related party" shall submit their proposal(s) to Owner's Representative no later than 24 hours prior to the published deadline.
- .3 Construction Manager shall notify all bidders to submit their proposals directly to Owner's Representative only.

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

**§ 3.1.12 Procurement**

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them. Notwithstanding the foregoing, Construction Manager acknowledges that Owner is a public, tax exempt entity and Construction Manager shall work with Owner to avoid the payment of taxes when possible.

**§ 3.1.13 Notices and Compliance with Laws**

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

**EXHIBIT A**  
**CONSTRUCTION CONTRACT**

**§ 3.1.14 Other Preconstruction Services**

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

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

Per RFQ/P Documents issued to date – Exhibit C

**§ 3.2 Guaranteed Maximum Price Proposal**

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

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

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

- .1 Written notification from the Owner stating that the contingency specified in Section 14.5.38 has been met;
- .2 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .4 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .5 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .6 A date by which the Owner must accept the Guaranteed Maximum Price, mutually agreed to by the Owner and Construction Manager.

.7 Allowances for direct work included within the GMP will include all Labor, Material and Equipment, taxes and subcontractor's fees. All Allowances shall be substantiated with documentation from contractors, subcontractors and sub-subcontractor including invoices for payment from material suppliers if requested by the Owner's Representative. Reconciliation of Allowances shall recognize appropriate adjustments to the Fee, however will not allow for General Conditions adjustments.

.8 Owner requested Alternates shall include adjustment for Fee based on dollar volume and General Conditions if and only if the Alternate substantively affects the schedule beyond the terms of this Agreement. Construction Managers Voluntary Alternates must include all related costs, including impacts to the design and Owner's other costs that may be a result of implementation.

**§ 3.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency

amount (the "Construction Contingency") for the Construction Manager's exclusive use to cover those costs incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Contract Documents, delays in receipt of materials, and additional costs relating to adverse weather, construction scheduling problems or subcontractor defaults not reimbursed by the subcontractor's bonding company. However, the Construction Contingency shall not be used by Construction Manager to cover costs incurred to replace or otherwise correct nonconforming Work, except as provided for in Section 6.7.3 [here 7.7.3]. The

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Construction Manager, with Owner's written approval, may utilize the Construction Contingency for any items within the Cost of the Work without the necessity of a Change Order without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum Price. Costs incurred in excess of the Construction Contingency due to unforeseeable causes or unanticipated details shall be borne by the Construction Manager at the Construction Manager's sole risk. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner, and any and all remaining unused amounts allocated to the Construction Contingency shall accrue to the Owner. Construction Manager's access to the Construction Contingency shall be approved in writing on a per instance basis by the Owner.

**§ 3.2.5** The Construction Manager and applicable subcontractors as deemed appropriate by the Owner and Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal or portions thereof. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both that are acceptable to the Owner. Failure by the Owner or Architect to discover inconsistencies or inaccuracies in the information shall not in any way excuse the Construction Manager from completing the project at or below the Guaranteed Maximum Price identified in this Agreement.

**§ 3.2.6** If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information, clarifications, inclusions and exclusions as outlined in 3.2.4 upon which it is based.

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

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

**§ 3.2.9** Deleted.

## **§ 3.3 Construction Phase**

### **§ 3.3.1 General**

**§ 3.3.1.1** For purposes of Section 8.1.2 of A201-2017, the date of commencement of the Work shall mean the date the Construction Manager receives a construction building permit from the applicable jurisdictional authority and a written Notice to Proceed with the Work as stated in Section 3.3.1.2.

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

### **§ 3.3.2 Administration**

**§ 3.3.2.1** The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. During the Construction Phase, the Construction Manager shall meet weekly with the Owner and Architect, unless the Owner and Architect mutually agree upon some other frequency appropriate to the phase of construction. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

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

**§ 3.3.2.3 Monthly Report**

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

**§ 3.3.2.4 Daily Logs**

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

**§ 3.3.2.5 Cost Control**

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

**ARTICLE 4 OWNER'S RESPONSIBILITIES**

**§ 4.1 Information and Services Required of the Owner**

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

§ 4.1.2 Anything in the Contract Documents to the contrary notwithstanding, the Owner represents that it has lawful authority to requisition certain capital construction funds deposited and available in Owner's Project Account to pay for the Project, and agrees to requisition funds allocated to such account in an amount not to exceed the Guaranteed Maximum Price in accordance with the Contract Documents. It is understood and agreed that no funds of Owner have been appropriated or otherwise available to perform Owner's obligations under this Agreement except those capital construction funds allocated to Owner's Project Account. No change order or other form of order or directive shall be issued by the Owner requiring additional compensable Work to be performed, which Work causes the aggregate amount payable under this Agreement to exceed the amount allocated for completion of the Project in said Project Account and budget approved by the Owner for the Project, unless the Owner's governing board gives the Construction Manager written assurance that additional funds have been or will be appropriated or otherwise made available to cover the costs of additional work have been made or unless such work is covered under a remedy granting provision of this Agreement. As used herein the term "remedy granting provision" means any contract clause which permits additional compensation in the event that a specific contingency or event occurs. Owner will provide written notice to Construction Manager when funds have been appropriated and Construction Manager may begin construction.

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

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise reasonable diligence and critical judgment in the review of such information, reports, surveys, drawings and tests prior to proceeding with any work or activity based upon the same, and shall exercise proper precautions relating to the safe performance of the Work.

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

§ 4.1.4.2 The Owner shall furnish surveys as provided in Section 2.3.4 of AIA A201-2017

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

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

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

**§ 4.2 Owner's Designated Representative**

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

§ 4.2.1 Deleted.

**§ 4.3 Architect**

The Construction Manager's services shall be provided in coordination with the services of the Architect. Upon request by the Construction Manager, the Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

**ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

**§ 5.1 Compensation**

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

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

*(Paragraphs deleted)* The Owner shall pay Construction Manager a fixed fee of Eighty two thousand Dollars (\$82,000.00) in lump sum upon completion of Preconstruction Phase services.

§ 5.1.2 Not Applicable

*(Table deleted)*

§ 5.1.2.1 Not Applicable.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within twelve ( 12 ) months of the date the Owner authorizes the Construction Manager to proceed into the Preconstruction Phase in writing, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services may be equitably adjusted.

*(Paragraphs deleted)*

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**ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

**§ 6.1 Contract Sum**

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

**§ 6.1.2** The Construction Manager's Fee:

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

Construction Manager's Fee for this Contract is 3.5% of the Cost of the Work.. The Construction Manager's Fee shall be calculated as a straight multiplication on the total contract value less fee.

Fee will be invoiced at a percent complete of the cost of work in place.

No Construction Manager's fee shall be paid on the Construction Contingency until funds are allocated from those contingencies to the Cost of the Work..

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

For additive changes to the Guaranteed Maximum Price as established in the Guaranteed Maximum Price Amendment, Construction Manager's Fee will be increased by a percentage of the cost of the change that is equivalent to the percentage of the fee against the Guaranteed Maximum Price, pursuant to the provisions of the Article 7 of the General Conditions.

For deductive changes to the Guaranteed Maximum Price as established in the Guaranteed Maximum Price Amendment, Construction Manager's Fee will be decreased by a percentage of the cost of the change that is equivalent to the percentage of the fee against the Guaranteed Maximum Price, pursuant to the provisions of Article 7 of the General Conditions.

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

The maximum percentage for subcontractor change order markup above actual cost for labor, equipment and materials is 3.5% for the Construction Manager and 10% for subcontractors, per Construction Manager's proposal. This includes Construction Manager, subcontractor and material vendors/suppliers per Exhibit C

**§ 6.1.5** Rental rates for Construction Manager-owned equipment has been provided in Exhibit C.

Rental for Construction Manager-owned equipment will only be paid based on the time such equipment is in actual use for the Project and not based on the time such equipment is stored at the Project site. Construction Manager shall document actual use of said equipment with each pay application. Equipment purchased for the Project shall become the property of the Owner unless Owner agrees in writing to allow Construction Manager to retain the equipment for a predetermined price. Equipment shall not be purchased for the Project without Owner approval in advance and shall not be purchased for the Project when rental of equipment is more advantageous from a cost standpoint for the Owner and the Project.

**§ 6.1.6** Liquidated damages, if any: none.

*(Paragraph deleted)*

**§ 6.1.7** Other:

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

Not Applicable

**§ 6.2 Guaranteed Maximum Price**

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

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To the extent the Contract Sum is less than the Guaranteed Maximum Price, the difference between the Contract Sum and the Guaranteed Maximum Price (i.e., all savings) shall remain with the Owner. No change in the Work or the materials or labor utilized in connection therewith shall be the basis for an addition to the Guaranteed Maximum Price or the Construction Manager's Maximum Fees unless and until same has been authorized a Change Order executed by the Owner and issued in accordance with the Contract Documents.

## § 6.3 Changes in the Work

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

Changes in the Work shall not be the basis of a change to the Guaranteed Maximum Price or the Construction Manager's Fee unless and until such change has been approved authorized by a Change Order executed and issued in accordance with the Contract Documents.

The Date of Substantial Completion shall not be adjusted for a change in the Work unless the Construction Manager demonstrates to the Owner's reasonable satisfaction, in the Owner's sole discretion, that the change in the work will affect the critical path of the Construction Manager's schedule.

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

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

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

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

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

## ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 7.1 Costs to Be Reimbursed

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

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

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

### § 7.2 Labor Costs

§ 7.2.1 Wages and hourly rates or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. This direct work shall be based on actual costs to the Construction Manager including such benefits, if any, as may be payable to the

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construction worker with respect thereto. Any labor supplied by a temporary labor organization shall be invoiced to the Project at cost from the temporary labor organization with supporting documentation provided in pay applications. Construction Manager may mark up temporary labor organization receipts up to 7% prior to applying markup percentages for the cost of the work.

**§ 7.2.2** Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior *(Paragraphs deleted)* approval and for Construction Manager's project management and reasonable administrative support whether performed at the site or in the Construction Manager's offices with the Owner's prior approval, all at the fixed rates as provided in the not-to-exceed general conditions fee proposal in Exhibit C.

**§ 7.2.2.1** Deleted.

**§ 7.2.3** Deleted.

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

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

**§ 7.2.6** Bonuses, profit sharing, incentive compensation, and any other discretionary payments paid to anyone hired by the Construction Manager or paid to a Subcontractor or vendor shall *NOT* be included in Labor Costs.

## **§ 7.3 Subcontract Costs**

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

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

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

**§ 7.4.2** Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall be properly placed and stored by Construction Manager at a location designated by the Owner, and shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work. Any purchased materials remaining after completion of the subject portion of Owner's Work (for example, extra paint, wall coverings or carpet) will be given by Construction Manager to Owner for use in subsequent repairs. Materials should be labeled, sealed, boxed and protected as appropriate to ensure the materials remain in good condition.

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

**§ 7.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value and agreed to by Owner. Contractor will provide to the Project a full stock of most commonly used small tools (All tools worth less than \$3000 each; drills, saws, screw guns, brooms, wheelbarrows, shovels, etc.). These tools will be furnished at no cost to the Project, but should one need replaced; it will be a direct cost to the Project unless the tool was damaged purposely or

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carelessly by contractor or stolen from the Project location. Consumables such as drill bits, saw blades, powder actuated loads, winter fuel fittings and hose, oxygen, acetylene, etc. will be a direct cost to the Project at a rate at least ten percent (10%) less than any available rental source (see attached Contractor Standardized Rental Rates). Tool rent is only to be charged for the time the tool is in use and reasonably required on the job site. Contractor tool rental is subject to Owner audit at any time.

**§ 7.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment rented shall be competitive and subject to the Owner's prior approval and shall be at or below rental rates consistent with those prevailing in the area. Provided, however, with respect to rental of Construction Manager's own equipment, such rental rates shall not exceed one hundred percent (100%) of the current A.E.D Manual charges, without the Owner's prior approval, and in no event shall the total of such rental charges exceed the depreciated fair market value of the piece of equipment when first utilized on the job. Tool rent is only to be charged for the time the tool is reasonably required on the Project site, and such rentals shall be subject to Owner audit at any time. The total rental cost of any such equipment may not exceed the purchase price of any comparable item. Rental rates for equipment are provided in Exhibit C.

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

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

**§ 7.5.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if secured in a bonded warehouse and proof of insurance is provided to Owner, subject to the Owner's prior approval.

**§ 7.6 Miscellaneous Costs**

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

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

Insurance costs shall include (a) the attributable portion of premiums for Construction Manager's General Liability Insurance fixed at actual costs for this insurance to the Construction Manager's Corporate Offices without overhead and profit; and (b) if required by the Owner, the attributable portion of premiums for Construction Manager to furnish labor, material and performance bond shall be at actual costs for this insurance to the Construction Manager's Corporate Offices without overhead and profit, and (c) as required by the Owner, Builder's Risk insurance shall be at actual cost for this insurance to the Construction Manager's corporate offices without overhead and profit. Insurance costs shall be included and set in Exhibit C.

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

**§ 7.6.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable. However, the Cost of the Work shall not include any taxes from which Owner is exempt as a public entity, in accordance with §3.6 of the Supplementary Conditions to AIA Document A201-2017.

**§ 7.6.3** Except for the building permit fee which Owner shall pay directly, all fees and assessments for other permits, licenses, and inspections, for which the Construction Manager is responsible and required by the Contract Documents to pay.

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

**§ 7.6.5** Deleted.

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§ 7.6.5.1 Deleted.

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

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deleted.

§ 7.6.9 Deleted.

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

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's Project Superintendent incurred while traveling in discharge of duties connected with the Work, if approved in advance by the Owner.

**§ 7.7 Other Costs and Emergencies**

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

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

§ 7.7.3 Construction Manager is allowed to use (and include in the Cost of the Work) up to 5% of its Construction Contingency for costs of repairing or correcting minor defects and other damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by a design flaw or by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

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

**§ 7.8 Related Party Transactions**

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

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

**§ 7.9 Costs Not To Be Reimbursed**

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

- .1 Salaries, wages and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or other offices including the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;

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

**ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner.

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

**ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall make reasonable efforts to obtain at least three (3) "Qualified" bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. If Construction Manager is not able to obtain (3) "Qualified" bids, written request to provide less shall be requested of the Owner's Representative and approval shall not be unreasonably withheld. A "Qualified" bid is a bid that meets the criteria established collectively by the Construction Manager and the Owner as outlined in Section 3.1.11.2 and can include a bid from the Construction Manager as set forth in said Section 3.1.11.2 or a "related party" in accordance with Section 7.8. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. The Owner shall have the right to disapprove at its discretion subcontractors proposed by the Construction Manager. If the Owner disapproves any Subcontractors, The Construction Manager shall obtain another Subcontractor bid so as not to have less than three (3) Subcontractors providing bids, unless approved by the Owner, for the respective portion of the Work.

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

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

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**ARTICLE 10 ACCOUNTING RECORDS**

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be maintained in accordance with generally accepted accounting principles, consistently applied, and shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. Failure to provide such access within ten (10) days of request therefore shall constitute a material default hereunder.

**ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

**§ 11.1 Progress Payments**

**§ 11.1.1** This Project is funded in part through issuance of Owner bonds. Prior to the submission of the first Application for Payment, Construction Manager will submit a completed Federal Form W-9.

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

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

The Construction Manager shall, during the last week of each month, meet with the Architect, Project Manager and Owner, and/or other parties designated by the Owner, to review and approve an itemized draft indicating the total estimated value of the Work completed through the end of the current calendar month including the value of all material and equipment suitable stored at the jobsite or other approved location. Such draft shall set for the dollar amounts of completion of each part of the Work, including a prorated share of the Construction Manager's Fee less applicable retention. The approved draft will then be formalized into an Application for Payment and will be submitted to the Owner for processing.

**§ 11.1.3**

After its receipt of an Application for Payment, Owner shall work diligently to complete the process for payment..

The process for Applications for Payment is as follows:

1. Construction Manager will submit invoices directly to the Owner's Representative. The Construction Manager is instructed to send Applications for Payment to the Owner's Representative.
2. All Applications for Payment will be submitted and processed once per month; **Applications for Payment will be required to be received to the Owner by the 6<sup>th</sup> day of each month for the previous calendar month.**  
*Note: Applications for Payment received on the 7<sup>th</sup> will not be processed until the 6<sup>th</sup> of the following month, with no exceptions. Applications for Payment received before or on the 30<sup>th</sup> day of the month will not be processed until the 6<sup>th</sup> day of the following month.*
3. Applications for Payment shall be reviewed by the Owner and the Owner's Owners Representative for accuracy, completeness and contractual compliance.

Owner shall make reasonable efforts to issue a progress payment to the Construction Manager no later than forty-five (45) days after the Construction Manager timely submits a complete, correct and contractually compliant Application for Payment to the Owner's Representative.

*(Paragraph deleted)*

**§ 11.1.4** With each Application for Payment, the Construction Manager and subcontractors shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, subcontractor lien waivers, proof of payment to subcontractors for amounts submitted under previous pay applications, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or

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exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

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

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

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

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

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

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

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

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

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017; and/or other amounts about which there is a legitimate dispute as to whether payment is due.
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and



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.6 Retainage withheld pursuant to Section 11.1.8.

**§ 11.1.8 Retainage**

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

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

Five Percent (5%)

**§ 11.1.8.1.1** The following items are not subject to retainage:

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

None.

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

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

*(Paragraphs deleted)* Not Applicable.

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

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

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

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

**§ 11.2 Final Payment**

**§ 11.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, including the retainage withheld from prior Applications for Payment pursuant to Section 11.1.8.1, shall be made by the Owner to the Construction Manager when

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

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5. The Construction Manager has provided the Owner with a final Certificate of Occupancy, to the extent the conditions required to obtain the final certificate of occupancy are the responsibility of the Construction Manager under the Contract Documents; and
6. The requirements set forth in Section 11.2.4 herein have been met.

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

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

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

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

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than sixty (60) days after the issuance of the Architect's final Certificate for Payment and all requirements in this Section 11.2 have been met., or as follows:

Not Applicable

§ 11.2.4 The Architect will not issue the final Certificate for Payment and final payment will not be made until the time of final settlement shall be established by the Owner and shall thereafter be advertised by two (2) publications of notice, the last of which shall appear at least ten (10) days prior to the time of final settlement as required pursuant to Colo. Rev. Stat. §38-26-107. The Owner shall withhold from all payments to Construction Manager sufficient funds to insure the payment of all claims filed by any person that has furnished labor, materials, sustenance, or other supplies used or consumed by Construction Manager or a subcontractor in or about the performance of the Work, or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the Work whose claim therefore has not been paid by Construction Manager or the subcontractor, all in accordance with the provisions of Colo. Rev. Stat. §38-26-107.

**§ 11.3 Interest**

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

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

Zero percent (0%)

**ARTICLE 12 DISPUTE RESOLUTION**

**§ 12.1 Initial Decision Maker**

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

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

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

None

**§ 12.2 Binding Dispute Resolution**

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

*(Check the appropriate box.)*

Arbitration pursuant to Article 15 of AIA Document A201–2017

Litigation in the District Court of Mesa County, Colorado

Other: *(Specify)*

**ARTICLE 13 TERMINATION OR SUSPENSION**

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

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than thirty (30) days’ written notice to the Owner.

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

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

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

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

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

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- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

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

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

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

**§ 13.2.1 Termination**

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

**§ 13.2.2 Termination by the Owner for Cause**

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

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

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

**§ 13.2.3 Termination by the Owner for Convenience**

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

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

The same amount determined in accordance with Section 13.2.2, but Section 13.2.2.1.4 shall not apply.

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## § 13.3 Suspension

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

## ARTICLE 14 MISCELLANEOUS PROVISIONS

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

## § 14.2 Successors and Assigns

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

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

## § 14.3 Insurance and Bonds

For all phases of the Project, the Construction Manager and Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds, as required by Article 11 of AIA Document A201–2017 and the attached AIA Document A133™–2019 Exhibit B *Insurance and Bonds*, incorporated herein as if fully set forth herein.

*(Paragraphs deleted)*

*(Table deleted)*

*(Paragraphs deleted)*

§ 14.3.2 No Work will be conducted on the Project site until a certificate of insurance on a form acceptable to Owner has been submitted certifying that the Construction Manager and each subcontractor has insurance that complies with the specific insurance and indemnity requirements listed in this section 14.3. Such certificates shall contain a statement that the policies certified therein cannot be cancelled, materially modified, or allowed to expire without providing thirty (30) days' prior written notice to the Owner. Construction Manager is also responsible to verify that any Design/Build subcontractors (any subcontractor providing engineered drawings for review and approval), including but not limited to joist manufacturers, fire alarm subcontractors, fire sprinkler subcontractors, security subcontractors, landscape irrigation engineers, and precast concrete subcontractors, carry the following Professional Errors and Omissions Insurance: Professional Liability Insurance (Errors and Omissions), covering the services provided under this Agreement, including contractual liability insurance against the liability assumed in this Agreement, as is acceptable to and approved by the Owner. The costs and benefits of Professional Liability Insurance for design build subcontractors is to be reviewed with the project team at the design development phase of the project at which time it will be confirmed which Design/Build subcontractors will be required to carry Professional Liability Insurance. Such insurance shall have minimum policy limits of \$2,000,000 in the aggregate and \$2,000,000 per claim (All deductibles to be paid by Design/Build Subcontractor). The insurance provided must be primary to any insurance coverage carried by Owner.

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

*(Paragraphs deleted)*

§14.3.3 Construction Manager shall procure and maintain at its own cost and expense for the duration of this Agreement (or such longer period as is provided herein), and shall require that each Subcontractor procure and maintain, at its own cost and expense, during such Subcontractor's Project contract (or such longer period as is provided herein), the following insurance coverages:

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**§14.3.4** Worker's Compensation Insurance, Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Builder's Risk Insurance, if required, and all other insurance required by the Contract Documents. As to each Subcontractor, this insurance shall include contractual liability insurance covering Subcontractor's indemnity obligations under the Subcontract.

**§ 14.5 Other provisions:**

**§ 14.5.1** Any written notices hereunder directed to Owner, Owner's Representative or Construction Manager or the Architect may be served on the persons identified in Article 1 above by the means stated in 14.5.2 :

**§ 14.5.2 Notice:** All notices or other communications required or permitted hereunder shall be in writing, and shall be hand-delivered, sent certified mail, postage prepaid, return receipt requested, or sent via email to the address of the party as specified in Article 1 above, and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice' (ii) if mailed, four (4) business days after the date of posting by the United States Post Office; (iii) if given by email, when sent. Any notice, request, demand or direction or other communication sent by email must be confirmed within forty eight (48) hours by letter, mailed or hand-delivered in accordance with the foregoing.

**§ 14.5.3** Construction Manager shall provide staffing at or exceeding the levels proposed during the Request for Qualifications and Proposal process and shall not change any personnel involved with the Project or associated levels of commitment without prior written approval by the Owner.

**§ 14.5.4 Attorney's Fees:** If either party to this Agreement engages legal counsel to enforce any terms or conditions of this Agreement, the initiation of any legal proceedings or the defense thereof, including any appeals, the substantially prevailing party shall be entitled to prompt payment and reimbursement in full for all of its reasonable attorney's fees, costs and expert witness fees incurred.

**§ 14.5.5 Staff Commitment:** The proposed staff including Construction Manager's Project Manager Brady Blackmer will be committed to the project for the duration and will not be reassigned without the Owner's prior written approval.

**§ 14.5.6** Not Used.

**§ 14.5.7** Not Used.

**§ 14.5.9** Not Used

**§ 14.5.10** Not Used.

**§ 14.5.11** Not Used.

**§ 14.5.12** Not Used.

**§ 14.5.13** Not Used.

**§ 14.5.14** Deleted.

**§ 14.5.15** Deleted.

**§ 14.5.16** Not Used.

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§ 14.5.17 The Construction Manager shall fully cooperate with the Owner and the Owner's Representative.

§ 14.5.18 Not Used.

§ 14.5.19 Not Used.;

§ 14.5.20 Construction Manager will cooperate with other contractors in the buildings to ensure harmonious working relationships, including, without limitation, coordinating with other contractors in the buildings, trash removal and water and utility usage.

§ 14.5.21 Construction Manager will leave all Common Areas in a neat, clean, orderly and safe condition at the end of each day during construction of Owner's Work.

§ 14.5.22 Not Used.

§ 14.5.23 The Construction Manager shall maintain an accurate set of as-built drawings at the site. At the completion of the Work, the Construction Manager shall certify by signing on them that each of the as-built drawings and specifications are complete and accurate. No later than thirty (30) days after Substantial Completion of Owner's Work and prior to application for Final Payment, and as a condition to its approval by the Architect and Owner, the Construction Manager shall transfer the job site as-built drawings, arranged in proper order, indexed and certified as accurate to the Architect for transmittal to the Owner. The Construction Manager will not be responsible for transferring to the as-built documents any addenda, clarifications or changes documented by the consultants.

§ 14.5.24 Not Used.

§ 14.5.25 Not Used

§ 14.5.26 Not Used

§ 14.5.27 Not Used.

§ 14.5.28 Construction Manager and Owner acknowledge that they or their employees may, in the performance of the resultant Contract, come into the possession of proprietary or confidential information owned by or in the possession of the other. Neither party shall use any such information for its own benefit or make such information available to any person, firm, corporation, or other organization, regardless of whether directly or indirectly affiliated with Construction Manager or Owner, unless (i) required by law, including to comply with lawful request under the Colorado Open Records Act C.R.S. §§24-72-201, et seq., as amended, and other applicable laws, (ii) by order of any court or tribunal, (iii) such disclosure is necessary for the assertion of a right, or defense of an assertion of a right, by one party against the other party hereto, or (iv) such information has been acquired from other sources.

§ 14.5.29 Construction Manager agrees that it shall not publicize this Contract or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of Owner's employees or use Owner's name in connection with any sales promotion or publicity event without the prior express written approval of Owner.

§ 14.5.30 Construction Manager agrees that at all times its employees will observe and comply with all regulations of the facilities, including but not limited to, no smoking, and parking and security regulations. Construction Manager shall also abide at all times by all applicable Owner policies and procedures, including without limitation those related to the prohibited use and/or possession of alcohol, tobacco or firearms on Owner's property. The Construction Manager shall at all times strictly enforce this prohibition among its own employees and its consultants and their employees.

§ 14.5.31 Upon Substantial Completion and for a period of 15 calendar days thereafter the Construction Manager will replace burned out light bulbs at no cost to the Owner. Owner acknowledges that Construction Manager is not responsible to re-lamp usable working bulbs in permanent light fixtures.

**EXHIBIT A  
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§ 14.5.32 The Construction Manager shall provide notification within 72 hours after becoming aware of the basis of any request for change order. The Construction Manager shall develop and submit pricing of proposed changes within seven (7) days after a solution has been provided. The Owner shall provide a written response to the Construction Manager's proposal within ten (10) business days of the Owner's receipt of the Construction Manager's submission.

§ 14.5.33 Not Used.

§ 14.5.34 The Construction Manager shall include with every subcontract agreement the following language:  
"Subcontractor binds itself to Construction Manager and Owner and is obligated to Construction Manager and Owner in the same manner and to the same extent that Construction Manager is bound and obligated to Owner under the Prime Contract. All Rights which Owner may exercise and enforce against Construction Manager may be exercised and enforced by Owner against Subcontractor. In the event of any dispute between the Owner and Construction Manager, Subcontractor shall be bound by all decisions, directives, and interpretations and rulings of the Owner, including Owner's termination or suspension of the Prime Contract.

§ 14.5.35 The Construction Manager represents that he (1) has sufficient knowledge and expertise to construct the Work in accordance with all applicable codes and regulations; (2) has reviewed, analyzed, and has current knowledge of the site; (3) has reviewed, analyzed and has found sufficient for construction and completion of the Work the Contract Documents listed in this agreement; any exceptions to this statement have been specifically identified in this Agreement. The Construction Manager represents and warrants that it can and will complete the Work for the Contract Sum identified in this agreement, and that no sums additional to the Contract Sum are required for Construction Manager's completion of the Work as identified in this agreement.

§ 14.5.36 The parties agree expressly that the intent of the Contract Documents is to include in the Work to be performed by the Construction Manager all labor, materials and supplies, insurance, tools, equipment, licenses, , transportation, and field surveying and other services and items necessary for the Project to be a complete and workable system as required for the satisfactory performance, execution and final completion of the Work. Matters not expressly included in the Contract Documents that are reasonably inferable from the Contract Documents shall be deemed included as part of the Work and the Construction Manager's responsibility.

§ 14.5.37 Both parties acknowledge having had the opportunity to participate in the drafting of this Agreement. The Agreement shall not be construed against either party based upon authorship.

§ 14.5.38 This Agreement is contingent upon receipt by Owner and deposit in the Owner's Project Account of the net proceeds of the sale of certain Owner General Obligation Bonds, Series 2023 in an amount not less than 40.8 Million Dollars (\$40,800,000.00). In the event that this contingency is not met on or before March 1<sup>st</sup>, 2024, Owner may terminate this Agreement by written notice to Construction Manager, in which case neither party shall have any further rights, obligations or liability under the Contract.

**ARTICLE 15 SCOPE OF THE AGREEMENT**

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price as amended.
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction as amended
- .5 Supplementary Conditions
  
- .6 Other Exhibits:  
(Check all boxes that apply.)

Init.



EXHIBIT A  
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[ ]

[ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Exhibit C	RFQ/P Documents, Response and Proposal, Schedule, Equipment Rates	2/21/2024 12/04/2023	16

.7 Other documents, if any, listed below:

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

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

\_\_\_\_\_  
**OWNER** (Signature)

Mr. Dane Hilgenfeld  
President, Board of Education  
Plateau Valley School District 50

  
\_\_\_\_\_  
**CONSTRUCTION MANAGER** (Signature)

Mr. Shane Haas, President, FCI Constructors, Inc..

EXHIBIT A  
CONSTRUCTION CONTRACT

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

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:22:58 ET on 03/05/2024.

**PAGE 1**

**AGREEMENT** made as of the 22nd day of September in the year 2023

...

*(Name, legal status, address, and other information)*

Plateau Valley School District 50  
56600 HWY 330  
Collbran, CO 81624

...

FCI Constructors, Inc.  
3070 I-70 Business Loop, Building A  
Grand Junction, CO 81504

...

pk-12 School Replacement Project  
56600 HWY 330  
Collbran, CO 81624

...

TreanorHL Inc.  
1755 Blake Street, Suite 400  
Denver, CO 80202

**PAGE 2**

**EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT-AMENDMENT- TBD**

...

Per TreanorHL Schematic Design Documents and  
Scope and Proposal documents included in Exhibit C

:-

...

Per TreanorHL Schematic Design Documents and Scope and Proposal documents included in Exhibit C

**PAGE 3**

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User Notes:

(1249265002)

EXHIBIT A  
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Per TreanorHL Schematic Design Documents and Scope and Proposal documents included in Exhibit C

...

100% Design Development: 3/1/2024  
100% Construction Documents: August 2024

...

May 1<sup>st</sup>, 2024

...

Building Substantial Completion: November 18<sup>th</sup>, 2025  
Site Substantial Completion: June 25, 2026

...

Per Schedule included in Exhibit C

...

Green Globes – Targeting 3 Globes

...

Dynamic Program Management

PO Box 726

Eagle, CO 81631

Email:

**PAGE 4**

Mr. Trevor Long, Superintendent

56600 HWY 330

Collbran, CO 81624

...

Ground Engineering

...

By Architect

...

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

Surveyor – Clark Land Surveying

Construction Material Testing – Ground Engineering

Commissioning Agent – Bowman

FF&E - TBD

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...

Adam Braunstein,  
1755 Blake Street, Suite 400  
Denver, CO 80202  
Email:

...

Marc Litzen, Project Manager  
3070 I-70 Business Loop, Building A  
Grand Junction, CO 81504  
Email:

**PAGE 5**

N/A

...

Refer to Section 3.1.11.2

...

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

...

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's ~~interests~~ interests and as is consistent with reasonable professional skill and care and the orderly progress of the Project. All such time periods and deadlines are of the essence. The Construction Manager warrants that the services shall be performed in a good and workmanlike manner and shall be suitable and fit for the purposes for which they are intended. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

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

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§ 2.3.1The parties expressly acknowledge that the General Conditions set forth in AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended and supplemented by the Supplementary Conditions, are adopted by the parties the date hereof and referred to herein as "A201-2017". Where reference is made in this Agreement to a provision of A201–2017, or other Contract Document, the reference refers to that provision as amended or supplemented by the Supplementary Conditions. For the Preconstruction Phase, A201–2017 shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

...

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, but in no case until the contingency specified in Section 14.5.38 has been met and the Owner authorizes Construction Manager to proceed into this phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. The Construction Manager is expected to be reasonably familiar with applicable local and state building codes and requirements, and to bring to the Owner's and Architect's attention any discrepancy or compliance issue Construction Manager suspects or becomes aware of during the course of the Project.

...

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

For any Work that is specified as design build systems by the Architect (e.g. Fire Sprinkler, Fire Alarm, etc...) The Construction Manager is required to ascertain that its subcontractors' drawings and specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

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When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Project Schedule is attached hereto as Exhibit C, and shall not be modified without prior authorization of the Owner. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

...

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the

EXHIBIT A  
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Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall promptly inform the Owner and Architect ~~in the event that the estimate if the estimates of the Cost of the Work exceeds-exceed or are anticipated to exceed~~ the latest approved Project budget, and make recommendations for corrective ~~action-action in writing~~.

~~§ 3.1.6.3 If the Architect is providing cost-estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates. Not Used.~~

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The Construction Manager shall establish a process, to be reviewed and approved by the Owner, to qualify a list of local subcontractors provided by the Owner and will use its commercially reasonable best efforts to provide those subcontractors opportunities to bid on Work associated with the Project. As working drawings and specifications are completed, Construction Manager will establish bidding schedules and conduct pre-bid conferences to familiarize bidders with bidding documents, management techniques and any special systems, materials or methods. Construction Manager will prepare scope packages for each trade which clearly identify the bid scope, including general conditions items such as cleanup and safety. Construction Manager will review scope packages with the Owner and Architect prior to issuing same to subcontractors. Construction manager will analyze all bids and prepare: (1) a bid matrix and scoring method (approved in advance by the Owner), (2) written bid analysis, (3) review bids and bid analysis with the Owner and Architect, (4) make recommendations for contract awards, and (5) award subcontracts.

The subcontractor selected for an award will be the subcontractor whose bid, as presented in the response to the bidding documents, is the most advantageous to the Owner. The Owner is not bound to accept the lowest priced bid if that proposal is not in the best interests of the Owner as determined by the Owner.

~~§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase. If the Construction Manager or a "related party" (as defined in Section 7.8) desires to perform or self-perform ANY portion of the Work on the Project, then the Construction Manager shall identify such portion with particularity to the Owner and Architect at the time of the review conducted pursuant to Section 3.1.11.2 above, and comply with Section 7.8.2, regarding any such related party.~~

~~§ 3.1.11.4 In an effort to incentivize all qualified subcontractors to submit a competitive bid proposal on a portion of the Work which the Construction Manager or a "related party" desires to perform, the bid documents for that portion of the Work shall clearly communicate to all bid participants the following procedure:~~

- ~~.1 All participants, other than the Construction Manager and "related party," shall submit their bid proposals directly, and only, to the Owner's Representative no later than the published deadline, with a contemporaneous submittal to the Owner.~~
- ~~.2 The Construction Manager and any "related party" shall submit their proposal(s) to Owner's Representative no later than 24 hours prior to the published deadline.~~
- ~~.3 Construction Manager shall notify all bidders to submit their proposals directly to Owner's Representative only.~~

~~§ 3.1.11.5 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.~~

...

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

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acknowledges that Owner is a public, tax exempt entity and Construction Manager shall work with Owner to avoid the payment of taxes when possible.

**§ 3.1.13 Notices and Compliance with Laws**  
**PAGE 9**

Per RFQ/P Documents issued to date – Exhibit C

...

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

...

- .1 Written notification from the Owner stating that the contingency specified in Section 14.5.38 has been met;
- .2 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- ~~.2~~ .3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- ~~.3~~ .4 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- ~~.4~~ .5 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- ~~.5~~ .6 A date by which the Owner must accept the Guaranteed Maximum Price. ~~Price, mutually agreed to by the Owner and Construction Manager.~~

.7 Allowances for direct work included within the GMP will include all Labor, Material and Equipment, taxes and subcontractor's fees. All Allowances shall be substantiated with documentation from contractors, subcontractors and sub-subcontractor including invoices for payment from material suppliers if requested by the Owner's Representative. Reconciliation of Allowances shall recognize appropriate adjustments to the Fee, however will not allow for General Conditions adjustments.

.8 Owner requested Alternates shall include adjustment for Fee based on dollar volume and General Conditions if and only if the Alternate substantively affects the schedule beyond the terms of this Agreement. Construction Managers Voluntary Alternates must include all related costs, including impacts to the design and Owner's other costs that may be a result of implementation.

**§ 3.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency amount (the "Construction Contingency") for the Construction Manager's exclusive use to cover those costs ~~that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order~~ incurred in the Work from unforeseeable causes, or details which could not have been anticipated by the Construction Manager at the time of the Owner's approval of the Guaranteed Maximum Price. Such unforeseeable causes or unanticipated details include, but are not limited to, refinement of details of design within the scope of standards, quality and quantities which are reasonably inferable from the Contract Documents, delays in receipt of materials, and additional costs relating to adverse weather, construction scheduling problems or subcontractor defaults not reimbursed by the subcontractor's bonding company. However, the Construction Contingency shall not be used by Construction Manager to cover costs incurred to replace or otherwise correct nonconforming Work, except as provided for in Section 6.7.3 [here 7.7.3]. The Construction Manager, with Owner's written approval, may utilize the Construction Contingency for any items within the Cost of the Work without the necessity of a Change Order without constituting a Change in the Scope of the Work, and without resulting in any change in the Guaranteed Maximum

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Price. Costs incurred in excess of the Construction Contingency due to unforeseeable causes or unanticipated details shall be borne by the Construction Manager at the Construction Manager's sole risk. In the final accounting, all supporting documentation for all uses of the Construction Contingency shall be provided to Owner, and any and all remaining unused amounts allocated to the Construction Contingency shall accrue to the Owner. Construction Manager's access to the Construction Contingency shall be approved in writing on a per instance basis by the Owner.

**§ 3.2.5** The Construction Manager and applicable subcontractors as deemed appropriate by the Owner and Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal, proposal or portions thereof. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both or both that are acceptable to the Owner. Failure by the Owner or Architect to discover inconsistencies or inaccuracies in the information shall not in any way excuse the Construction Manager from completing the project at or below the Guaranteed Maximum Price identified in this Agreement.

**§ 3.2.6** If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions information, clarifications, inclusions and exclusions as outlined in 3.2.4 upon which it is based.

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

...

**§ 3.3.1.1** For purposes of Section 8.1.2 of A201-2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase, the Construction Manager receives a construction building permit from the applicable jurisdictional authority and a written Notice to Proceed with the Work as stated in Section 3.3.1.2.

.

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

...

**§ 3.3.2.1** The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. During the Construction Phase, the Construction Manager shall meet weekly with the Owner and Architect, unless the Owner and Architect mutually agree upon some other frequency appropriate to the phase of construction. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

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

...



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§ 4.1.2 ~~Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2. Anything in the Contract Documents to the contrary notwithstanding, the Owner represents that it has lawful authority to requisition certain capital construction funds deposited and available in Owner's Project Account to pay for the Project, and agrees to requisition funds allocated to such account in an amount not to exceed the Guaranteed Maximum Price in accordance with the Contract Documents. It is understood and agreed that no funds of Owner have been appropriated or otherwise available to perform Owner's obligations under this Agreement except those capital construction funds allocated to Owner's Project Account. No change order or other form of order or directive shall be issued by the Owner requiring additional compensable Work to be performed, which Work causes the aggregate amount payable under this Agreement to exceed the amount allocated for completion of the Project in said Project Account and budget approved by the Owner for the Project, unless the Owner's governing board gives the Construction Manager written assurance that additional funds have been or will be appropriated or otherwise made available to cover the costs of additional work have been made or unless such work is covered under a remedy granting provision of this Agreement. As used herein the term "remedy granting provision" means any contract clause which permits additional compensation in the event that a specific contingency or event occurs. Owner will provide written notice to Construction Manager when funds have been appropriated and Construction Manager may begin construction.~~

...

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise reasonable diligence and critical judgment in the review of such information, reports, surveys, drawings and tests prior to proceeding with any work or activity based upon the same, and shall exercise proper precautions relating to the safe performance of the Work.

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§ 4.1.4.2 ~~The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights of way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark as provided in Section 2.3.4 of AIA A201-2017~~

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

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

...

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall seek prompt approval or authorization from the Owner and render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction

EXHIBIT A  
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Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

...

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

...

**§ 5.1.2** ~~The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below. (If applicable, attach an exhibit of hourly billing rates or insert them below.)~~ The Owner shall pay Construction Manager a fixed fee of Eighty two thousand Dollars (\$82,000.00) in lump sum upon completion of Preconstruction Phase services.

**§ 5.1.2 Not Applicable**

**Individual or Position**

**Rate**

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

**§ 5.1.3** ~~If the Preconstruction Phase services covered by this Agreement have not been completed within (—) months of the date of this Agreement, twelve ( 12 ) months of the date the Owner authorizes the Construction Manager to proceed into the Preconstruction Phase in writing, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall~~ may be equitably adjusted.

**§ 5.2 Payments**

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

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

—%

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Construction Manager's Fee for this Contract is 3.5% of the Cost of the Work.. The Construction Manager's Fee shall be calculated as a straight multiplication on the total contract value less fee.

EXHIBIT A  
CONSTRUCTION CONTRACT

Fee will be invoiced at a percent complete of the cost of work in place.

No Construction Manager's fee shall be paid on the Construction Contingency until funds are allocated from those contingencies to the Cost of the Work..

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

For additive changes to the Guaranteed Maximum Price as established in the Guaranteed Maximum Price Amendment, Construction Manager's Fee will be increased by a percentage of the cost of the change that is equivalent to the percentage of the fee against the Guaranteed Maximum Price, pursuant to the provisions of the Article 7 of the General Conditions.

For deductive changes to the Guaranteed Maximum Price as established in the Guaranteed Maximum Price Amendment, Construction Manager's Fee will be decreased by a percentage of the cost of the change that is equivalent to the percentage of the fee against the Guaranteed Maximum Price, pursuant to the provisions of Article 7 of the General Conditions.

...

The maximum percentage for subcontractor change order markup above actual cost for labor, equipment and materials is 3.5% for the Construction Manager and 10% for subcontractors, per Construction Manager's proposal. This includes Construction Manager, subcontractor and material vendors/suppliers per Exhibit C

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed ~~—~~ percent (~~—~~%) of the standard rental rate paid at the place of the Project. has been provided in Exhibit C.

Rental for Construction Manager-owned equipment will only be paid based on the time such equipment is in actual use for the Project and not based on the time such equipment is stored at the Project site. Construction Manager shall document actual use of said equipment with each pay application. Equipment purchased for the Project shall become the property of the Owner unless Owner agrees in writing to allow Construction Manager to retain the equipment for a predetermined price. Equipment shall not be purchased for the Project without Owner approval in advance and shall not be purchased for the Project when rental of equipment is more advantageous from a cost standpoint for the Owner and the Project.

§ 6.1.6 Liquidated damages, if any: none.  
*(Insert terms and conditions for liquidated damages, if any.)*

...

Not Applicable

...

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

To the extent the Contract Sum is less than the Guaranteed Maximum Price, the difference between the Contract Sum and the Guaranteed Maximum Price (i.e., all savings) shall remain with the Owner. No change in the Work or the materials or labor utilized in connection therewith shall be the basis for an addition to the Guaranteed Maximum Price or the Construction Manager's Maximum Fees unless and until same has been authorized a Change Order executed by the Owner and issued in accordance with the Contract Documents.

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CONSTRUCTION CONTRACT

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

Changes in the Work shall not be the basis of a change to the Guaranteed Maximum Price or the Construction Manager's Fee unless and until such change has been approved authorized by a Change Order executed and issued in accordance with the Contract Documents.

The Date of Substantial Completion shall not be adjusted for a change in the Work unless the Construction Manager demonstrates to the Owner's reasonable satisfaction, in the Owner's sole discretion, that the change in the work will affect the critical path of the Construction Manager's schedule.

...

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

...

§ 7.2.1 Wages and hourly rates or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. This direct work shall be based on actual costs to the Construction Manager including such benefits, if any, as may be payable to the construction worker with respect thereto. Any labor supplied by a temporary labor organization shall be invoiced to the Project at cost from the temporary labor organization with supporting documentation provided in pay applications. Construction Manager may mark up temporary labor organization receipts up to 7% prior to applying markup percentages for the cost of the work.

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

~~§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:  
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.) approval and for Construction Manager's project management and reasonable administrative support whether performed at the site or in the Construction Manager's offices with the Owner's prior approval, all at the fixed rates as provided in the not-to-exceed general conditions fee proposal in Exhibit C.~~

~~§ 7.2.2.1 Deleted.~~

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

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

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

§ 7.2.6 Bonuses, profit sharing, incentive compensation, and any other discretionary payments paid to anyone hired by the Construction Manager or paid to a Subcontractor or vendor shall NOT be included in Labor Costs.

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CONSTRUCTION CONTRACT

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

...

**§ 7.4.2** Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall be properly placed and stored by Construction Manager at a location designated by the Owner, and shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work. Any purchased materials remaining after completion of the subject portion of Owner's Work (for example, extra paint, wall coverings or carpet) will be given by Construction Manager to Owner for use in subsequent repairs. Materials should be labeled, sealed, boxed and protected as appropriate to ensure the materials remain in good condition.

...

**§ 7.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market ~~value~~ value and agreed to by Owner. Contractor will provide to the Project a full stock of most commonly used small tools (All tools worth less than \$3000 each; drills, saws, screw guns, brooms, wheelbarrows, shovels, etc.). These tools will be furnished at no cost to the Project, but should one need replaced; it will be a direct cost to the Project unless the tool was damaged purposely or carelessly by contractor or stolen from the Project location. Consumables such as drill bits, saw blades, powder actuated loads, winter fuel fittings and hose, oxygen, acetylene, etc. will be a direct cost to the Project at a rate at least ten percent (10%) less than any available rental source (see attached Contractor Standardized Rental Rates). Tool rent is only to be charged for the time the tool is in use and reasonably required on the job site. Contractor tool rental is subject to Owner audit at any time.

**§ 7.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment ~~owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval.~~ rented shall be competitive and subject to the Owner's prior approval and shall be at or below rental rates consistent with those prevailing in the area. Provided, however, with respect to rental of Construction Manager's own equipment, such rental rates shall not exceed one hundred percent (100%) of the current A.E.D Manual charges, without the Owner's prior approval, and in no event shall the total of such rental charges exceed the depreciated fair market value of the piece of equipment when first utilized on the job. Tool rent is only to be charged for the time the tool is reasonably required on the Project site, and such rentals shall be subject to Owner audit at any time. The total rental cost of any such equipment may not exceed the purchase price of any comparable item. Rental rates for equipment are provided in Exhibit C.

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**§ 7.5.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if secured in a bonded warehouse and proof of insurance is provided to Owner, subject to the Owner's prior approval.

...

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

...

EXHIBIT A  
CONSTRUCTION CONTRACT

Insurance costs shall include (a) the attributable portion of premiums for Construction Manager's General Liability Insurance fixed at actual costs for this insurance to the Construction Manager's Corporate Offices without overhead and profit; and (b) if required by the Owner, the attributable portion of premiums for Construction Manager to furnish labor, material and performance bond shall be at actual costs for this insurance to the Construction Manager's Corporate Offices without overhead and profit, and (c) as required by the Owner, Builder's Risk insurance shall be at actual cost for this insurance to the Construction Manager's corporate offices without overhead and profit. Insurance costs shall be included and set in Exhibit C.

§ 7.6.2 Sales, use, use or similar taxes, taxes imposed by a governmental authority, authority that are related to the Work and for which the Construction Manager is liable. However, the Cost of the Work shall not include any taxes from which Owner is exempt as a public entity, in accordance with §3.6 of the Supplementary Conditions to AIA Document A201-2017.

§ 7.6.3 Fees and assessments for the building permit, and Except for the building permit fee which Owner shall pay directly, all fees and assessments for other permits, licenses, and inspections, for which the Construction Manager is responsible and required by the Contract Documents to pay.

...

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

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

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

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

...

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel Project Superintendent incurred while traveling in discharge of duties connected with the Work: Work, if approved in advance by the Owner.

...

§ 7.7.3 Costs of repairing or correcting Construction Manager is allowed to use (and include in the Cost of the Work) up to 5 % of its Construction Contingency for costs of repairing or correcting minor defects and other damaged or nonconforming Work executed by the Construction Manager, Subcontractors, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, a design flaw or by negligence or failure to fulfill a specific responsibility by, the Construction Manager, of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

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CONSTRUCTION CONTRACT

...

- .1 ~~Salaries-Salaries, wages and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than other offices including~~ the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;

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

...

~~§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall make reasonable efforts to obtain at least three (3) "Qualified" bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. If Construction Manager is not able to obtain (3) "Qualified" bids, written request to provide less shall be requested of the Owner's Representative and approval shall not be unreasonably withheld. A "Qualified" bid is a bid that meets the criteria established collectively by the Construction Manager and the Owner as outlined in Section 3.1.11.2 and can include a bid from the Construction Manager as set forth in said Section 3.1.11.2 or a "related party" in accordance with Section 7.8. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. The Owner shall have the right to disapprove at its discretion subcontractors proposed by the Construction Manager. If the Owner disapproves any Subcontractors, The Construction Manager shall obtain another Subcontractor bid so as not to have less than three (3) Subcontractors providing bids, unless approved by the Owner, for the respective portion of the Work.~~

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The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be maintained in accordance with generally accepted accounting principles, consistently applied, and shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. Failure to provide such access within ten (10) days of request therefore shall constitute a material default hereunder.

...

~~§ 11.1.1 This Project is funded in part through issuance of Owner bonds. Prior to the submission of the first Application for Payment, Construction Manager will submit a completed Federal Form W-9.~~

...

EXHIBIT A  
CONSTRUCTION CONTRACT

~~§ 11.1.3~~ Provided that an Application for Payment is received by the Architect not later than the ~~the~~ day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the ~~the~~ day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ~~( )~~ days after the Architect receives the Application for Payment. The Construction Manager shall, during the last week of each month, meet with the Architect, Project Manager and Owner, and/or other parties designated by the Owner, to review and approve an itemized draft indicating the total estimated value of the Work completed through the end of the current calendar month including the value of all material and equipment suitable stored at the jobsite or other approved location. Such draft shall set for the dollar amounts of completion of each part of the Work, including a prorated share of the Construction Manager's Fee less applicable retention. The approved draft will then be formalized into an Application for Payment and will be submitted to the Owner for processing.

**§ 11.1.3**

After its receipt of an Application for Payment, Owner shall work diligently to complete the process for payment..

The process for Applications for Payment is as follows:

1. Construction Manager will submit invoices directly to the Owner's Representative. The Construction Manager is instructed to send Applications for Payment to the Owner's Representative.
2. All Applications for Payment will be submitted and processed once per month; **Applications for Payment will be required to be received to the Owner by the 6<sup>th</sup> day of each month for the previous calendar month.** Note: Applications for Payment received on the 7<sup>th</sup> will not be processed until the 6<sup>th</sup> of the following month, with no exceptions. Applications for Payment received before or on the 30<sup>th</sup> day of the month will not be processed until the 6<sup>th</sup> day of the following month.
3. Applications for Payment shall be reviewed by the Owner and the Owner's Owners Representative for accuracy, completeness and contractual compliance.

Owner shall make reasonable efforts to issue a progress payment to the Construction Manager no later than forty-five (45) days after the Construction Manager timely submits a complete, correct and contractually compliant Application for Payment to the Owner's Representative.

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

**§ 11.1.4** With each Application for Payment, the Construction Manager and subcontractors shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, subcontractor lien waivers, proof of payment to subcontractors for amounts submitted under previous pay applications, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.  
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**§ 11.1.5.1** The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect and Owner may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment. The schedule shall detail work in several phases if required by the Owner.

...

- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017; and/or other amounts about which there is a legitimate dispute as to whether payment is due.

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Five Percent (5%)

...

None.



EXHIBIT A  
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...

~~§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:  
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)  
Not Applicable.~~

...

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

...

**§ 11.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, including the retainage withheld from prior Applications for Payment pursuant to Section 11.1.8.1, shall be made by the Owner to the Construction Manager when

...

- ~~2~~ the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- ~~3~~ a final Certificate for Payment has been issued by the Architect in accordance with Section ~~11.2.2.2-11.2.2.2;~~
- ~~4~~ Final lien waivers have been issued by the Construction Manager and all Subcontractors; and
- ~~5~~ The Construction Manager has provided the Owner with a final Certificate of Occupancy, to the extent the conditions required to obtain the final certificate of occupancy are the responsibility of the Construction Manager under the Contract Documents; and
- ~~6~~ The requirements set forth in Section 11.2.4 herein have been met.

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**§ 11.2.3** The Owner's final payment to the Construction Manager shall be made no later than ~~30~~ sixty (60) days after the issuance of the Architect's final Certificate for ~~Payment, Payment~~ and all requirements in this Section 11.2 have been met, or as follows:

Not Applicable

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

EXHIBIT A  
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~~amount to be paid by the Owner to the Construction Manager. The Architect will not issue the final Certificate for Payment and final payment will not be made until the time of final settlement shall be established by the Owner and shall thereafter be advertised by two (2) publications of notice, the last of which shall appear at least ten (10) days prior to the time of final settlement as required pursuant to Colo. Rev. Stat. §38-26-107. The Owner shall withhold from all payments to Construction Manager sufficient funds to insure the payment of all claims filed by any person that has furnished labor, materials, sustenance, or other supplies used or consumed by Construction Manager or a subcontractor in or about the performance of the Work, or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the Work whose claim therefore has not been paid by Construction Manager or the subcontractor, all in accordance with the provisions of Colo. Rev. Stat. §38-26-107.~~

...

~~%—Zero percent (0%)~~

...

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

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

**PAGE 23**

None

...

[ ] ~~Litigation in a court of competent jurisdiction~~  Litigation in the District Court of Mesa County, Colorado

...

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

...

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than ~~seven-thirty (30)~~ thirty (30) days’ written notice to the Owner.

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~~The same amount determined in accordance with Section 13.2.2. but Section 13.2.2.1.4 shall not apply.~~

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For all phases of the Project, the Construction Manager and Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds, as required by Article 11 of AIA Document A201–2017 and the attached AIA Document A133™–2019 Exhibit B Insurance and Bonds, incorporated herein as if fully set forth herein.

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**§ 14.3.1 Preconstruction Phase**

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

~~§ 14.3.1.1 Commercial General Liability with policy limits of not less than —(\$ —) for each occurrence and —(\$ —) in the aggregate for bodily injury and property damage.~~

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

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

~~§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than —(\$ —) each accident, —(\$ —) each employee, and —(\$ —) policy limit.~~

~~§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than —(\$ —) per claim and —(\$ —) in the aggregate.~~

**§ 14.3.1.6 Other Insurance**

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

**Coverage**

**Limits**

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

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

**§ 14.3.2 Construction Phase**

~~After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents. No Work will be conducted on the Project site until a certificate of insurance on a form acceptable to Owner has been submitted certifying that the Construction Manager and each subcontractor has insurance that complies with the specific insurance and indemnity requirements listed in this section 14.3. Such certificates shall contain a statement that the policies certified therein cannot be cancelled, materially modified, or allowed to expire without providing thirty (30) days' prior written notice to the Owner. Construction Manager is also responsible to verify that any Design/Build subcontractors (any subcontractor providing engineered drawings for review and approval), including but not limited to joist manufacturers, fire alarm subcontractors, fire sprinkler subcontractors, security subcontractors, landscape irrigation engineers, and precast concrete subcontractors, carry the following Professional Errors and Omissions Insurance: Professional Liability Insurance (Errors and Omissions), covering the services provided under this Agreement, including contractual liability insurance against the liability assumed in this Agreement, as is acceptable~~

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to and approved by the Owner. The costs and benefits of Professional Liability Insurance for design build subcontractors is to be reviewed with the project team at the design development phase of the project at which time it will be confirmed which Design/Build subcontractors will be required to carry Professional Liability Insurance. Such insurance shall have minimum policy limits of \$2,000,000 in the aggregate and \$2,000,000 per claim (All deductibles to be paid by Design/Build Subcontractor). The insurance provided must be primary to any insurance coverage carried by Owner.

...

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

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

**§14.3.3** Construction Manager shall procure and maintain at its own cost and expense for the duration of this Agreement (or such longer period as is provided herein), and shall require that each Subcontractor procure and maintain, at its own cost and expense, during such Subcontractor's Project contract (or such longer period as is provided herein), the following insurance coverages:

**§14.3.4** Worker's Compensation Insurance, Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Builder's Risk Insurance, if required, and all other insurance required by the Contract Documents. As to each Subcontractor, this insurance shall include contractual liability insurance covering Subcontractor's indemnity obligations under the Subcontract.

**§ 14.5.1** Any written notices hereunder directed to Owner, Owner's Representative or Construction Manager or the Architect may be served on the persons identified in Article 1 above by the means stated in 14.5.2 :

**§ 14.5.2 Notice:** All notices or other communications required or permitted hereunder shall be in writing, and shall be hand-delivered, sent certified mail, postage prepaid, return receipt requested, or sent via email to the address of the party as specified in Article 1 above, and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice' (ii) if mailed, four (4) business days after the date of posting by the United States Post Office; (iii) if given by email, when sent. Any notice, request, demand or direction or other communication sent by email must be confirmed within forty eight (48) hours by letter, mailed or hand-delivered in accordance with the foregoing.

**§ 14.5.3** Construction Manager shall provide staffing at or exceeding the levels proposed during the Request for Qualifications and Proposal process and shall not change any personnel involved with the Project or associated levels of commitment without prior written approval by the Owner.

**§ 14.5.4 Attorney's Fees:** If either party to this Agreement engages legal counsel to enforce any terms or conditions of this Agreement, the initiation of any legal proceedings or the defense thereof, including any appeals, the substantially prevailing party shall be entitled to prompt payment and reimbursement in full for all of its reasonable attorney's fees, costs and expert witness fees incurred.

**§ 14.5.5 Staff Commitment:** The proposed staff including Construction Manager's Project Manager Brady Blackmer will be committed to the project for the duration and will not be reassigned without the Owner's prior written approval.

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§ 14.5.6 Not Used.

§ 14.5.7 Not Used.

§ 14.5.9 Not Used

§ 14.5.10 Not Used.

§ 14.5.11 Not Used.

§ 14.5.12 Not Used.

§ 14.5.13 Not Used.

§ 14.5.14 Deleted.

§ 14.5.15 Deleted.

§ 14.5.16 Not Used.

§ 14.5.17 The Construction Manager shall fully cooperate with the Owner and the Owner's Representative.

§ 14.5.18 Not Used.

§ 14.5.19 Not Used.;

§ 14.5.20 Construction Manager will cooperate with other contractors in the buildings to ensure harmonious working relationships, including, without limitation, coordinating with other contractors in the buildings, trash removal and water and utility usage.

§ 14.5.21 Construction Manager will leave all Common Areas in a neat, clean, orderly and safe condition at the end of each day during construction of Owner's Work.

§ 14.5.22 Not Used.

§ 14.5.23 The Construction Manager shall maintain an accurate set of as-built drawings at the site. At the completion of the Work, the Construction Manager shall certify by signing on them that each of the as-built drawings and specifications are complete and accurate. No later than thirty (30) days after Substantial Completion of Owner's Work and prior to application for Final Payment, and as a condition to its approval by the Architect and Owner, the Construction Manager shall transfer the job site as-built drawings, arranged in proper order, indexed and certified as accurate to the Architect for transmittal to the Owner. The Construction Manager will not be responsible for transferring to the as-built documents any addenda, clarifications or changes documented by the consultants.

§ 14.5.24 Not Used.

§ 14.5.25 Not Used

§ 14.5.26 Not Used

§ 14.5.27 Not Used.

§ 14.5.28 Construction Manager and Owner acknowledge that they or their employees may, in the performance of the resultant Contract, come into the possession of proprietary or confidential information owned by or in the possession of the other. Neither party shall use any such information for its own benefit or make such information available to any person, firm, corporation, or other organization, regardless of whether directly or indirectly affiliated with

EXHIBIT A  
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Construction Manager or Owner, unless (i) required by law, including to comply with lawful request under the Colorado Open Records Act C.R.S. §§24-72-201, et seq., as amended, and other applicable laws, (ii) by order of any court or tribunal, (iii) such disclosure is necessary for the assertion of a right, or defense of an assertion of a right, by one party against the other party hereto, or (iv) such information has been acquired from other sources.

§ 14.5.29 Construction Manager agrees that it shall not publicize this Contract or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of Owner's employees or use Owner's name in connection with any sales promotion or publicity event without the prior express written approval of Owner.

§ 14.5.30 Construction Manager agrees that at all times its employees will observe and comply with all regulations of the facilities, including but not limited to, no smoking, and parking and security regulations. Construction Manager shall also abide at all times by all applicable Owner policies and procedures, including without limitation those related to the prohibited use and/or possession of alcohol, tobacco or firearms on Owner's property. The Construction Manager shall at all times strictly enforce this prohibition among its own employees and its consultants and their employees.

§ 14.5.31 Upon Substantial Completion and for a period of 15 calendar days thereafter the Construction Manager will replace burned out light bulbs at no cost to the Owner. Owner acknowledges that Construction Manager is not responsible to re-lamp usable working bulbs in permanent light fixtures.

§ 14.5.32 The Construction Manager shall provide notification within 72 hours after becoming aware of the basis of any request for change order. The Construction Manager shall develop and submit pricing of proposed changes within seven (7) days after a solution has been provided. The Owner shall provide a written response to the Construction Manager's proposal within ten (10) business days of the Owner's receipt of the Construction Manager's submission.

§ 14.5.33 Not Used.

§ 14.5.34 The Construction Manager shall include with every subcontract agreement the following language: "Subcontractor binds itself to Construction Manager and Owner and is obligated to Construction Manager and Owner in the same manner and to the same extent that Construction Manager is bound and obligated to Owner under the Prime Contract. All Rights which Owner may exercise and enforce against Construction Manager may be exercised and enforced by Owner against Subcontractor. In the event of any dispute between the Owner and Construction Manager, Subcontractor shall be bound by all decisions, directives, and interpretations and rulings of the Owner, including Owner's termination or suspension of the Prime Contract.

§ 14.5.35 The Construction Manager represents that he (1) has sufficient knowledge and expertise to construct the Work in accordance with all applicable codes and regulations; (2) has reviewed, analyzed, and has current knowledge of the site; (3) has reviewed, analyzed and has found sufficient for construction and completion of the Work the Contract Documents listed in this agreement; any exceptions to this statement have been specifically identified in this Agreement. The Construction Manager represents and warrants that it can and will complete the Work for the Contract Sum identified in this agreement, and that no sums additional to the Contract Sum are required for Construction Manager's completion of the Work as identified in this agreement.

§ 14.5.36 The parties agree expressly that the intent of the Contract Documents is to include in the Work to be performed by the Construction Manager all labor, materials and supplies, insurance, tools, equipment, licenses, transportation, and field surveying and other services and items necessary for the Project to be a complete and workable system as required for the satisfactory performance, execution and final completion of the Work. Matters not expressly included in the Contract Documents that are reasonably inferable from the Contract Documents shall be deemed included as part of the Work and the Construction Manager's responsibility.

§ 14.5.37 Both parties acknowledge having had the opportunity to participate in the drafting of this Agreement. The Agreement shall not be construed against either party based upon authorship.

§ 14.5.38 This Agreement is contingent upon receipt by Owner and deposit in the Owner's Project Account of the net proceeds of the sale of certain Owner General Obligation Bonds, Series 2023 in an amount not less than 40.8 Million Dollars (\$40,800,000.00). In the event that this contingency is not met on or before March 1<sup>st</sup>, 2024, Owner may

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terminate this Agreement by written notice to Construction Manager, in which case neither party shall have any further rights, obligations or liability under the Contract.

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

...

- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction as amended
- .5 ~~AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below: Supplementary Conditions~~

~~(Insert the date of the E203-2013 incorporated into this Agreement.)~~

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- [ ] ~~AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:~~

~~(Insert the date of the E234-2019 incorporated into this Agreement.)~~

...

<u>Exhibit C</u>	<u>RFQ/P Documents,</u>	<u>2/21/2024</u>	<u>16</u>
	<u>Response and Proposal,</u>	<u>12/04/2023</u>	
	<u>Schedule, Equipment</u>		
	<u>Rates</u>		

...

Mr. Dane Hilgenfeld  
President, Board of Education  
Plateau Valley School District 50

*(Printed name and title)*

Mr. Shane Haas, President, FCI Constructors, Inc..

*(Printed name and title)*

EXHIBIT A  
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**Certification of Document's Authenticity**  
AIA® Document D401™ – 2003

I, Colleen Kaneda, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:22:58 ET on 03/05/2024 under Order No. 4104246640 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.

  
(Signed)

President  
(Title)

3/6/24  
(Dated)



 **AIA** Document A133<sup>®</sup> – 2019 Exhibit B

## Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 22nd day of September in the year 2023  
*(In words, indicate day, month and year.)*

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

PK-12 Replacement School  
56600 HWY 330  
Collbran, CO 81624

**THE OWNER:**  
*(Name, legal status, and address)*

Plateau Valley School District 50  
56600 HWY 330  
Collbran, CO 81624

**THE CONSTRUCTION MANAGER:**  
*(Name, legal status, and address)*

FCI Constructors, Inc.  
3070 I-70 Business Loop, Building A  
Grand Junction, CO 81504

### TABLE OF ARTICLES

#### B.1 GENERAL

#### B.2 OWNER'S INSURANCE

#### B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

#### B.4 SPECIAL TERMS AND CONDITIONS

##### ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit, 14.3.5 of AIA Document A133-2019 dated September 22<sup>nd</sup>, 2023 and its General Conditions. As used in this Exhibit, the term General Conditions refers to AIA Document A201<sup>TM</sup>-2017, General Conditions of the Contract for Construction dated January \_\_\_\_, 2024.

##### ARTICLE B.2 OWNER'S INSURANCE

*(Paragraph Deleted)*

#### ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Document A201<sup>TM</sup>-2017, General Conditions of the Contract for Construction. Article 11 of A201<sup>TM</sup>-2017 contains additional insurance provisions.

**EXHIBIT A  
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The Owner shall procure and maintain at his own expense, until completion of direct work and acceptance thereof, a builder's risk insurance policy insuring against "all risks of physical loss or damage" as the term is commonly construed in the insurance industry, insuring the entire project against such physical loss or damage. If other special insurance not provided for herein is desired by the Contractor, the Contractor shall purchase such insurance at Contractor's expense; such coverage to contain specific limitations and exclusions. Faulty workmanship and negligence shall be excluded. A copy of the policy shall be provided to the Contractor upon request.

*(Paragraph Deleted)*

Such insurance shall be  
*(Paragraph Deleted)*

written on forms acceptable to Owner in an amount not less than the final completed value of the Project; less cost of site preparation (including fences necessary to secure work area and excavation land, foundations below the lowest basement floor, underground pipes and wiring, sidewalks, curbs and gutters; and shall name as insured the Owner and Contractor. It shall be understood that subcontractors and second level subcontractors are insured as to their interests in the partially completed Project.

Any insured loss is to be adjusted with the Owner and made payable to the Owner as Trustee for the insured, as their interests may appear.

The insurance policy shall provide for necessary access to the Project by Owner as follows: "Permission is hereby granted for the Owner to occupy such portion of the premises completed or suitable for occupancy prior to final acceptance of the entire project, any provision of the policy to the contrary notwithstanding."

*(Table Deleted)*

The Contractor and its subcontractors and suppliers waive all rights against the Owner for damages caused by fire or other perils to the extent covered by the builder's risk insurance obtained pursuant to this section or other property insurance applicable to the work, except such rights they have to proceeds of such  
*(Paragraph Deleted)*

*(Table Deleted)*

insurance provided by the Owner on their behalf. The Contractor shall require similar waivers of its subcontractors and all lower tier subcontractors, agents and employees. In waiving rights of recovery under terms of this sub paragraph, the term "Owner" shall be deemed to include its employees, and the architect/engineer and its employees as the Owner's representative as provided in the Contract Documents.

The Contractor, on his written request, shall be named jointly with the Owner in all policies, all of which shall be open to its inspection.

The following are specific exclusions: This insurance does not cover pollution, land, glass breakage, any tools owned by mechanics, any equipment, scaffolding, staging, towers and forms owned or rented by the Contractor, the capital value of which is not included in the cost of the work, or any temporary structures or trailers used by the Contractor or any subcontractor or material supplier.

The Contractor shall pay any deductible amount when making a claim against the builder's risk insurance policy. In no event shall the amount of the deductible under the Builder's Risk Policy exceed \$50,000.00.

**§ B.2.4 Optional Extended Property Insurance.**

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User Notes:

(3B9ADA34)

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The Owner shall purchase and maintain the insurance selected and described below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

- § **B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
  
- § **B.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
  
- § **B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
  
- § **B.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
  
- § **B.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
  
- § **B.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
  
- § **B.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ B.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

- § **B.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach,

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including costs of investigating a potential or actual breach of confidential or private information.  
*(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[ ] **§ B.2.5.2 Other Insurance**

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

**Coverage**

**Limits**

**ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS**

**§ B.3.1 General**

**§ B.3.1.1 Certificates of Insurance.** The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

**§ B.3.1.2 Deductibles and Self-Insured Retentions.** The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager.

**§ B.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04. The Owner shall also be named as an additional insured, only for operations arising out of the performance of the Contract Documents, under the following policies of insurance carried by the Contractor: automobile liability. With respect to Worker's Compensation Liability insurance, Owner shall be named as a Certificate Holder Entitled to Notice.

**§ B.3.2 Construction Manager's Required Insurance Coverage**

**§ B.3.2.1** The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. Coverages shall be written on an occurrence basis. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ B.3.2.2 Commercial General Liability**

**§ B.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than Two million Dollars and Zero Cents (\$ 2,000,000.00 ) each occurrence, Five million Dollars and Zero Cents (\$ 5,000,000.00 ) general aggregate, and Five million Dollars and Zero Cents (\$ 5,000,000.00 ) aggregate for products-completed operations hazard, providing coverage for claims including

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- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

**§ B.3.2.2.2** The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

**§ B.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than Two million Dollars and Zero Cents (\$ 2,000,000.00 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

**§ B.3.2.4** The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

**§ B.3.2.5** Workers' Compensation at statutory limits.

**§ B.3.2.6** Employers' Liability with policy limits not less than One million Dollars and Zero Cents (\$ 1000000.00 ) each accident, One million Dollars and Zero Cents (\$ 1000000.00 ) each employee, and One million Dollars and Zero Cents (\$ 1000000.00 ) policy limit.

**§ B.3.2.7** Not used.

**§ B.3.2.8** If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than Two million Dollars and Zero Cents (\$ 2,000,000.00 ) per claim and Five million Dollars and Zero Cents (\$ 5,000,000.00 ) in the aggregate.

**EXHIBIT A  
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**§ B.3.2.9** If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

**§ B.3.2.10** Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.

**§ B.3.2.11** Not Used.

**§ B.3.2.12** Not Used.

**§ B.3.3 Construction Manager's Other Insurance Coverage**

**§ B.3.3.1** Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ B.3.3.2** The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

*(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

- § B.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section B.2, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall not be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
- (Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

Construction Manager's Builder's Risk policy shall cover all new construction and any renovations, demolitions or additions to existing structures.

- § B.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, for Work within fifty (50) feet of railroad property.
- § B.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
- § B.3.3.2.4** Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.
- § B.3.3.2.5** Property insurance on an "all-risks" completed value form, covering property owned by the

Init.

**EXHIBIT A  
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Construction Manager and used on the Project, including scaffolding and other equipment.

**[ X ] § B.3.3.2.6 Other Insurance**

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

**Coverage**

Umbrella Liability

**Limits**

Ten Million Dollars (\$10,000,000.00) each occurrence and Ten Million Dollars (\$10,000,000.00) Aggregate. Subcontractors having contracts for Work that exceed \$4,000,000 shall have umbrella coverage in an amount equal to at least one half the amount of their contract less the face amount of their Commercial general liability coverage per occurrence.

Excess Liability

Ten Million Dollars (\$10,000,000.00) each occurrence and Ten Million Dollars (\$10,000,000.00) Aggregate

**§ B 3.3.4** It is also understood and agreed on the part of the Contractor that the insurance required above will cover the Owner, its officers, directors, agents, and employees against contingent liability for any and all claims of any nature whatsoever arising out of said operations and covered by the herein above policies of insurance.

If the Contractor fails to procure and maintain the above-required insurance, or if an aggregate policy limit has been eroded, the Contractor will notify the Owner. The Owner shall have the right to procure and maintain the required insurance for and in the name of the Contractor and the Contractor shall pay the cost thereof and shall furnish all necessary information to make effective and to maintain such insurance. If the Contractor fails to pay for the insurance required herein, the Owner may pay the premiums and offset those amounts against any amounts due under the Agreement to the Contractor.

**§ B.3.4 Performance Bond and Payment Bond**

As required by law, the Contractor shall furnish a Performance and Payment Bond, in the amount of 100% of the Contract Sum, to cover the faithful performance of the Contract Documents and payment of all obligations arising thereunder, including, but not limited to, payment for all labor and materials provided to the Project. Such bond shall be executed and delivered to Owner promptly upon execution of the Guaranteed Maximum Price Amendment. The bond shall be in the form and with a surety company acceptable to the Owner that is lawfully authorized to issue surety bonds in Mesa County, Colorado. Premiums on such bond shall be paid by the Contractor. *If, at any time, a Surety of*  
*(Table Deleted)*

such bond becomes irresponsible or loses its right to do business in the State of Colorado, the Owner may require another Surety acceptable to the Owner, which the Contractor shall furnish within ten (10) days after receipt of written notice to do so.

**ARTICLE B.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Init.

EXHIBIT A  
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**Additions and Deletions Report for**  
**AIA® Document A133® – 2019 Exhibit B**

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:22:02 ET on 03/05/2024.

**PAGE 1**

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the 22nd day of September in the year 2023

...

PK-12 Replacement School  
56600 HWY 330  
Collbran, CO 81624

...

Plateau Valley School District 50  
56600 HWY 330  
Collbran, CO 81624

...

FCI Constructors, Inc.  
3070 I-70 Business Loop, Building A  
Grand Junction, CO 81504

...

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this ~~Exhibit~~ Exhibit 14.3.5 of AIA Document A133-2019 dated September 22<sup>nd</sup>, 2023 and its General Conditions. As used in this Exhibit, the term General Conditions refers to AIA Document A201<sup>TM</sup>-2017, General Conditions of the Contract for ~~Construction~~ Construction dated January     , 2024.

...

**§ B.2.1 General**

**PAGE 2**

~~Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required.~~ The Owner shall procure and maintain at his own expense, until completion of



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direct work and acceptance thereof, a builder's risk insurance policy insuring against "all risks of physical loss or damage" as the term is commonly construed in the insurance industry, insuring the entire project against such physical loss or damage.

...

by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements. If other special insurance not provided for herein is desired by the Contractor, the Contractor shall purchase such insurance at Contractor's expense; such coverage to contain specific limitations and exclusions. Faulty workmanship and negligence shall be excluded. A copy of the policy shall be provided to the Contractor upon request.

...

### **§ B.2.2 Liability Insurance**

...

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

...

### **§ B.2.3 Required Property Insurance**

...

§ B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties written on forms acceptable to Owner in an amount not less than the final completed value of the Project; less cost of site preparation (including fences necessary to secure work area and excavation land, foundations below the lowest basement floor, underground pipes and wiring, sidewalks, curbs and gutters; and shall name as insured the Owner and Contractor. It shall be understood that subcontractors and second level subcontractors are insured as to their interests in the partially completed Project.

...

to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees. Any insured loss is to be adjusted with the Owner and made payable to the Owner as Trustee for the insured, as their interests may appear.

...

§ B.2.3.1.1 Causes of Loss. The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows: The insurance policy shall provide for necessary access to the Project by Owner as

EXHIBIT A  
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follows: "Permission is hereby granted for the Owner to occupy such portion of the premises completed or suitable for

...

(Indicate below the cause of loss and any applicable sub-limit.) occupancy prior to final acceptance of the entire project, any provision of the policy to the contrary notwithstanding."

...

**Cause of Loss**

**Sub-Limit**

...

~~**§ B.2.3.1.2 Specific Required Coverages.** The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows: The Contractor and its subcontractors and suppliers waive all rights against the Owner for damages caused by fire or other perils to the extent covered by the builder's risk insurance obtained pursuant to this section or other property insurance applicable to the work, except such rights they have to proceeds of such~~

...

~~(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)~~

...

**Coverage**

**Sub-Limit**

...

~~**§ B.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions insurance provided by the Owner on their behalf. The Contractor shall require similar waivers of its subcontractors and all lower tier subcontractors, agents and employees. In waiving rights of recovery under terms of this sub paragraph, the term "Owner" shall be deemed to include its employees, and the architect/engineer and its employees as the Owner's representative as provided in the Contract Documents.~~

...

~~**§ B.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions. The Contractor, on his written request, shall be named jointly with the Owner in all policies, all of which shall be open to its inspection.~~

...

EXHIBIT A  
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~~§ B.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing. The following are specific exclusions: This insurance does not cover pollution, land, glass breakage, any tools owned by mechanics, any equipment, scaffolding, staging, towers and forms owned or rented by the Contractor, the capital value of which is not included in the cost of the work, or any temporary structures or trailers used by the Contractor or any subcontractor or material supplier.~~

...

~~§ B.2.3.3 Insurance for Existing Structures~~

...

~~If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties. The Contractor shall pay any deductible amount when making a claim against the builder's risk insurance policy. In no event shall the amount of the deductible under the Builder's Risk Policy exceed \$50,000.00.~~

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~~§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04. The Owner shall also be named as an additional insured, only for operations arising out of the performance of the Contract Documents, under the following policies of insurance carried by the Contractor: automobile liability. With respect to Worker's Compensation Liability insurance, Owner shall be named as a Certificate Holder Entitled to Notice.~~

...

~~§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. Coverages shall be written on an occurrence basis. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:~~

...

~~§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than Two million Dollars and Zero Cents (\$ 2,000,000.00 ) each occurrence, Five million Dollars and Zero Cents (\$ 5,000,000.00 ) general aggregate, and Five million Dollars and Zero Cents (\$ 5,000,000.00 ) aggregate for products-completed operations hazard, providing coverage for claims including~~

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PAGE 5

**§ B.3.2.3** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than Two million Dollars and Zero Cents (\$ 2,000,000.00 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

...

**§ B.3.2.6** Employers' Liability with policy limits not less than One million Dollars and Zero Cents (\$ 1000000.00 ) each accident, One million Dollars and Zero Cents (\$ 1000000.00 ) each employee, and One million Dollars and Zero Cents (\$ 1000000.00 ) policy limit.

...

**§ B.3.2.7** ~~Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks~~Not used.

...

**§ B.3.2.8** If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than Two million Dollars and Zero Cents (\$ 2,000,000.00 ) per claim and Five million Dollars and Zero Cents (\$ 5,000,000.00 ) in the aggregate.

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**§ B.3.2.11** ~~Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~Not Used.

...

**§ B.3.2.12** ~~Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~Not Used.

...

**§ B.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section ~~B.2.3, B.2,~~ which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such ~~insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3.~~ insurance. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall not be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

...

*(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section ~~B.2.3, B.2,~~ indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

EXHIBIT A  
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...

Construction Manager's Builder's Risk policy shall cover all new construction and any renovations, demolitions or additions to existing structures.

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§ B.3.3.2.6 Other Insurance

...

Umbrella Liability

Ten Million Dollars (\$10,000,000.00) each occurrence and Ten Million Dollars (\$10,000,000.00) Aggregate. Subcontractors having contracts for Work that exceed \$4,000,000 shall have umbrella coverage in an amount equal to at least one half the amount of their contract less the face amount of their Commercial general liability coverage per occurrence.

Excess Liability

Ten Million Dollars (\$10,000,000.00) each occurrence and Ten Million Dollars (\$10,000,000.00) Aggregate

...

§ B 3.3.4 It is also understood and agreed on the part of the Contractor that the insurance required above will cover the Owner, its officers, directors, agents, and employees against contingent liability for any and all claims of any nature whatsoever arising out of said operations and covered by the herein above policies of insurance.

...

If the Contractor fails to procure and maintain the above-required insurance, or if an aggregate policy limit has been eroded, the Contractor will notify the Owner. The Owner shall have the right to procure and maintain the required insurance for and in the name of the Contractor and the Contractor shall pay the cost thereof and shall furnish all necessary information to make effective and to maintain such insurance. If the Contractor fails to pay for the insurance required herein, the Owner may pay the premiums and offset those amounts against any amounts due under the Agreement to the Contractor.

...

~~The Construction Manager shall provide surety bonds, from a company or companies. As required by law, the Contractor shall furnish a Performance and Payment Bond, in the amount of 100% of the Contract Sum, to cover the faithful performance of the Contract Documents and payment of all obligations arising thereunder, including, but not limited to, payment for all labor and materials provided to the Project. Such bond shall be executed and delivered to Owner promptly upon execution of the Guaranteed Maximum Price Amendment. The bond shall be in the form and with a surety company acceptable to the Owner that is lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows: Mesa County, Colorado. Premiums on such bond shall be paid by the~~

...

(Specify type and penal sum of bonds.) Contractor. If, at any time, a Surety of

EXHIBIT A  
CONSTRUCTION CONTRACT

...

Type	Penal Sum (\$0.00)
Payment Bond	
Performance Bond	

...

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement. such bond becomes irresponsible or loses its right to do business in the State of Colorado, the Owner may require another Surety acceptable to the Owner, which the Contractor shall furnish within ten (10) days after receipt of written notice to do so.

 **Document A201® – 2017**

**General Conditions of the Contract for Construction**

**for the following PROJECT:**

*(Name and location or address)*

Pk-12 Replacement School  
56600 HWY 330  
Collbran, CO 81624

**THE OWNER:**

*(Name, legal status and address)*

Plateau Valley School District 50  
56600 HWY 330  
Collbran, CO 81624

**THE ARCHITECT:**

*(Name, legal status and address)*

TreanorHL Inc.  
1755 Blake Street, Suite 400  
Denver, CO 80202

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3	<b>CONTRACTOR</b>
4	<b>ARCHITECT</b>
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**ADDITIONS AND DELETIONS:**

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

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

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

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User Notes:

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- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
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**User Notes:**

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

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

#### § 1.1.2 The Contract

The Contract Documents as defined in section 1.1.1 form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 The Work

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

#### § 1.1.4 The Project

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

#### § 1.1.5 The Drawings

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

#### § 1.1.6 The Specifications

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

#### § 1.1.7 Instruments of Service

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

#### § 1.1.8 Initial Decision Maker

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

#### §1.1.9 Products

Products are new material, machinery, components, equipment, fixtures, and systems forming the Work, but do not include machinery and equipment used for preparation, fabrication, conveying and erection of the Work.

#### §1.1.10 Furnish

Furnish means to supply and deliver, unload, inspect for damage.

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## **§1.1.11 Install**

Install means to unpack, assemble, erect, apply, place, finish, cure, protect, clean, and make ready for use.

## **§1.1.12 Provide**

Provide means to furnish and install.

## **§1.1.13 Receive**

Receive means to accept delivery of, off-load/unload, verify content/count, inspect for damage, document any damage on shipping/receiving documents and report same immediately to the Owner, notify the Owner of receipt, safely and properly store/secure/protect until final installation and Certificate of Occupancy

## **§ 1.2 Correlation and Intent of the Contract Documents**

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

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

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

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

**§ 1.2.4** In the event the Contractor discovers an error in the drawings, or a conflict between the drawings and specifications, the Contractor shall bring such error or conflict to the attention of the Architect and Owner's Representative as soon as reasonably possible. The Contractor shall await instructions from the Architect on how to proceed before proceeding with this work. Where a conflict occurs between or within standards, specifications and drawings, the more stringent or higher quality requirements shall apply. Addenda and modifications to the drawings and specifications take precedence over the original contract documents. Should there be a conflict within the specifications, or the drawings, or between the specifications and the drawings, the Owner shall decide which interpretation will provide the best installation and the Owner's decision shall be final.

## **§ 1.3 Capitalization**

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

## **§ 1.4 Interpretation**

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

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

**§ 1.5.1** Subject to the terms and conditions of the contract between the Architect and Owner, the Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or

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for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights in or to the Instruments of Service.

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

## **§ 1.6 Notice**

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

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

## **§ 1.7 Digital Data Use and Transmission**

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

## **§ 1.8 Building Information Models Use and Reliance**

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

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

**§ 2.1.1** The Owner is Plateau Valley School District 50. The Owner shall designate in writing a representative who shall have express authority, to the extent permitted by Colorado law and the Owner's policies and regulations, to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

### **§ 2.2 Evidence of the Owner's Financial Arrangements**

**§ 2.2.1** Deleted.

**§ 2.2.2** Deleted.

**§ 2.2.3** Deleted.

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§ 2.2.4 Deleted.

**§ 2.3 Information and Services Required of the Owner**

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

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

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

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

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. If the Contractor becomes aware of any deficiency, inaccuracy or incompleteness of services and information furnished by Owner under this subsection 2.3.5., the Contractor shall promptly advise the Owner in writing of such inaccuracy or incompleteness.

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

**§ 2.4 Owner's Right to Stop the Work**

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

**§ 2.5 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15. . Nothing herein shall in any way limit the Owner's legal right to revoke acceptance of the Work at a later time, in accordance with applicable law.

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**ARTICLE 3 CONTRACTOR**

**§ 3.1 General**

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

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

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

**§ 3.1.4** The contractor shall comply with all applicable federal labor and state labor laws including without limitation those addressing Contractor's obligations for publicly funded projects.

**§ 3.2 Review of Contract Documents and Field Conditions by Contractor**

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

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the 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. If the Contractor performs any construction activity knowing it involves an error, inconsistency or omission in the Contract Documents without providing notice of such error, inconsistency or omission to the Architect, the Contractor shall assume responsibility for such construction activity and shall bear the costs attributable to any necessary correction.

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

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall, upon written request of the owner, correct such failure(s) without adjustment to the contract sum. In the event a correction that will make the owner whole is not possible, then the contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

**§ 3.3 Supervision and Construction Procedures**

**§ 3.3.1** The Contractor shall perform, supervise and direct the Work, using the Contractor's best skill and attention, which at a minimum, shall conform to industry standards for staff housing facility construction in Colorado. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences,

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

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

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

**§ 3.4 Labor and Materials**

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

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

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

**§ 3.5 Warranty**

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

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

**§ 3.5.3** The Contractor further warrants that the construction processes and methods employed to perform the work shall be suitable for the results required and expected. If the Contractor proposes to use an unproved and untried method, process or product, the architect must be advised of the proposal in writing for purposes of discussion with the Owner. The Owner may permit experimentation, but may require special guarantees of the Contractor to cover the work produced by any new and untried process, method or product.

**§ 3.5.4** The Contractor further warrants that it has full title to all equipment, components and other items conveyed to the Owner under the terms of this contract, that its transfer of such title to the Owner is rightful and that all such equipment, components and other items shall be transferred free and clear from all security interest, liens or encumbrances whatsoever. The Contractor agrees to warrant and defend such title against all persons claiming the whole or any part thereof at no cost to the Owner.

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§ 3.5.5 The Contractor shall promptly repair, replace or otherwise correct any of its workmanship and any parts, materials, components, equipment or other items in the work which contain faults or defects, whether such failures are observed by the Owner, architect or Contractor before or after final completion. The Contractor shall bear all costs of correcting such work covered by the warranties.

§ 3.5.6 The Contractor shall further warrant, and shall ensure that all of its subcontractors and sub-subcontractors shall warrant, that all work executed under this contract shall be free from defects of materials and workmanship for a period of one (1) year from the date of substantial completion, except items of work completed after date of Substantial completion shall run for one year from the date of final payment to the Contractor. This warranty is a remedy available to the Owner in addition to claims the Owner may have arising out of work or materials found to be noncomplying, out of specification or otherwise in breach of this contract no matter when discovered. Unless otherwise agreed by Owner, Contractor unconditionally agrees to remedy, repair and/or replace, at its own expense, all such defective work and all other work damaged thereby, and pay for any damages resulting therefrom, which appears within such one year warranty period. Whenever guarantees or warranties are required by the specifications for a longer period than one (1) year, such period shall govern. Owner shall have the full benefit of longer warranties provided by particular subcontractors or other suppliers. Upon discovery of any warranty defect or defects under section 3.5.5, the Owner shall give written notice thereof to the Contractor. If, within ten (10) days after the mailing of such written notice by the Owner to the Contractor or its agent, requesting such repairs or replacement, the Contractor shall neglect to make, or undertake with due diligence to make the same, the Owner may make such repairs at the Contractor's expense; provided, however, that in the case of emergency and within the judgment of the Owner, delay would cause certain loss or damage, repairs or replacement may be made without notice being given to the Contractor, and the Contractor shall pay the cost thereof. The checking or cracking of walls, floors or ceilings, except hairline cracks from concrete shrinking which are cosmetic only, and the chipping or flaking of paint shall, during the first year after acceptance of the building, be deemed to be a defect covered by this warranty without proof of use of inferior materials, equipment or workmanship. Such defects shall not, in and of themselves, cause a duty to investigate for structural defects.

§ 3.5.7 Neither the Owner's approval of the final Request for Payment nor payment of any Request for Payment or of any sum previously withheld from the Contractor shall relieve the Contractor of responsibility for its warranty and guarantee hereunder or for faulty materials or workmanship. Nothing herein shall be construed to establish a period of limitation with respect to any other obligation, which the Contractor might have under the contract documents. The establishment of the warranty periods set forth in Section 3.5.5 relates only to the specific obligations of the Contractor to correct known defects in the work, and has no relationship to the time within which its 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 its obligations and resulting damages other than specifically to correct known defects in the work which are discovered and called to the Contractor's attention during the warranty period.

§ 3.5.8 The Contractor at its own expense shall also repair or replace any damages to any equipment, facilities or other personal or real property owned or leased by the Owner which is damaged as a result of any such fault or defect or Contractor's performance of the Work, at no cost to the Owner.

§ 3.5.9 All subcontractors', manufacturers', and suppliers' warranties and guarantees, expressed or implied, for any part of the work and any materials used therein, shall be obtained and enforced by the Contractor for the benefit of the Owner whether or not these warranties have been assigned or otherwise transferred to the Owner. The Contractor shall assign or transfer such warranties and guarantees to the Owner if the Owner requests the Contractor to do so, but such transfer shall not affect the Contractor's obligation to enforce such warranties and guarantees.

§ 3.5.10 Remedies for breach of warranty are cumulative and in addition to any other remedy Owner may have for defective work or work not in compliance with the contract documents.

§ 3.5.11 The warranties and obligations set forth above shall not be limited by the provisions of § 12.2.

## § 3.6 Taxes

§ 3.6.1 The Owner is exempt from Colorado State and County Sales and Use Taxes on materials and equipment to be incorporated into the Work. Said taxes on materials incorporated into the work, or upon equipment or supplies expended and/or used to exhaustion in the course of the work, shall not be included in the Cost of the Work, the

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Guaranteed Maximum Price or modifications to the same shall not include the cost of any such taxes. The Owner's tax exempt number is \_\_\_\_\_.

**§ 3.6.2** Prior to the purchase of any property to be incorporated into the Work, the Contractor shall ensure that the purchaser, including the Contractor and all subcontractors on the Project, apply to the Department of Revenue, State of Colorado, for an exemption (Form DR-172) to be used for all Work performed and completed under this Contract, and copies of all tax exemption certificates shall be furnished to the Owner prior to commencement of the Work. All purchases for the Work subject to tax shall use the exemption from sales tax. Any costs, taxes or fines that are incurred as a result of a failure to comply with the requirements of this § 3.6.2 shall be paid by the Contractor.

**§ 3.6.3** The Contractor shall comply with applicable municipal ordinances concerning sales and use taxes on required materials permanently in the Work. It is specifically understood and agreed that any refund of taxes paid shall become the property of the Owner. The Contractor and subcontractors shall keep all required records and upon completion of the project, furnish the Owner with certificates and listing of Invoices as required to allow the Owner to obtain refund of all taxes paid.

### **§ 3.7 Permits, Fees, Notices and Compliance with Laws**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for the building permit. The Contractor shall pay for other permits, fees, licenses, and inspections by the Colorado Division of Fire Prevention & Control - Department of Fire Safety (the "Division"), or with a prequalified planning department certified by the Division pursuant to CRS 24-32-124(2)(a)(II), or other government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Owner shall pay for special inspections through a certified inspector procured by the owner for the Project.

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

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, regardless of whether such work is in accordance with contract documents, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. Codes and ordinances shall take full and complete precedence over anything contained in the contract documents, except where the contract documents require work or materials of higher standards than those required by codes and ordinances, in which case the contract documents shall govern. The Contractor shall promptly notify the Owner and Architect if the Contractor believes the Contract Documents require work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

### **§ 3.7.4 Concealed or Unknown Conditions**

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

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall

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continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

**§ 3.7.6** The Contractor has visited the site of the Project and thoroughly familiarized itself with the local conditions under which the services required hereunder are to be performed; and shall correlate its observations of same with all of the requirements of the Contract Documents.

**§ 3.8 Allowances**

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

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

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

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

**§ 3.9 Superintendent**

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

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

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

**§ 3.9.4** The Contractor's superintendent or an assistant superintendent shall be on site full time and at all times while work is in progress including but not limited to weekends, evenings and nights, until the Project and all punch list items have been completed to the satisfaction of the Architect. The Contractor shall ensure that no subcontractor shall perform work on the site without the presence of the superintendent or assistant superintendent. Communication given to the superintendent or assistant superintendent shall be as binding as if given to the Contractor. Communications which may have a material impact on the timing or completion of the Project shall be confirmed in writing.

**§ 3.10 Contractor's Construction and Submittal Schedules**

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



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schedule. The completion time shall be as specified in the Agreement. The schedule shall be revised when the completion time is revised by Change Order.

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

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

**§ 3.11 Documents and Samples at the Site**

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

**§ 3.12 Shop Drawings, Product Data and Samples**

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

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

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

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

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

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

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

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

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

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

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

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

§ 3.12.11 Copies of all Shop Drawings, Product Data, Samples and similar submittals as identified in section 3.12 shall be preserved in an orderly manner and delivered to the Owner upon Final Completion.

**§ 3.13 Use of Site**

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

§ 3.13.2 The site shall be kept clean and well organized at all times for purposes of safety, protection and care of project materials and equipment, as well as general aesthetics.

§ 3.13.3 The Contractor shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, all persons at the site and all property at the site and adjacent thereto. The contractor acknowledges that the work site may comprise buildings and areas that may be occupied during the performance of some portions of this contract.

§ 3.13.4 The Contractor shall notify all public utility companies 48 hours prior to the commencement of any work by it or its subcontractors in the vicinity of the utilities. No work shall commence until the utilities have been located and staked by the utility company or written consent from the Architect to proceed has been given to the contractor. If the

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utility service must be interrupted, the Contractor shall notify the head of the local administrative services (i.e., town manager, mayor or town clerk, as applicable) and the utility users affected by the interruption. Such notice shall consist of publication in a local newspaper and/or announcement on local radio or television stations, whichever is most reasonably calculated to give notice to such utility users.

### § 3.14 Cutting and Patching

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

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

### § 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. The Contractor shall designate trash and debris areas where all building debris shall be put daily (these areas to be cleaned weekly). The work shall be reasonably cleaned daily. 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. The Contractor shall do the following special cleaning for all trades at completion of work: clean all glass, woodwork, painted and decorated work, hardware, tile work, fixtures, floors, windows, metal surfaces (leave the work perfectly clean). Under no circumstances shall the owner's trash receptacles be used for construction debris.

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

### § 3.16 Access to Work

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

### § 3.17 Royalties, Patents and Copyrights

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

### § 3.18 Indemnification

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

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

§ 3.19 **FINANCIAL REPRESENTATIONS.** The Contractor hereby represents, promises, and warrants that Contractor is financially solvent and possesses sufficient experience, licenses, authority, personnel and working capital to complete the services required hereunder.

**ARTICLE 4 ARCHITECT**

§ 4.1 **General**

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

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

§ 4.2 **Administration of the Contract**

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

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

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

§ 4.2.4 **Communications**

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

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the

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Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

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

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

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

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

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

§ 4.2.15 In carrying out his duties under this article 4, the Architect will be contractually obligated to consult with subcontracted engineers and other professionals as necessary. The Architect will advise the Owner if, in the Architect's judgment, additional professionals should be retained.

§ 4.2.16 Nothing in this contract shall be interpreted as superseding the Architect's duties and responsibilities as stated in the contract between the Owner and Architect.

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**ARTICLE 5 SUBCONTRACTORS**

**§ 5.1 Definitions**

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

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

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

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

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

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

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

**§ 5.2.5** Each Subcontract shall be in writing and shall specify that (i) the Owner is an intended third party beneficiary of such Subcontract; and that (ii) it shall be assignable to the Owner without any restriction. Contractor shall not allow a Subcontractor to commence work without an executed Subcontract with the Contractor in accordance with Sections 5.1, 5.2, and 5.3. Contractor must execute all subcontracts in a timely manner so no delays in the Work are realized. Contractor shall promptly provide a copy of all contracts with Subcontractors to Owner's Representative.

**§ 5.3 Subcontractual Relations**

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

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**§ 5.4 Contingent Assignment of Subcontracts**

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

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

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

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

**ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

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

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

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

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

**§ 6.2 Mutual Responsibility**

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

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

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

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

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

**§ 6.3 Owner's Right to Clean Up**

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

**ARTICLE 7 CHANGES IN THE WORK**

**§ 7.1 General**

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

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. The Contractor recognizes that the Contract Documents are intended to describe the design and construction. The Contractor hereby represents, promises, and warrants that the Guaranteed Maximum Price includes all costs consistent with the Contract Documents and reasonably inferable from the Contract Documents as being reasonably necessary to produce the results required by the Contract Documents.

**§ 7.2 Change Orders**

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

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

§ 7.2.2 A change order shall be initiated by a proposal request (PR) from the Owner submitted through the Architect or from the Contractor to the Architect. The PR shall include a detailed description of the proposed change with supplementary or revised drawings and specifications. Within ten (10) days from the date of issuance of a PR, the Contractor shall respond, outlining the amount of the adjustment, if any, in the Contract Sum; and the extent of the adjustment, if any, in the Contract Time that are required as a result of the proposed change. Adjustments to the Contract Sum shall be stated in a lump sum amount or unit prices. Justification for adjustment to the Contract Time must be provided in the format outlined in the Contract Documents. "to be determined" or similar description, is not acceptable as an adjustment to the Contract Time. PRs that have been approved and signed by all parties are considered a change order as defined in section 7.2.1 and is authorization to proceed with the work described therein. Once a month, approved proposal requests will be grouped together using AIA form G701 for accounting purposes. The form G701 shall list the approved proposal requests, the net change in contract sum, the net change in contract time, and modification to the date of substantial completion. The issuance of form G701 shall not change any of the provisions outlined in an approved PR.



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## § 7.3 Construction Change Directives

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

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

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

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

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

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

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be

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reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

## **§ 7.4 Minor Changes in the Work**

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum, extension of the Contract Time or substitution of a Product of lesser quality or utility, and not inconsistent with the intent of the Contract Documents. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## **ARTICLE 8 TIME**

### **§ 8.1 Definitions**

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

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

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

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

**§ 8.1.5** The date of Final Completion of the work is the date that the Architect certifies in the Final Certificate for Payment pursuant to §9.10.1 that the Work is acceptable under the Contract Documents and the Contract is fully performed.

### **§ 8.2 Progress and Completion/Liquidated Damages**

**§ 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. The Contractor shall perform its obligations as expeditiously as is consistent with reasonable professional skill and care and the orderly progress of the Project. Owner and Contractor agree that it would be impractical and extremely difficult to estimate the damages, including, but not limited to indirect, incidental, special and consequential damages, which Owner might suffer if the Contractor fails to achieve Substantial Completion within the Contract Time. Therefore, Owner and Contractor have determined and agree that fair and reasonable compensation for the damages Owner may suffer if Contractor fails to achieve Substantial Completion within the Contract Time is One Thousand Dollars (\$1,000.00) per day, and Contractor agrees to pay the said amount for each day after the expiration of the Contract Time until such time as the Work is Substantially Completed. Such amounts ("Liquidated Damages") shall be Owner's sole and exclusive remedy, and not as a penalty, for Contractor's failure to achieve Substantial Completion within the Contract Time.

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

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

### **§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2; (4) by delay authorized by the Owner pending mediation and binding dispute

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resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

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

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

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

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

### § 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The schedule of values shall be prepared in such a manner that each major item of subcontractor work is shown as a single line item on AIA Document G 703, Application and Certificate for Payment, Continuation Sheet. As a guide, each section of the Project Manual should be shown as a single line item. Upon request by the Architect, the Contractor shall support values given with data that will substantiate their correctness. The schedule of values shall be used only as a basis for the Contractor's application for payment.

Each item on the schedule of values shall be identified as per the detailed CSI Master Format Divisions as approved by the Owner.

If re-submittal is required after review by the Architect, the Contractor shall revise and resubmit the schedule of values in the same manner as required. The schedule of values must be approved prior to certification of the first Application for Payment by the Architect.

### § 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. All Applications for Payment shall be submitted by the Contractor to the Owner in the AIA G702 and G703 format. The Contractor agrees that securities shall not be substituted for any retainage specified in the Contract Documents.

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

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

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

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

§ 9.3.4 With each application for payment, the Contractor shall submit Progress Charts comparing the "work-in-place" progress to the Progress Schedule.

**§ 9.4 Certificates for Payment**

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

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

**§ 9.5 Decisions to Withhold Certification**

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

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- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents;
- .8 failure of the Contractor to submit Progress Charts in comparison to Progress Schedule with an application for payment;
- .9 **failure to comply with any laws, ordinances, regulations or orders of any public authority governing the performance of the work, including failure to obtain necessary permits or licenses;** or
- .10 the Owner has been required to correct defective work.

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

**§ 9.5.3** When the reasons for withholding certification are removed, certification will be made for amounts previously withheld provided, however, that the Owner may continue to withhold payment if the amount withheld for one or more particular reasons exceeds the amounts payable for work for which (i) there is no reason to withhold payment, or (ii) the reason to withhold payment has been removed. Additionally, and notwithstanding any provision of the Agreement to the Contrary, the Owner may refuse to make payment of the full amount recommended by the Architect because:

- a. Claims have been made against the Owner on account of Contractor's performance or furnishing of the Work;
- b. Liens have been filed or recorded in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such liens;
- c. There are other items entitling Owner to a set-off against the amount recommended; or
- d. The Owner has a reasonable belief that any reasons enumerated in § 9.5.1 exist.

If the Owner refuses to make payment of all or any portion of the amount recommended by the Architect, the Owner will give the Contractor written notice (with a copy to the Architect) stating the reasons for such action. The Owner will promptly pay the Contractor the amount so withheld, or any adjusted amount agreed upon by the Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for the withholding. If it is subsequently determined that the Owner's refusal to pay was not justified, the amount withheld shall be paid immediately to the Contractor.

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

**§ 9.6 Progress Payments**

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

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

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

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§ 9.6.4 Upon completion of the Work covered by each pay application, and before or contemporaneously with payment of any sums due Contractor, Contractor shall produce and deliver to Owner, full, complete, and properly executed releases for the period of time covered by such pay application from all persons or entities who have furnished materials or labor, including Contractor, in connection with the Work. Such releases may be conditioned upon payment of an amount stated in such release for the work done for the applicable period of time. Contractor warrants that it will pay all subcontractors, sub-subcontractors, materialmen and suppliers any payment due them arising out of this Contract promptly upon payment by the Owner. Without in any way limiting the foregoing, the Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor the Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may be otherwise required by law.

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

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

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

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

§ 9.6.9 retainage shall be held in the amount of five percent (5%). Retainage shall be held against each line item of the schedule of values as work is completed and/or stored throughout the project duration. The contractor expressly agrees that securities shall not be substituted for any retainage specified in this section and that it shall not request any such substitution. This section 9.6.9 shall be deemed amended to comply with any applicable retainage laws of the state of Colorado or any amendment thereto.

§ 9.6.10 The Owner shall make monthly progress payments as described in this § 9.6 until the scheduled (including time extensions made by change order) time for Substantial Completion. If the Project is not substantially complete at this time, the Owner will not make further progress payments until the Project reaches Substantial Completion.

**§ 9.7 Failure of Payment**

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

**§ 9.8 Substantial Completion**

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and all major systems are operational, and all safety features are completed.

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

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. In addition to the other requirements of this Agreement, Contractor must have obtained the written approval and issuance of any occupancy permits required by the laws of the State of Colorado before Contractor shall be deemed to have achieved substantial completion.

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

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

**§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Contractor agrees to the use and occupancy of a portion or unit of the Project before formal Acceptance by the Owner under the following conditions:

- 1) A Certificate of Substantial Completion shall be prepared and executed as provided in Subsection 9.9.1 of the General Conditions of the Contract, except that when, in the opinion of the Owner, the Contractor is chargeable with unwarranted delay in completing work or other contract requirements, the signature of the Contractor will not be required. The Certificate of Substantial Completion shall be accompanied by a written endorsement of the Contractor's insurance carrier and surety permitting occupancy by the Owner during the remaining period of Project Work.
- 2) Occupancy by the Owner shall not be construed by the Contractor as being acceptance of that part of the Project to be occupied.
- 3) The Contractor shall not be held responsible for any damage to the occupied part of the Project resulting from the Owner's occupancy.
- 4) Occupancy by the Owner shall not be deemed to constitute a waiver of any claims on behalf of the Owner or Contractor against each other.

Use and occupancy by the Owner prior to Project acceptance does not relieve the Contractor of its responsibility to maintain all insurance and bonds required of the Contractor under the Contract until the Project is completed and accepted by the Owner.

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

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§ 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, and owner occupancy and use of substantially completed work does not constitute final acceptance by the owner of such work.

**§ 9.10 Final Completion and Final Payment**

§ 9.10.1 "Final completion" of the work occurs following substantial completion and when the Architect confirms, in writing, that the Contractor has completed the work in accordance with the Contract Documents, including completion of all punch lists and cleanup work. Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. If the work is completed, but Substantial Completion thereof shall be prevented through delay or correction of minor defects or unavailability of materials or other causes beyond the control of the Contractor, the Owner at its discretion may release to the Contractor such amounts as may be in excess of three times the cost of completing the unfinished work or the cost of correcting the defective work.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, (6) originals or authenticated copies of all guarantees, warranties and certificates, (7) operating and maintenance manuals, (8) identification lists of all materials and equipment, (9) Inspection Certificates, (10) record documents, and municipal Sales/Use Tax records (11) demonstration by the Contractor to the Owner concerning the proper operation and maintenance of all equipment, and (12) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner, their employees and elected officials against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

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

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

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

§ 9.10.6 When the Work is complete, the Contractor shall provide one complete set, in hard copy, of Drawings and Specifications upon which is marked in red all modifications made during construction so as to represent the as-built condition of the Project and shall deliver same to the Owner.

§ 9.10.7 On the date of final settlement, as advertised, and after the Owner has verified that no claims have been filed, final payment shall be made in full. Notwithstanding the foregoing, if any claim for labor, materials, supplies or equipment is filed with the Owner before payment in full of all sums due the Contractor on the final settlement date, the Owner shall withhold from the Contractor sufficient funds, if available, to ensure the payment of such claim, until the same is withdrawn. Such withdrawal shall be evidenced by filing with the Owner a receipt of payment in full or an order authorizing withdrawal signed by the claimant or its duly authorized agent or assignee. Such funds shall not be withheld longer than ninety (90) days following the date fixed for final settlement with the Contractor as set forth in the published notice of final settlement, unless an action at law has been commenced within that time to enforce such claim has been filed with the Owner. At the expiration of the ninety (90) day period, the Owner shall release to the Contractor all funds that are not the subject of such action at law. Notwithstanding the provisions in this section, in the event the Colorado statutory procedure as contemplated herein is amended during the term of the Construction Agreement, such amended procedure shall be substituted accordingly.

**ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

**§ 10.1 Safety Precautions and Programs**

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

**§ 10.2 Safety of Persons and Property**

§ 10.2.1 The Contractor shall recognize the Project will be constructed on an occupied campus and shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

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

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

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

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

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

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the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

### **§ 10.2.8 Injury or Damage to Person or Property**

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

**§ 10.2.8.1** the Contractor shall take over and assume all responsibility for the areas of work that are covered under the Contract Documents. The Contractor shall provide and maintain all protection as required by the governing laws, rules, regulations, and ordinances. The Contractor shall be responsible for any loss or damage caused by him or his workmen to the property of the Owner and shall make good any loss, damage, or injury without cost to the Owner.

**§ 10.2.8.2** the Contractor shall be solely responsible for the safety of his work, materials, equipment, tools, etc., on the site and shall, if he deems it necessary or expedient, employ at his own expense the services of a competent watchman. The Owner disclaims all responsibilities for the safety of the work, materials, equipment, tools, etc., or for any damage which may be done to same due to theft or any other cause until such time as the completed work is formally accepted by the Owner.

**§ 10.2.8.3** the Contractor shall take special precautions against fire and shall comply fully with the requirements of city, county, and insurance authorities including stipulation as outlined below:

1. Combustible refuse shall be removed from the site and disposed of daily in a manner approved by the governing authorities.

2. Private and public streets, sidewalks, roads, etc., shall be protected and maintained during the course of work, and any damage to same shall be repaired by the Contractor at his own expense.

### **§ 10.3 Hazardous Materials and Substances**

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. The Contractor acknowledges that it and its employees, agents and subcontractors have the responsibility of being fully informed of the Owner's Management Plan, if any, as it relates to buildings located at the site and shall consult with the Owner about how such Plan addresses suspected or active asbestos-containing material areas within such buildings.

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities

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proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 Deleted.

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

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. In addition to Contractor's other indemnity obligations set forth herein, the Contractor shall defend (with counsel satisfactory to Owner), indemnify, and hold harmless the Owner, its employees and elected officials for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 Not Used

## § 10.4 Emergencies

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

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 Contractor's Insurance and Bonds

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

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

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

§ 11.1.4 **Notice of Cancellation, Expiration, or Material Modification of Contractor's Required Insurance.** In addition to the notice required in the Agreement thirty (30) days prior to the cancellation, expiration, or material modification of Contractor's required insurance, within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation, expiration, or material modification of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation, expiration, or material modification. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse or material modification in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

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## § 11.2 Owner's Insurance

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

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

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

## § 11.3 Waivers of Subrogation

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

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

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

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The

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Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

## **§11.5 Adjustment and Settlement of Insured Loss**

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

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 Uncovering of Work**

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

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

### **§ 12.2 Correction of Work**

#### **§ 12.2.1 Before Substantial Completion**

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

#### **§ 12.2.2 After Substantial Completion**

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

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

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

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

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

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

**§ 12.3 Acceptance of Nonconforming Work**

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

§ 12.3.1 In the event final payment has been made, the Contractor shall pay and be liable to the Owner for the reduction in the Contract Sum.

**ARTICLE 13 MISCELLANEOUS PROVISIONS**

**§ 13.1 Governing Law**

The Contract shall be governed by the law of the State of Colorado. The parties agree that the venue for any mediation, legal action or proceeding in connection herewith shall be exclusively in Mesa County, Colorado.

**§ 13.2 Successors and Assigns**

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

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

**§ 13.3 Rights and Remedies**

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

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

§ 13.3.3 All remedies for breach of contract documents and breach of warranty are cumulative and not exclusive of each other, provided that double recovery shall not be allowed.

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**§ 13.4 Tests and Inspections**

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

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

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

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

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

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

**§ 13.5 Interest**

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

**ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

**§ 14.1 Termination by the Contractor**

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

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

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute

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in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed..

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

**§ 14.2 Termination by the Owner for Cause**

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

**§ 14.3 Suspension by the Owner for Convenience**

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

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

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

**§ 14.4 Termination by the Owner for Convenience**

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

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



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

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

§ 14.4.4 In the event of any termination of the Contract, the Contractor agrees to reasonably cooperate and provide any information requested by Owner in connection with completion of the Project.

**ARTICLE 15 CLAIMS AND DISPUTES**

**§ 15.1 Claims**

**§ 15.1.1 Definition**

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

**§ 15.1.2 Time Limits on Claims**

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

**§ 15.1.3 Notice of Claims**

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

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

**§ 15.1.4 Continuing Contract Performance**

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

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

**§ 15.1.5 Claims for Additional Cost**

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

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**§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. The Contractor shall also include a detailed critical path schedule with all dependencies marked accurately and a comparison to a prior similar schedule which illustrates the reason for the claim.

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

**§ 15.1.7 Waiver of Claims for Consequential Damages**

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. Not Used. The term "consequential damages" shall not include the cost of any structural repair, dismantling, or replacement that is reasonably related to any supplier's, manufacturer's, Contractor's or subcontractor's negligence or defective work.

**§ 15.2 Initial Decision**

**§ 15.2.1** Any claim, dispute or other matter in question between the Contractor and the Owner referred to the Architect, except those which have been waived as provided for in subsections 15.1.7, 9.10.4 and 9.10.5, shall be subject to such remedies at law or equity as may be available for the enforcement of contract rights pursuant to Colorado law. However, no action shall be instituted on any such claim, dispute or other matter until the earlier of (1) the date on which the Architect has rendered a written decision, or (2) the 10th day after the parties have presented their evidence to the Architect or have been given a reasonable opportunity to do so, if the Architect has not rendered his written decision by that date. When such a written decision of the Architect states (1) that the decision is final but subject to appeal as provided by law, and (2) that any claim must be pursued by litigation or other means agreeable to the parties within 30 days after the date on which the party making the claim receives the written decision, failure to assert such claim within said 30-day period will result in the Architect's decision becoming final and binding upon the Owner and the Contractor. The timely submission of a claim or dispute or other matter in question between the Contractor and the Owner relating to the execution and progress of the Work, pursuant to subsection 15.1.2, shall be a condition precedent to the institution of any litigation or other dispute resolution proceeding.

*(Paragraphs deleted)*

**§ 15.3 Mediation**

**§ 15.3.1** The parties may at any time agree to participate in nonbinding mediation to resolve any dispute or claim arising under the Agreement not finally resolved between the Contractor and the Owner pursuant to subsection 15.2.1 above.

*(Paragraphs deleted)*

**§ 15.3.4** In the event the parties agree to participate in nonbinding mediation pursuant to §15.3.1 above, the parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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**§ 15.4 Arbitration Deleted.** All references to arbitration of disputes in the General Conditions and in any other Contract Documents shall be deleted. Any arbitration between the Owner and the Contractor submitted to arbitration shall be pursuant to a written arbitration agreement executed after the dispute arises. Nothing contained herein shall alter or affect the function of the Architect in resolving disputes between the Contractor and the Owner.

*(Paragraphs deleted)*

**ARTICLE 16 GOVERNMENTAL ENTITY PROVISIONS.**

**§ 16.1 Appropriation of Funds.** Anything in the General or Supplementary Conditions to the contrary notwithstanding, the Owner represents that a full and lawful appropriation for the Project has been made and that the amount of money appropriated therefore is equal to or in excess of the Agreement Sum. No change order or other form of order of directive shall be issued by the Owner requiring additional compensable work to be performed, which work causes the aggregate amount payable under this Agreement to exceed the amount appropriated for the Agreement, unless the Owner gives written assurance that a lawful appropriation to cover the costs of additional work have been named or unless such work is covered under a remedy granting provision of the Agreement. As used herein the term "remedy granting provision" means any agreement clause which permits additional compensation in the event that a specific contingency or event occurs.

**§16.2 Governmental Codes/Agreements.** All work performed under this Agreement shall be subject to the requirements of any state or local codes having jurisdiction at the site of the Work, and shall meet or exceed the requirements regarding the Work set forth in any intergovernmental agreement now existing or subsequently entered into between Owner and any town or local governmental entity. The Contractor shall be aware of the Owner's obligations under any such agreement and shall perform the Work so as to comply with such obligations. The Contractor shall also be aware of the provisions of sections 8-1-107(2)(d) and 22-32-124, C.R.S., which govern the jurisdiction of state and local authorities with respect to building standards and the application of local planning and zoning ordinances.

**§16.2.1** The Contractor shall comply with all applicable provisions of the Occupational Safety and Health Administration (OSHA) and all laws, ordinances, rules, regulations, and orders of all governmental agencies or authorities having jurisdiction to protect the safety of employees and/or other persons who may be affected by the Work. The Contractor shall erect and maintain all necessary safeguards to protect workers on the Project site and the owners and users of adjacent property, and shall post danger signs and other warnings against hazards created by the Work including but not limited to protruding nails, hoists, well holes, elevator shafts, hatchways, scaffolding, window openings, stairways, excavations, and falling materials. The Contractor shall designate a responsible employee at the Project site as a safety officer to ensure the Contractor's compliance with this section. Said employee shall be the Contractor's Project superintendent unless otherwise designated in writing by the Contractor to the Owner.

**§16.3 Public Works Contract.** The Contractor is informed and shall see that all Subcontractors, material suppliers and workers on the Project are informed of the following:

**§16.3.1** The Owner is a public entity and the Project is a public works project within the intent and meaning of section 38-26-105, C.R.S. Accordingly, all payments properly due to the Contractor and all claims for amounts lawfully due from the Contractor and its Subcontractors and all rights to mechanic's liens to secure payment thereof arising on behalf of any person, co-partnership, association of person, company or corporation that has furnished or provided labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by the Contractor or any Subcontractor in the performance of the Work shall be subject to section 38-26-101, 105, 106, and 107, C.R.S.

**§16.3.2** In the event any person, co-partnership, association of persons, company or corporation that has furnished labor, materials, team hire, sustenance, provision, provender or other supplies used or consumed by the Contractor or its Subcontractor in or about the performance of the Work files a claim with the Owner by verified statement of the amount due in the method an manner and in compliance with section 38-26-107(1), C.R.S., then no amount of the Contract Sum shall be properly payable to the extent of such claims until:

**§16.3.2(a)** such claim has been paid or withdrawn in the method, manner and in compliance with section 38-26-107(2), C.R.S.; or

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**§16.3.2(b)** one day following ninety (90) days after the date fixed for final settlement of claims as published pursuant to section 38-26-107(2), C.R.S., provided no action is commenced within such 90-day time period to enforce such unpaid claim in the method and manner and in compliance with section 38-26-107(2), C.R.S.; or

**§16.3.2(c)** upon entry of final judgment in favor of the Contractor or a claimant to the extent of such judgment, in the event within ninety (90) days after the date fixed for final settlement of claims as published pursuant to section 38-26-107(2), C.R.S., an action is commenced to enforce such unpaid claim in the method and manner and in compliance with section 38-26-107(2), C.R.S.

**§16.4 Nondiscrimination.** The Contractor shall maintain policies of employment as follows:

**§16.4.1** During the performance of the Contract Documents, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, marital status, national origin, disability or age, except when sex or age is a bona fide occupational qualification. The Contractor will take action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, creed, color, sex, sexual orientation, marital status, national origin, disability or age. Such action shall include, but not be limited to employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of applicable Equal Employment Opportunity laws.

**§16.4.2** The Contractor and all subcontractors shall state, in all solicitations or advertisements for employees placed by them or on their behalf, that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, sexual orientation, marital status, national origin, disability or age.

**§16.5 Preference To Colorado Labor.** In compliance with section 8-17-101, C.R.S., et seq., Construction Manager shall give preference to Colorado labor in the several classifications of skilled and common labor employed to the perform the Work, and not less than eighty percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed on the Project shall be Colorado labor. The term "Colorado labor" means any person who has been a bona fide resident of the State of Colorado for a period of not less than one year, without discrimination as to race, creed, color, sex, sexual orientation, marital status, age, national origin or disability except when sex or age is a bona fide occupational qualification. Contractor and all Subcontractors shall, in all respects, comply with these Colorado labor requirements.

**§16.6 Stormwater Management Plan.** In the event Federal, state and local regulations require Owner to follow a Stormwater Management Plan on any construction project that will disturb at least one acre of soil, Contractor shall assure Owner is in compliance with current State of Colorado Division of Water Quality's Stormwater Regulations. The Owner will be consulted regarding project requirements prior to start of construction. Personnel from Mesa County Government or the applicable municipality will review and approve Stormwater Management Plans during the design phase of the Project. Contractor understands that county or municipal personnel may perform site inspections to insure compliance with stormwater regulation requirements.

**§16.8 Safe Schools.** Contractor understands that the Owner's primary concern is for the safety of students and staff; however, it is also recognized that some contact between workmen and students may be unavoidable. To the extent practicable, Contractor will endeavor to prevent persons known to be violent offenders or sexual predators from employment by Contractor or its subcontractors at any school site. Specifically, Contractor will see that all such employees are screened against the registered sexual offenders lists maintained by the Colorado Bureau of Investigation (see <http://www.sor.state.co.us/sxoregistration.asp>), based on their current place of residence. All such employees will be counseled regarding standards of behavior around students and rules against fraternization with students at the job sites will be established and enforced. Contractor shall require all construction workers, whether Contractor's own forces or those of subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall have identification of the person by number or other identifying medium in a typeface large enough to be seen from a reasonable distance.

**§16.9 Parking.** Contractor shall require all construction workers, whether Contractor's own forces or those of subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the

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Owner's Representative. Any vehicles not parked in the appropriate locations may be towed at the vehicle owner's sole expense.

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**User Notes:**

(1665886004)

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**Additions and Deletions Report for**  
**AIA® Document A201® – 2017**

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**PAGE 1**

Pk-12 Replacement School  
56600 HWY 330  
Collbran, CO 81624

...

Plateau Valley School District 50  
56600 HWY 330  
Collbran, CO 81624

...

TreanorHL Inc.  
1755 Blake Street, Suite 400  
Denver, CO 80202

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

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The Contract Documents as defined in section 1.1.1 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.

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**§1.1.9 Products**

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Products are new material, machinery, components, equipment, fixtures, and systems forming the Work, but do not include machinery and equipment used for preparation, fabrication, conveying and erection of the Work.

**§1.1.10 Furnish**

Furnish means to supply and deliver, unload, inspect for damage.

**§1.1.11 Install**

Install means to unpack, assemble, erect, apply, place, finish, cure, protect, clean, and make ready for use.

**§1.1.12 Provide**

Provide means to furnish and install.

**§1.1.13 Receive**

Receive means to accept delivery of, off-load/unload, verify content/count, inspect for damage, document any damage on shipping//receiving documents and report same immediately to the Owner, notify the Owner of receipt, safely and properly store/secure/protect until final installation and Certificate of Occupancy

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§ 1.2.4 In the event the Contractor discovers an error in the drawings, or a conflict between the drawings and specifications, the Contractor shall bring such error or conflict to the attention of the Architect and Owner's Representative as soon as reasonably possible. The Contractor shall await instructions from the Architect on how to proceed before proceeding with this work. Where a conflict occurs between or within standards, specifications and drawings, the more stringent or higher quality requirements shall apply. Addenda and modifications to the drawings and specifications take precedence over the original contract documents. Should there be a conflict within the specifications, or the drawings, or between the specifications and the drawings, the Owner shall decide which interpretation will provide the best installation and the Owner's decision shall be final.

...

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

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

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§ 2.1.1 The Owner is ~~the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number-~~ Plateau Valley School District 50. The Owner shall designate in writing a representative who shall have express ~~authority-authority~~, to the extent permitted by Colorado law and the Owner's policies and regulations, to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

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

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

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

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

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. If the Contractor becomes aware of any deficiency, inaccuracy or incompleteness of services and information furnished by Owner under this subsection 2.3.5., the Contractor shall promptly advise the Owner in writing of such inaccuracy or incompleteness.

...

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



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amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15. Nothing herein shall in any way limit the Owner's legal right to revoke acceptance of the Work at a later time, in accordance with applicable law.

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

...

§ 3.1.4 The contractor shall comply with all applicable federal labor and state labor laws including without limitation those addressing Contractor's obligations for publicly funded projects.

...

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect 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. If the Contractor performs any construction activity knowing it involves an error, inconsistency or omission in the Contract Documents without providing notice of such error, inconsistency or omission to the Architect, the Contractor shall assume responsibility for such construction activity and shall bear the costs attributable to any necessary correction.

...

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall, upon written request of the owner, correct such failure(s) without adjustment to the contract sum. In the event a correction that will make the owner whole is not possible, then the contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

...

§ 3.3.1 The Contractor shall perform, supervise and direct the Work, using the Contractor's best skill and ~~attention~~ attention, which at a minimum, shall conform to industry standards for staff housing facility construction in Colorado. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods,

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

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

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§ 3.5.3 The Contractor further warrants that the construction processes and methods employed to perform the work shall be suitable for the results required and expected. If the Contractor proposes to use an unproved and untried method, process or product, the architect must be advised of the proposal in writing for purposes of discussion with the Owner. The Owner may permit experimentation, but may require special guarantees of the Contractor to cover the work produced by any new and untried process, method or product.

§ 3.5.4 The Contractor further warrants that it has full title to all equipment, components and other items conveyed to the Owner under the terms of this contract, that its transfer of such title to the Owner is rightful and that all such equipment, components and other items shall be transferred free and clear from all security interest, liens or encumbrances whatsoever. The Contractor agrees to warrant and defend such title against all persons claiming the whole or any part thereof at no cost to the Owner.

§ 3.5.5 The Contractor shall promptly repair, replace or otherwise correct any of its workmanship and any parts, materials, components, equipment or other items in the work which contain faults or defects, whether such failures are observed by the Owner, architect or Contractor before or after final completion. The Contractor shall bear all costs of correcting such work covered by the warranties.

§ 3.5.6 The Contractor shall further warrant, and shall ensure that all of its subcontractors and sub-subcontractors shall warrant, that all work executed under this contract shall be free from defects of materials and workmanship for a period of one (1) year from the date of substantial completion, except items of work completed after date of Substantial completion shall run for one year from the date of final payment to the Contractor. This warranty is a remedy available to the Owner in addition to claims the Owner may have arising out of work or materials found to be noncomplying, out of specification or otherwise in breach of this contract no matter when discovered. Unless otherwise agreed by Owner, Contractor unconditionally agrees to remedy, repair and/or replace, at its own expense, all such defective work and all other work damaged thereby, and pay for any damages resulting therefrom, which appears within such one year warranty period. Whenever guarantees or warranties are required by the specifications for a longer period than one (1) year, such period shall govern. Owner shall have the full benefit of longer warranties provided by particular subcontractors or other suppliers. Upon discovery of any warranty defect or defects under section 3.5.5, the Owner shall give written notice thereof to the Contractor. If, within ten (10) days after the mailing of such written notice by the Owner to the Contractor or its agent, requesting such repairs or replacement, the Contractor shall neglect to make, or undertake with due diligence to make the same, the Owner may make such repairs at the Contractor's expense; provided, however, that in the case of emergency and within the judgment of the Owner, delay would cause certain loss or damage, repairs or replacement may be made without notice being given to the Contractor, and the Contractor shall pay the cost thereof. The checking or cracking of walls, floors or ceilings, except hairline cracks from concrete shrinking which are cosmetic only, and the chipping or flaking of paint shall, during the first year after acceptance of the building, be deemed to be a defect covered by this warranty without proof of use of inferior materials, equipment or workmanship. Such defects shall not, in and if themselves, cause a duty to investigate for structural defects.

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§ 3.5.7 Neither the Owner's approval of the final Request for Payment nor payment of any Request for Payment or of any sum previously withheld from the Contractor shall relieve the Contractor of responsibility for its warranty and guarantee hereunder or for faulty materials or workmanship. Nothing herein shall be construed to establish a period of limitation with respect to any other obligation, which the Contractor might have under the contract documents. The establishment of the warranty periods set forth in Section 3.5.5 relates only to the specific obligations of the Contractor to correct known defects in the work, and has no relationship to the time within which its 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 its obligations and resulting damages other than specifically to correct known defects in the work which are discovered and called to the Contractor's attention during the warranty period.

§ 3.5.8 The Contractor at its own expense shall also repair or replace any damages to any equipment, facilities or other personal or real property owned or leased by the Owner which is damaged as a result of any such fault or defect or Contractor's performance of the Work, at no cost to the Owner.

§ 3.5.9 All subcontractors', manufacturers', and suppliers' warranties and guarantees, expressed or implied, for any part of the work and any materials used therein, shall be obtained and enforced by the Contractor for the benefit of the Owner whether or not these warranties have been assigned or otherwise transferred to the Owner. The Contractor shall assign or transfer such warranties and guarantees to the Owner if the Owner requests the Contractor to do so, but such transfer shall not affect the Contractor's obligation to enforce such warranties and guarantees.

§ 3.5.10 Remedies for breach of warranty are cumulative and in addition to any other remedy Owner may have for defective work or work not in compliance with the contract documents.

§ 3.5.11 The warranties and obligations set forth above shall not be limited by the provisions of § 12.2.

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. § 3.6.1 The Owner is exempt from Colorado State and County Sales and Use Taxes on materials and equipment to be incorporated into the Work. Said taxes on materials incorporated into the work, or upon equipment or supplies expended and/or used to exhaustion in the course of the work, shall not be included in the Cost of the Work, the Guaranteed Maximum Price or modifications to the same shall not include the cost of any such taxes. The Owner's tax exempt number is \_\_\_\_\_.

§ 3.6.2 Prior to the purchase of any property to be incorporated into the Work, the Contractor shall ensure that the purchaser, including the Contractor and all subcontractors on the Project, apply to the Department of Revenue, State of Colorado, for an exemption (Form DR-172) to be used for all Work performed and completed under this Contract, and copies of all tax exemption certificates shall be furnished to the Owner prior to commencement of the Work. All purchases for the Work subject to tax shall use the exemption from sales tax. Any costs, taxes or fines that are incurred as a result of a failure to comply with the requirements of this § 3.6.2 shall be paid by the Contractor.

§ 3.6.3 The Contractor shall comply with applicable municipal ordinances concerning sales and use taxes on required materials permanently in the Work. It is specifically understood and agreed that any refund of taxes paid shall become the property of the Owner. The Contractor and subcontractors shall keep all required records and upon completion of the project, furnish the Owner with certificates and listing of Invoices as required to allow the Owner to obtain refund of all taxes paid.

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§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor-Owner shall secure and pay for the building permit as well as permit. The Contractor shall pay for other permits, fees, licenses, and inspections by the Colorado Division of Fire Prevention & Control - Department of Fire Safety (the "Division"), or with a prequalified planning department certified by the Division pursuant to CRS 24-32-124(2)(a)(II), or other government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The Owner shall pay for special inspections through a certified inspector procured by the owner for the Project.

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§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, regardless of whether such work is in accordance with contract documents, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. Codes and ordinances shall take full and complete precedence over anything contained in the contract documents, except where the contract documents require work or materials of higher standards than those required by codes and ordinances, in which case the contract documents shall govern. The Contractor shall promptly notify the Owner and Architect if the Contractor believes the Contract Documents require work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

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§ 3.7.6 The Contractor has visited the site of the Project and thoroughly familiarized itself with the local conditions under which the services required hereunder are to be performed; and shall correlate its observations of same with all of the requirements of the Contract Documents.

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

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§ 3.9.4 The Contractor's superintendent or an assistant superintendent shall be on site full time and at all times while work is in progress including but not limited to weekends, evenings and nights, until the Project and all punch list items have been completed to the satisfaction of the Architect. The Contractor shall ensure that no subcontractor shall perform work on the site without the presence of the superintendent or assistant superintendent. Communication given to the superintendent or assistant superintendent shall be as binding as if given to the Contractor. Communications which may have a material impact on the timing or completion of the Project shall be confirmed in writing.

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

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§ 3.12.11 Copies of all Shop Drawings, Product Data, Samples and similar submittals as identified in section 3.12 shall be preserved in an orderly manner and delivered to the Owner upon Final Completion.

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

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§ 3.13.2 The site shall be kept clean and well organized at all times for purposes of safety, protection and care of project materials and equipment, as well as general aesthetics.

§ 3.13.3 The Contractor shall take reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to, all persons at the site and all property at the site and adjacent thereto. The contractor acknowledges that the work site may comprise buildings and areas that may be occupied during the performance of some portions of this contract.

§ 3.13.4 The Contractor shall notify all public utility companies 48 hours prior to the commencement of any work by it or its subcontractors in the vicinity of the utilities. No work shall commence until the utilities have been located and staked by the utility company or written consent from the Architect to proceed has been given to the contractor. If the utility service must be interrupted, the Contractor shall notify the head of the local administrative services (i.e., town manager, mayor or town clerk, as applicable) and the utility users affected by the interruption. Such notice shall consist of publication in a local newspaper and/or announcement on local radio or television stations, whichever is most reasonably calculated to give notice to such utility users.

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§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. The Contractor shall designate trash and debris areas where all building debris shall be put daily (these areas to be cleaned weekly). The work shall be reasonably cleaned daily. 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. The Contractor shall do the following special cleaning for all trades at completion of work: clean all glass, woodwork, painted and decorated work, hardware, tile work, fixtures, floors, windows, metal surfaces (leave the work perfectly clean). Under no circumstances shall the owner's trash receptacles be used for construction debris.

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

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§ 3.19 FINANCIAL REPRESENTATIONS. The Contractor hereby represents, promises, and warrants that Contractor is financially solvent and possesses sufficient experience, licenses, authority, personnel and working capital to complete the services required hereunder.

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§ 4.2.15 In carrying out his duties under this article 4, the Architect will be contractually obligated to consult with subcontracted engineers and other professionals as necessary. The Architect will advise the Owner if, in the Architect's judgment, additional professionals should be retained.

§ 4.2.16 Nothing in this contract shall be interpreted as superseding the Architect's duties and responsibilities as stated in the contract between the Owner and Architect.

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§ 5.2.5 Each Subcontract shall be in writing and shall specify that (i) the Owner is an intended third party beneficiary of such Subcontract; and that (ii) it shall be assignable to the Owner without any restriction. Contractor shall not allow a Subcontractor to commence work without an executed Subcontract with the Contractor in accordance with Sections 5.1, 5.2, and 5.3. Contractor must execute all subcontracts in a timely manner so no delays in the Work are realized. Contractor shall promptly provide a copy of all contracts with Subcontractors to Owner's Representative.

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§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. The Contractor recognizes that the Contract Documents are intended to describe the design and construction. The Contractor hereby represents, promises, and warrants that the Guaranteed Maximum Price includes all costs consistent with the Contract Documents and reasonably inferable from the Contract Documents as being reasonably necessary to produce the results required by the Contract Documents.

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§ 7.2.2 A change order shall be initiated by a proposal request (PR) from the Owner submitted through the Architect or from the Contractor to the Architect. The PR shall include a detailed description of the proposed change with supplementary or revised drawings and specifications. Within ten (10) days from the date of issuance of a PR, the Contractor shall respond, outlining the amount of the adjustment, if any, in the Contract Sum; and the extent of the adjustment, if any, in the Contract Time that are required as a result of the proposed change. Adjustments to the Contract Sum shall be stated in a lump sum amount or unit prices. Justification for adjustment to the Contract Time must be provided in the format outlined in the Contract Documents. "to be determined" or similar description, is not acceptable as an adjustment to the Contract Time. PRs that have been approved and signed by all parties are considered a change order as defined in section 7.2.1 and is authorization to proceed with the work described therein. Once a month, approved proposal requests will be grouped together using AIA form G701 for accounting purposes. The form G701 shall list the approved proposal requests, the net change in contract sum, the net change in contract time, and modification to the date of substantial completion. The issuance of form G701 shall not change any of the provisions outlined in an approved PR.

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

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§ 8.1.5 The date of Final Completion of the work is the date that the Architect certifies in the Final Certificate for Payment pursuant to §9.10.1 that the Work is acceptable under the Contract Documents and the Contract is fully performed.

**§ 8.2 Progress and Completion/Liquidated Damages**

§ 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. The Contractor shall

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perform its obligations as expeditiously as is consistent with reasonable professional skill and care and the orderly progress of the Project. Owner and Contractor agree that it would be impractical and extremely difficult to estimate the damages, including, but not limited to indirect, incidental, special and consequential damages, which Owner might suffer if the Contractor fails to achieve Substantial Completion within the Contract Time. Therefore, Owner and Contractor have determined and agree that fair and reasonable compensation for the damages Owner may suffer if Contractor fails to achieve Substantial Completion within the Contract Time is One Thousand Dollars (\$1,000.00) per day, and Contractor agrees to pay the said amount for each day after the expiration of the Contract Time until such time as the Work is Substantially Completed. Such amounts ("Liquidated Damages") shall be Owner's sole and exclusive remedy, and not as a penalty, for Contractor's failure to achieve Substantial Completion within the Contract Time.

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

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Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The schedule of values shall be prepared in such a manner that each major item of subcontractor work is shown as a single line item on AIA Document G 703, Application and Certificate for Payment, Continuation Sheet. As a guide, each section of the Project Manual should be shown as a single line item. Upon request by the Architect, the Contractor shall support values given with data that will substantiate their correctness. The schedule of values shall be used only as a basis for the Contractor's application for payment.

Each item on the schedule of values shall be identified as per the detailed CSI Master Format Divisions as approved by the Owner.

If re-submittal is required after review by the Architect, the Contractor shall revise and resubmit the schedule of values in the same manner as required. The schedule of values must be approved prior to certification of the first Application for Payment by the Architect.

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**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. All Applications for Payment shall be submitted by the Contractor to the Owner in the AIA G702 and G703 format. The Contractor agrees that securities shall not be substituted for any retainage specified in the Contract Documents.

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**§ 9.3.4** With each application for payment, the Contractor shall submit Progress Charts comparing the "work-in-place" progress to the Progress Schedule.

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- .7 repeated failure to carry out the Work in accordance with the Contract Documents.
- .8 failure of the Contractor to submit Progress Charts in comparison to Progress Schedule with an application for payment;
- .9 failure to comply with any laws, ordinances, regulations or orders of any public authority governing the performance of the work, including failure to obtain necessary permits or licenses; or
- .10 the Owner has been required to correct defective work.

...

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld, provided, however, that the Owner may continue to withhold payment if the amount withheld for one or more particular reasons exceeds the amounts payable for work for which (i) there is no reason to withhold payment, or (ii) the reason to withhold payment has been removed. Additionally, and notwithstanding any provision of the Agreement to the Contrary, the Owner may refuse to make payment of the full amount recommended by the Architect because:

- a. Claims have been made against the Owner on account of Contractor's performance or furnishing of the Work;
- b. Liens have been filed or recorded in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such liens;
- c. There are other items entitling Owner to a set-off against the amount recommended; or
- d. The Owner has a reasonable belief that any reasons enumerated in § 9.5.1 exist.

If the Owner refuses to make payment of all or any portion of the amount recommended by the Architect, the Owner will give the Contractor written notice (with a copy to the Architect) stating the reasons for such action. The Owner will promptly pay the Contractor the amount so withheld, or any adjusted amount agreed upon by the Owner and Contractor, when Contractor corrects to Owner's satisfaction the reasons for the withholding. If it is subsequently determined that the Owner's refusal to pay was not justified, the amount withheld shall be paid immediately to the Contractor.

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§ 9.6.4 Upon completion of the Work covered by each pay application, and before or contemporaneously with payment of any sums due Contractor, Contractor shall produce and deliver to Owner, full, complete, and properly executed releases for the period of time covered by such pay application from all persons or entities who have furnished materials or labor, including Contractor, in connection with the Work. Such releases may be conditioned upon payment of an amount stated in such release for the work done for the applicable period of time. Contractor warrants that it will pay all subcontractors, sub-subcontractors, materialmen and suppliers any payment due them arising out of this Contract promptly upon payment by the Owner. Without in any way limiting the foregoing, the Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor the Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may be otherwise be required by law.

...

§ 9.6.9 retainage shall be held in the amount of five percent (5%). Retainage shall be held against each line item of the schedule of values as work is completed and/or stored throughout the project duration. The contractor expressly agrees that securities shall not be substituted for any retainage specified in this section and that it shall not request any such



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substitution. This section 9.6.9 shall be deemed amended to comply with any applicable retainage laws of the state of colorado or any amendment thereto.

§ 9.6.10 The Owner shall make monthly progress payments as described in this § 9.6 until the scheduled (including time extensions made by change order) time for Substantial Completion. If the Project is not substantially complete at this time, the Owner will not make further progress payments until the Project reaches Substantial Completion.

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

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use-use and all major systems are operational, and all safety features are completed.

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§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. In addition to the other requirements of this Agreement, Contractor must have obtained the written approval and issuance of any occupancy permits required by the laws of the State of Colorado before Contractor shall be deemed to have achieved substantial completion.

...

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

- 1) A Certificate of Substantial Completion shall be prepared and executed as provided in Subsection 9.9.1 of the General Conditions of the Contract, except that when, in the opinion of the Owner, the Contractor is chargeable with unwarranted delay in completing work or other contract requirements, the signature of the Contractor will not be required. The Certificate of Substantial Completion shall be accompanied by a written endorsement of the Contractor's insurance carrier and surety permitting occupancy by the Owner during the remaining period of Project Work.
- 2) Occupancy by the Owner shall not be construed by the Contractor as being acceptance of that part of the Project to be occupied.

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- 3) The Contractor shall not be held responsible for any damage to the occupied part of the Project resulting from the Owner's occupancy.
- 4) Occupancy by the Owner shall not be deemed to constitute a waiver of any claims on behalf of the Owner or Contractor against each other.

Use and occupancy by the Owner prior to Project acceptance does not relieve the Contractor of its responsibility to maintain all insurance and bonds required of the Contractor under the Contract until the Project is completed and accepted by the Owner.

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§ 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. Documents, and owner occupancy and use of substantially completed work does not constitute final acceptance by the owner of such work.

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§ 9.10.1 "Final completion" of the work occurs following substantial completion and when the Architect confirms, in writing, that the Contractor has completed the work in accordance with the Contract Documents, including completion of all punch lists and cleanup work. Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. ~~The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.~~ If the work is completed, but Substantial Completion thereof shall be prevented through delay or correction of minor defects or unavailability of materials or other causes beyond the control of the Contractor, the Owner at its discretion may release to the Contractor such amounts as may be in excess of three times the cost of completing the unfinished work or the cost of correcting the defective work.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, ~~and (6) (6) originals or authenticated copies of all guarantees, warranties and certificates,~~ (7) operating and maintenance manuals, (8) identification lists of all materials and equipment, (9) Inspection Certificates, (10) record documents, and municipal Sales/Use Tax records (11) demonstration by the Contractor to the Owner concerning the proper operation and maintenance of all equipment, and (12) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the ~~Owner-Owner,~~ their employees and elected officials against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

...

.5 faulty or defective Work first appearing or discovered after Substantial Completion.

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§ 9.10.6 When the Work is complete, the Contractor shall provide one complete set, in hard copy, of Drawings and Specifications upon which is marked in red all modifications made during construction so as to represent the as-built condition of the Project and shall deliver same to the Owner.

§ 9.10.7 On the date of final settlement, as advertised, and after the Owner has verified that no claims have been filed, final payment shall be made in full. Notwithstanding the foregoing, if any claim for labor, materials, supplies or equipment is filed with the Owner before payment in full of all sums due the Contractor on the final settlement date, the Owner shall withhold from the Contractor sufficient funds, if available, to ensure the payment of such claim, until the same is withdrawn. Such withdrawal shall be evidenced by filing with the Owner a receipt of payment in full or an order authorizing withdrawal signed by the claimant or its duly authorized agent or assignee. Such funds shall not be withheld longer than ninety (90) days following the date fixed for final settlement with the Contractor as set forth in the published notice of final settlement, unless an action at law has been commenced within that time to enforce such claim has been filed with the Owner. At the expiration of the ninety (90) day period, the Owner shall release to the Contractor all funds that are not the subject of such action at law. Notwithstanding the provisions in this section, in the event the Colorado statutory procedure as contemplated herein is amended during the term of the Construction Agreement, such amended procedure shall be substituted accordingly.

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§ 10.2.1 The Contractor shall recognize the Project will be constructed on an occupied campus and shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

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- .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~~ construction; and
- .4 students, staff, and others associated with the Owner.

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§ 10.2.8.1 the Contractor shall take over and assume all responsibility for the areas of work that are covered under the Contract Documents. The Contractor shall provide and maintain all protection as required by the governing laws, rules, regulations, and ordinances. The Contractor shall be responsible for any loss or damage caused by him or his workmen to the property of the Owner and shall make good any loss, damage, or injury without cost to the Owner.

§ 10.2.8.2 the Contractor shall be solely responsible for the safety of his work, materials, equipment, tools, etc., on the site and shall, if he deems it necessary or expedient, employ at his own expense the services of a competent watchman. The Owner disclaims all responsibilities for the safety of the work, materials, equipment, tools, etc., or for any damage which may be done to same due to theft or any other cause until such time as the completed work is formally accepted by the Owner.

§ 10.2.8.3 the Contractor shall take special precautions against fire and shall comply fully with the requirements of city, county, and insurance authorities including stipulation as outlined below:

1. Combustible refuse shall be removed from the site and disposed of daily in a manner approved by the governing authorities.

2. Private and public streets, sidewalks, roads, etc., shall be protected and maintained during the course of work, and any damage to same shall be repaired by the Contractor at his own expense.

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

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Contractor acknowledges that it and its employees, agents and subcontractors have the responsibility of being fully informed of the Owner's Management Plan, if any, as it relates to buildings located at the site and shall consult with the Owner about how such Plan addresses suspected or active asbestos-containing material areas within such buildings.

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

...

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. In addition to Contractor's other indemnity obligations set forth herein, the Contractor shall defend (with counsel satisfactory to Owner), indemnify, and hold harmless the Owner, its employees and elected officials for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

~~§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~  
Not Used

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~~§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within Cancellation, Expiration, or Material Modification of Contractor's Required Insurance. In addition to the notice required in the Agreement thirty (30) days prior to the cancellation, expiration, or material modification of Contractor's required insurance, within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration cancellation, expiration, or material modification of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration, cancellation, expiration, or material modification. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse or material modification in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.~~

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§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, their consultants and employees (2) the Architect and Architect's consultants for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, Agreement, except such rights as they may have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. subrogation waiver is limited to the rights and claims of the Owner and Contractor that may be brought against each other, exclusively and shall only be effective in the context. The Owner and Contractor do not waive and specifically maintain their subrogation rights, including all rights and remedies available at law and equity,

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against: (1) the Architect and Architect's consultants, agents, and employees; and (2) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. ~~This waiver of subrogation the waiver of subrogation by and between the owner and Contractor.~~ The waiver of subrogation by and between the Owner and Contractor shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

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§ 12.3.1 In the event final payment has been made, the Contractor shall pay and be liable to the Owner for the reduction in the Contract Sum.

...

The Contract shall be governed by the law of the ~~place where the Project is located, excluding that jurisdiction's choice of law rules.~~ ~~If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ State of Colorado. ~~The parties agree that the venue for any mediation, legal action or proceeding in connection herewith shall be exclusively in Mesa County, Colorado.~~

...

§ 13.3.3 All remedies for breach of contract documents and breach of warranty are cumulative and not exclusive of each other, provided that double recovery shall not be allowed.

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

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§ 14.4.4 In the event of any termination of the Contract, the Contractor agrees to reasonably cooperate and provide any information requested by Owner in connection with completion of the Project.

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§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. The Contractor shall also include a detailed critical path schedule with all dependencies marked accurately and a comparison to a prior similar schedule which illustrates the reason for the claim.

...

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. ~~Not Used.~~ The term "consequential damages" shall not include the cost of any structural repair, dismantling, or replacement that is reasonably related to any supplier's, manufacturer's, Contractor's or subcontractor's negligence or defective work.

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# EXHIBIT A CONSTRUCTION CONTRACT

~~§ 15.2.1~~ Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner. Any claim, dispute or other matter in question between the Contractor and the Owner referred to the Architect, except those which have been waived as provided for in subsections 15.1.7, 9.10.4 and 9.10.5, shall be subject to such remedies at law or equity as may be available for the enforcement of contract rights pursuant to Colorado law. However, no action shall be instituted on any such claim, dispute or other matter until the earlier of (1) the date on which the Architect has rendered a written decision, or (2) the 10th day after the parties have presented their evidence to the Architect or have been given a reasonable opportunity to do so, if the Architect has not rendered his written decision by that date. When such a written decision of the Architect states (1) that the decision is final but subject to appeal as provided by law, and (2) that any claim must be pursued by litigation or other means agreeable to the parties within 30 days after the date on which the party making the claim receives the written decision, failure to assert such claim within said 30-day period will result in the Architect's decision becoming final and binding upon the Owner and the Contractor. The timely submission of a claim or dispute or other matter in question between the Contractor and the Owner relating to the execution and progress of the Work, pursuant to subsection 15.1.2, shall be a condition precedent to the institution of any litigation or other dispute resolution proceeding.

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

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

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

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

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

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

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

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

~~§ 15.3.1~~ Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution. The parties may at any time agree to participate in nonbinding mediation to resolve any dispute or claim arising under the Agreement not finally resolved between the Contractor and the Owner pursuant to subsection 15.2.1 above.

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

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

~~§ 15.3.4~~ The In the event the parties agree to participate in nonbinding mediation pursuant to §15.3.1 above, the parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

~~§ 15.4~~ Arbitration Deleted. All references to arbitration of disputes in the General Conditions and in any other Contract Documents shall be deleted. Any arbitration between the Owner and the Contractor submitted to arbitration shall be pursuant to a written arbitration agreement executed after the dispute arises. Nothing contained herein shall alter or affect the function of the Architect in resolving disputes between the Contractor and the Owner.

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

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

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

# EXHIBIT A CONSTRUCTION CONTRACT

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

## ~~§ 15.4.4 Consolidation or Joinder~~

~~§ 15.4.4.1~~ Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

## ARTICLE 16 GOVERNMENTAL ENTITY PROVISIONS.

§ 16.1 Appropriation of Funds. Anything in the General or Supplementary Conditions to the contrary notwithstanding, the Owner represents that a full and lawful appropriation for the Project has been made and that the amount of money appropriated therefore is equal to or in excess of the Agreement Sum. No change order or other form of order of directive shall be issued by the Owner requiring additional compensable work to be performed, which work causes the aggregate amount payable under this Agreement to exceed the amount appropriated for the Agreement, unless the Owner gives written assurance that a lawful appropriation to cover the costs of additional work have been named or unless such work is covered under a remedy granting provision of the Agreement. As used herein the term "remedy granting provision" means any agreement clause which permits additional compensation in the event that a specific contingency or event occurs.

§16.2 Governmental Codes/Agreements. All work performed under this Agreement shall be subject to the requirements of any state or local codes having jurisdiction at the site of the Work, and shall meet or exceed the requirements regarding the Work set forth in any intergovernmental agreement now existing or subsequently entered into between Owner and any town or local governmental entity. The Contractor shall be aware of the Owner's obligations under any such agreement and shall perform the Work so as to comply with such obligations. The Contractor shall also be aware of the provisions of sections 8-1-107(2)(d) and 22-32-124, C.R.S., which govern the jurisdiction of state and local authorities with respect to building standards and the application of local planning and zoning ordinances.

§16.2.1 The Contractor shall comply with all applicable provisions of the Occupational Safety and Health Administration (OSHA) and all laws, ordinances, rules, regulations, and orders of all governmental agencies or authorities having jurisdiction to protect the safety of employees and/or other persons who may be affected by the Work. The Contractor shall erect and maintain all necessary safeguards to protect workers on the Project site and the owners and users of adjacent property, and shall post danger signs and other warnings against hazards created by the Work including but not limited to protruding nails, hoists, well holes, elevator shafts, hatchways, scaffolding, window openings, stairways, excavations, and falling materials. The Contractor shall designate a responsible employee at the Project site as a safety officer to ensure the Contractor's compliance with this section. Said employee shall be the Contractor's Project superintendent unless otherwise designated in writing by the Contractor to the Owner.

§16.3 Public Works Contract. The Contractor is informed and shall see that all Subcontractors, material suppliers and workers on the Project are informed of the following:

§16.3.1 The Owner is a public entity and the Project is a public works project within the intent and meaning of section 38-26-105, C.R.S. Accordingly, all payments properly due to the Contractor and all claims for amounts lawfully due from the Contractor and its Subcontractors and all rights to mechanic's liens to secure payment thereof arising on behalf of any person, co-partnership, association of person, company or corporation that has furnished or provided labor, materials, team hire, sustenance, provisions, provender, or other supplies used or consumed by the



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Contractor or any Subcontractor in the performance of the Work shall be subject to section 38-26-101, 105, 106, and 107, C.R.S.

**§16.3.2** In the event any person, co-partnership, association of persons, company or corporation that has furnished labor, materials, team hire, sustenance, provision, provender or other supplies used or consumed by the Contractor or its Subcontractor in or about the performance of the Work files a claim with the Owner by verified statement of the amount due in the method an manner and in compliance with section 38-26-107(1), C.R.S., then no amount of the Contract Sum shall be properly payable to the extent of such claims until:

**§16.3.2(a)** such claim has been paid or withdrawn in the method, manner and in compliance with section 38-26-107(2), C.R.S.; or

**§16.3.2(b)** one day following ninety (90) days after the date fixed for final settlement of claims as published pursuant to section 38-26-107(2), C.R.S., provided no action is commenced within such 90-day time period to enforce such unpaid claim in the method and manner and in compliance with section 38-26-107(2), C.R.S.; or

**§16.3.2(c)** upon entry of final judgment in favor of the Contractor or a claimant to the extent of such judgment, in the event within ninety (90) days after the date fixed for final settlement of claims as published pursuant to section 38-26-107(2), C.R.S., an action is commenced to enforce such unpaid claim in the method and manner and in compliance with section 38-26-107(2), C.R.S.

**§16.4 Nondiscrimination.** The Contractor shall maintain policies of employment as follows:

**§16.4.1** During the performance of the Contract Documents, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, marital status, national origin, disability or age, except when sex or age is a bona fide occupational qualification. The Contractor will take action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, creed, color, sex, sexual orientation, marital status, national origin, disability or age. Such action shall include, but not be limited to employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of applicable Equal Employment Opportunity laws.

**§16.4.2** The Contractor and all subcontractors shall state, in all solicitations or advertisements for employees placed by them or on their behalf, that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, sexual orientation, marital status, national origin, disability or age.

**§16.5 Preference To Colorado Labor.** In compliance with section 8-17-101, C.R.S., et seq., Construction Manager shall give preference to Colorado labor in the several classifications of skilled and common labor employed to the perform the Work, and not less than eighty percent (80%) of each type or class of labor in the several classifications of skilled and common labor employed on the Project shall be Colorado labor. The term "Colorado labor" means any person who has been a bona fide resident of the State of Colorado for a period of not less than one year, without discrimination as to race, creed, color, sex, sexual orientation, marital status, age, national origin or disability except when sex or age is a bona fide occupational qualification. Contractor and all Subcontractors shall, in all respects, comply with these Colorado labor requirements.

**§16.6 Stormwater Management Plan.** In the event Federal, state and local regulations require Owner to follow a Stormwater Management Plan on any construction project that will disturb at least one acre of soil, Contractor shall assure Owner is in compliance with current State of Colorado Division of Water Quality's Stormwater Regulations. The Owner will be consulted regarding project requirements prior to start of construction. Personnel from Mesa County Government or the applicable municipality will review and approve Stormwater Management Plans during the design phase of the Project. Contractor understands that county or municipal personnel may perform site inspections to insure compliance with stormwater regulation requirements.

**§16.8 Safe Schools.** Contractor understands that the Owner's primary concern is for the safety of students and staff; however, it is also recognized that some contact between workmen and students may be unavoidable. To the

EXHIBIT A  
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extent practicable. Contractor will endeavor to prevent persons known to be violent offenders or sexual predators from employment by Contractor or its subcontractors at any school site. Specifically, Contractor will see that all such employees are screened against the registered sexual offenders lists maintained by the Colorado Bureau of Investigation (see <http://www.sor.state.co.us/sxoregistration.asp>), based on their current place of residence. All such employees will be counseled regarding standards of behavior around students and rules against fraternization with students at the job sites will be established and enforced. Contractor shall require all construction workers, whether Contractor's own forces or those of subcontractors, to wear identification tags on the front of their persons during all times that they are on Owner's property. Such identification tags shall have identification of the person by number or other identifying medium in a typeface large enough to be seen from a reasonable distance.


**§16.9 Parking.** Contractor shall require all construction workers, whether Contractor's own forces or those of subcontractors, to park their personal motor vehicles on Owner's property only in the parking places designated by the Owner's Representative. Any vehicles not parked in the appropriate locations may be towed at the vehicle owner's sole expense.

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

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CONSTRUCTION CONTRACT

**Certification of Document's Authenticity**  
AIA® Document D401™ – 2003

I, Colleen Kaneda, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 18:08:52 ET on 03/05/2024 under Order No. 4104246640 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

  
\_\_\_\_\_  
(Signed)

*President*  
\_\_\_\_\_  
(Title)

*3/6/24*  
\_\_\_\_\_  
(Dated)

***ORIGINAL RFQ/P SCOPE OF  
SERVICES DOCUMENT***

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**FOR PROFESSIONAL SERVICES**



**CONSTRUCTION MANAGER / GENERAL CONTRACTOR**

PVSD Replacement pk-12 School  
Plateau Valley School District 50



**DYNAMIC**  
PROGRAM MANAGEMENT

## Exhibit C – Scope and Proposal Documents

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### A. Owner and Project Information

Please refer to the BEST grant application, budget, schedule and all exhibits located on the Owner's website, <https://www.pvdsd50.org/en-US> for information regarding the Owner and the school project.

In addition to the files available on the School District's website, the architect has completed and issued Schematic Design Documents.

### B. Scope of Work

The CM/GC Scope of Work will generally consist of the requirements in the AIA A133-2017 and AIA A201 General Conditions contract and the following:

#### **TRANSPARENCY**

All scope of work shall be completed in a collaborative and transparent manner. The Candidate should expect to attend Board of Education, Owner, OAC, Community, and Design meetings understanding some of these meetings will take place in evenings outside of normal business hours. All subcontractor bid responses will be shared with the Owner for review.

#### **PRECONSTRUCTION SERVICES**

Candidate shall immediately begin providing preconstruction services upon selection. Milestone cost estimates will be provided at 100% SD, 50% DD and 100% DD. Detailed Initial GMP and final GMP estimates per permitting sequencing will be provided by the Candidate.

As needed, Candidate will provide real-time pricing with the objective to hold the project within target budget. A trend log, including potential alternates and value engineering, shall be managed and communicated by the Candidate to the team members. Written constructability review will be provided during the preconstruction phase. These may include construction review of construction assemblies, materials, lead time, architectural details, schedule impacts, sequencing and site limitations. These reviews will be completed at Schematic, Design Development, and interim Construction Document review periods.

All work shall be competitively bid for the project and presented to the owner for final acceptance of subcontractors. Candidate shall provide to the team any cost increases or decreases to select local subcontractors.

Candidate will coordinate with team members to establish a detailed construction schedule identifying long lead items and critical path activities. The Candidate will work with the Owner, Owner's Representative, and Design Team to plan an acceptable site staging and work plan to separate construction activities from the operating school facilities.

#### **CONSTRUCTION**

The Owner is seeking a CM/GC to coordinate and manage the building process as a member of the project team. The Candidate shall understand construction methods and

techniques. Candidate shall construct of the project in accordance with construction documents and specifications within the scheduled timeframe. Being a BEST Grant funded project, the project will adhere to a sustainability program that will require CM/GC documentation and participation.

**Site** – Candidate will provide supervision of all internal personnel and subcontractors including ensuring internal personnel and subcontractors on site have cleared background checks based on the Owner’s criteria. Candidate will ensure prohibited items by law are not brought onto the School District’s property by those under the Candidate’s responsibility. Candidate is responsible for site safety. Candidate will work with the Owner’s selected construction material testing firm to provide appropriate notice of inspection requests. Candidate will work with the Owner’s selected commissioning agent and provide timely information as requested by this consultant.

**Schedule** – Candidate shall manage the construction schedule and communicate the 3-week look ahead schedule every week and provide updated full project schedules monthly with each application for payment.

**Budget** - Candidate is responsible for the construction budget and will provide weekly budget updates to the Owner, Owner’s Representative, and Design Team. Pay applications will be provided per the contract in a timely fashion so that invoices may be submitted to the Owner for payment.

**Documentation** - Maintain and provide to the Owner all construction related documentation such as RFI’s, submittals, schedules, and inspections. Candidate shall fulfill contractor’s responsibilities regarding actions, documentation and submissions for the selected sustainability program.

**Quality** – Quality control is the CM/GC’s responsibility. The Candidate shall provide a product with the highest quality workmanship.

**Completion** - Close-out and warranty services will be in accordance with contract documents. CM/GC will work with project team members to close out the project proactively and efficiently at completion. Candidate will provide warranty request process to the Owner and respond appropriately and timely to such requests.

#### **UTILITY COORDINATION**

Candidates will be expected to assist in utility coordination with the various utility providers with assistance from the Owner’s Representative and Design Team.

#### **LOCAL EXPENSES**

Candidate should understand local economic impact is important to the Owner. The Candidate will be expected to track and report to the Owner’s Representative on each pay application a breakout of local expenses for any local labor, subcontractor, meals, lodging, subconsultants, gas, etc. made within Plateau Valley School District boundaries for the duration of the project. These expenses are compiled each month and provided to the Board of Education as an estimate of expenses spent within the community as a result of the project.

### **ADDITIONAL GRANT FUNDING**

The Owner may pursue additional grant funding. These grants may include GOCO, DOLA, Colorado Health Foundation, etc. The Candidate will provide cost estimates and schedules as required by grant applications.

### **SCHEDULE**

A detailed schedule has been attached to this exhibit as the current contract schedule.

### **FEE PROPOSAL**

A fee proposal has been attached this this exhibit including:

- Preconstruction Fee
- General Conditions
- Additional cost to provide 24-month warranty, from base 12-month warranty
- % Fee
- % General Liability Insurance
- % Performance and Payment Bonds
- % Builder's risk insurance
- % Markup on Change Orders
- % Markup allowed by subcontractors on Change Orders
- Equipment rate sheet
- Hourly rates of personnel
- # of weeks candidate commits to completing the construction phase of the project

### **Preconstruction Fee**

The preconstruction fee shall include the cost of all staff and reimbursable expenses during the preconstruction phase of the project.

### **General Conditions/General Requirements**

General conditions/General Requirements shall be provided and shall be treated as a GMP within the GMP for the scope of the work of the project. General conditions/General requirements are intended to cover any costs the CM/GC would expect to spend for general conditions on a project of this size, location and scope and the lists below are not intended to be exhaustive.

General conditions/General requirements shall include the cost of staff defined below that would be normally charged to the project for the phases immediately following pre-construction through closeout and warranty:

- Project Manager(s)
- Project Engineer(s)
- Project Superintendent(s)
- M/E Coordinator
- Field Supervision
- Field Coordination
- General Foreman
- Quality Control
- Safety Coordination

- Trade Coordination
- Clerical/Secretarial
- Project Coordination
- Estimating / Cost Engineering

The fee for General Conditions/General requirements shall also cover the cost of equipment, field office, tools, hauling, material, and everything listed below (if necessary) required for the CM/GC firm during the construction and closeout phases:

- Office equipment
- Printing/reproduction
- 3D programming, modeling, and BIM
- Procore or other file management software
- Phones/phone lines including mobile and land lines
- Radios
- Fuel/Maintenance
- Substance abuse testing
- Background checks
- Moving and subsistence
- Travel from home office
- Construction and project signage
- Temporary Walkways, Drives & Parking
- Progress photos and videos
- Temporary office
- Postage/delivery
- Internet service
- Vehicles/vehicle expenses and/or rental
- Submittals
- Jobsite dumpsters and disposal fees
- Office furniture
- Drinking water
- Small tools
- Forklift for loading/unloading of miscellaneous materials
- Loading & unloading of miscellaneous materials
- Jobsite cleanup (excludes final cleanup)
- Office supplies
- Office clean-up
- Temporary toilets/sinks
- First aid supplies
- IT equipment such as computers, laptops and tablets; and software including MS office suite, scheduling, pdf editing, and subcontractor pay applications (Textura or similar).
- On site printers and copiers
- Material handling
- Temporary construction fence
- On site storage for CM/GC
- Safety equipment
- Fire extinguishers
- Safety barrier / safety warnings / safety handrails
- Temporary water, including distribution and utility charges
- Temporary power



EXHIBIT A  
CONSTRUCTION CONTRACT

Exhibit C

- Temporary heat for trailer
- Drafting and detailing
- As-built drawings

**PVSD Replacement pk-12 School Project**  
**Fee Workbook**  
11/29/2023

Firm Name

FCI CONSTRUCTORS, INC

**LUMP SUM ITEMS**

Preconstruction Fee	\$82,000
General Conditions - May 1 - July 1 2024	\$106,405
General Conditions - July 1 - February 1, 2026	\$2,466,857
General Conditions - Feb 1 - August 1, 2026	\$359,339
Total General Conditions	\$2,932,601
2 Year Warranty, in lieu of 1 Year	\$31,270

**% ITEMS**

% Fee for OH / Profit (% of cost of the work)	3.50%
% for General Liability Insurance (% of cost of the work)	0.85%
% for Performance & Payment Bonds (% of cost of the work)	0.46%
% for Subcontractor Default Insurance (% of cost of the work) If applicable	NOT REQ'D
% for Builder's Risk Insurance (% of cost of the work)	0.15%
% Markup fee by CMGC on Change Orders	3.50%
% Markup fee allowed by Subcontractors on Change Orders	10.00%

\* Please attach your firm's equipment rate sheet, including standard winter conditions items

**Hourly Rates**

General Laborer	\$45/HR
Carpenter	\$67/HR
Carpenter Foreman	\$73/HR
Senior Project Manager	\$146/HR
Project Manager	\$123/HR
Assistant Project Manager	\$101/HR
Senior Superintendent	\$134/HR

Superintendent  
Project Engineer  
OTHER (can be filled out by candidate)  
OTHER (can be filled out by candidate)  
OTHER (can be filled out by candidate)  
OTHER (can be filled out by candidate)  
OTHER (can be filled out by candidate)

\$112/HR
\$112/HR

### General Conditions Schedule

# weeks of construction activities in which fees were based (mobilization to final completion - including demo)

89
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# EXHIBIT A CONSTRUCTION CONTRACT

Exhibit C

**FCI Cost Worksheet**

May 1, 2024      July 1, 2024      Enabling and interior demo

Project: PLATEAU VALLEY SCHOOL DISTRICT

Div. 1: GENERAL CONDITIONS

DESCRIPTION	QTY	UNIT	PRICE	MATERIAL	PRICE	EQUIP/SUB	PRICE	LABOR	TOTAL
PROJECT MANAGER		WK	-	-	-	-	4,920	-	-
SUPERINTENDENT	9	WK	-	-	-	-	5,360	46,709	46,709
ASST SUPERINTENDENT		WK	-	-	-	-	4,480	-	-
PROJECT ENGINEER	9	WK	-	-	-	-	4,480	39,040	39,040
M/E COORDINATOR	0	WK	-	-	-	-	-	-	-
FIELD SUPERVISION	0	WK	-	-	-	-	-	-	-
FIELD COORDINATION		WK	-	-	-	-	4,480	-	-
GENERAL FOREMAN		WK	-	-	-	-	2,920	-	-
QUALITY CONTROL	0	WK	-	-	-	-	-	-	INCLUDED
SAFETY COORDINATOR	0	WK	-	-	-	-	-	-	INCLUDED
TRADE COORDINATION		WK	-	-	-	-	4,480	-	-
CLERICAL/SECRETARIAL	0	WK	-	-	-	-	-	-	INCLUDED
PROJECT COORDINATION	0	WK	-	-	-	-	-	-	INCLUDED
ESTIMATING / COST ENGINEERING	0	WK	-	-	-	-	-	-	INCLUDED
OFFICE EQUIPMENT	0	WK	-	-	-	-	-	-	INCLUDED
PRINTING / REPRODUCTION		LS	6,500	-	-	-	-	-	-
3D PROGRAMMIN & BIM	0	WK	-	-	-	-	-	-	BY SUB
FILE MANAGEMNT SOFTWARE	0	WK	-	-	-	-	-	-	INCLUDED
CELL PHONE	3	MO	300	902	-	-	-	-	902
TRAILER PHONE/INTERNET	1	MO	200	200	-	-	-	-	200
RADIOS	0	WK	-	-	-	-	-	-	NOT REQ'D
PICKUP RENT	2	MO	1,100	2,200	1,025	2,050	-	-	4,250
SUBSTANCE ABUSE TESTING	0	LS	-	-	-	-	-	-	INCLUDED
BACKGROUND CHECKS	0	WK	-	-	-	-	-	-	INCLUDED
SUBSISTENCE	0	WK	-	-	-	-	-	-	NOT REQ'D
RENT	0	MO	-	-	-	-	-	-	NOT REQ'D
HOME OFFICE TRAVEL	0	MO	-	-	-	-	-	-	NOT REQ'D
PROJECT SIGNAGE	0	LS	1,500	-	-	-	-	-	-
TEMP WALKWAYS,DRIVES & PARKING	0	WK	-	-	-	-	-	-	COST OF WORK
PROGRESS PHOTOS & VIDEOS	0	WK	-	-	-	-	-	-	INCLUDED
OFFICE TRAILER	1	MO	600	600	MOB IN/OUT	3,500	-	-	4,100
POSTAGE / DELIVERY	0	MO	100	-	-	-	-	-	-
SUBMITTALS	0	WK	-	-	-	-	-	-	INCLUDED
DUMPSTER & DISPOSAL FEES	2	WK	-	-	550	1,100	-	-	1,100
OFFICE FURNITURE	0	WK	-	-	-	-	-	-	INCLUDED
DRINKING WATER	1	MO	-	-	25	25	-	-	25
SMALL TOOLS	0	LS	6,000	-	-	-	-	-	-
FORKLIFT	0	MO	-	-	2,300	-	-	-	-
LOADING & UNLOADING MAT'L	0	WK	-	-	-	-	-	-	INCLUDED
JOBSITE CLEANUP	0	WK	-	-	-	-	2,040	-	-
OFFICE SUPPLIES	1	MO	300	300	-	-	-	-	300
OFFICE CLEAN UP	0	WK	-	-	-	-	-	-	INCLUDED
TEMP TOILET	1	MO	-	-	850	850	-	-	850
FIRST AID	0	MO	-	-	150	-	-	-	-
IT PER USER	1	MO	-	-	980	980	-	-	980
COPIER	1	MO	-	-	350	350	-	-	350
MAT'L HANDLING	0	WK	-	-	-	-	-	-	INCLUDED
TEMP CONSTRUCTION FENCE	1	MO	-	-	1,750	1,750	-	-	1,750
STORAGE VAN	1	MO	450	450	MOB IN/OUT	5,000	-	-	5,450
SAFETY EQUIPMENT	1	MO	400	400	-	-	-	-	400
FIRE EXTINGUISHERS	0	LS	3,500	-	-	-	-	-	-
SAFETY BARRIER / WARNINGS / HARNDRAILS	0	WK	-	-	-	-	-	-	COST OF WORK
LEED REQUIREMENTS	0	LS	-	-	-	-	-	-	-
TEMP WATER	0	MO	-	-	-	-	-	-	BY OWNER
TEMP POWER	0	MO	-	-	-	-	-	-	BY OWNER
DRAFTING & DETAILING	0	WK	-	-	-	-	-	-	NOT REQ'D
AS-BUILT DRAWING	0	WK	-	-	-	-	-	-	INCLUDED
<b>TOTALS</b>				<b>5,052</b>		<b>15,605</b>		<b>85,749</b>	<b>106,405</b>

# EXHIBIT A CONSTRUCTION CONTRACT

Exhibit C

**FCI Cost Worksheet**

July 1, 2024

February 1, 2026

Project: PLATEAU VALLEY SCHOOL DISTRICT

Div. 1: GENERAL CONDITIONS

DESCRIPTION	QTY	UNIT	PRICE	MATERIAL	PRICE	EQUIP/SUB	PRICE	LABOR	TOTAL
PROJECT MANAGER	28	WK	\$ -	\$ -	\$ -	\$ -	\$ 4,920	\$ 138,006	\$ 138,006
SUPERINTENDENT	85	WK	\$ -	\$ -	\$ -	\$ -	\$ 5,360	\$ 455,600	\$ 455,600
ASST SUPERINTENDENT	89	WK	\$ -	\$ -	\$ -	\$ -	\$ 4,480	\$ 400,198	\$ 400,198
PROJECT ENGINEER	85	WK	\$ -	\$ -	\$ -	\$ -	\$ 4,480	\$ 380,800	\$ 380,800
M/E COORDINATOR	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
FIELD SUPERVISION	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
FIELD COORDINATION	94	WK	\$ -	\$ -	\$ -	\$ -	\$ 2,920	\$ 273,487	\$ 273,487
GENERAL FOREMAN	85	WK	\$ -	\$ -	\$ -	\$ -	\$ 2,920	\$ 248,200	\$ 248,200
QUALITY CONTROL	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
SAFETY COORDINATOR	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
TRADE COORDINATION	64	WK	\$ -	\$ -	\$ -	\$ -	\$ 2,920	\$ 186,150	\$ 186,150
CLERICAL/SECRETARIAL	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
PROJECT COORDINATION	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
ESTIMATING / COST ENGINEERING	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
OFFICE EQUIPMENT	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
PRINTING / REPRODUCTION	1	LS	\$ 6,500	\$ 6,500	\$ -	\$ -	\$ -	\$ -	\$ 6,500
3D PROGRAMMIN & BIM	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	BY SUB
FILE MANAGEMNT SOFTWARE	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
CELL PHONE	21	MO	\$ 300	\$ 6,168	\$ -	\$ -	\$ -	\$ -	\$ 6,168
TRAILER PHONE/INTERNET	24	MO	\$ 200	\$ 4,712	\$ -	\$ -	\$ -	\$ -	\$ 4,712
RADIOS	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	NOT REQ'D
PICKUP RENT	22	MO	\$ 1,100	\$ 23,715	\$ 2,050	\$ 44,197	\$ -	\$ -	\$ 67,912
SUBSTANCE ABUSE TESTING	1	LS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
BACKGROUND CHECKS	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
SUBSISTENCE	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	NOT REQ'D
RENT	0	MO	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	NOT REQ'D
HOME OFFICE TRAVEL	0	MO	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	NOT REQ'D
PROJECT SIGNAGE	1	LS	\$ 1,500	\$ 1,500	\$ -	\$ -	\$ -	\$ -	\$ 1,500
TEMP WALKWAYS,DRIVES & PARKING	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	COST OF WORK
PROGRESS PHOTOS & VIDEOS	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
OFFICE TRAILER	24	MO	\$ 600	\$ 14,136	MOB IN/OUT	\$ 3,500	\$ -	\$ -	\$ 17,636
POSTAGE / DELIVERY	20	MO	\$ 100	\$ 1,956	\$ -	\$ -	\$ -	\$ -	\$ 1,956
SUBMITTALS	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
DUMPSTER & DISPOSAL FEES	85	WK	\$ -	\$ -	\$ 550	\$ 46,750	\$ -	\$ -	\$ 46,750
OFFICE FURNITURE	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
DRINKING WATER	24	MO	\$ -	\$ -	\$ 25	\$ 589	\$ -	\$ -	\$ 589
SMALL TOOLS	1	LS	\$ 6,000	\$ 6,000	\$ -	\$ -	\$ -	\$ -	\$ 6,000
FORKLIFT	24	MO	\$ -	\$ -	\$ 2,300	\$ 54,187	\$ -	\$ -	\$ 54,187
LOADING & UNLOADING MAT'L	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
JOBSITE CLEANUP	21	WK	\$ -	\$ -	\$ -	\$ -	\$ 2,040	\$ 43,350	\$ 43,350
OFFICE SUPPLIES	24	MO	\$ 300	\$ 7,068	\$ -	\$ -	\$ -	\$ -	\$ 7,068
OFFICE CLEAN UP	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
TEMP TOILET	22	MO	\$ -	\$ -	\$ 850	\$ 18,326	\$ -	\$ -	\$ 18,326
FIRST AID	24	MO	\$ -	\$ -	\$ 150	\$ 3,534	\$ -	\$ -	\$ 3,534
IT PER USER	22	MO	\$ -	\$ -	\$ 980	\$ 21,128	\$ -	\$ -	\$ 21,128
COPIER	24	MO	\$ -	\$ -	\$ 350	\$ 8,246	\$ -	\$ -	\$ 8,246
MAT'L HANDLING	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
TEMP CONSTRUCTION FENCE	24	MO	\$ -	\$ -	\$ 1,750	\$ 41,229	\$ -	\$ -	\$ 41,229
STORAGE VAN	22	MO	\$ 450	\$ 9,702	MOB IN/OUT	\$ 5,000	\$ -	\$ -	\$ 14,702
SAFETY EQUIPMENT	24	MO	\$ 400	\$ 9,424	\$ -	\$ -	\$ -	\$ -	\$ 9,424
FIRE EXTINGUISHERS	1	LS	\$ 3,500	\$ 3,500	\$ -	\$ -	\$ -	\$ -	\$ 3,500
SAFETY BARRIER / WARNINGS / HARNDRAILS	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	COST OF WORK
LEED REQUIREMENTS	1	LS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TEMP WATER	20	MO	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	BY OWNER
TEMP POWER	20	MO	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	BY OWNER
DRAFTING & DETAILING	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	NOT REQ'D
AS-BUILT DRAWING	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
<b>TOTALS</b>				\$ 94,380		\$ 246,686		\$ 2,125,792	\$ 2,466,857

# EXHIBIT A CONSTRUCTION CONTRACT

Exhibit C

**FCI Cost Worksheet**

February 1, 2026 August 1, 2026 Demo and parking lot

Project: PLATEAU VALLEY SCHOOL DISTRICT

Div. 1: GENERAL CONDITIONS

DESCRIPTION	QTY	UNIT	PRICE	MATERIAL	PRICE	EQUIP/SUB	PRICE	LABOR	TOTAL
PROJECT MANAGER	5	WK	\$ -	\$ -	\$ -	\$ -	\$ 4,920	\$ 24,600	\$ 24,600
SUPERINTENDENT	26	WK	\$ -	\$ -	\$ -	\$ -	\$ 5,360	\$ 139,360	\$ 139,360
ASST SUPERINTENDENT		WK	\$ -	\$ -	\$ -	\$ -	\$ 4,480	\$ -	\$ -
PROJECT ENGINEER	26	WK	\$ -	\$ -	\$ -	\$ -	\$ 4,480	\$ 116,480	\$ 116,480
M/E COORDINATOR	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
FIELD SUPERVISION	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
FIELD COORDINATION	12	WK	\$ -	\$ -	\$ -	\$ -	\$ 4,480	\$ 53,760	\$ 53,760
GENERAL FOREMAN	26	WK	\$ -	\$ -	\$ -	\$ -	\$ 2,920	\$ 75,920	\$ 75,920
QUALITY CONTROL	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
SAFETY COORDINATOR	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
TRADE COORDINATION		WK	\$ -	\$ -	\$ -	\$ -	\$ 4,480	\$ -	\$ -
CLERICAL/SECRETARIAL	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
PROJECT COORDINATION	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
ESTIMATING / COST ENGINEERING	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
OFFICE EQUIPMENT	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
PRINTING / REPRODUCTION	0	LS	\$ 6,500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
3D PROGRAMMIN & BIM	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	BY SUB
FILE MANAGEMNT SOFTWARE	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
CELL PHONE	6	MO	\$ 300	\$ 1,795	\$ -	\$ -	\$ -	\$ -	\$ 1,795
TRAILER PHONE/INTERNET	4	MO	\$ 200	\$ 800	\$ -	\$ -	\$ -	\$ -	\$ 800
RADIOS	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	NOT REQ'D
PICKUP RENT	6	MO	\$ 1,100	\$ 6,581	\$ 1,025	\$ 6,132	\$ -	\$ -	\$ 12,714
SUBSTANCE ABUSE TESTING	1	LS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
BACKGROUND CHECKS	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
SUBSISTENCE	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	NOT REQ'D
RENT	0	MO	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	NOT REQ'D
HOME OFFICE TRAVEL	0	MO	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	NOT REQ'D
PROJECT SIGNAGE	0	LS	\$ 1,500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TEMP WALKWAYS,DRIVES & PARKING	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	COST OF WORK
PROGRESS PHOTOS & VIDEOS	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
OFFICE TRAILER	4	MO	\$ 600	\$ 2,400	MOB IN/OUT	\$ 3,500	\$ -	\$ -	\$ 5,900
POSTAGE / DELIVERY	2	MO	\$ 100	\$ 200	\$ -	\$ -	\$ -	\$ -	\$ 200
SUBMITTALS	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
DUMPSTER & DISPOSAL FEES	13	WK	\$ -	\$ -	\$ 550	\$ 7,150	\$ -	\$ -	\$ 7,150
OFFICE FURNITURE	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
DRINKING WATER	0	MO	\$ -	\$ -	\$ 25	\$ -	\$ -	\$ -	\$ -
SMALL TOOLS	0	LS	\$ 6,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
FORKLIFT	4	MO	\$ -	\$ -	\$ 2,300	\$ 9,200	\$ -	\$ -	\$ 9,200
LOADING & UNLOADING MAT'L	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
JOBSITE CLEANUP	7	WK	\$ -	\$ -	\$ -	\$ -	\$ 2,040	\$ 13,260	\$ 13,260
OFFICE SUPPLIES	4	MO	\$ 300	\$ 1,200	\$ -	\$ -	\$ -	\$ -	\$ 1,200
OFFICE CLEAN UP	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
TEMP TOILET	4	MO	\$ -	\$ -	\$ 850	\$ 3,400	\$ -	\$ -	\$ 3,400
FIRST AID	4	MO	\$ -	\$ -	\$ 150	\$ 600	\$ -	\$ -	\$ 600
IT PER USER	6	MO	\$ -	\$ -	\$ 980	\$ 5,880	\$ -	\$ -	\$ 5,880
COPIER	4	MO	\$ -	\$ -	\$ 350	\$ 1,400	\$ -	\$ -	\$ 1,400
MAT'L HANDLING	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
TEMP CONSTRUCTION FENCE	4	MO	\$ -	\$ -	\$ 1,750	\$ 7,000	\$ -	\$ -	\$ 7,000
STORAGE VAN	4	MO	\$ 450	\$ 1,800	MOB IN/OUT	\$ 5,000	\$ -	\$ -	\$ 6,800
SAFETY EQUIPMENT	4	MO	\$ 400	\$ 1,600	\$ -	\$ -	\$ -	\$ -	\$ 1,600
FIRE EXTINGUISHERS	0	LS	\$ 3,500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
SAFETY BARRIER / WARNINGS / HARNDRAILS	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	COST OF WORK
LEED REQUIREMENTS	1	LS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TEMP WATER	6	MO	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	BY OWNER
TEMP POWER	6	MO	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	BY OWNER
DRAFTING & DETAILING	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	NOT REQ'D
AS-BUILT DRAWING	0	WK	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	INCLUDED
<b>TOTALS</b>				\$ 16,376		\$ 49,262		\$ 423,380	\$ 359,339



**EXHIBIT A**

CONSTRUCTION CONTRACT				Exhibit C
FIREPROOFING MOB	\$500.00			
GROUND PENETRATING RADAR w/OPER**	\$2,000.00			
GROUND PENETRATING RADAR w/OPER MOB**	\$500.00			
<b>SURVEY</b>				
LASER (LEVEL, ROTATING)	\$33.00	\$106.00	\$233.00	
ROBOTIC TOTAL STATION	\$225.00	\$810.00	\$2,695.00	
REBAR LOCATOR	\$27.00	\$78.00	\$162.00	
THEODOLITE	\$112.00	\$335.00	\$670.00	
TOTAL STATION	\$63.00	\$225.00	\$715.00	
<b>TRUCKS/TRAILERS/STORAGE</b>				
16' FLATBED TRAILER	\$120.00	\$240.00	\$485.00	
16' CARPENTER TRAILER (ENCLOSED)	\$120.00	\$240.00	\$485.00	
COMPRESSOR, TRAILER	\$182.00	\$536.00	\$1,295.00	
GENERATOR, TRAILER	\$150.00	\$450.00	\$1,300.00	
OFFICE TRAILER			\$700.00	
PICKUP			\$1,025.00	
PICKUP (ON SITE USE ONLY)			\$500.00	
PICKUP SNOWPLOW ATTACHMENT			\$500.00	
STORAGE VAN (CON-X)	\$25.00	\$75.00	\$225.00	
TRASH DUMP TRAILER (12')	\$99.00	\$225.00	\$445.00	
WATER TANK WITH TRAILER	\$158.00	\$465.00	\$945.00	
BRUSH HOG TOW BEHIND	\$225.00	\$520.00	\$1,170.00	
<b>TOOLS AND MISC.</b>				
10" Table Saw	\$27.00	\$81.00	\$243.00	
3" PUMP	\$60.00	\$180.00	\$540.00	
60# HAMMER AIR	\$76.00	\$227.00	\$490.00	
90# HAMMER AIR	\$95.00	\$250.00	\$540.00	
AUTO LEVEL	\$26.00	\$78.00	\$234.00	
BACKFLOW PREVENTER/EQUIPMENT			\$225.00	
BRUT PORTABLE SANDBLASTER	\$225.00	\$490.00	\$1,000.00	
CIRCULATING FAN 36" OR 48"	\$27.00	\$78.00	\$234.00	
COMPACTOR JUMPING	\$107.00	\$330.00	\$590.00	
COMPRESSOR ELECT.	\$29.00	\$87.00	\$261.00	
CORE DRILL 2"-5" (+BIT WEAR)	\$133.00	\$220.00	\$810.00	
DEMOLITION SAW	\$67.00	\$175.00	\$525.00	
DRYWALL TEXTURE SPRAYER (30 GAL)	\$44.00	\$113.00	\$335.00	
ELECT. HAMMER (T-905)	\$95.00	\$237.00	\$378.00	
GENERATOR	\$43.00	\$129.00	\$387.00	
HILTI VC 40-U WET/DRY VAC (DUST COLLECTOR)	\$22.00	\$87.00	\$260.00	
HYDRAULIC FURNITURE DOLLY	\$72.00	\$197.00	\$468.00	
MITER SAW	\$15.00	\$45.00	\$135.00	
MOTORIZED POST DRIVER	\$95.00	\$237.00	\$378.00	
PAINT SPRAYER	\$76.00	\$225.00	\$452.00	
PALLET JACK	\$72.00	\$197.00	\$468.00	
PIPE INSPECTION CAMERA, 100'	\$175.00	\$800.00	\$2,000.00	
PLATE COMPACTOR	\$110.00	\$300.00	\$608.00	
PRESSURE WASHER	\$105.00	\$375.00	\$790.00	
RIDE ON FLOOR SCRAPER (ELECTRIC)	\$800.00	\$2,000.00	\$4,500.00	
ROTO HAMMER AND BITS	\$87.00	\$256.00	\$600.00	
SNOW BLOWER	\$55.00	\$165.00	\$495.00	
TRASH CHUTE 30" DIAM WITH MOUNTING				
ACCESSORIES	\$68.00	\$234.00	\$675.00	
VENTILATION FANS/BLOWER	\$25.00	\$90.00	\$175.00	
WELDER 200AMP	\$116.00	\$297.00	\$576.00	
WIRE FEED WELDER	\$39.00	\$116.00	\$232.00	
<b>Total</b>				

Revision 07/18/2022

\*\* GPR is \$2,000.00/day; \$1000 / half-day (minimum charge)

\*\*\* Information Technology rate is \$245/month/ per user.

Includes: Job Site based computers, iPads, tablets, IT hardware, and supporting software licenses & IT

\*\*\*\* For heaters less than 400,000 BTU, the D/W/M rate is a lump sum, regardless of quantity of heaters mobilized. These are small(er) units.

**Submitted By:** \_\_\_\_\_

**Approved By:** \_\_\_\_\_



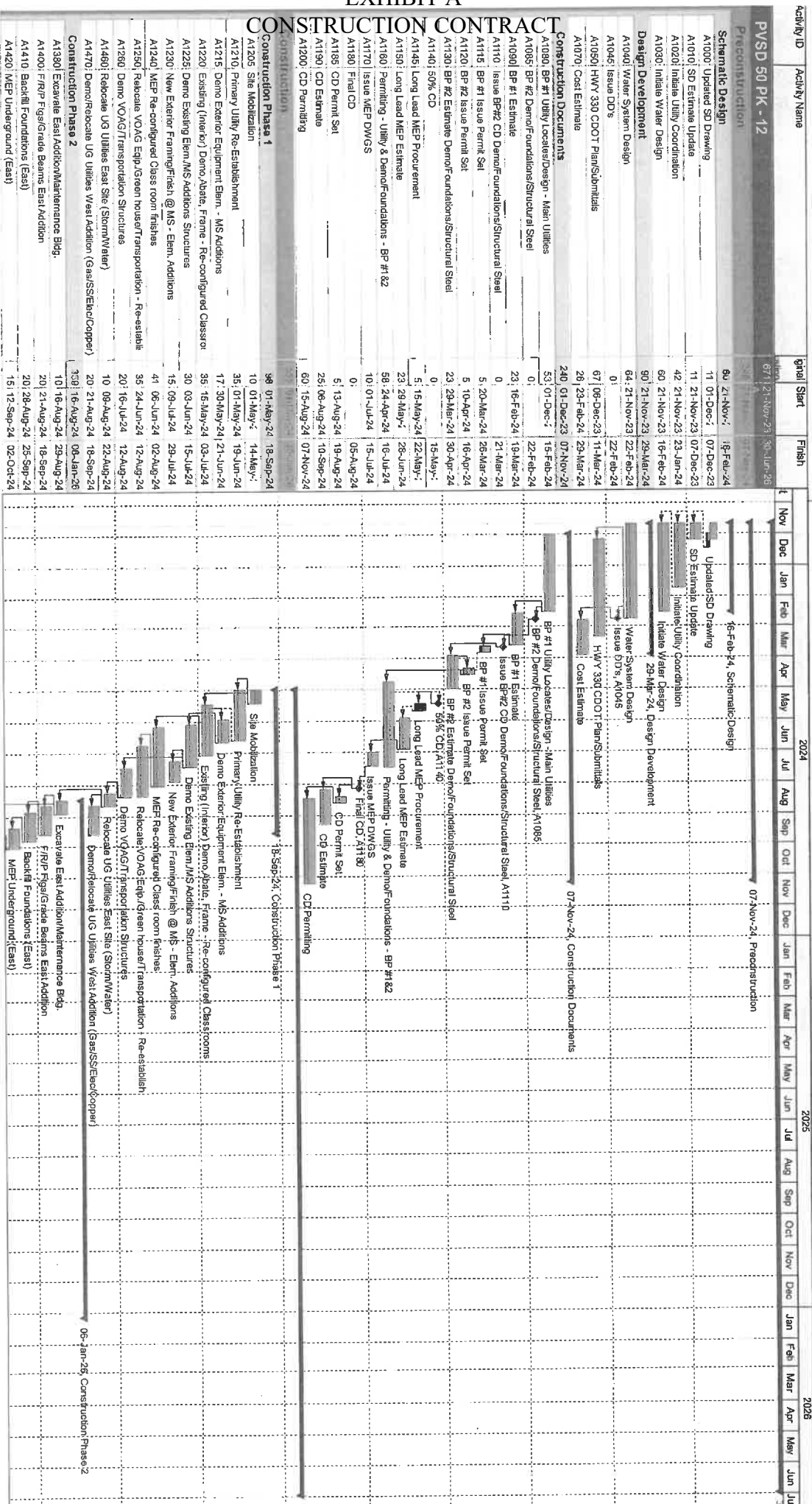
EXHIBIT A

CONSTRUCTION CONTRACT

PVSD 50 PK - 12

FCI Constructors, Inc.

04-Dec-23



Primary Baseline   
  Remaining Work   
  Critical Remaining Work   
  Milestone   
  Summary

TASK Filter: All Activities

Page 1 of 3

© Oracle Corporation

EXHIBIT A

CONSTRUCTION CONTRACT

PVSD 50 PK - 12

FCI Constructors, Inc.

04-Dec-23

Activity ID	Activity Name	Original Start	Finish	2024	2025	2026	2027												
Activity ID	Activity Name	Original Start	Finish	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	2026	2027
A1426	SOG Prep (East)	30-Sep-24	04-Oct-24																
A1430	Excavate/Overlaid - Raining Wall	30-Aug-24	18-Oct-24																
A1436	F/R/P SOG (East)	26-Oct-24	05-Nov-24																
A1440	Ex. Foundation Transportation Bldg.	26-Oct-24	01-Nov-24																
A1441	F/R/P Transportation Bldg. Figs./Grade Beams	01-Nov-24	08-Nov-24																
A1445	Establish East Roadway/Ex. Transportation Bldg.	20-Oct-24	08-Nov-24																
A1450	Backfill Transportation Grade Beams	14-Nov-24	13-Nov-24																
A1451	Transportation Bldg. MEP UG	14-Nov-24	20-Nov-24																
A1455	Excavate Classroom Addition (West)	14-Oct-24	26-Nov-24																
A1466	Transportation Bldg. F/R/P SOG	25-Nov-24	29-Nov-24																
A1475	F/R/P Figs./Grade Beams (West)	21-Oct-24	17-Dec-24																
A1480	Backfill Grade Beams (West)	04-Nov-24	24-Dec-24																
A1486	MEP Underground (West)	04-Nov-24	01-Jan-25																
A1500	SOG Prep (West)	18-Nov-24	01-Jan-25																
A1505	New Utility/Storm	27-Nov-24	08-Jan-25																
A1510	SOG F/R/P #1	27-Nov-24	12-Dec-24																
A1520	SOG F/R/P #2	27-Nov-24	12-Dec-24																
A1530	Structural Masonry (East)	30-Oct-24	24-Jan-25																
A1535	Job/Deck To Site	20-Jan-25																	
A1540	Gym - East Addition Joist & Deck Install	20-Jan-25	29-Jan-25																
A1542	Gym/Maintenance Membrane Roofing	30-Jan-25	12-Feb-25																
A1543	Transportation Bldg. Structural Masonry	27-Jan-25	21-Feb-25																
A1546	F/R/P SOMD	19-Mar-25	01-Apr-25																
A1550	Erect Structural Steel	01-Jan-26	08-Apr-26																
A1555	Classroom Addition Joist & Deck Install	12-Mar-25	08-Apr-25																
A1560	Clear & Grub Roadway/Transportation Bldg. Pad	21-Mar-25	10-Apr-25																
A1564	Transportation Bldg. Joist & Deck	07-Apr-25	11-Apr-25																
A1566	Demo Bleachers/Clear & Grub Sport Field/East Lot	14-Mar-25	01-May-25																
A1570	CFM/FEXT Sheathing Classroom Addition	09-Apr-25	03-Jun-25																
A1571	LL Gauge INT. Framing	14-Apr-25	13-Jun-25																
A1580	Membrane Roofing	14-Apr-25	13-Jun-25																
A1592	Install NEW Sport Field - Prep	02-May-25	05-Jun-25																
A1594	Sport Lighting - UG/Bases/Goal Posts	23-May-25	12-Jun-25																
A1595	Install C/W/SF	23-Apr-25	17-Jun-25																
A1615	Install Turf	13-Jun-25	25-Jun-25																
A1619	East Parking Lot UG/Prep - Track Prep	06-Jun-25	26-Jun-25																
A1621	Set RTU's	16-Jun-25	20-Jun-25																
A1623	North Roadway Site Prep	27-Jun-25	14-Jul-25																
A1623	Top Out Corridors - MEP Overhead	23-Apr-25	22-Jul-25																
A1630	Exterior Masonry Veneer	30-Apr-25	02-Aug-25																
A1635	Install Gym Equipment/Hoops	13-Jun-25	26-Jun-25																
A1637	Install Gym Floor	27-Jun-25	10-Jul-25																
A1640	Establish Turf - Ready 8/1/24	28-Jun-26	09-Aug-26																
A1646	North Roadway/Building Site Concrete	08-Jul-25	04-Aug-25																
A1650	Strip & Finish Gym Floor	26-Jul-25	07-Aug-25																
A1661	Complete Storm UG Utility	15-Jul-25	11-Aug-25																
A1663	Exterior Sealants	16-Jul-25	12-Aug-25																

Primary Baseline Remaining Work Critical Remaining Work Milestone Summary

Page 2 of 3

TASK filter: All Activities

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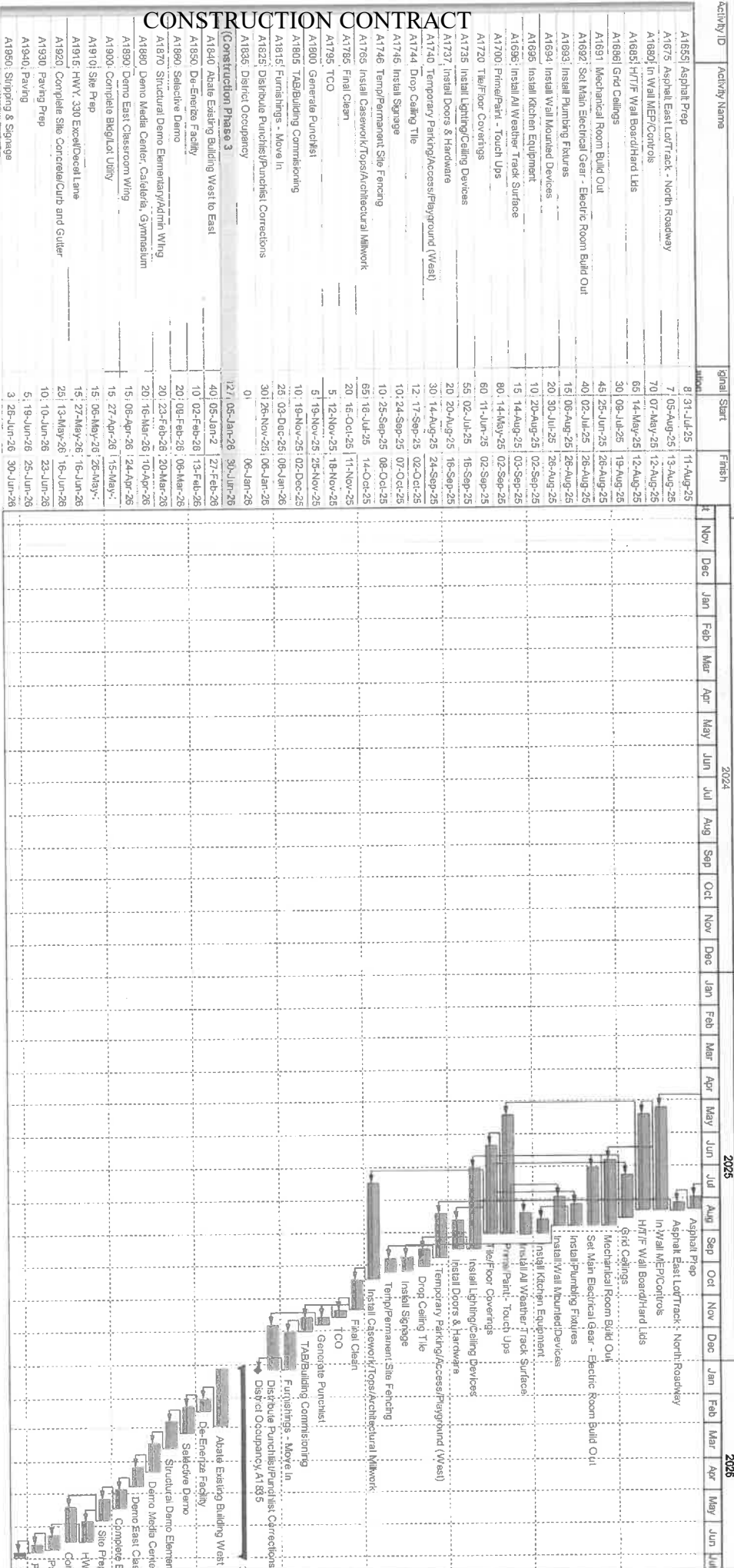
EXHIBIT A

CONSTRUCTION CONTRACT

PVSD 50 PK - 12

FCI Constructors, Inc.

04-Dec-23

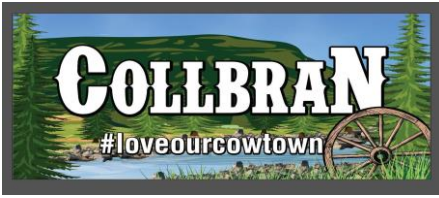


Primary Baseline  
Actual Work  
Remaining Work  
Critical Remaining Work  
Milestone  
Summary

Page 3 of 3

TASK Filter: All Activities

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## Board of Trustees Memorandum Agenda Item: 7

**TITLE:** Pioneer Excavating, LLC Water Valve Replacement Contract

**ATTACHMENTS:** A – Contract between Pioneer Excavating, LLC and the Town of Collbran for Hwy 330 Water Valve Replacement Project

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**BACKGROUND:**

In early February 2024, the Board concluded an RFP process by awarding the Hwy 330 valve replacement RFP Pioneer Excavating, LLC. This project was deemed necessary to complement the PVSD waterline improvement project. The contract presented attached hereto is the contract included and approved by this Board in the initial RFP posting.

**RECOMMEND ACTION:**

Approval of the final Pioneer Excavating, LLC contract as presented.

Respectfully Submitted,

Angie Sprang  
Interim Town Administrator

# TOWN OF COLLBRAN, COLORADO

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## NAME OF CONTRACTOR

This Contract made and entered into this 12th Day of March 2025, by and between the TOWN OF COLLBRAN, COLORADO, a political subdivision of the State of Colorado, referred to as "TOWN" and Pioneer Excavating LLC, a Colorado corporation (or limited liability company, etc., or if the contractor is not a Colorado entity, then it should read "a Texas, Delaware, etc., corporation authorized to do business in Colorado"), hereinafter referred in the Contract Documents as "Contractor.

WITNESSETH, that Town advertised that sealed bids would be received for furnishing all labor, tools, supplies, equipment, materials and everything necessary and required for the construction project.

WHEREAS, this Contract has been awarded to the above-named Contractor by Town, and said Contractor is now willing and able to perform all of said Work in accordance with said advertisement and his bid.

NOW THEREFORE, in consideration of the compensation to be paid Contractor, the mutual covenants hereinafter set forth and subject to the terms hereinafter stated, it is mutually covenanted and agreed as follows:

## ARTICLE I

Contract Documents: It is agreed by the parties hereto that the following list of installments, drawings, and documents which are attached hereto, bound herewith, or incorporated herein by reference constitute and shall be referred to either as the Contract Documents or the Contract, and all of said instruments, drawings, and Documents taken together as a whole constitute a contract between the parties hereto, and they are as fully a part of this Contract as if they were set out verbatim and in full herein.

Advertisement for Bids	Instruction to Bidders
Bid	Notification of Immigration Compliance
Insurance Clarification	
Contract	Notice of Award
Notice to Proceed	Field Order
Change Order	Application for Payment
Certificate of Substantial Completion	Lien Waiver
Project Special Provisions	
Plans and Drawings (Bearing the same Project name)	
Town of Collbran Standard Construction Specifications	
Addenda (If Any)	Special Provisions (If Any)
Town of Collbran General Contract Conditions	

In case of any conflict, inconsistency or discrepancy among the Contract Documents, the requirement defining or describing the higher quality work or performance shall control. If the conflict, inconsistency or discrepancy cannot be resolved by the application of that rule, the Contract Documents shall be given precedence in the following order:

- (a) Contract and Notice to Proceed,
- (b) General Contract Conditions,
- (c) Change Orders and Field Orders,
- (d) Addenda,
- (e) Project Plans,
- (f) Project Special Provisions,
- (g) Standard Plans,
- (h) Standard Specifications.

Figure dimensions on Drawings shall govern over scaled dimensions. Any work that may reasonably be inferred from the Specifications or Drawings as being required to product the intended result shall be supplied whether or not it is specifically called for.

## ARTICLE 2

Definitions: The definitions provided in the Town of Collbran General Contract Conditions and the Town of Collbran Standard Construction Specifications apply to the terms used in the Contract and all Contract Documents, unless specifically modified by this Contract.

## ARTICLE 3

Statement of Work: Contractor agrees to and shall furnish all labor, tools, supplies, equipment, materials, and everything necessary for and required to do, perform and complete all of the work described, drawn, set forth, shown, and included in said Contract Documents.

## ARTICLE 4

Contract Time: Contractor agrees to undertake the performance of the Work under the Contract within ten (10) calendar days after the date of the Notice to Proceed and agrees to fully complete said Work within the stipulated working days noted hereinafter unless an extension of time is granted by Town. The Contract Time for Substantial Completion of all required Work shall be 5 Days or April 25, 2025.

## ARTICLE 5

Liquidated Damages: It is understood and agreed by and between Town and Contractor that should the completion of the entire project be delayed beyond the stipulated day herein specified, the Town will suffer substantial damages, which damages it would be difficult to accurately determine. The Parties hereto have considered the possible limit of damages and have agreed that a delay in completion of this work will cost per Item **24. Failure to Complete Work on Time** of the Town of Collbran General Contract Conditions. If Contractor shall fail to pay such liquidated damages promptly upon demand, therefore, the Surety on the Performance Bond shall pay such damages. Also, Town may hold all or part of such liquidated damages from payments due Contractor.

## ARTICLE 6

Terms of Payment: Contractor agrees to accept as his full and only compensation for the performance of all the work required under this price or prices set forth in Contractor's Bid, attached hereto and made a part hereof for Contract items numbered 1 through 2 for total estimated cost thereof to be SPELLED OUT,

(\$) 76,900.36

Partial payments will be made for Work completed during the previous month and certified by the Engineer as well as for materials (invoice cost only) delivered to the Project site and suitably stored per items **55. Progress Payments** and Item **56. Payment for Materials on Hand (Stockpiled Material)** of the Town of Collbran General Contract Conditions.

All material and work covered by partial payments made shall thereupon become the sole property of Town, but this provision shall not be construed as relieving Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of Town to require the fulfillment of all the terms of the Contract.

Town will retain, from partial payments, five percent (5%) of the total amount due the Contractor based on the Contractor's Application for Payment and the Engineer's recommendation of the work required by the Contract has been performed. Thereafter, Town may pay any of the remaining installments without retaining additional funds if, in the opinion of Town, satisfactory progress is being made in the work. Town may, at its sole discretion, at any time during the Contract Time, reduce the percentage of the total amount due which is retained when it appears that such retainage is not necessary to adequately protect Town.

Upon completion of the Work under the Contract, and prior to the payment, the Engineer and Town shall publish, in the newspaper published in the County the Notice of Contractor's Settlement, which shall state that they have accepted said Work as completed according to the Contract Documents and that Contractor is entitled to final settlement and that, upon thirty days notice following the date of first publication, specifying the exact date, Town will pay the full balance due under the Contract, and that persons having claims for labor or material furnished Contractor shall present the same to Town prior to said date specified for such payment. Nothing contained herein shall be construed as relieving the Contractor and the Sureties on the Contractor's Bond from any claim or claims for work or labor done or materials or supplies furnished in the execution of the Contract it is the intent of the Owner, to make payment for partial payments submit the Application for Payment not later than the first day of the month.

- 2) The Engineer will, within 15 calendar days after receipt of an approved Application for Payment, submit the Application for Payment to Town for payment along with his Recommendation of Payment, noting any changes.

## CHANGE OF CONTRACT PRICE

The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to Contractor for performing Work. All duties, responsibilities and obligations assigned to or undertaken by Contractor shall be at his expense without change in the Contract Price.

The Contract Price may only be changed by a Change Order. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined as defined in section **VII. Changes in Work or Contract Price** of the Town of Collbran General Contract Conditions contained and/or referenced herein.

## **CHANGE OF THE CONTRACT TIME**

The Contract Time may only be changed by a Change Order. Any claim for an increase in Contract Time shall be determined as defined in item **24. Determination and Extension of Contract Time** of the Town of Collbran General Contract Conditions contained and/or referenced herein.

All time limits stated in the Contract Documents are of the essence of the Contract. The provisions of this Section shall not exclude recovery for damages (including compensation for additional professional services) for delay by either party.

## **ARTICLE 7**

Bonds and Insurance: Contractor furnishes currently herewith insurance required by the Contract Documents, said insurance having been approved by the Town and attached hereto.

Town shall not be responsible for purchasing and maintaining any property insurance to protect the interest of Contractor or Subcontractors in the Work to the extent of any deductible amounts that are provided below. If Contractor wishes property insurance coverage within the limits of such amount, Contractor may purchase and maintain it at his own expense.

Insurance is to be placed with insurers with a Best's rating of no less than A:VII, unless pre-approved in writing by Town.

If Town has any objection to the coverage afforded by other provisions of the insurance required to be purchased and maintained by Contractor in accordance with this section on the basis of its not complying with the Contract Documents, Town will notify Contractor in writing thereof within ten (10) days of the date of delivery of such certificates to Town.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to Town.



Contractor shall procure and continuously maintain during the term of this Contract, and for a period of two years after completion of the Contractor's Work, insurance of the kinds and with the limits not less than the amounts shown below:

1. Workers' Compensation and Employer's Liability Coverage.  
Workers' Compensation and Employer's Liability, including Occupations Disease Coverage in accordance with the scope and limits as required by the State of Colorado, a minimum of: \$100,000 each accident, \$100,000 disease each employee; \$500,000 disease policy.
2. Commercial General Liability ("Occurrence Form")  
\$1,000,000 combined single limit, per occurrence for bodily injury, personal injury and property damage.
3. Comprehensive Automotive Liability.  
\$1,000,000 per accident bodily injury and property damage combined.
4. Excess Liability ("Umbrella Form").  
\$1,000,000 limit per occurrence; \$1,000,000 aggregate.
5. Professional liability insurance with minimum limits of liability of not less than \$1,000,000 each claim and \$1,000,000 aggregate for both the Contractor or any subcontractors when:
  - (1) Construction Surveying and/or Survey Monumentation are included in the Contract.
  - (2) Plans, specifications, and submittals are required to be signed and sealed by the Contractor's Professional Engineer, including but not limited to:
    - (i) Shop drawings and working drawings as required in the General Contract Conditions.
    - (ii) Mix Designs.
    - (iii) Contractor performed design work as required by the plans and specifications.
    - (iv) Change Orders
    - (v) Approved Value Engineering Change Proposals.
  - (3) The Contractor and any included subcontractor shall renew and maintain Professional Liability Insurance as outlined above for a minimum of one year following final acceptance of work.

**The Contractor's insurance policies shall be endorsed to include, for the benefit of Town, a 30-day advance written notice of cancellation, non-renewal, or reduction in policy limits of liability by endorsement.** Additionally it shall specifically state on the Commercial General Liability and Auto Liability policies the following: "Town of Collbran, its officers, officials, employees and volunteers as INSUREDS, as respects liability, on behalf of Contractor, arising out of this Contract." All certificates of insurance are to be submitted on standard "ACCORD 25-S" form. A Certificate of such insurance coverage naming Town of Collbran, its officials, officers, employees and agents as insured, shall be supplied to Town upon signing of this Contract. Failure to obtain or maintain such insurance shall constitute a breach of the Contract.

Contractor shall require all subcontractors and sub-subcontractors to maintain during the term of this contract, Commercial General Liability insurance, Comprehensive Automobile Liability insurance, and Workers' Compensation and Employers' Liability insurance, in the same manner as

specified for Contractor. Contractor shall furnish subcontractors' certificates of insurance to the Board, with a copy to the Board's Contract Administrator, immediately upon request.

## ARTICLE 8

- 1) Any other work, materials, equipment or machinery not specifically described or expressly covered herein, but which is required or necessary to perform or complete the work, which is contemplated, shall be deemed to be, and is, covered by this Contract.
- 2) The Contractor shall perform its work hereunder in accordance with sound and acceptable industry or professional practices and standards and in accordance with all codes, standards, regulations, and laws applicable to the work; and prior to beginning work, shall secure, at Contractor's expense, all necessary permits required by any governmental agency with jurisdiction.
- 3) In the performance of work under this Contract, the Contractor shall be deemed to be, and is, an independent Contractor with the authority to control and direct the performance and details of its work; the Town being interested only in the results obtained. As an independent contractor, Contractor shall be responsible for payment of all taxes including federal, state and local taxes arising out of the activities under this Contract, including by way of illustration but not limitation, federal and state income tax, Social Security tax, unemployment insurance taxes, and any other taxes or license fees required.
- 4) Precautions shall be exercised at all times for the protection of all persons (including Town employees) and property. The safety provisions of all applicable laws, regulations, and codes shall be observed. Hazards arising from the use of vehicles, machinery, and equipment shall be guarded or eliminated in accordance with the highest accepted standards of safety practice. The Contractor and any subcontractors shall comply fully with all requirements of the Occupational Safety and Health Act, and any other pertinent Federal, State or Local Statutes, rules or regulations. The Contractor and any subcontractors shall bear full responsibility for payment of any fines or other punishments resulting from violation of any such statutes, rules or regulations.
- 5) This Contract may not be assigned or subcontracted without the prior express written consent of the Town and specifically the Contractor shall not assign any money due or to become due without prior written consent of the Town. Any attempt to assign this Contract or any portion of this Contract without the prior express written consent of the Town shall render the Contract null and void with respect to the attempted assignee.
- 6) The Town reserves the right, without notice and at reasonable times, to inspect the work accomplished by the Contractor under this Contract. The right of inspection reserved in the Town is for the protection of Town in assuring that the work is proceeding in a timely and satisfactory manner and does not relieve the Contractor from responsibility for selecting appropriate means of fulfilling its obligations hereunder.

- 7) The Town, or its designee, may, at reasonable times, during the term of this Contract or for two years after its termination or expiration, audit the Contractor's books with regard to this Contract, and the Contractor shall retain its books and records for the required period.
- 8) This is not an exclusive Contract. The Town may, at its sole discretion, contract with other entities for work similar to that to be performed by the Contractor hereunder. Contractor may contract to perform similar work for others and is not expected to work exclusively for Town.
- 9) This Contract is and shall be deemed to be performable in the Town of Collbran, Colorado, and venue for any dispute hereunder shall be in the District Court of the County of Mesa, Colorado. In the event of dispute concerning performance hereunder, the parties agree that the Court may enter judgment in favor of the prevailing party for costs and reasonable attorneys' fees.
- 10) Contractor agrees that any information received by Contractor during any furtherance of the Contractor's obligations hereunder will be treated by the Contractor as confidential and will not be revealed to other persons, firms or organizations unless required by state, federal or local law.
- 11) **(This paragraph applies if the work performed is a "public work"):** In discharge of this Contract, Contractor shall employ Colorado labor to perform not less than 80% of each type or class of labor in each of the several classifications of skilled and common labor employed on this project. A "public work" is any construction, alteration, repair, demolition, or improvement of any building, road, street, bridge, drain, park, or other structure suitable for and intended for use by the public.
- 12) This contract constitutes the entire contract between the parties, and no changes or modifications shall be effective unless reduced to writing and signed by the party to be charged.
- 13) Persons signing as or on behalf of Contractor represent by their signature that the person signing is fully authorized to so sign this Contract and that the Contractor has taken all steps necessary that the signature is binding upon the Contractor.
- 14) The provisions of this Contract shall be severable; and the invalidity of any provisions shall not invalidate the remaining provisions hereof.
- 15) Contractor shall indemnify, and hold harmless the Town, its agents, officials and employees, against all loss or damages, including penalties, charges, professional fees, interest, costs, expenses and liabilities of every kind and character arising out of, or relating to, any and all claims and causes of actions of every kind and character, in connection with, directly or indirectly, this Contract, whether or not it shall be alleged or determined that the harm was caused through or by the Contractor or the subcontractor, if any, or their respective employees and agents, or a party indemnified hereunder. Contractor further agrees that its obligations to the Town under this paragraph include claims against the Town by Contractor's employees whether or not such claim is covered by workers compensation. Contractor expressly

understands and agrees that any insurance or bond protection required by this contract, or otherwise provided by Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the Town as herein provided, and such obligation exists even if the claim is fraudulent or groundless.

16) In the event a damage claim arises from the Contractor's activities as part of the project, the Contractor shall conform to the following procedure:

1. The Contractor's Representative shall be contacted as soon as possible by the Contractor's work crew. The Contractor's Representative shall immediately contact the Engineer.
2. The Contractor's Representative shall recommend resolution of the matter in writing to the claimant with a copy to Engineer no more than 48 hours following the occurrence.

Should Town or Contractor suffer injury or damage to his employee(s) or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage.

17) Survivability: The duties and obligations imposed by these Contract Documents and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by item 4. **Laws to be Observed**, item 34. **Removal of Unacceptable Work and Unauthorized Work**, and item 57. **Acceptance** of the Town of Collbran General Conditions and item 21) Default of Contract below and all of the rights and remedies available to Town and Engineer thereunder, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Contract Documents shall survive final payment and termination or completion of this Contract.

18) Contractor assures that where activities supported by this Contract produce any discovery or invention, original computer programs, writing, sound recordings, pictorial reproductions, drawing or other graphical representation and works of any similar nature, the Town has the right to use, duplicate and disclose, in whole or in part in any manner for any purpose whatsoever and authorize others to do so. If the material or invention is copyrightable, the Contractor may copyright such, but the Town reserves the royalty-free non-exclusive and irreversible license to practice, reproduce, publish and use such materials in whole or in part, and authorize others to do so.

19) Conformance with Law: Contractor shall at all times during the performance period strictly conform/comply with all applicable federal, state and local laws and implement regulations as they currently exist and may hereafter be amended. Contractor shall also require compliance

with all applicable federal, state and local laws and regulations in subcontract and sub-grant contracts, if any permitted under this Contract.

- 20) Non-discrimination: Contractor shall not discriminate against any person on the basis of race, color, national origin, age, sex, religion and disability, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS related conditions, in performance of work and provision of services under this Contract.
- 21) Survival of Certain Contract Provision: Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Contract, and the exhibits and attachments hereto, which may require continued performance or compliance beyond the termination date of this Contract shall survive such termination date and shall be enforceable as provided herein in the event of a failure to perform or comply by a party to this Contract. Examples of some provisions surviving termination include but are not limited to Contract Article 7 and 8, subparagraphs 2, 3, 4, 7, 9, 10, 12, 13, 14, 15, 16, 17, 18, 21 and 22 shall survive expiration or any termination of this Contract.
- 22) Termination: Town reserves the right, regardless of satisfactory or non-satisfactory performance hereunder, to terminate this Contract without liability by giving written notice of such termination to the Contractor. A written notice to terminate must be delivered to the Contractor ten (10) days prior to the date of final service delivery. In the event of such termination, the Contractor shall be paid for all satisfactory work accomplished pursuant to this Contract. Any final settlement of compensation shall take into full consideration all work which has been properly performed by the Contractor and all payments which have or have not been made.

Town may, after giving Contractor and his Surety seven (7) days' written notice, terminate the services of Contractor. Once the notice is served, the Town may immediately exclude Contractor from site and take possession of the Work. Following the seven (7) days, the Town may also take possession of all Contractor's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which Town has paid Contractor but which are stored elsewhere, and finish the Work as Town may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct and indirect costs of completing the Work, including compensation for additional professional services, such excess shall be paid to Contractor. If such costs exceed such unpaid balance, Contractor shall pay the difference to Town. Such costs incurred by Town shall be verified by the Engineer and incorporated in a Change Order, but in finishing the Work, Town shall not be required to obtain the lowest figure for the Work performed.

Where Contractor's services have been so terminated by Town, the termination shall not affect any right of Town against Contractor then existing or which may thereafter accrue. Any retention of payment of monies due Contractor by Town will not release Contractor from liability.

- 23) Availability of Funds: Both parties agree that payments pursuant to this Contract are subject to and contingent upon the continuing availability and appropriation of funds for the purposes

herein. If such funds become unavailable, Town may terminate this Contract immediately without further liability.

24) Contract Binding: Town and Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto in respect to all covenants, Contracts and obligations contained in the Contract Documents.

25) Third Party Beneficiary. It is specifically agreed between the parties executing this Contract that it is not intended by any provision of any part of the Contract to create in the public or any member thereof a third party beneficiary hereunder, or to authorize any one not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract. The duties, obligations and responsibilities of the parties to this Contract with respect to third parties shall remain as imposed by law.

IN WITNESS WHEREOF, The Town of Collbran, Colorado has caused this Contract to be subscribed by its Town Trustees and sealed and attested by its Town Clerk in its behalf; and the Contractor, second party, has signed this Contract the day and the year first mentioned herein.

This Contract is executed in three counterparts, each deemed to be an original.

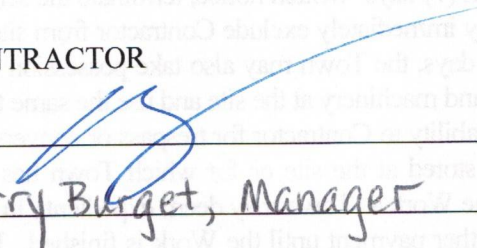
THE TOWN OF COLLBRAN, COLORADO

ATTEST

BY: \_\_\_\_\_  
Kendall Wilcox, Mayor  
Town of Collbran

BY: \_\_\_\_\_, Clerk to the Board

CONTRACTOR

BY: \_\_\_\_\_  
  
Perry Burget, Manager



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/13/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> IMA, Inc. - Wichita PO Box 2992 Wichita KS 67201	<b>CONTACT NAME:</b> IMA Wichita Team <b>PHONE (A/C, No, Ext):</b> 316-267-9221 <b>E-MAIL ADDRESS:</b> certs@imacorp.com	<b>FAX (A/C, No):</b> 316-266-6254	
	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURED</b> Pioneer Excavating LLC 110 NW 2nd St Cedaredge, CO 81413	License#: PC-1210733 IMPAMHC-02	<b>INSURER A:</b> Employers Mutual Casualty Company <b>INSURER B:</b> *Pinnacol Assurance <b>INSURER C:</b> Evanston Insurance Company <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	21415 41190 35378

**COVERAGES**

CERTIFICATE NUMBER: 1635315564

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			6D5631525	6/1/2024	6/1/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY			6E5631525	6/1/2024	6/1/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			6J5631525	6/1/2024	6/1/2025	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
B	<input checked="" type="checkbox"/> <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	4244573	6/1/2024	6/1/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
C	Pollution Liability			CPLMOL121875	3/1/2024	3/1/2025	Per Occurrence \$1,000,000 Aggregate \$2,000,000 Deductible \$10,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Town of Collbran, its officers, officials, employees, and volunteers are included as Additional Insured on the General Liability Policy, if required by written contract or agreement, subject to the policy terms and conditions. This Insurance is Primary & Non-Contributory on the General Liability Policy, if required by written contract or agreement, subject to the policy terms and conditions. General Liability Coverage includes 30 day notice of cancellation, subject to the terms and conditions of the policy.

**CERTIFICATE HOLDER****CANCELLATION**

Town of Collbran  
 1010 High Street, PO Box 387  
 Collbran CO 81624

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE







January 31, 2025

Town of Collbran  
1010 High Street  
Collbran, CO 81624

**Re: Recommendation of Award**

Bids on the referenced project were opened on January 30, 2025. A total of two bids were received. The bids were checked for mathematical accuracy and no discrepancies were found.

The low bidder is Perry Burget with Pioneer Excavating LLC and we recommend a contract be awarded.

Based upon the low bid the following is a revised estimate of total project cost:

Construction Cost	\$76,900.36
<b>Total Estimated Project Cost</b>	<b>\$76,900.36</b>

We are returning all bid bonds and original bid forms for filing. The bid bonds should be returned to the bidders once the formal contract has been awarded.

If you have any questions, please contact our office.

Sincerely,

**KLJ Engineering LLC**

Jason Reimer, PE



# THE AMERICAN INSTITUTE OF ARCHITECTS



Bond No. PB00211600023

AIA Document A312

## Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**CONTRACTOR (Name and Address):**

Pioneer Excavating LLC  
4145 2000 Rd  
Delta, CO 81416

**OWNER (Name and Address):**

Town of Collbran  
1010 High Street  
Collbran, CO 81624

**CONSTRUCTION CONTRACT**

Date: 04/21/2025

Amount: (\$76,900.36) Seventy Six Thousand Nine Hundred and 36/100 Dollars

Description (Name and Location): 2025 Hwy 330 Waterline Valve Replacement

**SURETY (Name and Principal Place of Business):**

Philadelphia Indemnity Insurance Company  
One Bala Plaza, Suite 100  
Bala Cynwyd, PA 19004-0950

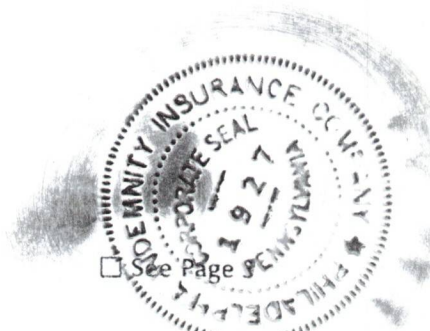
**BOND**

Date (Not earlier than Construction Contract Date): 04/21/2025

Amount: (\$76,900.36) Seventy Six Thousand Nine Hundred and 36/100 Dollars

Modifications to this Bond:  None

See Page 8



**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corporate Seal)

Pioneer Excavating LLC

Signature: \_\_\_\_\_

Name and Title:

**SURETY**

Company: \_\_\_\_\_ (Corporate Seal)

Philadelphia Indemnity Insurance Company

Signature: Myriah A. Anderson

Name and Title: Myriah A. Anderson

Attorney-in-Fact

(Any additional signatures appear on page 3)

(FOR INFORMATION ONLY—Name, Address and Telephone)

**AGENT or BROKER:**

IMA, Inc.  
PO Box 2992  
Wichita, KS 67201

**OWNER'S REPRESENTATIVE (Architect, Engineer or other party):**



1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for

which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation avail-



able to sureties as a defense in the jurisdiction of the suit shall be applicable.

**10** Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

**11** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

## **12 DEFINITIONS**

**12.1** Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Con-

tractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

**12.2** Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

**12.3** Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

**12.4** Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

## **MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:**

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL  
Company:

(Corporate Seal)

SURETY  
Company:

(Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title:  
Address:

Signature: \_\_\_\_\_  
Name and Title:  
Address:





# THE AMERICAN INSTITUTE OF ARCHITECTS



Bond No. PB00211600023

AIA Document A312

## Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**CONTRACTOR (Name and Address):**

Pioneer Excavating LLC  
4145 2000 Rd  
Delta, CO 81416

**OWNER (Name and Address):**

Town of Collbran  
1010 High Street  
Collbran, CO 81624

**CONSTRUCTION CONTRACT**

Date: 04/21/2025

Amount: (\$76,900.36 ) Seventy Six Thousand Nine Hundred and 36/100 Dollars

Description (Name and Location): 2025 Hwy 330 Waterline Valve Replacement

**SURETY (Name and Principal Place of Business):**

Philadelphia Indemnity Insurance Company  
One Bala Plaza, Suite 100  
Bala Cynwyd, PA 19004-0950

**BOND**

Date (Not earlier than Construction Contract Date): 04/21/2025

Amount: (\$76,900.36 ) Seventy Six Thousand Nine Hundred and 36/100 Dollars

Modifications to this Bond:

None

See Page 6

**CONTRACTOR AS PRINCIPAL**

Company: \_\_\_\_\_ (Corporate Seal)

Pioneer Excavating LLC

Signature: \_\_\_\_\_  
Name and Title: \_\_\_\_\_

**SURETY**

Company: \_\_\_\_\_ (Corporate Seal)

Philadelphia Indemnity Insurance Company

Signature: \_\_\_\_\_  
Name and Title: Myriah A. Anderson  
Attorney-in-Fact

(Any additional signatures appear on page 6)

(FOR INFORMATION ONLY—Name, Address and Telephone)

**AGENT or BROKER:**

IMA, Inc.  
PO Box 2992  
Wichita, KS 67201

**OWNER'S REPRESENTATIVE (Architect, Engineer or other party):**





- 1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
- 2 With respect to the Owner, this obligation shall be null and void if the Contractor:
  - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - 2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.
- 3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
- 4 The Surety shall have no obligation to Claimants under this Bond until:
  - 4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
  - 4.2 Claimants who do not have a direct contract with the Contractor:
    - 1 Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
    - 2 Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
    - 3 Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
- 5 If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
- 6 When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
  - 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
  - 6.2 Pay or arrange for payment of any undisputed amounts.
- 7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
- 8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
- 9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
- 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
- 11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
- 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.
- 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this



Bond shall be construed as a statutory bond and not as a common law bond.

14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

**15 DEFINITIONS**

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the

Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

**MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:**

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL  
Company:

(Corporate Seal)

SURETY  
Company:

(Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title:  
Address:

Signature: \_\_\_\_\_  
Name and Title:  
Address:



PHILADELPHIA INDEMNITY INSURANCE COMPANY

One Bala Plaza, Suite 100  
Bala Cynwyd, PA 19004-0950

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: That PHILADELPHIA INDEMNITY INSURANCE COMPANY (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint Desiree E. Westmoreland, Myriah A. Anderson, Todd Alan Rambo, Clara R. Navarro Abela, and Alycia Marie Hoebener of IMA, Inc., its true and lawful Attorney-in-fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, in an amount not to exceed \$50,000,000.

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY on the 14<sup>th</sup> of November, 2016.

**RESOLVED:** That the Board of Directors hereby authorizes the President or any Vice President of the Company: (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

**FURTHER RESOLVED:** That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY ITS AUTHORIZED OFFICE THIS 5TH DAY OF MARCH, 2021.



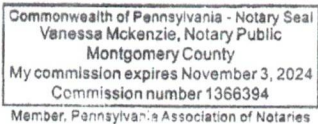
(Seal)

John Glomb, President & CEO  
Philadelphia Indemnity Insurance Company

On this 5<sup>th</sup> day of March, 2021 before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the PHILADELPHIA INDEMNITY INSURANCE COMPANY; that the seal affixed to said instrument is the Corporate seal of said Company; that the said Corporate Seal and his signature were duly affixed.

Notary Public:

*Vanessa McKenzie*



residing at:

Bala Cynwyd, PA

My commission expires:

November 3, 2024

I, Edward Sayago, Corporate Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and the Power of Attorney issued pursuant thereto on the 5<sup>th</sup> day March, 2021 are true and correct and are still in full force and effect. I do further certify that John Glomb, who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY.

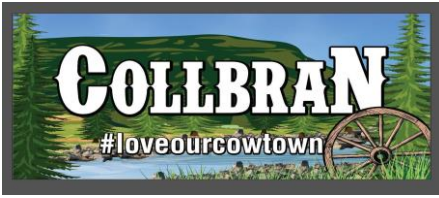
In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 21<sup>st</sup> day of April, 2025

Edward Sayago, Corporate Secretary  
PHILADELPHIA INDEMNITY INSURANCE COMPANY









## Board of Trustees Memorandum Agenda Item: 9

**TITLE:** Request for Proposals (RFP): Hiring a Town Water Attorney

**ATTACHMENTS:** **A** – RFP to Hire a Town Water Attorney  
**B** – RFP Attachment A: High Level Hoosier Ditch Project Description

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**BACKGROUND:**

At the March 18, 2025 Board meeting hiring a town water was requested by a majority of the Board. Attached is an RFP outlining the process for hiring a Town Water Attorney, to deal specifically with water law matters for the Town of Collbran.

**RECOMMEND ACTION:**

Approval of the RFP to Hire a Town Water Attorney as presented.

Respectfully Submitted,

Angie Sprang  
Interim Town Administrator



# **TOWN OF COLLBRAN, COLORADO**

## **REQUEST FOR PROPOSALS**

### **TOWN WATER ATTORNEY**

Town of Collbran  
1010 High Street  
Collbran, CO 81624  
970-487-3751  
[townofcollbran.colorado.gov](http://townofcollbran.colorado.gov)

## REQUEST FOR PROPOSALS

April 01, 2025

The Town of Collbran is currently seeking the services of a specialized attorney to serve as the Town's Water Attorney. It is intended that the successful candidate would perform the services listed in this proposal. **THIS REQUEST FOR PROPOSAL (RFP) IS NOT A COMPETITIVE BID BASED ON PRICE ONLY.** The request for proposal allows the Town of Collbran, Colorado (the Town) to select a service provider that best meets the needs of the Town, taking into consideration proposer qualifications, price, products, and service capabilities and other factors relevant to the Town's policies, programs, administrative resources, and budget. The Town reserves the right to accept or reject any and all proposals and to waive any informalities or irregularities in said proposals. The Request for Proposals does not bind the Town to hire a new Town Attorney when, in the Town's sole discretion, the Town determines not to do so.

This RFP has been advertised on <https://www.bidnetdirect.com/>. Any modifications to this RFP or addenda pertaining to this RFP will be published on the above-mentioned website, and all proposers are responsible to periodically check these websites for relevant updates prior to the submission of a proposal.

This RFP contains the instructions governing the proposals to be submitted, the material to be included therein, and the requirements that must be met to be eligible for consideration.

### CALENDAR

A tentative schedule of key dates for the project has been established as follows:

April 01, 2025	Send out Request for Qualifications
April 17, 2025	Deadline for submission of questions
April 23, 2025	Deadline for submission of qualifications
April 25, 2025	Selection of finalists for interview
Week of April 28, 2025	Conduct interviews
Will be set after interviews	Appointment of Town Water Attorney

Questions concerning the information contained herein should be directed to the following person:

Angie Sprang  
Town Administrator  
[townmanager@townofcollbran.us](mailto:townmanager@townofcollbran.us)

### COMMUNITY BACKGROUND

The Town of Collbran, Mesa County, Colorado, is a Title 31 statutory Town, and was incorporated in 1908. The Town has a population of approximately 368 residents (2022 Census) and consists of approximately 260 households. The Town is situated in the Plateau Valley on the Grand Mesa. The Town provides a full range of public services, including public safety, Municipal Utilities (water,

wastewater), Infrastructure (drainage, streets, public buildings, and sidewalks), and Town parks. The community is zoned for and developed with different zones for commercial and residential.

There are five (5) Board of Trustee representatives, and each representative is elected to the Board for staggered four (4) year terms. The Mayor is elected for a two (2) year term. Every two (2) years, the mayor and two (2) Trustee representatives are up for election. The Mayor and all Trustees are elected “at large.”

The Town Manager, who functions as the Chief Operating Officer of the Town, answers directly to the Board of Trustees. The Town employs Department Managers and a staff of approximately 6 full-time employees to manage the Town’s day-to-day business.

### SCOPE OF SERVICES

CRS 31-4-304 provides for the appointment of a specialized Town Water Attorney. “The board of trustees shall appoint a town attorney, as it deems necessary for the good government of the corporation [Town].”

The scope of services for the Town Water Attorney includes but is not limited to:

- Serve as the attorney of record for any water law related matters on behalf of the Town of Collbran, Colorado
- Be well informed on the water rights owned by the Town of Collbran and provide advisement and legal advice to the Town Manager, Town Attorney, Town Board of Trustees, and other Town Staff as needed
- The Town Water Attorney will work with the Town Attorney to provide support as a separate law firm specializing in water law

The Water Attorney shall perform such other duties as may be prescribed for them by the Board of Trustees, including representation on behalf of the Town in Court. The Town Water Attorney is requested to attend selected portions of two (2) Board of Trustee meetings a month as necessary to address water-law related matters and may be requested to attend other meetings as necessary. Meetings may be attended in-person or remotely. The Board of Trustees meet the first and third Tuesday of every month with meetings beginning at 6:00pm and has full capability for interactive remote attendance by the Town Water Attorney via Zoom software.

### PROPOSAL REQUIREMENTS

The following items should be addressed as part of the proposal:

1. Name of the person providing Town Water Attorney services to the Town. This is the person who will be appointed to the position of Town Water Attorney by the Town Board of Trustees, and is the person who will attend Board meetings on the first and third Tuesday evenings and all other Special Meetings on an as needed only basis. A resume of this person's background and experience should emphasize the water law experience of that person and the level of responsibility in this area.
2. The names and qualifications for each supporting member of the Town Water Attorney team and how they would be utilized by the Town Water Attorney.

3. Furnish an organizational chart of the permanent personnel in your office who will be responsible for the Town engagement.
4. Describe any knowledge or experience that makes you and/or your firm particularly qualified for the position.
5. Provide the name of your professional liability and other insurance carriers and the insurance limits on each policy.
6. Disclose any potential conflicts of interest that your firm may have in relation to the Town of Collbran.
7. Provide details regarding your existing workload and how you will fit this contract into your existing work priorities.
8. Provide a list of all other municipal clients with whom you have worked in the past five years. Please submit three client references that we may contact. These should be municipal governments or other governmental organizations where the individuals listed in Items #1 and #2 above currently provide or have provided municipal legal services in the recent past.
9. An acknowledgement that the proposed point person will not be changed without Board approval.
10. Each respondent's qualifications should address the ability to perform this scope of work, along with the specific expertise, education and experience of the various individuals who will be performing the work.
11. The Town reserves the right to obtain services from other attorneys when the Town, in its sole discretion, believes that the use of another law firm would be in the best interests of the Town. The respondent's proposal must affirmatively state that this is acceptable and that the respondent will agree to this provision in the negotiated contract.
12. List of rates by the Town Water Attorney and supporting staff.
13. The Town is soliciting talent and expertise first and foremost. While cost to the Town is important, the selection will not be based solely on cost. Please detail and explain your and/or your firm's required fees to perform the requested services.
14. If you propose to bill for services at an hourly rate or a monthly fee, provide the current hourly/monthly rate for each lawyer and for each employee of your firm who may work on Town matters. State specifically whether you will work on a fixed fee basis and, if so, how you propose that such a fee be determined. State specifically that if you are the successful candidate and if your fee will be based on hourly rates that you will not increase the rate for Town matters before January 1, 2027.
15. Specify availability and preferences for in-person or remote attendance.

**CURRENT AND SPECIFIC PROJECTS REQUIRING LEGAL ASSISTANCE:**

1. Know and understand the progressive background of the Town of Collbran's water rights portfolio.
2. The Town has a significant water rights portfolio and is engaging in this RFP process to seek a specialized water rights attorney to review the portfolio and assist with several projects related to the Town's water rights. One such current project is the Hoosier Ditch Project. Attached is a high-level overview outlining the Hoover Ditch Project.

3. Development improvement agreements for proposed water related development(s) within the Town and assistance with water related negotiations and agreements between the Town other parties as needed.
4. Development and administration of memorandums of understanding and/or memorandums of agreement between the Town and other parties, including other local governments, federal agencies, local not-for-profit organizations, contractors, or other parties as needed. Also, the development of contract documents, including templates that can be utilized by staff when necessary.

#### GENERAL TERMS AND CONDITIONS

1. The Town reserves the right to undertake its own investigation to evaluate a proposer/candidate. The Town shall have the sole discretion to accept or reject a proposal.
2. All proposals become the property of the Town upon receipt and will not be returned to the proposer/candidate. Selection or rejection of the proposal will not affect this right.
3. The Town operates under public disclosure laws, as part of normal procedures. Proprietary information must be identified and will be protected as far as possible.
4. Cost of developing the proposal, attendance at the remotely held oral interview or any other such costs are entirely the responsibility of the proposer/candidate and shall not be reimbursed in any manner by the Town. Finalists will be selected for interviews by the Town Board. Finalists are welcome to have one, some, or all members of their team attend the selection committee interview.
5. Failure to conform to proposal rules, including failure to respond to each item in the Proposal section of this RFP or to follow the proposal format requested in the RFP may lead to the rejection of a proposal. The submittals should contain all information necessary to evaluate the proposals.
6. The successful proposer/candidate shall not at any time permit any individual employed by the Town to benefit because of a financial interest in the candidate's firm, any affiliate of the successful candidate, or any subcontractor.
7. The final selection will be based on the written proposal, oral and written responses of client references and on the interview with the proposer/candidate. The Town will not be bound or responsible for any explanations or interpretations other than those given in writing as set forth in this Request for Proposals (RFP). No oral interpretations will be made by the Town to any firm as to the requirements of this RFP.

The Town shall reserve the right to reject any or all proposals, and to waive any informalities or irregularities therein and request new proposals when required. The Town reserves the right to request additional information or clarifications from firms, and or to allow corrections of errors or omissions. Submission of proposals indicates acceptance by the firm of the conditions contained in this RFP.

The accuracy of the proposal is the sole responsibility of the proposer/candidate. No changes in the proposal shall be allowed after the submission deadline, except when the proposer/candidate can show clear and convincing evidence that an unintentional factual mistake was made, including

the nature of the error and the price actually intended. Alternate proposals will not be considered. The Town reserves the right to accept or reject any and all proposals and to waive any informalities or irregularities in said proposals. The Request for Proposal does not bind the Town to accept a proposal when, in the Town's sole discretion, the Town determines not to do so. Additionally, the Town reserves the right to modify the schedule as necessary and will notify those participating in BIDNET. The Town of Collbran is an equal opportunity employer.

#### TERMINATION OF CONTRACT

The Town may, by written notice to the successful proposer/candidate, terminate the contract if the proposer/candidate has been found to have failed to perform in a manner satisfactory to the Town's specifications, including delivery as specified. The date of termination shall be stated in the notice. The Town shall be the sole judge of non-performance. The Town may cancel the contract upon thirty (30) days' written notice for reasons other than cause. This may include the Town's inability to continue with the contract due to non-appropriation or reduction of funding.



1601 Riverfront Dr, Ste 204  
Grand Junction, CO 81501-3829  
970 450 7474  
KLIENG.COM

# Basis of Design Report

<b>Date:</b>	2/3/2025
<b>To:</b>	Town of Collbran
<b>From:</b>	KLJ Engineering – Jason Reimer
<b>RE:</b>	Hoosier Ditch 60% Submittal – Water Attorney RFP High Level Project Description

## Purpose

The purpose of this report is to outline the basis of design for the Hoosier Ditch diversion and the 60% plan submittal. Currently, the Town of Collbran’s water right is located approximately three miles upstream of the water treatment plant. This project aims to relocate the point of diversion closer to the plant, eliminating the need for extensive piping and improving system efficiency.

## Design

The proposed solution involves installing a self-cleaning diversion structure at the northeast corner of the water treatment plant property. Water will be conveyed from the Coanda structure to the clear well, which will be repurposed as a settling basin for Hoosier Ditch water. From the repurposed raw water storage, the water will be pumped into the treatment plant using the existing pumps. A new tee connection will be installed on the plant’s north side to facilitate this transfer. Additionally, valves will be incorporated into both the existing diversion structure and the proposed pipeline, allowing the water source to be switched between the current springs and the Hoosier Ditch water right as needed.

## Assumptions

This design would require that the Town move its point of diversion downstream to the proposed take-out point. Without the takeout point being moved this project could not move forward as planned. The second assumption would be that current water treatment plant would be able to handle the possible change in water quality from Hoosier ditch water. This would require additional water quality sampling to occur before moving forward.

## Conclusion

The proposed Hoosier Ditch diversion project aims to add redundancy of the Town of Collbran’s water supply by relocating the point of diversion closer to the water treatment plant and using the Town’s existing water right. This approach eliminates the need for extensive piping from the existing diversion point while integrating a self-cleaning structure and repurposing existing infrastructure for optimized water storage and treatment. Successful implementation of this design is contingent upon securing approval for the new takeout point and confirming that the water treatment plant can effectively process Hoosier Ditch water. Further water quality testing and regulatory approvals will be essential next steps to ensure the feasibility and long-term sustainability of the project.



# Hydraulic Analysis Report

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## Project Data

Project Title: Hoosier Ditch Diversion  
Designer: Paloma Wilson  
Project Date: Tuesday, January 28, 2025  
Project Units: U.S. Customary Units

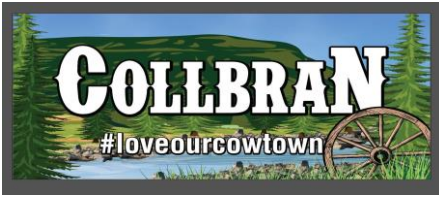
## Channel Analysis: HoosierToRawWaterStoragePipeCalc

### Input Parameters

Channel Type: Circular  
Pipe Diameter 1.50 ft  
Longitudinal Slope: 0.0050 ft/ft  
Manning's n: 0.0150  
Flow 6.0000 cfs

### Result Parameters

Depth 1.1469 ft  
Area of Flow 1.4498 ft<sup>2</sup>  
Wetted Perimeter 3.1926 ft  
Hydraulic Radius 0.4541 ft  
Average Velocity 4.1386 ft/s  
Top Width 1.2728 ft  
Froude Number: 0.6834  
Critical Depth 0.9463 ft  
Critical Velocity 5.1081 ft/s  
Critical Slope: 0.0083 ft/ft  
Critical Top Width 1.45 ft  
Calculated Max Shear Stress 0.3578 lb/ft<sup>2</sup>  
Calculated Avg Shear Stress 0.1417 lb/ft<sup>2</sup>



## Board of Trustees Memorandum Agenda Item: 9

**TITLE:** Approval of items necessary to complete the Collbran broadband project

**ATTACHMENTS:** **A** – No-cost extension of time change order – Apeiron Utility Construction  
**B** – No-cost extension of time change order – NeuComm Solutions  
**C** – Resolution 2025-007, modifying the 2025 budget to reflect offsetting revenues and expenditures for broadband construction.

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**BACKGROUND:**

At the May 21, 2025, Board of Trustees meeting, this Board approved change order #1 to the contract with Apeiron Utility Construction, LLC to add fiber installations to community anchor institutions in the amount of \$138,662.03 and extended the time to complete the project to September 30, 2024. The fiber to these community anchor institutions is to be placed aerially on Grand Valley Power poles, which required GVP to approve the additional placement of fiber on their infrastructure. That approval was not granted until January 28, 2025.

At that same meeting, the Board also approved change order #1 with NeuComm Solutions, LLC for the final networking equipment amount and extended the time of performance for the contract to September 30, 2024. That completion date was based on information provided by Region 10, and due to delays in the larger I-70 project that our fiber project will connect into, that work was also not completed in 2024.

Because staff anticipated that all the necessary approvals would have been granted and the Collbran middle mile project would have been completed in 2024, we did not include the final costs or the associated revenue in the 2025 budget. The remaining work under these two contracts will be fully reimbursed by DOLA grant funds and the Mesa County broadband funding award. A budget modification is necessary to amend the 2025 budget.

**RECOMMEND ACTION:**

Approval of no-cost extensions to contracts for the Collbran Middle-mile fiber contract by approving change order #2 to Apeiron Utility Construction and change order #2 to NeuComm Solutions. Modify the 2025 budget by adopting Resolution 2025-007 to show the 2025 expenditures related to completion of the project and the associated grant revenues.

Respectfully Submitted,

Angie Sprang  
Interim Town Administrator

**CHANGE ORDER**

**Contractor agrees to the specific costs herein and waives all rights to any future impact costs directly or indirectly related to or arising from the additional work.**

Project Name: Collbran Middle-Mile Fiber Optic Broadband Network Construction  
Contractor Name: Aperion Utility Construction, LLC Staff Resource: Karla Distel  
Street: 526 Perkins Court Original Contract Date: February 16, 2023  
City, State, Zip: Grand Junction, CO 81504 Change Order Number: 2

The Contract is modified as follows (include cost breakdown): No-cost extension of time to perform.  
Justification: Project is within the scope and original budget of the Middle-Mile project.

The original contract sum was: \$745,694.70  
Net change by previous change orders: \$138,662.03  
Contract sum prior to this change order: \$884,356.73  
The contract sum will be increased by decreased by unchanged  
The new contract sum including this change order is: \$884,356.73  
The original completion date for the contract was: December 31, 2023, Change order #1 extended to September 30, 2024  
The Contract time will be **X increased** by decreased by 304 days  
The date of the completion for the contract therefore is: July 31, 2025 (contractor completed bulk of fiber install by November 1, 2023, contract extension is required due to slow approval process of Grand Valley Power of pole attachment agreement for anchor installs)

Is Funding Approved in The Budget? Yes No **X** Budget amendment included

Requires Approval From? X Board of Trustees Manager:     

In Witness Whereof, The Parties have executed this Change Order on \_\_\_\_\_.

**CONTRACTOR SIGNATURE**

**TOWN OF COLLBRAN**

BY: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

STATE OF COLORADO )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before

me on \_\_\_\_\_, 200\_\_ by \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

BY: \_\_\_\_\_

**X** Mayor

Town Manager

Project Manager

(Seal)

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
Town Clerk

**CHANGE ORDER**

**Contractor agrees to the specific costs herein and waives all rights to any future impact costs directly or indirectly related to or arising from the additional work.**

Project Name: Collbran Broadband Carrier Neutral Location and Tower at Gandi Park/Purchase and Installation of Optical and Networking Equipment necessary for the Collbran Middle-Mile Fiber Project

Contractor Name NeuComm Solutions, LLC

Staff Resource: Karla Distel

Street: 18168 E. Weaver Drive

Original Contract Date: December 28, 2023

City, State, Zip: Aurora, CO 80016

Change Order Number: 2

The Contract is modified as follows (include cost breakdown): No-cost extension of time to complete work under contract.

Justification: Project is within the scope and original budget of the Middle-Mile project.

The original contract sum was: \$371,889.00

Net change by previous change orders: \$142,104.00

Contract sum prior to this change order: \$520,893.00

The contract sum will be **unchanged**

The new contract sum including this change order is: \$520,893.00

The original completion date for the contract was : May 29, 2024, extended to September 30, 2024 by change order #1

The Contract time will be X increased by decreased by 304 days

The date of the completion for the contract therefore is: July 31, 2025

Is Funding Approved in The Budget? Yes No X Budget amended attached

Requires Approval From?  Board of Trustees Manager: \_\_\_\_\_

In Witness Whereof, The Parties have executed this Change Order on \_\_\_\_\_.

**CONTRACTOR SIGNATURE**

**TOWN OF COLLBRAN**

BY: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

STATE OF COLORADO )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2025 by

\_\_\_\_\_ My Commission

Expires:

Witness my hand and official seal.

BY: \_\_\_\_\_

X Mayor

Town Manager

Project Manager

(Seal)

ATTEST:

\_\_\_\_\_

Town Clerk

Notary Public

**TOWN OF COLLBRAN, COLORADO**  
**RESOLUTION NO. X**  
**SERIES OF 2025**

A RESOLUTION OF THE TOWN OF COLLBRAN, COLORADO,  
AUTHORIZING REVENUES AND EXPENDITURES RELATED TO THE  
COLLBRAN MIDDLE-MILE FIBER PROJECT FOR THE YEAR ENDING  
DECEMBER 31, 2025.

WHEREAS, on December 3, 2025, the Board of Trustees of the Town of Collbran adopted its annual budget for the fiscal year beginning January 1, 2025, and ending December 31, 2025 (“2025 Budget”) after a duly noticed public hearing; and

WHEREAS, based upon the 2025 Budget as adopted, the Board further approved the Annual Appropriation for fiscal year 2025 (“2025 Annual Appropriation”) after a duly noticed public hearing; and

WHEREAS, at the time the 2025 Annual Appropriation was adopted; revenues and expenditures associated with the Collbran Middle-Mile project were anticipated to be completed by 12/31/24, and therefore those revenues and expenditures were not included in the 2025 budget, and

WHEREAS, due to delays outside the control of the Town or its contractors, that work was not completed; and

WHEREAS, the balance of work remaining on these contracts is approximately \$149,000; and

WHEREAS, an equal amount of grant revenues will be received to offset those costs; and

WHEREAS, the Board of Trustees desires to authorize the remaining expenditures in 2025.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF COLLBRAN, COLORADO THAT:

1. Recitals. The Board of Trustees incorporates the foregoing recitals as conclusions, facts, determinations and findings by the Board.

2. Supplemental Appropriation. The following additional appropriation is hereby approved for 2025 for the Town of Collbran.

<u>General Fund</u>	
2025 Revenues as adopted:	\$4,899,822
Additional revenue	<u>149,000</u>
Revised 2025 Revenues:	<u>\$5,048,822</u>
2025 Expenditures as adopted:	\$5,958,462
Additional Expenditures	<u>149,000</u>
Revised 2025 Expenditures:	<u>\$ 6,107,462</u>

THIS RESOLUTION was read, passed, and adopted by the Board of Trustees of the Town of Collbran at a regular meeting held this 1st day of April 2025.

TOWN OF COLLBRAN, COLORADO

By: \_\_\_\_\_  
Kendall W. Wilcox, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk/Treasurer