**IN THE SUPREME COURT OF THE STATE OF NEVADA**

SR CONSTRUCTION, INC., A NEVADA DOMESTIC CORPORATION,

Appellant,

vs.

PEEK BROTHERS CONSTRUCTION, INC., A NEVADA DOMESTIC CORPORATION,

Respondents.

Electronically Filed
Aug 11 2021 11:15 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

**Supreme Court No.: 82786**

# JOINT APPENDIX
# VOLUME 1

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Docket 82786 Document 2021-23329

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| 4 | Plaintiff's Opposition to Defendant SR Construction, Inc.'s Motion to Compel Arbitration and Stay Litigation | 10/28/2020 | 2 | JA0278-289 |
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| | Exhibit 6: Order Denying Defendant's Motion to Compel Arbitration | | 4 | JA0769-772 |
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| | Exhibit 1: Transcript of Proceedings of January 14, 2021 Hearing on Motion to Compel Arbitration and Stay Litigation | | 4 | JA0801-847 |
| 11 (cont.) | Exhibit 2: Master Subcontract Agreement | | 5 | JA0848-928 |
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Transaction # 8050530 : csulezic

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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF WASHOE**

| | |
|---|---|
| PEEK BROTHERS CONSTRUCTION, INC., a Nevada Domestic Corporation.<br><br>Plaintiff,<br><br>vs.<br><br>SR CONSTRUCTION, INC., a Nevada Domestic Corporation; DOE Defendants 1 - 10.<br><br>Defendants. | Case No.:<br><br>Dept. No.: |

**COMPLAINT**

**[ARBITRATION EXEMPTION REQUESTED]**

COMES NOW, Plaintiff PEEK BROTHERS CONSTRUCTION, INC., by and through its counsel of record, the law firm of Viloria, Oliphant, Oster & Aman L.L.P. and hereby complains, asserts, and alleges the following against the above-named Defendants:

**PARTIES**

1. Plaintiff PEEK BROTHERS CONSTRUCTION, INC. ("Peek Brothers") is a Nevada Domestic Corporation.

2. Defendant SR CONSTRUCTION, INC. ("SR Construction") is a Nevada Domestic Corporation.

3. The true identities of DOE Defendants 1-10 are presently unknown; however, Plaintiff will move to amend this Complaint upon learning the true identities of DOE Defendants 1 – 10 based on their liability for the damages alleged herein.

## JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter because the amount in controversy exceeds $15,000.00.

5. Venue in Washoe County is proper pursuant to NRS 13.010(1) because the contract that serves as the basis for this action is to be performed in Washoe County.

6. This suit is exempted from Nevada's Arbitration Program pursuant to NAR 3(A) because Plaintiff has incurred damages in excess of $50,000.

## FACTUAL BACKGROUND

7. On October 8, 2019, Peek Brothers entered into a Master Subcontractor Agreement ("Subcontract") with SR Construction, and subsequent Work Order on January 8, 2020 ("Work Order") (collectively, "Subcontract"), in which Peek Brothers agreed to perform earthwork related to the construction of the Northern Nevada Sierra Medical Center ("Project").

8. Included in Peek Brothers' scope of work on the Project was site mass grading, sub and base grade for the building pad and footing excavation ("Scope of Work").

9. In consideration for Peek Brothers' performance, SR Construction agreed to pay Peek Brothers the sum of Three Million Sixty-Two Thousand and No/100 Dollars ($3,062,000.00), pursuant to the Subcontract for the Project.

10. SR Construction agreed to make monthly payments to Peek Brothers for invoiced work.

11. In preparing its bid for the Project, Peek Brothers' bid price—and Subcontract price—for the sub and base grade for the building pad assumed the utilization of extra material from excavation of the building footings and plumbing trenches ("Spoils") to backfill the building footings and bring the building pad to subgrade elevation. In other words, Peek Brothers would use the dirt it had dug up in the process of creating trenches and footings to build up the footings and building pad.

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12. However, Fred Kravetz ("Mr. Kravetz") with SR Construction, instead directed Peek Brothers to import approximately 150,000 square feet of material ("material" or "structural fill") to bring the building pad to subgrade elevation *prior* to Peek Brothers digging up the trenches and footings.

13. In so doing, SR Construction, through Mr. Kravetz, initiated a change to the means and methods by which Peek Brothers' Scope of Work was to be performed.

14. Peek Brothers informed Mr. Kravetz on numerous occasions that it was unnecessary to import material because the Spoils would have otherwise been used to bring the building pad to subgrade elevation.

15. Peek Brothers further informed Mr. Kravetz that importation of material and the eventual removal of excess material from the footings would result in additional cost to SR Construction.

16. The decision by Mr. Kravetz required Peek Brothers to stockpile the Spoils on site after excavating the building footings and plumbing trenches, rather than use the Spoils to bring the building pad to subgrade elevation.

17. SR Construction did not require or request Peek Brothers submit a change order prior to importing the material and backfilling the building pad, nor did SR Construction amend the Work Order, attached to the Subcontract as Exhibit A, in writing.

18. Instead, SR Construction ordered Peek Brothers to complete the additional work without complying with the Subcontract.

19. It is understood that it was common practice for SR Construction to deviate from its agreements with subcontractors on the Project by orally demanding work or services which were not included in said subcontractors' scope of work.

20. In accordance with Mr. Kravetz's demand, Peek Brothers purchased and had to truck in the material, and the earthwork to bring the building pad to subgrade elevation was performed on April 9, 2020 through April 13, 2020.

21. Subsequent to bringing the building pad to subgrade elevation, the building footings and plumbing trenches were dug and the Spoils were stockpiled on site.

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22. On April 16, 2020, Peek Brothers submitted Change Order #13, reflecting the cost of labor and equipment to move the excess material from the footings from the building pad in the amount of $4,268.23, which was necessary because the excess material was no longer needed to bring the building pad to subgrade elevation.

23. On May 18, 2020, SR Construction sent Peek Brothers a Notice of Reduction of Scope & 48 Hour Notice to Cure, in which SR Construction unilaterally removed the scope of work from the Subcontract described as "Under slab Plumbing Trench and Backfill."

24. On May 21, 2020, Peek Brothers submitted Change Order #17, reflecting the cost of labor and equipment to import the fill onto the building pad to bring the building pad to subgrade elevation.

25. On June 4, 2020, Peek Brothers submitted a revised change order for the material imported and the work performed to bring the building pad to subgrade elevation, referred to as Change Order #17-R1, in the amount of $137,497.50.

26. Change Order #13 and Change Order #17-R1 were submitted to SR Construction in the same manner and in the same form as all previous change orders had been submitted.

27. Subsequent to Peek Brothers' performance of the importation of structural fill and backfilling of the building pad, SR Construction unilaterally removed the scope of work from the Subcontract described as "Sub and Base Grade."

28. Peek Brothers has provided SR Construction with all invoices for the work performed.

29. SR Construction failed to either accept Change Order #13 or respond accordingly within thirty (30) days after the date that Change Order #13 was submitted by Peek Brothers to SR Construction pursuant to NRS 624.626(1)(e).

30. SR Construction has failed to accept Change Order #17-R1 despite work performed and substantial costs incurred by Peek Brothers which was done pursuant to the order of Mr. Kravitz of SR Construction.

31. Peek Brothers complied with NRS 624.626 in submitting Change Order #13 and Change Order #17-R1 to SR Construction.

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32. The actions of SR Construction have damaged Peek Brothers in a sum to be proven at trial which is greater than $15,000.

**FIRST CLAIM FOR RELIEF**
**(Breach of Contract)**

33. Plaintiffs incorporate by reference Paragraphs 1- 32 of this Complaint as if set forth fully herein.

34. Peek Brothers and SR Construction entered into a valid Subcontract Agreement under which Peek Brothers agreed to perform certain work in exchange for timely payment therefor.

35. Pursuant to the terms of the Subcontract, all changes, substitutions, or deviations that affect the Scope of Work or the expenses thereof are required to be in writing.

36. At the express order of SR Construction, Peek Brothers imported structural fill, rather than utilize the Spoils (from excavation of the building footings and plumbing trenches), to backfill the building footings and bring the building pad to subgrade elevation.

37. SR Construction's demand to import structural fill rather than utilize the Spoils to bring the building pad to subgrade elevation constituted a change to the means and methods by which Peek Brothers' Scope of Work was to be performed.

38. The importation of structural fill resulted in excess cost to Peek Brothers in the amount of $137,497.50 not contemplated by the Subcontract, as set forth in Change Order #17-R1.

39. Peek Brothers performed its obligations under the Subcontract by furnishing the materials and performing the work that SR Construction ordered.

40. SR Construction breached the Subcontract by failing to comply with the Change Order process and/or amending the Work Order, as required by the Subcontract, to include the importation and eventual removal of material to and from the building pad.

41. SR Construction breached the Subcontract by failing to pay Peek Brothers for work performed and for which invoices were submitted, in accordance with the Accounting Practices outlined in the Subcontract.

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42. SR Construction failed to timely pay Peek Brothers' invoices pursuant to the Subcontract Invoice Procedures described in SR Construction's Accounting Practices.

43. As a result of SR Construction's breach, Peek Brothers has been damaged in an amount in excess of Fifteen Thousand and No/100 Dollars ($15,000.00).

44. Peek Brothers was forced to seek legal services to prosecute these claims and should be awarded their reasonable attorneys' fees.

**SECOND CLAIM FOR RELIEF**
**(Attorneys' Fees Pursuant to Subcontract Agreement)**

45. Plaintiffs incorporate by reference Paragraphs 1-44 of this Complaint as if set forth fully herein.

46. Pursuant to Exhibit D, Subsection V of the Subcontract, in the event that either contractor or subcontract institute a suit in court against the other party in connection with any dispute or matter arising under the Subcontract, the prevailing party is entitled to recover reasonable attorneys' fees.

47. Peek Brothers has been forced to initiate the instant suit as a result of SR Construction's failure to pay for work performed by Peek Brothers at the direction of SR Construction.

48. The instant suit arises under the Subcontract, as it pertains to Peek Brothers performance thereunder.

49. Accordingly, Peek Brothers has been forced to seek legal services to prosecute its claims and is entitled to reasonable attorneys' fees pursuant to the Subcontract.

**THIRD CLAIM FOR RELIEF**
**(Unjust Enrichment)**

50. Plaintiffs incorporate by reference Paragraphs 1-49 of this Complaint as if set forth fully herein.

51. Peek Brothers has conferred a benefit upon SR Construction by importing structural fill at SR Construction's order and utilizing the imported material to bring the building pad to subgrade elevation.

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52. SR Construction has appreciated and retained such benefit despite refusal to compensate Peek Brothers for the cost of the work performed.

53. It would be unjust and inequitable to permit SR Construction to retain the benefit of the above-described work.

54. As a result of SR Construction's unjust enrichment, Peek Brothers has been damaged in an amount in excess of Fifteen Thousand and No/100 Dollars ($15,000.00).

55. Peek Brothers was forced to seek legal services to prosecute these claims and should be awarded their reasonable attorney fees.

**FOURTH CLAIM FOR RELIEF**
**(Violation of NRS 624)**

56. Plaintiffs incorporate by reference Paragraphs 1-55 of this Complaint as if set forth fully herein.

57. On April 16, 2020, Peek Brothers submitted Change Order #13 to SR Construction in the amount of $4,268.23,

58. SR Construction failed to accept Change Order #13 or give written notice to Peek Brothers of any purported reason why Change Order #13 is unreasonable.

59. SR Construction's failure to respond to Change Order #13 is a violation of NRS 624.626(1)(e).

60. Accordingly, Peek Brothers is entitled to payment of the amount sought in Change Order #13 pursuant to NRS 624.626(3).

61. Peek Brothers has been forced to seek legal services to prosecute this claim and should be awarded its reasonable attorneys' fees.

WHEREFORE, Peek Brothers prays for relief against SR Construction as follows:

1. For judgment in excess of $15,000 on Peek Brothers' First, Second, and Third Claims for Relief;
2. For judgment in the amount of $4,268.23 on Peek Brothers' Fourth Claim for Relief;
3. For attorneys' fees, costs and interest pursuant to NRS 624.626(6);

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4. For attorneys' fees, costs and interest as allowed by law and/or equity; and

5. For such further relief the Court may deem just and proper.

**AFFIRMATION**

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

**DATED** this 2nd day of September, 2020.

VILORIA, OLIPHANT,
OSTER & AMAN L.L.P.

By: _____

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**<u>ACCEPTANCE OF SERVICE</u>**

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## ACCEPTANCE OF SERVICE

The undersigned, being duly authorized to accept service of process in the above-entitled matter on behalf of Defendant, SR CONSTRUCTION, INC., hereby accepts service of the Summons of Complaint.

**DATED** this 16th day of September, 2020.

THE ALLISON LAW FIRM CHTD.

By: _____

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3191 E. Warm Springs Road
Las Vegas, NV 89120
Attorney for Defendant, SR Construction, Inc.

## AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

**DATED** this 16th day of September, 2020.

VILORIA, OLIPHANT,
OSTER & AMAN L.L.P.

By: _____

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Transaction # 8105175 : yviloria

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**IN THE SECOND JUDICIAL DISTRICT COURT**

**IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA**

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|---|---|
| PEEK BROTHERS CONSTRUCTION, INC., a Nevada Domestic corporation,<br><br>Plaintiff,<br>vs.<br><br>SR CONSTRUCTION, INC., a Nevada Domestic Corporation; DOE Defendants 1 - 10.<br><br>Defendants. | Case No.: CV20-01375<br><br>Dept. No.: 8<br><br>**MOTION TO COMPEL ARBITRATION AND STAY LITIGATION** |

Defendant SR Construction, Inc. ("SR") by and through its attorneys, The Allison Law Firm Chtd., moves this Court for an order compelling Plaintiff Peek Brothers Construction ("Peek Bros.") to arbitrate the construction dispute that is the subject of this lawsuit. SR further moves for an order staying this case pending the outcome of the arbitration.

This Motion is made and based upon NRS 38.221, the following Points and Authorities attached to this Motion, the exhibits attached hereto, the papers and pleadings on file with the Court, and any argument of counsel at the time set for hearing on this matter.

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## LIST OF EXHIBITS

Exhibit 1: Affidavit of Noah G. Allison in Support of Motion to Compel Arbitration and Stay Litigation.

Exhibit 2: September 2, 2020 Complaint.

Exhibit 3: May 6, 2020 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 between UHS and SR ("Prime Contract").

Exhibit 4: October 8, 2019 Master Subcontract Agreement between SR and Peek Bros ("MSA").

Exhibit 5: January 8, 2020 Work Order Addendum to Master Subcontract Agreement ("Work Order").

Exhibit 6: July 23, 2020 Memo from UHS re: Peek Brothers Dispute.

Exhibit 7: Demand for Arbitration filed September 11, 2020.

Exhibit 8: September 25, 2020 Letter from Emilee Hammond to Kristin Schlack.

Exhibit 9: October 5, 2020 Letter from Noah Allison to Kristin Schlack.

Exhibit 10: October 6, 2020 Letter from Kristin Schlack.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

### INTRODUCTION

This case concerns a construction dispute on the Northern Nevada Sierra Medical Center construction project in Reno, Nevada ("Project"). Sparks Family Medical Center, Inc. c/o Universal Health Services of Delaware ("UHS") is the owner. SR is the general contractor. Peek Bros. is the earthwork subcontractor.

The dispute is over change orders sought by Peek Bros. and contested by SR and UHS. Exhibit 2, ¶¶ 7-32. The Prime Contract requires that arbitration be utilized as the method for binding dispute resolution with respect to claims seeking relief arising out of the terms of the contract. Exhibit 3, AIA A201 § 15.4. The MSA requires Peek Bros. and SR to utilize arbitration when the dispute between SR

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and Peek Bros. involves issues of fact or law that SR is required to arbitrate under the terms of the Prime Contract. Exhibit 4, Exhibit D ¶ W.

Because any payment made to Peek Bros. on the disputed change orders ultimately will come from UHS, and because UHS disputes the change orders, UHS has directed SR to initiate dispute resolution per the terms of the Prime Contract. Exhibit 4. UHS has further stated "SR Construction shall not settle or otherwise authorize payment of all or any portion of the disputed change request under the terms of the Prime Contract without written authorization from UHS." Exhibit 4.

For this reason, the claims made in this case involve issues of law and fact that SR and Peek Bros. must arbitrate under the terms of the Prime Contract. Accordingly, this Court should compel Peek Bros. to engage in the arbitration process it agreed to when it signed the MSA and stay this matter until the arbitration is concluded.

## II.

## BACKGROUND

### A. The MSA.

This Court will note that the MSA does not relate to a particular project, but rather represents the general terms of the relationship between SR and Peek Bros. Exhibit 4, p. 1. As explained in the MSA, subsequent work orders defining the scope, price and specific terms and conditions on a project are incorporated by reference. Exhibit 4, pp. 1-2. For this reason, the dispute resolution section of the MSA was carefully written in a way to bind SR and Peek Bros. to whatever dispute resolution requirements may exist between SR and an owner on a future project:

> **W. DISPUTE RESOLUTION – ARBITRATION** – (a) Contractor and Subcontractor shall not be obligated to resolve disputes arising under this Subcontract by arbitration, unless: (i) the prime contract has an arbitration requirement; and (ii) a particular dispute between the Contractor and Subcontractor involves issues of fact or law which the Contractor is required to arbitrate under the terms of the prime contract. In the event that arbitration is required under the terms of this Provision, the same arbitrator(s) utilized to resolve the dispute between any Owner and Contractor shall be utilized to resolve the dispute under this Provision; (b) In the event that the Contractor and any Owner or others arbitrate matters relating to this Subcontract, the Subcontractor shall be required, at the request of the Contractor, to prepare and present the Contractor's case at Subcontractor's expense to the extent the proceedings relate to this Subcontract; (c) Should the Contractor enter into arbitration with any Owner or others with regard to issues relating to this Agreement, the

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> Subcontractor shall be bound by the result of the arbitration to the same degree as the Contractor.

Exhibit 4, Exhibit D ¶ W. Disputes arising under the MSA and any work order must be arbitrated if the prime contract has an arbitration clause and the dispute involves issues that SR must arbitrate under the terms of the prime contract. Exhibit 4, Exhibit D ¶ W(a). Disputes arising when there is no arbitration clause in the prime contract or the issues do not require SR to arbitrate under the terms of the prime contract may be litigated. Exhibit 4, Exhibit D ¶ W(a).

**B. The Work Order.**

The Work Order, signed by Peek Bros. and SR on January 8, 2020, tied the MSA directly to the Project. Exhibit 5, p. 1 ("The terms and obligations of the above-referenced Master Subcontract Agreement are fully incorporated by reference as though fully set forth herein.") If ever there was a time for Peek Bros. to distance itself from the arbitration requirement in the MSA with respect to the Project, it was before it signed the Work Order.

**C. The Prime Contract.**

SR and UHS signed the Prime Contract on July 21, 2019. The Prime Contract is a typical "cost-plus" arrangement with a guaranteed maximum price ("GMP"). In a cost-plus contract, the owner is required to pay the general contractor for the cost of the work plus a fee on the project subject to the general contractor's GMP. Exhibit 3, AIA A133 § 5.1-5.2. The cost of the work is defined as the general contractor's substantiated reimbursable costs paid for its labor, ***subcontractors***, materials, equipment, taxes, permit fees, ***legal costs***, ***arbitration costs***, insurance costs, and other items up to the GMP. Exhibit 3, AIA A133 § 6.1-6.7 (Emphasis supplied). Thus, if the cost of Peek Bros.' work is $1,000,000.00, UHS is obligated to pay SR for it, subject to the GMP. And if the cost of Peek Bros.' work is increased to $1,250,000.00 by change orders, UHS is obligated to pay SR for that as well. A subcontract change order is money out of UHS's pocket; it obviously cares a great deal as to whether the change is legitimate.

The Prime Contract defines the manner in which "Claims" are decided. Here, SR and UHS agreed that arbitration pursuant to Section 15.4 of AIA Document A201-2017 shall be the method of binding dispute resolution. Exhibit 3, AIA A133, § 9.2. Section 15.4 of A201-2017 provides:

> Arbitration shall be utilized as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject

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> 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 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.

Exhibit 3, AIA A201 § 15.4.1. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. Exhibit 3, AIA A201 § 15.4.3. The converse is not true. A judgment rendered by a court in the absence of arbitration that is not waived is **not** binding. Such is the contractual agreement of the parties to this dispute.

**D. UHS Rejected the Disputed Change Orders and Directed SR to Initiate Dispute Resolution Under the Prime Contract.**

On July 23, 2020, after SR apprised UHS of the change orders Peek Bros. was asserting, UHS took the position the change orders lacked merit. Mr. Applegate of UHS wrote:

> Also, as I understand it, there was no real necessary change in their work plan as the construction documents and subcontract agreement call for Peek Brothers to deliver a certified building pad at elevation 43 and complete a rough graded site at the proper subgrade elevation as indicated on the grading/site improvement drawings. Additionally, I understand that we now have additional fill that will now need to be hauled away from the site (6,000 CY) as it was not truly necessary in the current scope of work that is subsumed under their subcontract, and Peek Brothers are requesting a change order for this extra work.

Exhibit 5. Because the requested change required extra money to be paid out of UHS's pocket for work that was outside the scope of the contracted work, UHS rejected the change order, directed SR to initiate dispute resolution, and further instructed that "SR Construction shall not settle or otherwise authorize payment of all or any portion of the disputed change request under the terms of the Prime Contract without written authorization from UHS." Exhibit 5.

**E. Peek Bros. Files an Action in this Court.**

Peek Bros. filed its complaint against SR on September 2, 2020. Exhibit 2. The allegations concern additive change orders incurred on the Project that SR and, by extension, UHS must pay. Exhibit 2.

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**F. SR Files a Demand for Arbitration with AAA.**

SR filed a Demand for Arbitration on September 11, 2020. Exhibit 6. The arbitration demand named two respondents: Peek Bros. ***and*** UHS. Both are indispensable to the complete resolution of the dispute. Exhibit 6. The arbitrator must examine the merit of Peek Bros.' change orders and any legitimate setoffs, as well as whether the change orders, if meritorious to any degree, are reimbursable costs that UHS must pay to SR.

On September 25, 2020, counsel for Peek Bros. submitted a letter to AAA objecting to its jurisdiction over the dispute. Exhibit 7. On October 5, 2020, counsel for SR submitted a response letter to AAA advising it that SR will file a motion to compel arbitration with this Court and agreeing to stay the arbitration proceedings while the motion to compel is under consideration. Exhibit 8. On October 6, 2020, AAA sent a letter advising it will stay the arbitration pending the outcome of the motion to compel arbitration. Exhibit 9.

## III.

## ARGUMENT

**A. Governing Authority and Legal Standards.**

The Nevada Legislature enacted the Uniform Arbitration Act ("Act") to govern the enforcement of arbitration agreements. NRS 38.219 provides:

> 1. An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable except as otherwise provided in NRS 597.995 or upon a ground that exists at law or in equity for the revocation of a contract.
>
> 2. The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.
>
> 3. An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.
>
> 4. If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitral proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

NRS 38.221(1) provides:

> 1. On a motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:



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(a) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

(b) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

NRS 338.221(7) provides:

7. If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

Orders to proceed with arbitration are not appealable and the parties must proceed with arbitration. *Clark County v. Empire Elec., Inc.*, 96 Nev. 18, 604 P.2d 352 (1980). Orders denying a motion to compel arbitration are directly appealable. *D.R. Horton, Inc. v. Green*, 120 Nev. 549, 96 P.3d 1159, 1162 (2004).

There is a strong public policy in favor of contractual provisions requiring arbitration in Nevada. *Phillips v. Parker*, 106 Nev. 415, 416-17, 794 P.2d 716, 717-18. Once an arbitrable issue has been found to exist, all doubts concerning the arbitrability of the subject matter of a dispute are to be resolved in favor of arbitration. *Exber, Inc. v. Sletten Constr. Co.*, 92 Nev. 721, 729, 558 P.2d 517, 522 (1976). Courts must not deprive parties of the benefits of arbitration for which they have bargained – speed in the resolution of the dispute, and the employment of the specialized knowledge and competence of the arbitrator. *Id., citing John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 557-58 (1964).

**B. The Arbitration Agreements in the Prime Contract and the MSA Together Bind SR, UHS and Peek Bros. to Proceed with Arbitration.**

The basic allegations in Peek Bros.' Complaint are that it is entitled to receive payment for change orders from SR for extra work, materials and equipment it furnished to the Project. Exhibit 2. SR and UHS take the position that Peek Bros. is not entitled to payment for the change orders pursuant to the terms and conditions of the MSA and Work Order. Exhibit 5; Exhibit 6.

The Prime Contract requires UHS to reimburse SR for all "[p]ayments made by the Construction Manager [SR] to Subcontractors [Peek Bros.] *in accordance with the requirements of the subcontracts.*" Exhibit 3, AIA A133 § 6.3 (emphasis supplied). SR has informed UHS that the change orders sought by Peek Bros. are not valid and not in accordance with the terms of the MSA and Work Order. Exhibit

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5. In response, UHS has directed SR to initiate arbitration and has further advised it will not pay SR for the disputed extras. Exhibit 5. SR will be in an impossible situation unless the Court compels arbitration. SR cannot force UHS into this litigation yet UHS holds the purse strings and will only release them if the matter is decided by arbitration.

It is not a close call here. Even if this Court completely disregarded its obligation to liberally construe the arbitration agreement in the MSA in favor of arbitration[1], the intertwined rights and obligations of UHS, SR and Peek Bros. undeniably raise issues of fact or law that must be arbitrated pursuant to the Prime Contract. It makes sense under every conceivable public policy and judicial doctrine for this Court to send the parties to the forum they all contracted to be in and have the rights and obligations of SR, UHS and Peek Bros. decided by a seasoned neutral construction professional. Doing so will conserve judicial resources. Doing so will prevent inconsistent decisions.[2] Doing so will save the parties time and money. Most important, doing so honors the contractual agreements of the parties.

**C. The Court Should Stay This Matter Pending the Outcome of the Arbitration.**

This Court has the power to stay this proceeding until the arbitration is concluded. NRS 338.221(7). It makes sense to enter a stay and SR requests the Court do so. SR is willing to provide regular status checks to the Court regarding the arbitration if the Court desires.

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[1] *Exeber* at 522, *citing New Pueblo Constructors, Inc. v. Lake Patagonia Recreation Ass'n*, 467 P.2d 88 (Ariz App. 1970).

[2] Imagine what could happen to SR if this Court refused to compel arbitration. SR and Peek Bros. would take this matter to trial, SR and UHS simultaneously could take this matter to arbitration. There would be two discovery tracks. The exact same issues would be decided at two different times and perhaps with opposite rulings. Then, adding insult to injury, the AAA decision would have no binding effect on Peek Bros. and the Court's judgment would have no binding effect on UHS.

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## III.

## CONCLUSION

Based on the foregoing, the Court should enter an order compelling Peek Bros. to participate in arbitration and stay this mater pending the arbitration's outcome.

DATED this 7th day of October, 2020.

THE ALLISON LAW FIRM CHTD.

By: _____

Noah G. Allison (Bar #6202)
3191 East Warm Springs Road
Las Vegas, Nevada 89120-3147
*Attorneys for SR Construction, Inc.*

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**AFFIRMATION**

**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 7th day of October, 2020.

THE ALLISON LAW FIRM CHTD.

By: _____

Noah G. Allison (Bar #6202)
3191 East Warm Springs Road
Las Vegas, Nevada 89120-3147
*Attorneys for SR Construction, Inc.*

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Las Vegas, Nevada 89120-3147

## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law firm of THE ALLISON LAW FIRM CHTD., and that on October 7th, 2020, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which served the following parties electronically:

Nathan J. Aman, Esq.
Emilee N. Hammond, Esq.
Viloria, Oliphant, Oster & Aman, LLP
327 California Ave.
Reno, Nevada 89509
*Attorney for Peek Brothers Construction, Inc.*

/s/ Nita MacFawn

Employee of The Allison Law Firm Chtd.

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| Exhibit 3 | May 6, 2020 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 between UHS and SR ("Prime Contract") | 89 |
| Exhibit 4 | October 8, 2019 Master Subcontract Agreement between SR and Peek Bros ("MSA") | 80 |
| Exhibit 5 | January 8, 2020 Work Order Addendum to Master Subcontract Agreement ("Work Order") | 55 |
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| Exhibit 9 | October 5, 2020 Letter from Noah Allison to Kristin Schlack | 1 |
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# EXHIBIT “1”

# AFFIDAVIT OF NOAH G. ALLISON, ESQ.

STATE OF NEVADA )
) ss:
COUNTY OF CLARK )

NOAH G. ALLISON, ESQ. being first duly sworn, deposes and says as follows:

1. I am an attorney duly licensed to practice law in the State of Nevada. I am a partner at The Allison Law Firm Chtd. and I am counsel for SR Construction, Inc. ("SR").

2. The following facts are within my personal knowledge, and if called upon as a witness, I am competent to testify thereto.

3. I make this Affidavit in Support of SR's Motion to Compel Arbitration and Stay Litigation ("Motion").

4. Attached as Exhibit 2 to the Motion is the Complaint filed in this matter on September 2, 2020.

5. Attached as Exhibit 3 to the Motion is a true and correct copy of the May 6, 2020 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 between UHS and SR.

6. Attached as Exhibit 4 to the Motion is a true and correct copy of the October 8, 2019 Master Subcontract Agreement between SR and Peek Bros.

7. Attached as Exhibit 5 to the Motion is a true and correct copy of the January 8, 2020 Work Order Addendum to Master Subcontract Agreement.

8. Attached as Exhibit 6 to the Motion is a true and correct copy of the July 23, 2020 Memo from UHS re: Peek Brothers Dispute.

9. Attached as Exhibit 7 to the Motion is a true and correct copy of the Demand for Arbitration filed September 11, 2020.

10. Attached as Exhibit 8 to the Motion is a true and correct copy of the September 25, 2020 Letter from Emilee Hammond to Kristin Schlack.

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11. Attached as Exhibit 9 to the Motion is a true and correct copy of the October 5, 2020 Letter from Noah Allison to Kristin Schlack.

12. Attached as Exhibit 10 to the Motion is a true and correct copy of the October 6, 2020 Letter from Kristin Schlack

FURTHER YOUR AFFIANT SAYETH NAUGHT.

NOAH G. ALLISON, ESQ.

Subscribed and Sworn to me by Noah G. Allison, Esq.
on the 7th day of October, 2020.

NOTARY PUBLIC

MARIA T. FREY
Notary Public, State of Nevada
No. 97-0104-1
My Appt. Exp Apr. 1, 2021

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# EXHIBIT “2”

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Transaction # 8050530 : csulezic

$1425
Nathan J. Aman, Esq.
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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

**IN AND FOR THE COUNTY OF WASHOE**

| | |
|---|---|
| PEEK BROTHERS CONSTRUCTION, INC., a Nevada Domestic Corporation.<br><br>Plaintiff,<br><br>vs.<br><br>SR CONSTRUCTION, INC., a Nevada Domestic Corporation; DOE Defendants 1 - 10.<br><br>Defendants. | Case No.:<br><br>Dept. No.: |

**COMPLAINT**

**[ARBITRATION EXEMPTION REQUESTED]**

COMES NOW, Plaintiff PEEK BROTHERS CONSTRUCTION, INC., by and through its counsel of record, the law firm of Viloria, Oliphant, Oster & Aman L.L.P. and hereby complains, asserts, and alleges the following against the above-named Defendants:

**PARTIES**

1. Plaintiff PEEK BROTHERS CONSTRUCTION, INC. ("Peek Brothers") is a Nevada Domestic Corporation.

2. Defendant SR CONSTRUCTION, INC. ("SR Construction") is a Nevada Domestic Corporation.

3. The true identities of DOE Defendants 1-10 are presently unknown; however, Plaintiff will move to amend this Complaint upon learning the true identities of DOE Defendants 1 – 10 based on their liability for the damages alleged herein.

## JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter because the amount in controversy exceeds $15,000.00.

5. Venue in Washoe County is proper pursuant to NRS 13.010(1) because the contract that serves as the basis for this action is to be performed in Washoe County.

6. This suit is exempted from Nevada's Arbitration Program pursuant to NAR 3(A) because Plaintiff has incurred damages in excess of $50,000.

## FACTUAL BACKGROUND

7. On October 8, 2019, Peek Brothers entered into a Master Subcontractor Agreement ("Subcontract") with SR Construction, and subsequent Work Order on January 8, 2020 ("Work Order") (collectively, "Subcontract"), in which Peek Brothers agreed to perform earthwork related to the construction of the Northern Nevada Sierra Medical Center ("Project").

8. Included in Peek Brothers' scope of work on the Project was site mass grading, sub and base grade for the building pad and footing excavation ("Scope of Work").

9. In consideration for Peek Brothers' performance, SR Construction agreed to pay Peek Brothers the sum of Three Million Sixty-Two Thousand and No/100 Dollars ($3,062,000.00), pursuant to the Subcontract for the Project.

10. SR Construction agreed to make monthly payments to Peek Brothers for invoiced work.

11. In preparing its bid for the Project, Peek Brothers' bid price—and Subcontract price—for the sub and base grade for the building pad assumed the utilization of extra material from excavation of the building footings and plumbing trenches ("Spoils") to backfill the building footings and bring the building pad to subgrade elevation. In other words, Peek Brothers would use the dirt it had dug up in the process of creating trenches and footings to build up the footings and building pad.

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12. However, Fred Kravetz ("Mr. Kravetz") with SR Construction, instead directed Peek Brothers to import approximately 150,000 square feet of material ("material" or "structural fill") to bring the building pad to subgrade elevation *prior* to Peek Brothers digging up the trenches and footings.

13. In so doing, SR Construction, through Mr. Kravetz, initiated a change to the means and methods by which Peek Brothers' Scope of Work was to be performed.

14. Peek Brothers informed Mr. Kravetz on numerous occasions that it was unnecessary to import material because the Spoils would have otherwise been used to bring the building pad to subgrade elevation.

15. Peek Brothers further informed Mr. Kravetz that importation of material and the eventual removal of excess material from the footings would result in additional cost to SR Construction.

16. The decision by Mr. Kravetz required Peek Brothers to stockpile the Spoils on site after excavating the building footings and plumbing trenches, rather than use the Spoils to bring the building pad to subgrade elevation.

17. SR Construction did not require or request Peek Brothers submit a change order prior to importing the material and backfilling the building pad, nor did SR Construction amend the Work Order, attached to the Subcontract as Exhibit A, in writing.

18. Instead, SR Construction ordered Peek Brothers to complete the additional work without complying with the Subcontract.

19. It is understood that it was common practice for SR Construction to deviate from its agreements with subcontractors on the Project by orally demanding work or services which were not included in said subcontractors' scope of work.

20. In accordance with Mr. Kravetz's demand, Peek Brothers purchased and had to truck in the material, and the earthwork to bring the building pad to subgrade elevation was performed on April 9, 2020 through April 13, 2020.

21. Subsequent to bringing the building pad to subgrade elevation, the building footings and plumbing trenches were dug and the Spoils were stockpiled on site.

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22. On April 16, 2020, Peek Brothers submitted Change Order #13, reflecting the cost of labor and equipment to move the excess material from the footings from the building pad in the amount of $4,268.23, which was necessary because the excess material was no longer needed to bring the building pad to subgrade elevation.

23. On May 18, 2020, SR Construction sent Peek Brothers a Notice of Reduction of Scope & 48 Hour Notice to Cure, in which SR Construction unilaterally removed the scope of work from the Subcontract described as "Under slab Plumbing Trench and Backfill."

24. On May 21, 2020, Peek Brothers submitted Change Order #17, reflecting the cost of labor and equipment to import the fill onto the building pad to bring the building pad to subgrade elevation.

25. On June 4, 2020, Peek Brothers submitted a revised change order for the material imported and the work performed to bring the building pad to subgrade elevation, referred to as Change Order #17-R1, in the amount of $137,497.50.

26. Change Order #13 and Change Order #17-R1 were submitted to SR Construction in the same manner and in the same form as all previous change orders had been submitted.

27. Subsequent to Peek Brothers' performance of the importation of structural fill and backfilling of the building pad, SR Construction unilaterally removed the scope of work from the Subcontract described as "Sub and Base Grade."

28. Peek Brothers has provided SR Construction with all invoices for the work performed.

29. SR Construction failed to either accept Change Order #13 or respond accordingly within thirty (30) days after the date that Change Order #13 was submitted by Peek Brothers to SR Construction pursuant to NRS 624.626(1)(e).

30. SR Construction has failed to accept Change Order #17-R1 despite work performed and substantial costs incurred by Peek Brothers which was done pursuant to the order of Mr. Kravitz of SR Construction.

31. Peek Brothers complied with NRS 624.626 in submitting Change Order #13 and Change Order #17-R1 to SR Construction.

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32. The actions of SR Construction have damaged Peek Brothers in a sum to be proven at trial which is greater than $15,000.

**FIRST CLAIM FOR RELIEF**
**(Breach of Contract)**

33. Plaintiffs incorporate by reference Paragraphs 1- 32 of this Complaint as if set forth fully herein.

34. Peek Brothers and SR Construction entered into a valid Subcontract Agreement under which Peek Brothers agreed to perform certain work in exchange for timely payment therefor.

35. Pursuant to the terms of the Subcontract, all changes, substitutions, or deviations that affect the Scope of Work or the expenses thereof are required to be in writing.

36. At the express order of SR Construction, Peek Brothers imported structural fill, rather than utilize the Spoils (from excavation of the building footings and plumbing trenches), to backfill the building footings and bring the building pad to subgrade elevation.

37. SR Construction's demand to import structural fill rather than utilize the Spoils to bring the building pad to subgrade elevation constituted a change to the means and methods by which Peek Brothers' Scope of Work was to be performed.

38. The importation of structural fill resulted in excess cost to Peek Brothers in the amount of $137,497.50 not contemplated by the Subcontract, as set forth in Change Order #17-R1.

39. Peek Brothers performed its obligations under the Subcontract by furnishing the materials and performing the work that SR Construction ordered.

40. SR Construction breached the Subcontract by failing to comply with the Change Order process and/or amending the Work Order, as required by the Subcontract, to include the importation and eventual removal of material to and from the building pad.

41. SR Construction breached the Subcontract by failing to pay Peek Brothers for work performed and for which invoices were submitted, in accordance with the Accounting Practices outlined in the Subcontract.

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ATTORNEYS AND COUNSELORS AT LAW
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327 CALIFORNIA AVENUE ~ RENO, NEVADA 89509

42. SR Construction failed to timely pay Peek Brothers' invoices pursuant to the Subcontract Invoice Procedures described in SR Construction's Accounting Practices.

43. As a result of SR Construction's breach, Peek Brothers has been damaged in an amount in excess of Fifteen Thousand and No/100 Dollars ($15,000.00).

44. Peek Brothers was forced to seek legal services to prosecute these claims and should be awarded their reasonable attorneys' fees.

**SECOND CLAIM FOR RELIEF**
**(Attorneys' Fees Pursuant to Subcontract Agreement)**

45. Plaintiffs incorporate by reference Paragraphs 1-44 of this Complaint as if set forth fully herein.

46. Pursuant to Exhibit D, Subsection V of the Subcontract, in the event that either contractor or subcontract institute a suit in court against the other party in connection with any dispute or matter arising under the Subcontract, the prevailing party is entitled to recover reasonable attorneys' fees.

47. Peek Brothers has been forced to initiate the instant suit as a result of SR Construction's failure to pay for work performed by Peek Brothers at the direction of SR Construction.

48. The instant suit arises under the Subcontract, as it pertains to Peek Brothers performance thereunder.

49. Accordingly, Peek Brothers has been forced to seek legal services to prosecute its claims and is entitled to reasonable attorneys' fees pursuant to the Subcontract.

**THIRD CLAIM FOR RELIEF**
**(Unjust Enrichment)**

50. Plaintiffs incorporate by reference Paragraphs 1-49 of this Complaint as if set forth fully herein.

51. Peek Brothers has conferred a benefit upon SR Construction by importing structural fill at SR Construction's order and utilizing the imported material to bring the building pad to subgrade elevation.

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52. SR Construction has appreciated and retained such benefit despite refusal to compensate Peek Brothers for the cost of the work performed.

53. It would be unjust and inequitable to permit SR Construction to retain the benefit of the above-described work.

54. As a result of SR Construction's unjust enrichment, Peek Brothers has been damaged in an amount in excess of Fifteen Thousand and No/100 Dollars ($15,000.00).

55. Peek Brothers was forced to seek legal services to prosecute these claims and should be awarded their reasonable attorney fees.

**FOURTH CLAIM FOR RELIEF**
**(Violation of NRS 624)**

56. Plaintiffs incorporate by reference Paragraphs 1-55 of this Complaint as if set forth fully herein.

57. On April 16, 2020, Peek Brothers submitted Change Order #13 to SR Construction in the amount of $4,268.23,

58. SR Construction failed to accept Change Order #13 or give written notice to Peek Brothers of any purported reason why Change Order #13 is unreasonable.

59. SR Construction's failure to respond to Change Order #13 is a violation of NRS 624.626(1)(e).

60. Accordingly, Peek Brothers is entitled to payment of the amount sought in Change Order #13 pursuant to NRS 624.626(3).

61. Peek Brothers has been forced to seek legal services to prosecute this claim and should be awarded its reasonable attorneys' fees.

WHEREFORE, Peek Brothers prays for relief against SR Construction as follows:

1. For judgment in excess of $15,000 on Peek Brothers' First, Second, and Third Claims for Relief;
2. For judgment in the amount of $4,268.23 on Peek Brothers' Fourth Claim for Relief;
3. For attorneys' fees, costs and interest pursuant to NRS 624.626(6);

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4. For attorneys' fees, costs and interest as allowed by law and/or equity; and

5. For such further relief the Court may deem just and proper.

**AFFIRMATION**

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

**DATED** this 2nd day of September, 2020.

VILORIA, OLIPHANT,
OSTER & AMAN L.L.P.

By: _____

Nathan J. Aman, Esq.
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# EXHIBIT “3”

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FULLY EXECUTED

07/21/2020

# AIA® Document A133™ – 2009

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

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

**AGREEMENT** made as of the 6th day of May in the year 2020
*(In words, indicate day, month and year.)*

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

Sparks Family Medical Center, Inc. c/o
Universal Health Services of Delaware367 South Gulph Road
King of Prussia, PA 19406

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

SR Construction, Inc.
3579 Red Rock Street
Las Vegas, Nevada 89103

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

Northern Nevada Sierra Medical Center
625 Innovation Drive
Reno, Nevada 89511

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

ESa Architects.
1033 Demonbreun Street, Suite 800
Nashville, Tennessee 37203
615-329-9445

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

Sean Applegate, MS, CHFM
Sr. Regional Project Manager
Universal Health Services, Inc.



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

Bret Loughridge
President
SR Construction, Inc.
3579 Red Rock Street
702-877-6111

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

Matt Childress
ESa Architects.
1033 Demonbreun Street, Suite 800
Nashville, Tennessee 37203
615-329-9445

The Owner and Construction Manager agree as follows.



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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

### § 1.2 Relationship of the Parties

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

### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.



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## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 2.1 Preconstruction Phase

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

### § 2.1.2 Consultation

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

**2.1.2.1** If the Project will involve building information modeling ("BIM"), the Owner, Construction Manager and Architect/Engineer shall jointly develop a BIM Execution Plan for Owner's review and approval. The BIM Execution Plan shall be consistent with the Owner's AIA A201-2017 General Conditions section 1.8 BIM Use and Reliance; and shall be completed to a level of LOD 400 at a minimum. Upon the Owner's approval of the BIM Execution Plan, if any, the BIM Execution Plan shall become a Contract Document.

**§ 2.1.3** When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically (typically monthly) update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and together with the Architect and Owner's consultants and representatives, identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

### § 2.1.4 Phased Construction

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

### § 2.1.5 Preliminary Cost Estimates

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

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


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**§ 2.1.6 Subcontractors and Suppliers**
The Construction Manager shall develop bidders' interest in the Project.

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

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

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

**§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**
**§ 2.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee. In the A201, references to the "Contract Sum" shall refer to the Guaranteed Maximum Price upon the Owner's acceptance of the Guaranteed Maximum Price proposal.

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

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

- **.1** A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- **.2** A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- **.3** A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- **.4** The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- **.5** A date by which the Owner must accept the Guaranteed Maximum Price.

**§ 2.2.4 Construction Manager's Contingency Fund -** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. The


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Construction Manager shall notify the Owner at least monthly of the nature and amounts applied from the Construction Contingency. Contractor's Construction Contingency is available for construction and coordination issues and must be spent in accordance with Article 6 of this Agreement and shall be appropriately reviewed with the Owner. .

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

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

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

**§ 2.2.8** The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

**§ 2.2.9** 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.

**§ 2.3 Construction Phase**
**§ 2.3.1 General**
**§ 2.3.1.1** 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.

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

**2.3.1.3 Weather Day Allowance.** The Contract Time, Guaranteed Maximum Price and the Construction Manager's overall schedule will include and accommodate an allowance of work days, to be set forth in the Guaranteed Maximum Price Amendment, anticipated to be lost for adverse weather impacts on the critical path and throughout the entire schedule. The weather days should be established from local knowledge and using reasonable documentation, and include 30 year construction averages from the National Oceanic and Atmospheric Administration (NOAA).

The Construction Manager shall notify the Owner in writing of any days lost due to adverse weather beyond a reasonable weather day allowance (together with dates, description of work activities impacted, etc.) and at each construction meeting, and shall review and justify to the Owner that the adverse weather delayed the critical path.

If adverse weather conditions that 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 (e.g. greater than 20% of reasonable estimates), could not have been reasonably anticipated and had an adverse effect on the scheduled construction. The contractor is usually entitled to additional contract time, but not additional compensation for weather delays and would apply under the Delay section of this Contract.


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**§ 2.3.2 Administration**

**§ 2.3.2.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids, subject to those person or entities that meet financial requirements and that would enter subcontracts acceptable to the Construction Manager. The Construction Manager shall obtain bids from at a minimum of three (3) Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner and Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

The Construction Manager shall at the commencement of procurement provide the Owner with a detailed list of prequalified and preapproved subcontractors for Owners review and approval. Construction Manager shall endeavor to obtain a minimum of three (3) bids for each trade as may be available in the region where the project is located. Notwithstanding this requirement, if the Construction Manager and owner determines that pre-selecting a subcontractor to be a key Trade Partner is in the best interest of the project, Construction Manager shall make such recommendation of award to the Owner for its review and approval. Owner requires a competitive process for onboarding Trade Partners which shall be reviewed and approved prior to any bidding.

2.3.2.1.1The Construction Manager shall request in writing any potential trades which the Construction Manager may Self-Perform Work ("SPW"). UHS shall give approval for trades in which the Construction Manager may self-perform work; potential trades may include Framing, Drywall, Concrete, Panelized exterior/interior walls, Firestopping, Doors/Frames/Hardware, Acoustical Ceilings, and Specialties. If Construction Manager is authorized to SPW, the Construction Manager will obtain a minimum of 3 sealed bids which are opened in front of a UHS designated representative. If Construction manager does not obtain at least 3 qualified bids, the SPW will not be allowed.

The Construction Manager shall not be entitled to any savings for SPW as set forth in Section 5.2.1, and 100% of all savings shall be reverted to the Owner.

For clarity, Construction Manager's fee shall be assessed on SPW.

2.3.2.1.2 If Construction Manager does SPW, Construction Manager shall:

A. Inform the Owner of the price, scope, and agreed contract terms prior to the bid process.
B. Provide three sealed bids if proposal on a stipulated sum basis
C. Bid all material with a minimum of 3 vendors
D. Provide time in the schedule to allow the Owner the right to reject any self-perform bid proposal that does not meet criteria above.

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

**§ 2.3.2.3** Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive


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the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

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

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

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

**§ 2.3.2.7** The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner The Construction Manager, its contractors and subcontractors are responsible for the safety of the site, their personnel, and for the safe prosecution of the work on the Project. The Owner shall in no way be held responsible for providing Safety oversight for the work of the Construction Manager and its Contractors and Subcontractors. The Owner shall require that Contractor's performing work directly for the Owner are required to adhere to the Construction Manager's project safety requirements.

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

**§ 2.4 Professional Services**

Section 3.12.10 of A201–2017 shall apply to both the Preconstruction and Construction Phases.

**§ 2.5 Hazardous Materials**

Section 10.3 of A201–2017 shall apply to both the Preconstruction and Construction Phases.

## ARTICLE 3 OWNER'S RESPONSIBILITIES

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

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

**§ 3.1.2** Prior to the 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. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.


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**§ 3.1.3** 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 Section 6.1.1, (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.

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

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

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

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

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

**§ 3.2 Owner's Designated Representative**

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

**§ 3.2.1 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.

**§ 3.3 Architect**

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

**§ 4.1 Compensation**

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

**§ 4.1.2** For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:



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

The Construction Manager shall be paid for its direct personnel expense per Section 4.1.4 below not to exceed in the aggregate of $2,331,341 , unless authorized in writing by the Owner or by Addendum.

**§ 4.1.3** If the Preconstruction Phase services covered by this Agreement have not been completed within(4) (Four) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

**§ 4.1.4** Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions. Preconstruction rates will be reimbursed at the rates set forth in Exhibit (xx). For ease of calculations, the UHS billable rate for labor should begin with raw salary and increased by applicable taxes, benefits, and holiday/vacation/sick. These rates shall be consistent with UHS Standard Business Terms.

**§ 4.2 Payments**

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

**§ 4.2.2** 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.)*

0 % Zero

**ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

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

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

Shall be two and three quarters percent (2.75%) of the Cost of the Work

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

The fee for changes in the work will be the same fee enumerated in 5.1.1. above.

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

Shall Not be Less Than 10% and Not More Than 15% Combined Total for Overhead & Profit on Change Orders, unless otherwise approved by Owner

**§ 5.1.4** Rental rates for Construction Manager-owned equipment shall not exceed Eighty percent (80 %) of the standard rates as listed in the regionally adjusted AED Greenbook.

**§ 5.1.5** Unit prices, if any: None
*(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)*

| Item | Units and Limitations | Price per Unit ($0.00) |
|---|---|---|


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**§ 5.2 Guaranteed Maximum Price**

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

All savings within the GMP shall be refunded to the Owner.

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

**§ 5.3 Changes in the Work**

**§ 5.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2017, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

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

**§ 5.3.3** In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2017 and the term "costs" as used in Section 7.3.4 of AIA Document A201–2017 shall have the meanings assigned to them in AIA Document A201–2017 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**§ 5.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2017 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

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

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

**§ 6.1 Costs to Be Reimbursed**

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

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


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**§ 6.2 Labor Costs**

**§ 6.2.1** Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

**§ 6.2.2** Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.
*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify as a separate staff summary in Section 11.5 or as in Exhibit (xx), the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work..)*

**§ 6.2.3** Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

**§ 6.2.4** Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3. For ease of calculations, the UHS billable rate for labor should begin with raw salary (annual salary divided by 2080 hours) and the billable rate for the burden items outlined in this section shall be fixed at forty-one percent (41 %) of substantiated and verified payroll for applicable taxes, benefits, and holiday/vacation/sick Substantiated payroll shall be hours worked properly charged to the project times the base salary rate of each employee. Audit shall be limited to verifying payroll hours and base salary rate of each employee once rates are approved.

**§ 6.2.5** Bonuses, profit sharing, incentive compensation and any other discretionary payments shall not be directly reimbursable and are not considered cost of the work. Any bonus, profit sharing and incentives should be included in the fee

**§ 6.3 Subcontract Costs**

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

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

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

**§ 6.4.2** Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

**§ 6.5.2** 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 costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval. If the total rental or lease of equipment is estimated to be


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beyond the purchase price of said equipment, Construction Manager shall purchase equipment and return it to the owner at the completion of the Project.

**§ 6.5.3** Costs of recycling and/or removal of debris from the site of the Work and its proper and legal disposal.

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

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

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

**6.5.7** Unless and to the extent that the Contract Documents require the Owner to provide them, Construction Manager's costs of temporary utilities as necessary for the Construction Manager to perform its Work including, but not limited to gas, water, electricity, sewer, connection fees, and utility consumptions charges.

**6.5.8** Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner.

**§ 6.6 Miscellaneous Costs**

**§ 6.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. The Construction Manager shall be reimbursed for its insurance outlined in Section 8 Insurance and as Exhibit (xx) and must adhere to UHS Standard Business Terms.

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

**§ 6.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.4.3 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

**§ 6.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2017 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

**§ 6.6.6** Costs for electronic equipment and software, including licenses for software, directly related to the Work with the Owner's prior approval shall be reimbursed as a general condition and not as a unit cost per hour on supervisory staff.

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


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

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

**§ 6.6.10 T**he deductible portion of any losses under policies of Builder's Risk unless the Construction Manager or subcontractor is at fault in which the entity responsible for the loss would be responsible for the deductible. Notwithstanding, and for purposes of the NNSMC project, wherein the Construction Manager has furnished the Builder's Risk Insurance Policy, the deductible portion to be paid by the party responsible for the loss shall be limited to $10,000 for general damage claims and $25,000 for claims involving water damage. For claims against the policy where the deductible is partially paid by the party causing the loss, the balance of the deductible shall otherwise be a reimbursable expense.

**§ 6.7 Other Costs and Emergencies**

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

**§ 6.7.2** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2017.

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

**§ 6.7.4** The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 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 6.8.

**§ 6.8 Costs Not to Be Reimbursed**

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

- **.1** Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- **.2** Expenses of the Construction Manager's principal office and offices other than the site office;
- **.3** Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- **.4** The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- **.5** Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- **.6** Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- **.7** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- **.8** Costs for services incurred during the Preconstruction Phase.

**§ 6.9 Discounts, Rebates and Refunds**

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


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

**§ 6.10 Related Party Transactions**

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

**§ 6.10.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

**§ 6.11 Accounting Records**

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

**§ 7.1 Progress Payments**

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

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

The Construction Manager shall, during the last week of each month, meet with the Architect and Owner (and/or other parties designated in writing by the Owner) to review and approve the draft Application for Payment submitted under Section 9.3.1 of A201. The approved draft will then be updated into a formal Application for Payment and submitted to the Owner for payment.

**§ 7.1.3** Provided that an Application for Payment is received by the Owner not later than the 1st day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 1st day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30 ) days after the Architect receives the Application for Payment.

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



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

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

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

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

**.1** Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2017;

**.2** Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

**.3** Subtract 5% retainage;

**.4** add Construction Manager's Fee, General Conditions, General Requirements, and cost for Permits (for all of which no retention shall be held) The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 and consistent with 7.1.8 below

**.5** Subtract the aggregate of previous payments made by the Owner;

**.6** Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

**.7** Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2017.

**§ 7.1.8** The Owner and Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors and the Construction Manager shall execute subcontracts in accordance with those agreements. All subcontracts and SPW shall be structured to hold retainage at 5% in conformance with NRS..

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

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


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audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

**§ 7.2 Final Payment**

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

**.1** the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;

**.2** the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

**.3** a final Certificate for Payment has been issued by the Architect.

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

**§ 7.2.2** The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2017. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

**§ 7.2.3** If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2017. 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.

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

## ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2017.
*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2017.)*

UHS prefers standard Contractor liability insurance and does not use CCIP or OCIP insurance products. The Construction Manager will adhere to UHS insurance requirements for small and large projects summarized in the UHS standard insurance requirements for Contractors.

UHS does not typically require Payment and Performance bonds on projects, but may consider bonding the entire project or individual bonding at the Subcontractor level if Contractor and UHS deem appropriate due to higher risk


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profile, limited contractors, etc. In these cases, Construction Manager shall include the cost of Labor & Material Payment and Performance Bonds on certain trade work line items within the GMP with approval from the Owner.

On a case by case basis, UHS and the Construction Manager will evaluate subcontractor default insurance programs or similar programs, UHS will ultimately decide if subcontractor default insurance is appropriate.

Builder's Risk insurance coverage will be evaluated on a case by case basis; however most new greenfield projects require the Construction Manager to carry Builders Risk. UHS traditionally carries Builder's Risk for renovations or projects that tie directly into an active facility.

| Type of Insurance or Bond | Limit of Liability or Bond Amount ($0.00) |
|---|---|

## ARTICLE 9 DISPUTE RESOLUTION

**§ 9.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

**§ 9.2** For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:
*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

[ X ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[ ] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

### § 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

## ARTICLE 10 TERMINATION OR SUSPENSION

### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

**§ 10.1.1** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2017.

**§ 10.1.2** In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no


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event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

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

**.1** Take the Cost of the Work incurred by the Construction Manager to the date of termination; plus equitable compensation for any demobilization costs incurred by the Construction Manager.

**.2** Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

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

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

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

**§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price**

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2017.

**§ 10.2.1** If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2017 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.2.2** If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2017 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

**§ 10.3 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 Section 14.3.2 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

## ARTICLE 11 MISCELLANEOUS PROVISIONS

**§ 11.1** Terms in this Agreement shall have the same meaning as those in A201–2017.



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**§ 11.2 Ownership and Use of Documents**
Section 1.5 of A201–2017 shall apply to both the Preconstruction and Construction Phases.

**§ 11.3 Governing Law**
Section 13.1 of A201–2017 shall apply to both the Preconstruction and Construction Phases.

**§ 11.4 Assignment**
The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 11.5** Other provisions:

**ARTICLE 12 SCOPE OF THE AGREEMENT**
**§ 12.1** This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

**§ 12.2** The following documents comprise the Agreement:

**.1** AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

**.2** AIA Document A201–2017, General Conditions of the Contract for Construction

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

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

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

Include Billing rates, Equipment Rate Schedules, Insurance Certifications, etc in this section.

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

| | |
|---|---|
| DocuSigned by: Mark Darcy 29EA916A5BB24C6... | DocuSigned by: Bret Loughridge F7E0B6440C5744A... |
| **OWNER** *(Signature)* | **CONSTRUCTION MANAGER** *(Signature)* |
| Mark D'Arcy Vice President, Design & Construction | Bret Loughridge President |
| *(Printed name and title)* | *(Printed name and title)* |



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*AIA® Document A133™ – 2009*

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**PAGE 1**

**AGREEMENT** made as of the 6th day of May in the year 2020

...

Sparks Family Medical Center, Inc. c/o
Universal Health Services of Delaware367 South Gulph Road
King of Prussia, PA 19406

...

SR Construction, Inc.
3579 Red Rock Street
Las Vegas, Nevada 89103

...

Northern Nevada Sierra Medical Center
625 Innovation Drive
Reno, Nevada 89511

...

*(Name, legal status and address)*

ESa Architects.
1033 Demonbreun Street, Suite 800
Nashville, Tennessee 37203
615-329-9445

...

*(Name, address and other information)*

Sean Applegate, MS, CHFM
Sr. Regional Project Manager
Universal Health Services, Inc.

**PAGE 2**

Bret Loughridge
President
SR Construction, Inc.
3579 Red Rock Street

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702-877-6111

...

Matt Childress
ESa Architects.
1033 Demonbreun Street, Suite 800
Nashville, Tennessee 37203
615-329-9445

**PAGE 3**

For the Preconstruction Phase, AIA Document ~~A201™–2007,~~ A201™–2017, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in ~~A201–2007,~~ A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in ~~A201–2007~~ A201–2017 shall mean the Construction Manager.

**PAGE 4**

**2.1.2.1** If the Project will involve building information modeling ("BIM"), the Owner, Construction Manager and Architect/Engineer shall jointly develop a BIM Execution Plan for Owner's review and approval. The BIM Execution Plan shall be consistent with the Owner's AIA A201-2017 General Conditions section 1.8 BIM Use and Reliance; and shall be completed to a level of LOD 400 at a minimum. Upon the Owner's approval of the BIM Execution Plan, if any, the BIM Execution Plan shall become a Contract Document.

**§ 2.1.3** When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically (typically monthly) update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and together with the Architect and Owner's consultants and representatives, identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

**PAGE 5**

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~~ quasi-governmental authorities for inclusion in the Contract Documents.

...

**§ 2.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee. In the A201, references to the "Contract Sum" shall refer to the Guaranteed Maximum Price upon the Owner's acceptance of the Guaranteed Maximum Price proposal.

...

**§ 2.2.4 Construction Manager's Contingency Fund -** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. The Construction Manager shall notify the Owner at least monthly of the nature and amounts applied from the Construction Contingency. Contractor's Construction Contingency is available for construction and coordination

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issues and must be spent in accordance with Article 6 of this Agreement and shall be appropriately reviewed with the Owner. .

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

**PAGE 6**

**§ 2.3.1.1** For purposes of Section 8.1.2 of ~~A201–2007,~~ A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

...

**2.3.1.3 Weather Day Allowance.** The Contract Time, Guaranteed Maximum Price and the Construction Manager's overall schedule will include and accommodate an allowance of work days, to be set forth in the Guaranteed Maximum Price Amendment, anticipated to be lost for adverse weather impacts on the critical path and throughout the entire schedule. The weather days should be established from local knowledge and using reasonable documentation, and include 30 year construction averages from the National Oceanic and Atmospheric Administration (NOAA).

The Construction Manager shall notify the Owner in writing of any days lost due to adverse weather beyond a reasonable weather day allowance (together with dates, description of work activities impacted, etc.) and at each construction meeting, and shall review and justify to the Owner that the adverse weather delayed the critical path.

If adverse weather conditions that 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 (e.g. greater than 20% of reasonable estimates), could not have been reasonably anticipated and had an adverse effect on the scheduled construction. The contractor is usually entitled to additional contract time, but not additional compensation for weather delays and would apply under the Delay section of this Contract.

**§ 2.3.2.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain ~~bids.~~ bids, subject to those person or entities that meet financial requirements and that would enter subcontracts acceptable to the Construction Manager. The Construction Manager shall obtain bids from at a minimum of three (3) Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner and Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

The Construction Manager shall at the commencement of procurement provide the Owner with a detailed list of prequalified and preapproved subcontractors for Owners review and approval. Construction Manager shall endeavor to obtain a minimum of three (3) bids for each trade as may be available in the region where the project is located. Notwithstanding this requirement, if the Construction Manager and owner determines that pre-selecting a subcontractor to be a key Trade Partner is in the best interest of the project, Construction Manager shall make such recommendation of award to the Owner for its review and approval. Owner requires a competitive process for onboarding Trade Partners which shall be reviewed and approved prior to any bidding.

2.3.2.1.1The Construction Manager shall request in writing any potential trades which the Construction Manager may Self-Perform Work ("SPW"). UHS shall give approval for trades in which the Construction Manager may self-perform work; potential trades may include Framing, Drywall, Concrete, Panelized exterior/interior walls, Firestopping, Doors/Frames/Hardware, Acoustical Ceilings, and Specialties. If Construction Manager is authorized to SPW, the Construction Manager will obtain a minimum of 3 sealed bids which are opened in front of a UHS designated representative. If Construction manager does not obtain at least 3 qualified bids, the SPW will not be

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allowed.

The Construction Manager shall not be entitled to any savings for SPW as set forth in Section 5.2.1, and 100% of all savings shall be reverted to the Owner.

For clarity, Construction Manager's fee shall be assessed on SPW.

2.3.2.1.2 If Construction Manager does SPW, Construction Manager shall:

A. Inform the Owner of the price, scope, and agreed contract terms prior to the bid process.
B. Provide three sealed bids if proposal on a stipulated sum basis
C. Bid all material with a minimum of 3 vendors
D. Provide time in the schedule to allow the Owner the right to reject any self-perform bid proposal that does not meet criteria above.

**PAGE 7**

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

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**§ 2.3.2.6** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of ~~A201–2007.~~ A201–2017.

**§ 2.3.2.7** The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the ~~Owner.~~Owner The Construction Manager, its contractors and subcontractors are responsible for the safety of the site, their personnel, and for the safe prosecution of the work on the Project. The Owner shall in no way be held responsible for providing Safety oversight for the work of the Construction Manager and its Contractors and Subcontractors. The Owner shall require that Contractor's performing work directly for the Owner are required to adhere to the Construction Manager's project safety requirements.

...

Section 3.12.10 of ~~A201–2007~~ A201–2017 shall apply to both the Preconstruction and Construction Phases.

...

Section 10.3 of ~~A201–2007~~ A201–2017 shall apply to both the Preconstruction and Construction Phases.

**PAGE 9**

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of ~~A201–2007,~~ A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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The Construction Manager shall be paid for its direct personnel expense per Section 4.1.4 below not to exceed in the aggregate of $2,331,341 , unless authorized in writing by the Owner or by Addendum.

**§ 4.1.3** If the Preconstruction Phase services covered by this Agreement have not been completed ~~within ( )~~ within(4) (Four) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

**§ 4.1.4** Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions. Preconstruction rates will be reimbursed at the rates set forth in Exhibit (xx). For ease of calculations, the UHS billable rate for labor should begin with raw salary and increased by applicable taxes, benefits, and holiday/vacation/sick. These rates shall be consistent with UHS Standard Business Terms.

...

0 % Zero

...

Shall be two and three quarters percent (2.75%) of the Cost of the Work

...

The fee for changes in the work will be the same fee enumerated in 5.1.1. above.

...

Shall Not be Less Than 10% and Not More Than 15% Combined Total for Overhead & Profit on Change Orders, unless otherwise approved by Owner

**§ 5.1.4** Rental rates for Construction Manager-owned equipment shall not exceed ~~percent ( %) of the standard rate paid at the place of the Project.~~Eighty percent (80 %) of the standard rates as listed in the regionally adjusted AED Greenbook.

**§ 5.1.5** Unit prices, if any: None

**PAGE 11**

All savings within the GMP shall be refunded to the Owner.

...

**§ 5.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document ~~A201–2007,~~ A201–2017, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

**§ 5.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document ~~A201–2007,~~ A201–2017, General Conditions of the Contract for Construction.

**§ 5.3.3** In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document ~~A201–2007~~ A201–2017 and the term "costs" as used in Section ~~7.3.7~~ 7.3.4 of AIA Document ~~A201–2007~~ A201–2017 shall have the meanings

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assigned to them in AIA Document ~~A201–2007~~ A201–2017 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**§ 5.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document ~~A201–2007~~ A201–2017 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

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*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify ~~in Section 11.5,~~ as a separate staff summary in Section 11.5 or as in Exhibit (xx), the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the ~~Work.)~~ Work..)*

...

**§ 6.2.4** Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3. For ease of calculations, the UHS billable rate for labor should begin with raw salary (annual salary divided by 2080 hours) and the billable rate for the burden items outlined in this section shall be fixed at forty-one percent (41 %) of substantiated and verified payroll for applicable taxes, benefits, and holiday/vacation/sick Substantiated payroll shall be hours worked properly charged to the project times the base salary rate of each employee. Audit shall be limited to verifying payroll hours and base salary rate of each employee once rates are approved.

**§ 6.2.5** 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, with the Owner's prior approval.~~ shall not be directly reimbursable and are not considered cost of the work. Any bonus, profit sharing and incentives should be included in the fee

...

**§ 6.5.2** 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 costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval. If the total rental or lease of equipment is estimated to be beyond the purchase price of said equipment, Construction Manager shall purchase equipment and return it to the owner at the completion of the Project.

**§ 6.5.3** Costs of recycling and/or removal of debris from the site of the Work and its proper and legal disposal.

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

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**6.5.7** Unless and to the extent that the Contract Documents require the Owner to provide them, Construction Manager's costs of temporary utilities as necessary for the Construction Manager to perform its Work including, but not limited to gas, water, electricity, sewer, connection fees, and utility consumptions charges.

**6.5.8** Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner.

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**§ 6.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. The Construction Manager shall be reimbursed for its insurance outlined in Section 8 Insurance and as Exhibit (xx) and must adhere to UHS Standard Business Terms.

...

**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section ~~13.5.3~~ 13.4.3 of AIA Document ~~A201–2007~~ A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

**§ 6.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document ~~A201–2007~~ A201–2017 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

**§ 6.6.6** Costs for electronic equipment and software, including licenses for software, directly related to the Work with the Owner's prior ~~approval.~~approval shall be reimbursed as a general condition and not as a unit cost per hour on supervisory staff.

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**§ 6.6.10 T**he deductible portion of any losses under policies of Builder's Risk unless the Construction Manager or subcontractor is at fault in which the entity responsible for the loss would be responsible for the deductible. Notwithstanding, and for purposes of the NNSMC project, wherein the Construction Manager has furnished the Builder's Risk Insurance Policy, the deductible portion to be paid by the party responsible for the loss shall be limited to $10,000 for general damage claims and $25,000 for claims involving water damage. For claims against the policy where the deductible is partially paid by the party causing the loss, the balance of the deductible shall otherwise be a reimbursable expense.

...

**§ 6.7.2** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document ~~A201–2007.~~A201–2017.

...

**§ 6.7.4** The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document ~~A201–2007~~ 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 6.8.

**§ 6.8 ~~Costs Not To Be Reimbursed~~Costs Not to Be Reimbursed**

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The Construction Manager shall, during the last week of each month, meet with the Architect and Owner (and/or other parties designated in writing by the Owner) to review and approve the draft Application for Payment submitted under Section 9.3.1 of A201. The approved draft will then be updated into a formal Application for Payment and submitted to the Owner for payment.

**§ 7.1.3** Provided that an Application for Payment is received by the ~~Architect~~ Owner not later than the 1st day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 1st day of the following month. If an Application for Payment is received by the Architect after the application date fixed

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above, payment shall be made by the Owner not later than ~~(~~ thirty (30 ) days after the Architect receives the Application for Payment.

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

...

**.1** Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document ~~A201–2007;~~A201–2017;

...

**.3** ~~Add the Construction Manager's Fee, less retainage of percent ( %).~~ Subtract 5% retainage;

**.4** add Construction Manager's Fee, General Conditions, General Requirements, and cost for Permits (for all of which no retention shall be held) The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 ~~or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~

~~**.4** Subtract retainage of percent ( %) from that portion of the Work that the Construction Manager self-performs;~~and consistent with 7.1.8 below

...

**.7** Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document ~~A201–2007.~~A201–2017.

**§ 7.1.8** The Owner and Construction Manager shall agree upon ~~(1)~~ a mutually acceptable procedure for review and approval of payments to Subcontractors and ~~(2)~~ the ~~percentage of retainage held on Subcontracts, and the~~ Construction Manager shall execute subcontracts in accordance with those agreements. All subcontracts and SPW shall be structured to hold retainage at 5% in conformance with NRS..

**PAGE 17**

**.1** the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document ~~A201–2007,~~ A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;

...

**§ 7.2.2** The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document ~~A201–2007.~~ A201–2017. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document ~~A201–2007.~~ A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

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

...

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document ~~A201–2007.~~A201–2017.
*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA ~~Document A201–2007.)~~Document A201–2017.)*

UHS prefers standard Contractor liability insurance and does not use CCIP or OCIP insurance products. The Construction Manager will adhere to UHS insurance requirements for small and large projects summarized in the UHS standard insurance requirements for Contractors.

UHS does not typically require Payment and Performance bonds on projects, but may consider bonding the entire project or individual bonding at the Subcontractor level if Contractor and UHS deem appropriate due to higher risk profile, limited contractors, etc. In these cases, Construction Manager shall include the cost of Labor & Material Payment and Performance Bonds on certain trade work line items within the GMP with approval from the Owner.

On a case by case basis, UHS and the Construction Manager will evaluate subcontractor default insurance programs or similar programs, UHS will ultimately decide if subcontractor default insurance is appropriate.

Builder's Risk insurance coverage will be evaluated on a case by case basis; however most new greenfield projects require the Construction Manager to carry Builders Risk. UHS traditionally carries Builder's Risk for renovations or projects that tie directly into an active facility.

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**§ 9.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of ~~A201–2007.~~ A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

**§ 9.2** For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document ~~A201–2007,~~ A201–2017, the method of binding dispute resolution shall be as follows:

...

[ X ] Arbitration pursuant to Section 15.4 of AIA Document ~~A201–2007~~A201–2017

...

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document ~~A201–2007~~ A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

...

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**§ 10.1.1** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of ~~A201–2007.~~A201–2017.

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**.1** Take the Cost of the Work incurred by the Construction Manager to the date of termination; plus equitable compensation for any demobilization costs incurred by the Construction Manager.

...

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document ~~A201–2007.~~A201–2017.

**§ 10.2.1** If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of ~~A201–2007~~ A201–2017 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.2.2** If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of ~~A201–2007~~ A201–2017 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

...

The Work may be suspended by the Owner as provided in Article 14 of AIA Document ~~A201–2007.~~ A201–2017. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document ~~A201–2007,~~ A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

...

**§ 11.1** Terms in this Agreement shall have the same meaning as those in ~~A201–2007.~~A201–2017.

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Section 1.5 of ~~A201–2007~~ A201–2017 shall apply to both the Preconstruction and Construction Phases.

...

Section 13.1 of ~~A201–2007~~ A201–2017 shall apply to both the Preconstruction and Construction Phases.

...

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

...

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**.2** AIA Document ~~A201–2007,~~ A201–2017, General Conditions of the Contract for Construction

...

Include Billing rates, Equipment Rate Schedules, Insurance Certifications, etc in this section.

...

Mark D'Arcy Vice President, Design & Construction

Bret Loughridge President

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*AIA® Document D401™ – 2003*

I, , 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 16:51:21 ET on 07/20/2020 under Order No. 2681862530 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™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

DocuSigned by:

Bret Lougbridge

F7E0B6440C5744A...

*(Signed)*

VP Operations

*(Title)*

7/20/2020

*(Dated)*

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# AIA® Document A201® – 2017

## *General Conditions of the Contract for Construction*

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

Northern Nevada Sierra Medical Center
625 Innovation Drive
Reno, Nevada 89511

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

Sparks Family Medical Center, Inc. c/o
Universal Health Services of Delaware367 South Gulph Road
King of Prussia, PA 19406

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

ESa Architects.
1033 Demonbreun Street, Suite 800
Nashville, Tennessee 37203
615-329-9445

**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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**14 TERMINATION OR SUSPENSION OF THE CONTRACT**

**15 CLAIMS AND DISPUTES**



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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

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

#### § 1.1.2 The Contract

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

#### § 1.1.3 The Work

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

#### § 1.1.4 The Project

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

#### § 1.1.5 The Drawings

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

#### § 1.1.6 The Specifications

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

#### § 1.1.7 Instruments of Service

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

#### § 1.1.8 Initial Decision Maker

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

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

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



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In the event that Contractor is aware of inconsistencies within or between Contract Documents and applicable standards, codes and ordinances, provided the Contractor did not otherwise clarify or qualify such inconsistency or discrepancy in the GMP documents, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Subparagraph shall not relieve the Contractor of any other obligations set forth in the Contract Documents.

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

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

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

**§ 1.3 Capitalization**

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

**§ 1.4 Interpretation**

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

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

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

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

**§ 1.6 Notice**

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

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

**§ 1.7 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™–2013, Building



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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. The Architect promptly deliver to the Contractor a full operable copy of the Architect's building and building system model(s) in order to facilitate the placement of the features, systems and components that will be supplied by the Contractor's personnel, suppliers and subcontractors. The Construction Manager's BIM shall be forwarded to Owner for Owner's exclusive use for operations and post construction.

**§ 1.9 Contractor Knowledge**
The terms "knowledge", "recognize", and "discover", their respective derivatives, and similar terms in the Contract Documents as used in reference to the Contractor, shall be interpreted to mean facts and information the Contractor knows or reasonably should know, recognizes or reasonably should recognize, and discovers or reasonably should discover in exercising the care, skill, and diligence required by the Contract Documents. The term "reasonably inferable" and similar terms in the Contract shall mean reasonably inferable by a contractor familiar with the Project and exercising the due care, skill, and diligence, required of a Contractor by the Contract Documents."

## ARTICLE 2 OWNER

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

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

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

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.


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

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

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

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

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

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

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

**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness so as not to delay the progress of the Work. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

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

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

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

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

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. Additionally, if Contractor refuses, fails or is unable to supply enough properly skilled workmen, materials or equipment to perform the Work according to the schedule, Owner may, in its sole discretion, supplement the forces of Contractor to perform a portion of Contractor's work upon forty eight (48) hours' notice to Contractor, and charge Contractor the actual reasonable costs associated with the supplementation. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies and supplementing Contractors work, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure,. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to

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the Owner.
If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

## ARTICLE 3 CONTRACTOR

### § 3.1 General

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

The Contractor accepts the relationship of trust and confidence established between the Contractor and the Owner by the Agreement and the Conditions of the Contract. The Contractor covenants with the Owner to furnish its best skill and judgment and to cooperate in furthering the interests of the Owner, to furnish efficient business administration and superintendence, to use its best effort to furnish at all times an adequate supply of skilled workers and materials, and to perform the Work in the best way and in the most expeditious and economical manner consistent with the interests and expectations of the Owner. Contractor represents that it is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform its obligations hereunder.

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

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

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

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with 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.

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

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


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**§ 3.3 Supervision and Construction Procedures**

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

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

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

**§ 3.3.4** If the Work is being performed on a cost reimbursable basis, nothing in these General Conditions is intended to preclude or limit reimbursement where otherwise permitted in the Agreement. For example, if these General Conditions state to the effect that a cost shall be "at Contractor's expense", such a provision shall not preclude reimbursement where otherwise permitted by the Agreement.

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

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

**§ 3.6 Taxes**

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



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

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

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

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

**§ 3.7.4 Concealed or Unknown Conditions**

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

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

**§ 3.8 Allowances**

**§ 3.8.1** The Contractor has included or shall include in the GMP 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 cost for unloading and handling at the site, labor, installation costs, and other expenses shall also be covered by the Allowance. Provided the Allowance amount is included in the total of the GMP, Contractor's Fee shall be included in the GMP and not a part of the Allowance.

**.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 so as to not delay the Progress of the Work.

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**§ 3.9 Superintendent**

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

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

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

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

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the 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.

**3.10.4** From the Contractor's initial construction schedule and other information as developed, the Contractor, in cooperation with the Owner, the Architect, and major Subcontractors, will continuously monitor, and shall revise and update monthly, the Schedule. The construction schedule shall be further revised or expanded to provide a fully coordinated entire project schedule with more detailed information concerning the time requirements for all parts of the Work (Including but not limited to design milestones, FFE, DOH/AHJ inspections. Substantial completion, first patient-day, final completion, etc.) and other elements of the Project as such information is developed. The Contractor and each Subcontractor, materialman, and supplier shall provide revised data in order to assist the Contractor in determining the most appropriate and acceptable construction schedule and acceleration opportunities for the Work and to update the Schedule. Submission of an updated Schedule, acceptable to the Owner, which acceptance shall not unreasonably be withheld, shall be a condition precedent to receiving progress payments. The Contractor shall provide Schedule updates within ten (10) days following a request from the Owner. The Contractor shall give specific notice to the Owner and its consultants of any change in the logic of the schedule or any part thereof, or the removal of any restraints, or the deduction of any duration. The Construction Schedule shall cover all field tasks, significant material deliveries, other off-site restraints such as permits, inspections, approvals and milestones for start dates, completion dates and availability dates as required. Tasks shall be broken down into activities that allow monitoring monthly progress

**§ 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

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delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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

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

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

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

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

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

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

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

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

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

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

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



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specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy, accuracy or completeness of the services, certifications or approvals provided by such design professional or for any performance and design criteria provided by such design professionals or by Architect. The Construction Manager, or its subcontractors, shall comment or formally submit an RFI in regards to any potential performance or design criteria which by the contractors knowledge are not best practice or industry standards consistent with section "1.9.Contractors Knowledge".

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

**§ 3.13 Use of Site**

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

**§ 3.14 Cutting and Patching**

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

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

**§ 3.15 Cleaning Up**

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

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

**§ 3.16 Access to Work**

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

**§ 3.17 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright or patent violations are contained in



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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 Owner.

**§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, 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 the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

**§ 3.18.3** To the fullest extent permitted by law, including without limitation California Civil Code, if applicable, Contractor's indemnity obligations under Section 3.18 will also include all fines, penalties, damages, liability, costs, expenses (including reasonable attorneys' fees) and any punitive damages arising out of or in connection with any violation of or failure to comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of the Work by the Contractor, Subcontractor, or any person or entity for whom either is responsible, means, methods, procedures, techniques, or sequences of execution or performance of the Work, and failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible. Notwithstanding the foregoing, nothing under Section 3.18, including this section 3.18.3, requires Contractor to indemnify an indemnitee for any loss, penalty, damage, liability, cost or expense of any kind resulting from Indemnitee's sole negligence or willful misconduct.

**§ 3.18.4** Contractor shall indemnify and hold harmless all of the Indemnitees from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing the Contractor's defense, indemnity, and hold harmless obligations.

**§ 3.18.5** Neither final payment by Owner nor acceptance of the Project shall constitute a waiver of the foregoing indemnities and, notwithstanding any provision in the Contract Documents to the contrary, the foregoing indemnity obligations of Contractor shall survive termination, for any reason, of the Contract.

**§ 3.18.6** Indemnification hereunder is in addition to and not in lieu of any common law indemnification to which Indemnitees are entitled.

## 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.



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**§ 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 unless such failure results from a directive of the Architect or a failure of Architect to perform its responsibilities under 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. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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

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

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

**§ 4.2.8** The Architect will prepare 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.



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**§ 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 so as to not delay the progress of the Work. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

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

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

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

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect or Owner 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 Owner or 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.


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

**§ 5.3 Subcontractual Relations**

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

**§ 5.4 Contingent Assignment of Subcontracts**

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

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

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

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

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

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

**§ 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.



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**§ 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 discovered 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 discovered.

**§ 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, disruption of work, improperly timed activities, damage to the Work or defective construction.

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

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

**§ 6.3 Owner's Right to Clean Up**

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

## ARTICLE 7 CHANGES IN THE WORK

**§ 7.1 General**

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

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

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

**§ 7.2 Change Orders**

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

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



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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, GMP or Contract Time, or all of them. 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, GMP 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 or Owner 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 Owner and in line with approved business terms;
- **.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, GMP and/or Contract Sum, 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 Owner 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, GMP 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, GMP 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 or GMP shall be actual net cost as confirmed by the Owner. 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



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certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the parties will execute a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive. All determinations by Architect may be disputed by Contractor and addressed in accordance with Article 15.

**§ 7.4 Minor Changes in the Work**

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

## ARTICLE 8 TIME

**§ 8.1 Definitions**

**§ 8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. Contractor acknowledges that completion of the Work in a timely manner is of critical importance to Owner and that Contractor's failure (except to the extent such delay is caused by Owner or otherwise excused as provided herein) to achieve Substantial Completion of the Work within the Contract Time may cause Owner to suffer damages. The Contractor acknowledges responsibility to maintain the schedule and use funds within the GMP Contract appropriately (and with Owner's approval) to maintain as well as correct any schedule deficiencies caused by Contractor or a Subcontractor.

**§ 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 shall be the date on which Contractor obtains the Certificate of Occupancy in accordance with Section 9.8.

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

**§ 8.2 Progress and Completion**

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

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

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

**§ 8.3 Delays and Extensions of Time**

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



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**§ 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 or the under the law.

## 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.

**§ 9.1.3** The Contractor shall provide monthly updates as to the Contract Sum and overall status of the Guaranteed Maximum Price. At a minimum, this report should include:

1. Executive Summary
2. Baseline budget along with current budget and projected final costs (including Change Orders)
3. CM Contingency Status and planned/projected use
4. CM Buyout summary noting budget, trade buyout amount, holds, savings/overrun, and status report.
5. Status of Allowances and holds
6. Summary of High-Risk Items, potential change orders, risk register status, and responsible party.
7. Milestones - Showing Original schedule, current and projected.

### § 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 Owner and 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 Owner and Architect. This schedule, unless objected to by the Owner or 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 Owner or Architect and supported by such data to substantiate its accuracy as the Owner and Architect may require, and unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### § 9.3 Applications for Payment

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

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

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

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location



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agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work, except for those claims or liens specifically noted in the Application for Payment. If the Contractor has knowledge of any claims or liens, the Contractor will certify as to what it knows of the claim or liens in the Application for Payment, and the Contractor will covenant to promptly bond or otherwise discharge or expunge such liens to the extent Owner has paid the Contractor for the Work in question. If any Subcontractor, Sub-Subcontractor or supplier records or files, or maintains any action on or respecting a claim of mechanics' lien, stop payment notice, or lis pendens relating to the Work, the Contractor will promptly procure appropriate release bonds that will extinguish or expunge the mechanics' lien, stop payment notice, or lis pendens, provided that the Owner has paid the Contractor for the Work in question.

**§ 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. If Architect fails to respond within such seven-day period, the Contractor's Application for Payment will be deemed certified as if Architect had issued a Certificate for Payment in the full amount of the Application for Payment.

**§ 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 reasonable 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; following written notice from the Owner or Architect and a reasonable period of time.
- **.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;



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**.3** failure of the Contractor to make payments properly due to Subcontractors or suppliers for labor, materials or equipment;
**.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
**.5** damage to the Owner or a Separate Contractor;
**.6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover , Consequential damages for the anticipated delay, unless the anticipated delay is excusable under Section 8.3.; or
**.7** repeated failure to carry out the Work in accordance with the Contract Documents.

**§ 9.5.2** When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

**§ 9.5.4** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

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

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

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

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

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

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

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


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**§ 9.7 Failure of Payment**

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

**§ 9.7.1** If Owner is entitled to reimbursement or payment from Contractor under or pursuant to the Contract Documents, such payment will be made promptly upon demand by Owner. If Contractor fails to promptly make any payment owed to Owner, or if Owner incurs any costs and expenses to cure any default of Contractor or to correct defective Work, Owner has an absolute right to offset such amount against the Contract Sum. Owner may also, in its sole discretion, elect either to (1), deduct an amount equal to that which Owner is entitled from any payment then or thereafter due Contractor from Owner, or (2) issue a written notice to Contractor reducing Contract Sum by an amount equal to that which Owner is owed.

**§ 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 shall be defined by issuance of the Certificate of Occupancy by the AHJ.. Owner expectations for Substantial Completion include full MEP system complete, operational, and balanced; all major work complete, and very limited punch list/minor cosmetic work remaining.

At the date when the Contract is executed or as a future Addendum included with the GMP, the Contractor and Owner shall establish and mutually agree to the Project Schedule, which shall be set forth in the Agreement as an Exhibit which shall establish the total Allowable Contract Time. The Allowable Contract Time may, from time to time, be adjusted by Change Order as allowed for within the Agreement and approved by owner. The Project Schedule should reflect a duration for construction activities that will allow essentially all construction activities to be 100% complete at the time of "Substantial Completion", and to allow all punch list to be complete by Owner first patient day.

Furthermore, for purposes of this Agreement, Contractor and Owner agree to meet and confer when the project is approximately 75% complete, as established by the total completed and stored to date on Contractor's pay application, to confirm final remaining duration (Time) allowed for Contractor to achieve Substantial Completion. This Contract time will serve as the date thereafter that Damages, as contemplated in15.1.7 shall begin to accrue unless adjusted by Change Order as allowed for within the Agreement and approved by Owner.

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

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

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



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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. In addition, the Contractor is required to obtain temporary or permanent certificate of occupancy permits from the proper authorities having jurisdiction to be deemed Substantially Complete. 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 as shown on the lists to be provided pursuant to Section 9.8.4 by withholding no more than 150% of the reasonable cost of completing or correcting such Work.

**§ 9.9 Partial Occupancy or Use**

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

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

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

**§ 9.10 Final Completion and Final Payment**

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

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

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

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

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

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

### § 10.2 Safety of Persons and Property

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

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

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

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

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

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


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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.

**§ 10.2.9** In the event the Contractor identifies activities or conditions during performance of the Work or at the Project, which, in the Contractor's good faith opinion, pose an unreasonable risk of bodily injury or property damage, whether immediate or in the future, the Contractor shall have the right to immediately take steps to protect its personnel and Subcontractors and stop Work and remove its personnel from the affected area.

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

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

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

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


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**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

**§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall 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, Architect's consultants, and Owner's Consultant's shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. Payment for general liability insurance shall be consistent with the agreed upon business terms and shall be billed according to work in place and not as an initial lump sum. For project specific policies (including builder's risk, Bonds, SDI, etc.), Contractor shall be entitled to bill at the time premium is paid.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

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

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

**§ 11.2 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



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procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

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

**§ 11.3 Waivers of Subrogation**

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

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

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

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

**§11.5 Adjustment and Settlement of Insured Loss**

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

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor


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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 aby Contractor without change in the Contract Time or GMP.

**§ 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.

If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project 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 anyone for whose acts they may be liable and for which the Contactor is responsible."

**§ 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.



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**§ 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 affected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

**§ 13.1 Governing Law**

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

**§ 13.2 Successors and Assigns**

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

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

**§ 13.3 Rights and Remedies**

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

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

**§ 13.4 Tests and Inspections**

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and 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



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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 in addition to the GMP.

**§ 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 in addition to the GMP.

**§ 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 in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

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

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

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

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- **.1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;



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.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. This obligation for payment shall survive termination of the Contract.

**§ 14.3 Suspension by the Owner for Convenience**

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

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

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

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

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

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

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

**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed including a pro-rata portion of profit and fee; 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.

## 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

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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 damages in accordance with the Contract Documents.

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

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

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

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

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

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

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

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

*(Paragraphs deleted)*
**§ 15.1.7 Waiver of Claims for Excess Consequential Damages**

Contractor and Owner waive Claims against each other for Excess Consequential Damages arising out of or relating to this Contract. The above waiver does not apply to (i) to the extent such claims are covered and paid by general liability insurance required under this agreement or (ii) to any claims against a party that is in willful default of the Contract Documents. For purposes of this Agreement, (i) "Excess Consequential Damages" means damages incurred by a party for lost profits, lost business opportunity and other indirect damages. With respect to the Owner, "Consequential Damages" are defined as cost of onboarding staff, moving staff, patients, furniture and equipment (including storage of equipment and furniture) and renting of replacement facilities due to the inability to use all or a portion of the Project during the period in which the Project or portion of the Project is unsuitable for use due to a late Certificate of


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Occupancy, late milestone for Owner furnished equipment delivery, or delay in First Patient Day resulting from the fault of the Contractor. For the avoidance of doubt, the Parties herewith agree that the maximum amount of Consequential Damages, of any type, to be paid by Contractor to Owner shall be capped at One Times (1X) of Contractor's Fee.

**§ 15.2 Initial Decision**

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

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

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

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

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

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

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

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

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



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**§ 15.3 Mediation**

Section 15.3 shall be deleted in its entirety, as the Parties desire to move directly to Arbitration.

*(Paragraphs deleted)*

**§ 15.4 Arbitration**

**§ 15.4.1** Arbitration shall be utilized 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.

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

**§ 15.4.4 Consolidation or Joinder**

**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

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

**§ 15.4.4.4** Arbitration, at the Contractor's election, may include Subcontractors to Contractor that Contractor deems relevant to the matter in dispute and upon Contractor's request, the Arbitrator shall decide all or a particular portion of a dispute between the Contractor and a Subcontractor and, as Contractor may request, the Arbitrator shall speak to the extent to which the Arbitrator's decisions regarding a dispute between Contractor and Owner and the dispute between Contractor and Subcontractor are inter-related.

**16** Potential Incentive Program - Incentive programs will be evaluated on a case by case basis with input from the Design and Construction teams and ultimately determined by the owner.

If Incentive Program is implemented, Owner and Contractor will mutually agree to incentives to stimulate increased value and benefit to the Project in terms of quality, patient safety, facility disruptions, schedule, budget, energy efficiencies, and other operational goals. Incentive program to be added as an Exhibit to the contract via an Amendment, Change Order at or before the GMP.



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## *General Conditions of the Contract for Construction*

**ADDITIONS AND DELETIONS:**
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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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# *Additions and Deletions Report for*

*AIA® Document A201® – 2017*

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**PAGE 1**

Northern Nevada Sierra Medical Center
625 Innovation Drive
Reno, Nevada 89511

...

Sparks Family Medical Center, Inc. c/o
Universal Health Services of Delaware367 South Gulph Road
King of Prussia, PA 19406

...

ESa Architects.
1033 Demonbreun Street, Suite 800
Nashville, Tennessee 37203
615-329-9445

**PAGE 3**

~~Certificate~~ Certificate of Substantial Completion

**Commented [KT2]:**

**PAGE 11**

In the event that Contractor is aware of inconsistencies within or between Contract Documents and applicable standards, codes and ordinances, provided the Contractor did not otherwise clarify or qualify such inconsistency or discrepancy in the GMP documents, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Subparagraph shall not relieve the Contractor of any other obligations set forth in the Contract Documents.

...

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~~ may 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.

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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

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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. The Architect promptly deliver to the Contractor a full operable copy of the Architect's building and building system model(s) in order to facilitate the placement of the features, systems and components that will be supplied by the Contractor's personnel, suppliers and subcontractors. The Construction Manager's BIM shall be forwarded to Owner for Owner's exclusive use for operations and post construction.

**§ 1.9 Contractor Knowledge**

The terms "knowledge", "recognize", and "discover", their respective derivatives, and similar terms in the Contract Documents as used in reference to the Contractor, shall be interpreted to mean facts and information the Contractor knows or reasonably should know, recognizes or reasonably should recognize, and discovers or reasonably should discover in exercising the care, skill, and diligence required by the Contract Documents. The term "reasonably inferable" and similar terms in the Contract shall mean reasonably inferable by a contractor familiar with the Project and exercising the due care, skill, and diligence, required of a Contractor by the Contract Documents."

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**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable ~~promptness.~~ promptness so as not to delay the progress of the Work. 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 defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, 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~~ deficiencies. Additionally, if Contractor refuses, fails or is unable to supply enough properly skilled workmen, materials or equipment to perform the Work according to the schedule, Owner may, in its sole discretion, supplement the forces of Contractor to perform a portion of Contractor's work upon forty eight (48) hours' notice to Contractor, and charge Contractor the actual reasonable costs associated with the supplementation. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such ~~deficiencies,~~ deficiencies and supplementing Contractors work, 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~~ neglect or failure,. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

**PAGE 14**

The Contractor accepts the relationship of trust and confidence established between the Contractor and the Owner by the Agreement and the Conditions of the Contract. The Contractor covenants with the Owner to furnish its best skill and judgment and to cooperate in furthering the interests of the Owner, to furnish efficient business administration and superintendence, to use its best effort to furnish at all times an adequate supply of skilled workers and materials, and to perform the Work in the best way and in the most expeditious and economical manner consistent with the interests and expectations of the Owner. Contractor represents that it is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform its obligations hereunder.

...

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, ~~codes,~~ codes as required by current law, 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.

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

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

...

**§ 3.3.4** If the Work is being performed on a cost reimbursable basis, nothing in these General Conditions is intended to preclude or limit reimbursement where otherwise permitted in the Agreement. For example, if these General Conditions state to the effect that a cost shall be "at Contractor's expense", such a provision shall not preclude reimbursement where otherwise permitted by the Agreement.

...

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

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

...

**§ 3.8.1** The Contractor has included or shall include in the ~~Contract Sum~~ GMP 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.

...

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~~.2 Contractor's costs~~ .2Contractor's cost 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~~ and other expenses shall also be covered by the Allowance. Provided the Allowance amount is included in the total of the GMP, Contractor's Fee shall be included in the GMP and not a part of the Allowance..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.~~promptness so as to not delay the Progress of the Work.

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**PAGE 17**

**3.10.4** From the Contractor's initial construction schedule and other information as developed, the Contractor, in cooperation with the Owner, the Architect, and major Subcontractors, will continuously monitor, and shall revise and update monthly, the Schedule. The construction schedule shall be further revised or expanded to provide a fully coordinated entire project schedule with more detailed information concerning the time requirements for all parts of the Work (Including but not limited to design milestones, FFE, DOH/AHJ inspections. Substantial completion, first patient-day, final completion, etc.) and other elements of the Project as such information is developed. The Contractor and each Subcontractor, materialman, and supplier shall provide revised data in order to assist the Contractor in determining the most appropriate and acceptable construction schedule and acceleration opportunities for the Work and to update the Schedule. Submission of an updated Schedule, acceptable to the Owner, which acceptance shall not unreasonably be withheld, shall be a condition precedent to receiving progress payments. The Contractor shall provide Schedule updates within ten (10) days following a request from the Owner. The Contractor shall give specific notice to the Owner and its consultants of any change in the logic of the schedule or any part thereof, or the removal of any restraints, or the deduction of any duration. The Construction Schedule shall cover all field tasks, significant material deliveries, other off-site restraints such as permits, inspections, approvals and milestones for start dates, completion dates and availability dates as required. Tasks shall be broken down into activities that allow monitoring monthly progress

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**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy, accuracy or completeness of the services, certifications or approvals provided by such design professional or for any performance and design criteria provided by such design professionals or by Architect. The Construction Manager, or its subcontractors, shall comment or formally submit an RFI in regards to any potential performance or design criteria which by the contractors knowledge are not best practice or industry standards consistent with section "1.9.Contractors Knowledge".

**PAGE 19**

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

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manufacturers is required by the Contract Documents, or where the copyright or patent 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.~~Owner.

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**§ 3.18.3** To the fullest extent permitted by law, including without limitation California Civil Code, if applicable, Contractor's indemnity obligations under Section 3.18 will also include all fines, penalties, damages, liability, costs, expenses (including reasonable attorneys' fees) and any punitive damages arising out of or in connection with any violation of or failure to comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of the Work by the Contractor, Subcontractor, or any person or entity for whom either is responsible, means, methods, procedures, techniques, or sequences of execution or performance of the Work, and failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible. Notwithstanding the foregoing, nothing under Section 3.18, including this section 3.18.3, requires Contractor to indemnify an indemnitee for any loss, penalty, damage, liability, cost or expense of any kind resulting from Indemnitee's sole negligence or willful misconduct.

**§ 3.18.4** Contractor shall indemnify and hold harmless all of the Indemnitees from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnitees in enforcing the Contractor's defense, indemnity, and hold harmless obligations.

**§ 3.18.5** Neither final payment by Owner nor acceptance of the Project shall constitute a waiver of the foregoing indemnities and, notwithstanding any provision in the Contract Documents to the contrary, the foregoing indemnity obligations of Contractor shall survive termination, for any reason, of the Contract.

**§ 3.18.6** Indemnification hereunder is in addition to and not in lieu of any common law indemnification to which Indemnitees are entitled.

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**§ 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.~~ Documents unless such failure results from a directive of the Architect or a failure of Architect to perform its responsibilities under the Contract Documents.. The Architect will not have control over or charge ~~of, and~~ 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.

...

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~~ 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.

...

**§ 4.2.8** The Architect will prepare ~~Change Orders and Construction Change Directives, and~~ Construction Change Directives,and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and

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make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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**§ 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.~~ promptness so as to not delay the progress of the Work. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

...

**§ 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 or Owner 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 Owner or Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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**§ 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. Owner's Separate Contractor's shall be required to adhere to the safety requirements of the Contractor.

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**§ 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,~~ 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 discovered 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.~~discovered.

**§ 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, disruption of work, improperly timed activities, damage to the Work or defective construction.

...

**.2** The amount of the adjustment, if any, in the Contract Sum; GMP and any component of the GMP and

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**§ 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~~ Sum, GMP or Contract Time, or ~~both.~~ all of them. 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~~ Sum, GMP and Contract Time being adjusted accordingly.

...

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**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect or Owner 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;~~Owner and in line with approved business terms;

...

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, GMP and/or Contract Sum, 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~~ Owner 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~~ Sum, GMP 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~~ Sum, GMP 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 or GMP shall be actual net cost as confirmed by the ~~Architect.~~ Owner. 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.

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**§ 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~~ parties will execute a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive. All determinations by Architect may be disputed by Contractor and addressed in accordance with Article 15.

...

**§ 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. Contractor acknowledges that completion of the Work in a timely manner is of critical importance to Owner and that Contractor's failure (except to the extent such delay is caused by Owner or otherwise excused as provided herein) to achieve Substantial Completion of the Work within the Contract Time may cause Owner to suffer damages. The Contractor acknowledges responsibility to maintain the schedule and use funds within the GMP Contract appropriately (and with Owner's approval) to maintain as well as correct any schedule deficiencies caused by Contractor or a Subcontractor.

...

**§ 8.1.3** The date of Substantial Completion ~~is the date certified by the Architect~~ shall be the date on which Contractor obtains the Certificate of Occupancy in accordance with Section 9.8.

...

**§ 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;

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(3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the ~~Architect~~ Owner determines, justify delay, then the Contract Time shall be extended for such reasonable time as the ~~Architect~~ Owner may determine.

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**§ 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.~~Documents or the under the law.

...

**§ 9.1.3** The Contractor shall provide monthly updates as to the Contract Sum and overall status of the Guaranteed Maximum Price. At a minimum, this report should include:

1. Executive Summary
2. Baseline budget along with current budget and projected final costs (including Change Orders)
3. CM Contingency Status and planned/projected use
4. CM Buyout summary noting budget, trade buyout amount, holds, savings/overrun, and status report.
5. Status of Allowances and holds
6. Summary of High-Risk Items, potential change orders, risk register status, and responsible party.
7. Milestones - Showing Original schedule, current and projected.

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Owner and 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 Owner and Architect. This schedule, unless objected to by the Owner or 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 Owner or Architect and supported by such data to substantiate its accuracy as the Owner and Architect may require, and unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

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**§ 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.~~Work, except for those claims or liens specifically noted in the Application for Payment. If the Contractor has knowledge of any claims or liens, the Contractor will certify as to what it knows of the claim or liens in the Application for Payment, and the Contractor will covenant to promptly bond or otherwise discharge or expunge such liens to the extent Owner has paid the Contractor for the Work in question. If any Subcontractor, Sub-Subcontractor or supplier records or files, or maintains any action on or respecting a claim of mechanics' lien, stop payment notice, or lis pendens relating to the Work, the Contractor will promptly procure appropriate release bonds that will extinguish or expunge the mechanics' lien, stop payment notice, or lis pendens, provided that the Owner has paid the Contractor for the Work in question.

...

**§ 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. If Architect fails to

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respond within such seven-day period, the Contractor's Application for Payment will be deemed certified as if Architect had issued a Certificate for Payment in the full amount of the Application for Payment.

...

**§ 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 reasonable 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; following written notice from the Owner or Architect and a reasonable period of time.

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**.3** failure of the Contractor to make payments properly due to Subcontractors or suppliers for labor, materials or equipment;

...

**.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;~~ , Consequential damages for the anticipated delay, unless the anticipated delay is excusable under Section 8.3.; or

...

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

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

**PAGE 30**

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

**§ 9.7.1** If Owner is entitled to reimbursement or payment from Contractor under or pursuant to the Contract Documents, such payment will be made promptly upon demand by Owner. If Contractor fails to promptly make any payment owed to Owner, or if Owner incurs any costs and expenses to cure any default of Contractor or to correct defective Work, Owner has an absolute right to offset such amount against the Contract Sum. Owner may also, in its sole discretion, elect either to (1), deduct an amount equal to that which Owner is entitled from any payment then or thereafter due Contractor from Owner, or (2) issue a written notice to Contractor reducing Contract Sum by an amount equal to that which Owner is owed.

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**§ 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 shall be defined by issuance of the Certificate of Occupancy by the AHJ.. Owner expectations for Substantial Completion include full MEP system complete, operational, and balanced; all major work complete, and very limited punch list/minor cosmetic work remaining.

At the date when the Contract is executed or as a future Addendum included with the GMP, the Contractor and Owner shall establish and mutually agree to the Project Schedule, which shall be set forth in the Agreement as an Exhibit which shall establish the total Allowable Contract Time. The Allowable Contract Time may, from time to time, be adjusted by Change Order as allowed for within the Agreement and approved by owner. The Project Schedule should reflect a duration for construction activities that will allow essentially all construction activities to be 100% complete at the time of "Substantial Completion", and to allow all punch list to be complete by Owner first patient day.

Furthermore, for purposes of this Agreement, Contractor and Owner agree to meet and confer when the project is approximately 75% complete, as established by the total completed and stored to date on Contractor's pay application, to confirm final remaining duration (Time) allowed for Contractor to achieve Substantial Completion. This Contract time will serve as the date thereafter that Damages, as contemplated in15.1.7 shall begin to accrue unless adjusted by Change Order as allowed for within the Agreement and approved by Owner.

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**§ 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. In addition, the Contractor is required to obtain temporary or permanent certificate of occupancy permits from the proper authorities having jurisdiction to be deemed Substantially Complete. 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.~~Documents as shown on the lists to be provided pursuant to Section 9.8.4 by withholding no more than 150% of the reasonable cost of completing or correcting such Work.

...

**§ 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. For any partial occupancy or use, the Owner shall reduce retainage proportionately to the Contractor at the time of partial occupancy or use.

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**§ 10.2.9** In the event the Contractor identifies activities or conditions during performance of the Work or at the Project, which, in the Contractor's good faith opinion, pose an unreasonable risk of bodily injury or property damage, whether immediate or in the future, the Contractor shall have the right to immediately take steps to protect its personnel and Subcontractors and stop Work and remove its personnel from the affected area.

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

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**§ 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~~ Architect's consultants, and Owner's Consultant's shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. Payment for general liability insurance shall be consistent with the agreed upon business terms and shall be billed according to work in place and not as an initial lump sum. For project specific policies (including builder's risk, Bonds, SDI, etc.), Contractor shall be entitled to bill at the time premium is paid.

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**§ 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~~ aby Contractor without change in the Contract ~~Time.~~Time or GMP.

...

If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project 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 anyone for whose acts they may be liable and for which the Contactor is responsible."

**PAGE 37**

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~~ affected whether or not final payment has been made.

...

**§ 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.~~expense in addition to the GMP.

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**§ 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.~~expense in addition to the GMP.

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**§ 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~~ This obligation for payment shall survive termination of the Contract.

...

**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly ~~executed,~~ executed including a pro-rata portion of profit and fee; 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.

...

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.

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~~**§ 15.1.7 Waiver of Claims for Consequential Damages**~~

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

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

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

**§ 15.1.7 Waiver of Claims for Excess Consequential Damages**

Contractor and Owner waive Claims against each other for Excess Consequential Damages arising out of or relating to this Contract. The above waiver does not apply to (i) to the extent such claims are covered and paid by general liability insurance required under this agreement or (ii) to any claims against a party that is in willful default of the Contract Documents. For purposes of this Agreement, (i) "Excess Consequential Damages" means damages incurred by a party for lost profits, lost business opportunity and other indirect damages. With respect to the Owner, "Consequential Damages" are defined as cost of onboarding staff, moving staff, patients, furniture and equipment (including storage of equipment and furniture) and renting of replacement facilities due to the inability to use all or a portion of the Project during the period in which the Project or portion of the Project is unsuitable for use due to a late Certificate of Occupancy, late milestone for Owner furnished equipment delivery, or delay in First Patient Day resulting from the fault of the Contractor. For the avoidance of doubt, the Parties herewith agree that the maximum amount of Consequential Damages, of any type, to be paid by Contractor to Owner shall be capped at One Times (1X) of Contractor's Fee.

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Section 15.3 shall be deleted in its entirety, as the Parties desire to move directly to Arbitration.

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

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

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

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

**§ 15.4.1** ~~If the parties have selected arbitration~~ Arbitration shall be utilized 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.

...

**§ 15.4.4.4** Arbitration, at the Contractor's election, may include Subcontractors to Contractor that Contractor deems relevant to the matter in dispute and upon Contractor's request, the Arbitrator shall decide all or a particular portion of a dispute between the Contractor and a Subcontractor and, as Contractor may request, the Arbitrator shall speak to the extent to which the Arbitrator's decisions regarding a dispute between Contractor and Owner and the dispute between Contractor and Subcontractor are inter-related.

**16** Potential Incentive Program - Incentive programs will be evaluated on a case by case basis with input from the Design and Construction teams and ultimately determined by the owner.

If Incentive Program is implemented, Owner and Contractor will mutually agree to incentives to stimulate increased value and benefit to the Project in terms of quality, patient safety, facility disruptions, schedule, budget, energy efficiencies, and other operational goals. Incentive program to be added as an Exhibit to the contract via an Amendment, Change Order at or before the GMP.

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I, , 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 16:51:42 ET on 07/20/2020 under Order No. 2681862530 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, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

DocuSigned by:

Bret Loughridge

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*(Signed)*

VP Operations

*(Title)*

7/20/2020

*(Dated)*

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# EXHIBIT “4”

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# SR Construction, Inc.

3579 Red Rock Street

LAS VEGAS, NEVADA 89103

Phone: 702-877-6111 Fax: 702-258-6326


DS

FULLY EXECUTED

**MASTER SUBCONTRACT AGREEMENT** Agreement No**. 02550-PEE**

This AGREEMENT is made and entered into at Las Vegas, Nevada on this day October 4, 2019 by and between SR Construction, Inc. (hereinafter called "Contractor"), and Peek Brothers Construction Incorporated Thereinafter called "Subcontractor") with principle offices at 400 Carroll Drive, Fernley, Nevada 89408.

**WHEREAS**, Contractor may from time to time desire Subcontractor to perform work and/or provide items of equipment, machinery, materials or supplies in the conduct of Contractor's operations; and

**WHEREAS**, Contractor and Subcontractor desire to establish certain general terms and conditions, which shall apply to and become part of each and every subcontract, whether written or oral, entered into between the parties.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties agree as follows:

## ENTIRE AGREEMENT AND OTHER CONDITIONS

This Agreement reflects the entire agreement between the parties with respect to its subject matter. Except for any secrecy or other nondisclosure agreements between the parties, all other oral or written agreements, contracts, understandings, conditions, or representations with respect to the subject matter of this Agreement are superseded by this Agreement.

## SCOPE OF WORK

### 1. PERFORMANCE OF WORK

Contractor and Subcontractor may agree from time to time that Subcontractor shall perform certain work and/or provide items of equipment, machinery, materials at supplies for Contractor.

Subcontractor certifies and agrees that it is familiar with the codes and standards that apply to the performance of all aspects of its work and shall diligently perform all work in a skillful and workmanlike manner. Except as otherwise specifically agreed, Subcontractor shall provide all labor and skills and all equipment, machinery, materials and supplies necessary for the performance of such work. Title to all work, including all studies, designs, specifications, and data shall belong to Contractor.

Supplementary drawings, plans, and specifications, which in the judgment of Contractor may be necessary or useful to facilitate the progress of the work, will be furnished by Contractor. Such documents are intended to be explanatory of each other but, should Subcontractor believe there are any discrepancies or misunderstandings as to the meaning of anything contained therein, Subcontractor shall request an explanation from Contractor, whose explanation shall be final and binding on Subcontractor. Such explanations shall be given by Contractor in writing to Subcontractor. Copies of drawings, plans, and specifications shall at all times be kept on file by Subcontractor and shall be readily accessible at locations where work is being performed.

## SUBCONTRACTS BETWEEN THE PARTIES

Any subcontract whereby Subcontractor agrees to perform work and/or provide items of equipment, machinery, materials or supplies for Contractor may be written or oral. The parties shall endeavor, however, to execute a "Work Order'' in the form set forth in Exhibit "A" ("Work Order"), attached hereto and made a part hereof, prior to beginning any work, but such shall not be a condition precedent to the applicability of this Agreement. For each Work Order, Subcontractor shall submit an Affidavit of Signature Authorization in the form set forth in Exhibit "B" attached hereto which sets forth the Company individuals that are authorized by the Company to

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execute subcontracts, contract work order agreements, change orders, lien waivers and any related documents to each of the aforementioned.

Except as may be specifically stated otherwise herein, this Agreement shall apply to every subcontract of whatever nature entered into between the parties, unless otherwise indicated, with the same force and effect as if the terms and conditions hereof were fully set forth in any such subcontract. In the event of a conflict between the terms of this Agreement and any Work Order, the terms of this Agreement shall control. Any purported amendment of the terms, requirements or obligations of this Agreement shall be void and of no force unless it is in writing and signed by the duly authorized representatives of the parties. This Agreement, however, shall apply only to written subcontracts entered into by Contractor that reference this Agreement.

## PAYMENT SCHEDULE AND ACCOUNTING PRACTICES

Upon execution of a Work Order issued pursuant to this Master Subcontract Agreement, Contractor agrees to pay Subcontractor in monthly payments of 95% of labor and materials which have been placed in position and for which payment has been made by the Owner to Contractor provided that the Subcontractor submits progress invoices in accordance with the Accounting Practices set forth in Exhibit "C," attached hereto and made a part of this Master Subcontract Agreement. Contractor shall retain 5% of any labor and materials payment until Contractor receives final payment from the Owner of any project where Subcontractor performs work for Contractor, but not less than thirty-five days after the entire work required by any prime contract has been fully completed in conformity with the applicable contract documents and all work has been has been delivered and accepted by the Owner, the Architect, and the Contractor.

Subject to the provisions of the next sentence, the retained percentage shall be paid to the Subcontractor promptly after Contractor receives his final payment from the Owner of any project where Subcontractor performs work for Contractor. Subcontractor agrees to furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases of claims for labor, material and subcontractors performing work or furnishing materials under this Agreement, all in a form satisfactory to Contractor. It is agreed that no payment thereunder shall be made, except at Contractor's option, until and unless such payroll affidavits, receipts, vouchers, or releases or any or all of them, have been furnished. Any payment made thereunder prior to completion and acceptance of the work, as referred to above, shall not be construed as evidence of acceptance of any part of Subcontractor's work.

## TERMS AND CONDITIONS

1. **GENERAL SUBCONTRACT PROVISIONS -** The General Subcontract Provisions set forth in Exhibit "D," attached hereto and made a part hereof, shall apply to performance of Subcontractor's work under this Agreement.
2. **ADDITIONAL PROVISIONS -** The Additional Provisions set forth in Exhibit "E," attached hereto and made a part hereof, shall apply to performance of Subcontractor's work under this Agreement.
3. **BUILDER'S RISK INSURANCE -** The Builder's Risk Insurance requirements set forth in Exhibit "F," attached hereto and made a part hereof, shall apply to performance of Subcontractor's work under this Agreement.
4. **PROJECT QUALITY CONTROL PLAN -** The Project Quality Control Plan set forth in Exhibit "G," attached hereto and made a part hereof, shall apply to performance of Subcontractor's work under this Agreement unless modified for specific project needs.
5. **PROJECT SAFETY PROGRAM -** The Project Safety Plan set forth in Exhibit "H," attached hereto and made a part hereof, shall apply to performance of Subcontractor's work under this Agreement.

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6. **HARRASSMENT POLICY -** The Harassment Policy set forth in Exhibit "I," attached hereto and made a part hereof, shall apply to performance of Subcontractor's work under this Agreement.

7. **PROJECT RULES & REGULATIONS -** The Project Rules & Regulations set forth in Exhibit "J," attached hereto and made a part hereof, shall apply to performance of Subcontractor's work under this Agreement unless modified for specific project needs.

8. **SUBCONTRACTOR CHANGE ORDER REQUEST FORM -** The Subcontractor Change Order Request Form set forth in Exhibit "K," attached hereto and made a part hereof, shall apply to performance of Subcontractor's work under this Agreement.

9. **CHANGE ORDER -** The Change Order Form set forth in Exhibit "L," attached hereto and made a part hereof, shall apply to performance of Subcontractor's work under this Agreement.

10. **SPECIAL SEQUENCING REQUIREMENTS -** The Special Sequencing Requirements set forth in Exhibit "L," attached hereto and made a part hereof, shall apply to performance of Subcontractor's work under this Agreement.

11. **CONFIDENTIALITY -** At all times hereafter, termination of this Agreement notwithstanding, Subcontractor shall treat as confidential and shall not, without Contractor's prior written consent, divulge to any third party or, except to the extent necessary for performance hereunder make any use of any proprietary information, owned or supplied by Contractor or representatives of Contractor which is disclosed or made available to Subcontractor by or on behalf of Contractor.

**APPLICABLE LAW**

1. **THE INTERPRETATION AND PERFORMANCE OF THIS AGREEMENT AND EACH CONTRACT HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEVADA.**

2. The parties specifically agree that, if any provision of this Agreement is determined to be unenforceable or in contravention of any applicable law, such provision shall be deemed modified to the minimum extent required to bring such provision into compliance with said statute or case law. By way of illustration and not limitation, if the obligation to indemnify for claims of property damage, injury or death is ruled to be unenforceable to the extent that it requires the indemnitor to indemnify the indemnitee for the indemnitees own negligence, the indemnitor shall still be required to indemnify the indemnitee to the extent that liability arises from the indemnitor's negligence, including the negligence of the indemnitor's employees, agents, and subcontractors. Likewise, if some provision of the insurance coverage requirements is legally unenforceable or exceeds the maximum amount permitted for an obligation under applicable law, then Subcontractor and Contractor shall nevertheless obtain and maintain the insurance required under this Agreement to the extent that such requirements are permitted under applicable law. **NOTHING CONTAINED HEREIN SHOULD BE CONSTRUED AS CONTRAVENING THE EXPRESS INTENTION OF THE PARTIES THAT THE LAWS OF THE STATE OF NEVADA SHALL APPLY IN ALL RESPECTS.**

3. **LAWS, RULES AND REGULATIONS -** Subcontractor and its subcontractors shall comply with all Federal, State and local laws, rules and regulations applicable to work performed hereunder. Subject to Provision B of the General Subcontract Provisions set forth in Exhibit "D," Indemnity, Subcontractor shall indemnify the Owner of any project where Subcontractor performs work for Contractor, the Contractor, and the Contractor's officers, directors, shareholders, partners, employees, representatives, affiliates, and parent and subsidiary companies for any fine, penalty or liability, and for costs related thereto, including, without limitation, court costs and attorneys' fees, arising out of any failure by Subcontractor and its subcontractors to comply with any law, rule or regulation.

 **Subcontractor Initials** DS TP

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**SR Construction, Inc.**
3579 Red Rock Street
LAS VEGAS, NEVADA 89103
Phone: 702-877-6111
Fax: 702-258-6326



4. **LIENS AND CLAIMS -** Contractor shall have the right to withhold from payments due Subcontractor reasonable amounts to cover actual and/or probable lienable and non-lienable claims which may be made against the Owner of any project where Subcontractor performs work for Contractor and/or Contractor, and/or their respective property, on account of any claim alleged to be due from Subcontractor. Contractor shall have the right to make reasonable settlements of such claims and recover such settlements from Subcontractor.

## FORCE MAJEURE

1. In the event either party is prevented from performing any of its obligations under any contract by force majeure, that party's obligations with respect to that contract shall be suspended during the period of such force majeure.
2. Force majeure shall include, without limitation: acts of God, unavoidable casualties, or any cause beyond the control of Subcontractor or Contractor, including the requirements of any applicable law. Neither mechanical, electronic difficulties, nor strikes or other concerted acts of workers shall be considered force majeure.
3. The party which is prevented from performing by force majeure shall advise the other party immediately of its inability to meet its obligations under the given contract, specifying the cause of the force majeure and estimated extent to which the event or condition will impact performance, and shall advise the other party when such difficulty ceases. The party claim in a force majeure event or condition shall act diligently to remove or remedy such condition (but shall not be required to settle any labor dispute on unfavorable terms). If Subcontractor fails to give such advice in writing to Contractor within forty-eight (48) hours of the occurrence of the event or condition, Subcontractor may not claim force majeure as a defense hereunder.
4. When any work contracted for is halted by reason of force majeure, Contractor may terminate the given contract immediately upon notice. In such case, Contractor shall owe Subcontractor only the compensation earned to time of notice plus any demobilization fee provided for in such contract.

## INDEPENDENT SUBCONTRACTOR RELATIONSHIP

Subcontractor shall perform all work as an independent Subcontractor. Neither Subcontractor nor its agents and employees shall be the agents or employees of Contractor. Subcontractor shall be fully responsible for, and shall have exclusive direction and control of its agents, employees and subcontractors and shall control the manner and method of carrying out operations.

Any provision in any Work Order, planning form, or other contract between the parties whereby Contractor or any of its agents or employees would otherwise have the right to direct Subcontractor or its agents and employees as to the manner of performing work shall be interpreted as meaning that Subcontractor should follow the wishes of Contractor in the results to be achieved and not in the means whereby the work is to be accomplished.

However, if Contractor shall request Subcontractor to remove one of its agents, employees or subcontractors for any reason, including but not limited to lack of competence or conduct which interferes with Contractor's operations, Subcontractor shall promptly cause such agent, employee or subcontractor to be replaced at no cost to Contractor provided, however, Subcontractor retains the sole right to select and discharge its employees, subcontractors and agents.

## SUBCONTRACTS

Subcontractor shall notify Contractor of those sub-subcontractors proposed, if any, for various parts of any work performed for Contractor, and Subcontractor shall not employ any sub-subcontractors to perform work under this

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Phone: 702-877-6111
Fax: 702-258-6326



Agreement without the prior written consent of Contractor. Prior to commencing work on a Work Order, Subcontractor shall notify Contractor in writing of its intent to use a sub-subcontractor(s).

## NOTICES

Unless otherwise specifically provided, all notices and other communications provided for in this Agreement or any contract hereunder shall be in writing and shall be effective upon receipt. Such notices and communications shall be given either: (a) by hand delivery to an authorized representative of the party to whom directed; or (b) by United States mail, postage prepaid, or (c) by courier service guaranteeing delivery within two days or less, charges prepaid, or (d) by facsimile to the address of the party as designated in any contract hereunder for matters relating to any specific work under that contract. Any notice, other than a force majeure notice under Section III, Article 9; Force Majeure, delivered after normal business hours at the receiving party's place of business shall not be deemed delivered until the receiving party's following business day. Either party may at any time change its address, facsimile number or attention recipient upon written notice to the other party.

## GENERAL PROVISIONS

1. The captions and headings used in this Agreement are intended for convenience only and shall not be used for purposes of construction or interpretation.
2. No waiver by either party of any one or more defaults by the other party in the performance of this Agreement or any contract hereunder shall operate or be construed as a waiver of any future default or defaults by the same party, whether of a like or a different character.
3. It is intended that if any provision of this Agreement is unenforceable for any reason, it shall be adjusted rather than voided, if possible, in order to achieve the intent of the parties. In any event, all other provisions of this Agreement shall be deemed valid, binding, and still enforceable.
4. In the event that either party commits any material breach of this Agreement including, without limitation, any breach of any indemnity obligation, in addition to any other remedy that the aggrieved party may have at law or in equity, it shall be entitled to recover all costs, including court costs and attorney's fees incurred in any proceeding wherein the aggrieved party seeks redress for such breach.
5. Neither this Agreement nor any contract hereunder shall be considered an exclusive contract. Contractor shall have the right to hire others to perform the same or similar work.
6. All dollar amounts set forth in this agreement shall be in US Dollars unless specifically stated otherwise in individual Scopes of Work.

 **Subcontractor Initials** DS TP _____

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**SR Construction, Inc.**
3579 Red Rock Street
LAS VEGAS, NEVADA 89103
Phone: 702-877-6111
Fax: 702-258-6326

**MASTER SUBCONTRACT AGREEMENT**

**EXHIBITS AND ATTACHMENTS**

1. Exhibit A – Work Order Addendum to Master Subcontract Agreement
2. Exhibit B – Affidavit of Signature
3. Exhibit C – Accounting Practices
   a. Attachment A – Insurance Requirements, Supplier Affidavit, IRS Form W-9, State of Nevada Business License, Subcontractor Invoice Form, AIA 703 Form, Unconditional Waivers and Conditional Waivers.
4. Exhibit D – General Subcontract Provisions
5. Exhibit E – Additional Provisions
6. Exhibit F – Builder's Risk Insurance
7. Exhibit G – Project Quality Control Plan
8. Exhibit H – Safety Plan
9. Exhibit I – EEO / Sexual Harassment Policy
10. Exhibit J – Rules and Regulations
11. Exhibit K – Subcontractor Change Request Form
12. Exhibit L – Example Change Order
13. Exhibit M – Special Sequencing Requirements

---

| | |
|---|---|
| Contracted By: | Contracted By: |
| Subcontractor | Contractor |
| Peek Brothers Construction Incorporated | SR Construction, Inc. |
| Signed: DocuSigned by: Travis Peek B3500ED107BD451... | Signed: DocuSigned by: Scott Loughridge 635BF70194594BC... |
| By: Travis Peek | By: Scott Loughridge |
| Date: 10/8/2019 | Date: 10/8/2019 |



**Subcontractor Initials** DS TP

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# Exhibit A

## WORK ORDER
## ADDENDUM TO MASTER SUBCONTRACT AGREEMENT
## WITH ATTACHMENT A

Date issued:_____ Master Subcontract Agreement No.:_____

Contractor: SR Construction, Inc. Subcontractor:_____

Project:_____ Owner:_____

Description of Work:_____
Including Attachment B

Work Order No:_____

This Addendum to Master Subcontract Agreement is entered pursuant to the above referenced Master Subcontract Agreement. The terms and obligations of the above-referenced Master Subcontract Agreement are fully incorporated by reference as though fully set forth herein.

Contractor agrees to pay Subcontractor for the strict performance of this work, the sum of:

$_____ subject to additions and deductions for changes in the work as may be agreed upon, and to make payment in accordance with the Payment Schedule set forth in the above-referenced Master Subcontract Agreement.

Subcontractor shall comply with each of the insurance requirements set forth in Exhibit C, Attachment A of the General Subcontract Provisions Exhibit D to the Master Subcontract Agreement, including the designation of the above referenced Owner and Contractor as an additional insured in accordance with Attachment A attached hereto.

The Contract Documents applicable to this Scope of Work include:

(*list and attach all Contract Documents including Subcontractor's bid package, project document log, and the project schedule*)

Subcontractor shall fill out and submit the Affidavit of Signature Authorization applicable to this Scope of Work in the form set forth in Exhibit "B" attached to the above-referenced Master Subcontract Agreement.

| | |
|---|---|
| Contracted By: | Contracted By: |
| Subcontractor<br>(Print Co. Name) _____ | Contractor<br>SR Construction, Inc. |
| Signed: _____ | Signed: _____ |
| By:(Print Name)_____ | By: Scott Loughridge |
| Date: _____ | Date: _____ |

# Exhibit B
## AFFIDAVIT OF SIGNATURE AUTHORIZATION

Date issued:_____ Master Subcontract Agreement No.:_____

Contractor: SR Construction, Inc. Subcontractor:_____

Project:_____ Owner:_____

Description of Work:_____

Work Order No. _____

I,_____
(Please Type in Name)

as_____ of _____
(Type in Title – Must be an Officer of Company) (Type in Company)

(Type in Complete Address)

being duly sworn, deposes and says:

That this Affidavit is made for and in behalf of the Company; that the affiant states that by appropriate resolution, the following listed persons have duly authorized by the Company to execute subcontracts, contract work order agreements, change orders, lien waivers and of the related documents; that the affiant has read and know the content of this Affidavit and has executed same on behalf of the Company.

1. _____
Please Type in Name & Title (Signature)
2. _____
Please Type in Name & Title (Signature)
3. _____
Please Type in Name & Title (Signature)
4. _____
Please Type in Name & Title (Signature)
5. _____
Please Type in Name & Title (Signature)

*NOTE: If the above list persons are not authorized to sign all documents (Subcontracts, Contract Work Order Agreements, Change Orders, Lien Waivers and other related documents) please indicate which documents they are authorized to sign.

_____
(AFFIANT'S SIGNATURE)

State of: _____

County of: _____
Subscribed and sworn to (or affirmed) before me this _____ day of _____ 201__

By _____ , personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) who appear before me.

_____
(Notary Signature)

DS
TP

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# Exhibit C

## SR CONSTRUCTION ACCOUNTING PRACTICES

## I. PAYMENT SCHEDULE

1. Payment requisitions and/or invoices for work performed or materials suitably stored hereunder must be rendered no later than the 20th day of the month or the last working day prior to the 20th in which the work was performed, being sent to Contractor at the address listed herein. Failure to timely render requisitions will be acknowledgement by Subcontractor as agreement to await payment until Contractor's next billing to Owner. For each Work Order issued pursuant to the Master Subcontract Agreement, Subcontractor agrees to be bound by Contractor, Architect, Owner and Lender percentage allowance and measurement of the quantity of work.

2. The Contractor may deduct from any amounts due to the Subcontractor any sum or sums owing by Subcontractor to the Contractor; and in the event of any breach by the Subcontractor of any provisions or obligation of this Subcontract, or in the event of the assertion by other parties of any claim or lien against the Contractor or Contractor's Surety or the construction site arising out of the Subcontractor's performance of this Contract, the Contractor shall have the right, but is not required, to retain out of any payments due or to become due to the Subcontractor an amount sufficient to completely protect the Contractor from any and all loss, damage or expense therefrom until the situation has been remedied or adjusted by the Subcontractor to the satisfaction of the Contractor.

3. Subcontractor agrees the Contractor reserves the right to make payment to Subcontractor's material men or Sub-subcontractors, Workmen's Compensation Carrier, Union Trust Funds, or any persons who has right of action against Contractor or Contractor's Surety under any law.

4. The Subcontractor shall furnish, if requested by the Contractor, sworn affidavits, in accordance with the form provided by Contractor, which shall state amounts due, to become due and amounts paid to suppliers and other parties contractually related with the Subcontractor with respect to labor and materials furnished or to be furnished under this Subcontract, and upon request of Contractor issue a Lien Release for all monies received to date. All sub-subcontracts and work orders issued by Subcontractor shall provide that if requested by a Contractor each sub-subcontractor and supplier to Subcontractor shall issue a lien release for each payment received. All forms and releases must be on Nevada State forms.

5. Subcontractor agrees that each payment by Subcontractor to sub-subcontractors and suppliers from funds paid by Contractor on this Subcontract Agreement shall carry the specific designation of the job for which this agreement is issued and state that the monies paid by that check is for this job only and shall not apply to any other accounts between Subcontractor and supplier or sub-subcontractor. Contractor reserves the right to require Subcontractor to present evidence of such payment with the required annotation.

6. The Subcontractor agrees and covenants that money received pursuant to this Subcontractor shall immediately become and constitute a trust fund for the benefit of persons and firms supplying labor, materials or services for this project, and shall not in any instance be diverted by Subcontractor to any other purpose until all obligations arising hereunder have been fully discharged and all claims arising therefrom have been fully paid. Contractor shall have the

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right to rely on information presented by Subcontractor, and any diversion of funds shall be evidence of fraud. Subcontractor grants Contractor the right to make inquiry of all sub-subcontractors and suppliers as to the status of their accounts with Subcontractor.

7. Subcontractor warrants to Contractor that if for any reason any sub-subcontractor or supplier to this Subcontractor shall at any time record a mechanics lien against the premises or any portion thereof, then upon written request of Contractor, Subcontractor shall promptly and at its sole cost and expense, obtain a lien release bond in form acceptable to Contractor, in an amount not less than 150% of the amount of the lien so claimed. This provision does not apply if Contractor is withholding payments to Subcontractor, provided it is not caused by a material breach by Subcontractor. Only to the extent the Subcontractor has been paid.

8. If any time the Contractor shall determine that the Subcontractor's financial condition has become unstable, the Contractor shall have the option to cancel this Subcontract or to initiate such other action as the Contractor may deem necessary for the protection or preservation of its interests and/or the prevention of delay in the efficient and orderly progress of work on the project, including but not limited to that portion of the work to be performed by Subcontractor hereunder. In the event of such cancellation, the rights of the Contractor shall be the same as if the Subcontractor has willfully refused to further perform the Subcontract.

9. No change, alteration or modification in the terms and conditions of this Subcontract or in the terms or manner of payment shall in any way exonerate or release, in whole or in part, any surety on any bond furnished by or on behalf of the Subcontractor.

10. If payments are made on valuations of work done, the Subcontractor shall, before the first application, submit to the Contractor a schedule of values of the various parts of the work, aggregating the total sum of the Contract, made out in such detail as the Subcontractor and Contractor may agree upon, or as required by the Owner, and, if required, supported by such evidence as to its correctness as the Contractor may direct. Such submittals shall include certified payroll, if required. This schedule, when approved by the Contractor, shall be used as a basis for Certificates for Payment, unless it is found to be in error.

11. If payments are made on account of materials not incorporated in the work but delivered and suitably stored at the site, or at some other locations agreed upon in writing by Contractor, such payments shall be in accordance with the terms and conditions of the Contract Documents. Upon payment to Subcontractor for any materials; such materials shall immediately become the property of the Contractor or the Owner.

12. All maintenance-operation manuals, special equipment chart and/or instructions, as-builts, special guarantees, certificates, as well as the Owner's standard guarantee form must be completed and submitted to the General Contractor, in a form acceptable to the Owner, prior to billing 90% completion of this Subcontract. Retention invoices will not be processed for payment until above mentioned items have been competed and submitted.

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13. No pre-payment of materials or equipment are allowed without prior written approval of the Owner.

14. No payment of stored materials or equipment offsite is allowed without prior written approval of the Owner and shall comply with Attachment H – Stored Material Checklist.

## II. INVOICE PROCEDURES

1. Subcontractor agrees to provide Contractor with a list indicating value of all major suppliers, materialmen, and sub-subcontractors prior to receipt of first progress billing; on attached Attachment A Page 4, completely filled out with names and telephone numbers. Major shall be considered as items that are greater than 5% of the amount of this subcontract.
   PLEASE NOTE: **NO PAYMENT WILL BE RELEASED PRIOR TO RECEIPT OF EXECUTED SUBCONTRACT AGREEMENT WITH ATTACHMENTS A PAGE 3 SUPPLIER AFFIDAVIT, ATTACHMENT A PAGE 4 "IRS FORM W-9", PAGE 5 "STATE OF NEVADA BUSINESS LICENSE", AND REQUIRED CERTIFICATES OF INURANCE.**

2. Subcontractor agrees to provide a conditional release (less retention) to Contractor on a monthly basis for current payment (Attachment A Page 8), and an unconditional release for payment from the previous billing period (Attachment A Page 9). In addition, major suppliers, materialmen, and sub-subcontractors shall provide similar releases.

   The period covered by each Subcontractor invoice shall be one calendar month ending on the last day of the month.

   Subcontractor shall submit invoice to SR Construction, Inc. NO LATER than the 20th of each month, projecting work completed through the last day of the month.

3. INVOICE FORMAT:
   Pay Requests must be on SR Construction, Inc. "Subcontractor INVOICE" Form (Attachment A Page 6) along with an AIA 703 Form (Attachment A Page 7).

   The Schedule of Values breakdowns for invoicing shall be submitted and approved by Contractor within 30 calendar days of issuance of the Subcontract Agreement and prior to your first billing. Billing categories shall generally reflect the bid form breakdown. Subcontractor agrees to allocate a reasonable and fair value of cost as determined by Contractor for requisitioning Submittals/Shop Drawings, Clean-up, Safety, As-Builts, and Closeout. Failure to submit invoices in proper billing format is cause for rejection.

4. UPON RECEIPT OF INVOICE:
   SR Construction, Inc. will review the invoice to determine if it is accurate as to percent complete, and includes all necessary supporting documentation.

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SR Construction, Inc. will return any invoice not complete or does not meet contractual requirements, and request a revised invoice incorporating specified changes. Please be advised that this may delay payment of your invoice.

NO progress payment shall be made for work not performed in accordance with the subcontract. (I.e. No executed subcontract in SR Construction, Inc. files, contract value exceeded without supporting change orders, etc).

5. FINAL PAYMENT: Final payment shall be due when work described in the subcontract is complete and final payment for said work is received by SR Construction, Inc. from the Owner. The acceptance by Subcontractor of final payment shall constitute a release by the Subcontractor in favor of SR Construction, Inc. and its surety, of all claims against SR Construction, Inc. and its surety arising under or by virtue of this subcontract other than those claims accepted with the written consent of SR Construction, Inc. Subcontractor agrees to accept the price or prices as set forth herein as full compensation for doing all work and furnishing all material contemplated and embraced in this agreement; for all risks of every description connected with the work; for all expenses incurred by or in consequence of the discontinuance with the work; and for faithfully completing work and the whole thereof in the manner and according to the requirements of SR Construction, Inc., Owner, and A/E. All payments under this agreement shall be made in Las Vegas, Nevada.

   After final acceptance of the work, Subcontractor shall submit a final application for payment. Subcontractor agrees to provide a "Conditional Waiver and Release Upon Final Payment" (Attachment A Page 10), in addition to "Unconditional Waiver and Release Upon Final Payment" (Attachment A Page 11), releases from its major suppliers, materialmen, and sub-subcontractors.

   Questions regarding these accounting practices should be directed to the Project Manager.

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# Attachment A

## INSURANCE REQUIREMENTS TO WORK ORDER

## *MEMORANDUM*

**DATE:**

**PROJECT:**

**TO:** **Subcontractors**

**FROM:** **Bret Loughridge/mc**

**SUB** ***ist pur projec e ar cha .)***
**ertific Insur eq ent**

The follo hou be d a A n Ins the eral Lial Certificate of Insur e for pr wit e fic n and numb noted ab

**Owner:** *(list owner)*

SAMPLE

**General Contractor:** **SR Construction**
3579 Red Rock Street
Las Vegas, Nevada 89103

**Please send the original Certificate of Insurance to my attention as soon as possible.**

It is imperative that these Certificates are in compliance and in our office before you are onsite. Additionally, we will be unable to process any pay requests until this requirement is satisfied.

**Attachment A**

# SR Construction, Inc.
# Insurance Requirements

SR Construction, Inc. requires that the certificates of insurance have the following limits and coverage's, and the certificates must be received by our office prior to commencing work on any SR Construction, Inc. jobsite.

A. General Liability:
   1. Limits of Liability:
      a. $2,000,000 general aggregate
      b. $2,000,000 products/completed operations aggregate
      c. $1,000,000 personal and advertising injury
      d. $1,000,000 each occurrence

   2. Coverage's:
      a. Commercial General Liability
      b. Occurrence Form
      c. Owner's and Contractor's Protective
      d. Employers Liability:
         1. $500,000 each accident
         2. $500,000 disease-policy limit
         3. $500,000 each employee

B. Automobile Liability:
   1. [illegible] of Liabil[illegible]
      a. [illegible],000,00[illegible] ined s[illegible]nit
   2. [illegible]rage's:
      [illegible]ned [illegible]mo[illegible]s (ar[illegible]t [illegible]o
      b. [illegible]d
      [illegible]n-[illegible]ed Aut[illegible]

SAMPLE

C. Umbrella Liability
   1. Limits of Liability (Note: In the event that life safety or public property are in jeopardy, or for contracts in excess of $500,000.00, higher limits will apply.):
      a. $2,000,000 general aggregate
      b. $2,000,000 each occurrence
   2. Coverage's
      a. Umbrella Liability Form

D. Additional Provisions:
   1. SR Construction, Inc. must be named as an additional insured along with the Owner. A copy of the
   2. All policies must contain a 30-day notice of cancellation.
   3. Any manuscript exclusions or limitations of coverage shall be specifically listed. These should include, but not be limited to, the following:
      a. EIFS
      b. Subsidence
      c. Mold and Fungus
      d. Contractual Liability
      e. General Liability Deductible or SIR (if none state)
   4. It is a requirement that the additional insured endorsement include coverage for completed operations. ISO endorsement CG20101185 (i.e. Nov. 1985 Edition) is acceptable. An individual company Blanket additional insured endorsement is acceptable if coverage is extended to include completed operations.
   5. Additional insured shall apply as primary insurance and that any other insurance carried by certificate holder will be excess only and will not contribute with this insurance.
   6. The general liability coverage should specify the aggregate limit of liability applies on a "per project" basis.
   7. Provide Waiver of Subrogation Coverage



DS
Initials _____

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# Attachment A

## SUBCONTRACTOR / SUPPLIER AFFIDAVIT

## ** Submit with Contract **

**To: SR CONSTRUCTION, INC.**
**3579 Red Rock Street**
**Las Vegas, NV 89103**
**Phone: 702-877-6111 Fax: 702-258-6326**

**FROM:**

**PROJECT:**
**PROJECT**

**CONTRACT DATE:**
**C AM T:**

SAMPLE

WHEREAS UN IGNED or subm llov f m l su an subcontrac ho have furnished o ish the mate n service ord red ove. und ned contrac rtifies that the list is complete an pliers c cc ctors h b d e nd f hat ollar value c r services furnis furni by is co .

The unders also a es of th mp ss corre s of this affida d recognizes alsification of the inform ber y re civi on t th ders

THE UNDERSIGNED acknowledges the following subcontractors and/or suppliers:

| NAME | ADDRESS AND PHONE | DOLLAR VALUE |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

THE PERSON SIGNING below does hereby certify that he/she is fully authorized and empowered to execute this instrument and to bind the Undersigned hereto, and does in fact so execute this instrument.

Signed: _____

Title: _____

Date: _____

State of _____
County of _____
Subscribe and sworn to before me.
(Name of Notary)
_____,

this _____ day of _____ 20_____
NOTARY PUBLIC

Signed: _____



DS
Initials _____

Form **W-9**
(Rev. December 2014)
Department of the Treasury
Internal Revenue Service

# Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification; check only one of the following seven boxes:
☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate
☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ _____
Note. For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single-member owner.
☐ Other (see instructions) ▶

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
Exempt payee code (if any) _____
Exemption from FATCA reporting code (if any) _____
(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

6 City, state, and ZIP code

7 List account number(s) here (optional)

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 3.

Note. If the account is in more than one name, see the instructions for line 1 and the chart on page 4 for guidelines on whose number to enter.

Social security number
☐☐☐ – ☐☐ – ☐☐☐☐

or

Employer identification number
☐☐ – ☐☐☐☐☐☐☐

## Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 3.

**Sign Here** Signature of U.S. person ▶ Date ▶

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. Information about developments affecting Form W-9 (such as legislation enacted after we release it) is at www.irs.gov/fw9.

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following:

- Form 1099-INT (interest earned or paid)
- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding? on page 2.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See What is FATCA reporting? on page 2 for further information.

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# STATE OF NEVADA
# DEPARTMENT OF TAXATION

SR CONSTRUCTION INC
3579 RED ROCK ST
LAS VEGAS NV 89103

IN ACCORDANCE WITH TITLE 32 OF NEVADA REVISED STATUTES, PURSUANT TO PROPER APPLICATION DULY FILED AND PAYMENT OF APPROPRIATE PRESCRIBED FEES/SECURITY, THE ABOVE NAMED IS HEREBY GRANTED THE FOLLOWING LISTED PERMIT, LICENSE OR CERTIFICATE FOR BUSINESS ACTIVITIES CONDUCTED WITHIN THE STATE OF NEVADA.

| PERMIT, CERTIFICATE OR LICENSE | REGISTRATION # | DATE OF ISSUE |
|---|---|---|
| USE TAX | 303907621-02 | 10/01/95 |

LOCATION: SR CONSTRUCTION
3579 RED ROCK ST
LAS VEGAS NV 89103

POST IN CONSPICUOUS PLACE

The above listed permit, license and/or certificate, shall be considered valid unless cancelled, suspended or revoked for good cause, in accordance with Title 32.

This document is not transferable and IS NOT issued in lieu of any locally required business license, permit or registration.

EXAMPLE

01TXPRMT
(Rev 05/02)



Initials _____

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# ATTACHMENT A
# SUBCONTRACTOR INVOICE FORM

**SUBCONTRACTOR:** _____

TO:
SR Construction, Inc.
3579 Red Rock St
Las Vegas, NV 89103

Invoice Date: _____

Payment Req No. _____

Period From: _____
Period To: _____
SR Project No. _____
Subcontract No. _____

**Project Name:** _____

SAMPLE

Original Contract Amount:
SR Signed Change Order #1
SR Signed Change Order #2
SR Signed Change Order
SR Signed Change Order
SR Signed Change Order - -
Approved Change Orders - -

Revised Contract Amount: -

| | To Date | Current Period |
|---|---|---|
| Gross Value of Work Completed: | - | - |
| Less Retention: | - | - |
| Amount Earned: | - | $ - |
| Less Amount previously invoiced: | - | |
| **TOTAL AMOUNT DUE THIS INVOICE:** | **$ -** | |

Please itemize value of UNapproved change order requests, or extras for which subcontract Change Orders have NOT been issued. (ATTACH DETAIL)

1) _____ $ _____
Description Amount

2) _____ $ _____
Description Amount

3) _____ $ _____
Description Amount

DS
Initials _____

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# CONTINUATION SHEET

*AIA DOCUMENT G703*



AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO:
APPLICATION DATE:
PERIOD TO:
ARCHITECT'S PROJECT NO:

| A | B | C | D | E | F | G | | H | I |
|---|---|---|---|---|---|---|---|---|---|
| ITEM NO. | DESCRIPTION OF WORK | SCHEDULED VALUE | WORK COMPLETED FROM PREVIOUS APPLICATION (D + E) | WORK COMPLETED THIS PERIOD | MATERIALS PRESENTLY STORED (NOT IN D OR E) | TOTAL COMPLETED AND STORED TO DATE (D+E+F) | % (G ÷ C) | BALANCE TO FINISH (C - G) | RETAINAGE (IF VARIABLE RATE) |
| | | | | | | | | | |
| | **GRAND TOTALS** | $0.00 | $0.00 | $0.00 | $0.00 | $0.00 | | $0.00 | |

SAMPLE



AIA DOCUMENT G703 · CONTINUATION SHEET FOR G702 · 1992 EDITION · AIA · ©1992
THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W. WASHINGTON, D.C. 20006-5232

DS
G703-1992
Initials _____

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# CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Property Name: _____

Property Location: _____

Undersigned's Customer: _____

Invoice/Payment Application Number: _____

Payment Amount: _____

Payment Period: _____

Upon receipt by the undersigned of a check in the above referenced Payment Amount payable to the undersigned, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release and the undersigned shall be deemed to waive any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:

This release covers a progress payment for the work, materials or equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, but only to the extent of the Payment Amount or such portion of the Payment Amount as the undersigned is actually paid, and does not cover any retention withheld, any items, modifications or changes pending approval, disputed items and claims, or items furnished or invoiced after the Payment Period. Before any recipient of this document relies on it, he should verify evidence of payment to the undersigned. The undersigned warrants that he either has already paid or will use the money he receives from this progress payment promptly to pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of this waiver and release.

DATED: _____

_____
Company Name

_____
Authorized Signature

_____
Title

DS
tp
_____ Initials

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# UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Property Name: _____

Property Location: _____

Undersigned's Customer: _____

Invoice/Payment Application Number: _____

Payment Amount: _____

Payment Period: _____

The undersigned has been paid and has received a progress payment in the above referenced Payment Amount for all work, materials and equipment the undersigned furnished to his Customer for the above described Property and does hereby waive and release any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:

This release covers a progress payment for the work, materials and equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, but only to the extent of the Payment Amount or such portion of the Payment Amount as the undersigned is actually paid, and does not cover any retention withheld, any items, modifications or changes pending approval, disputed items and claims, or items furnished or invoiced after the Payment Period. The undersigned warrants that he either has already paid or will use the money he receives from this progress payment promptly to pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of this waiver and release.

DATED: _____

_____
Company Name

_____
Authorized Signature

_____
Title

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT TO THE EXTENT OF THE PAYMENT AMOUNT OR THE AMOUNT RECEIVED. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.



DS tp _____ Initials

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# CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Property Name: _____

Property Location: _____

Undersigned's Customer: _____

Invoice/Payment Application Number: _____

Payment Amount: _____

Payment Period: _____

Amount of Disputed Claims: _____

Upon receipt by the undersigned of a check in the above referenced Payment Amount payable to the undersigned, and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to the release and the undersigned shall be deemed to waive any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property to the following extent:

This release covers the final payment to the undersigned for all work, materials or equipment furnished by the undersigned to the Property or to the Undersigned's Customer and does not cover payment for Disputed Claims, if any. Before any recipient of this document relies on it, he should verify evidence of payment to the undersigned. The undersigned warrants that he either has already paid or will use the money he receives from the final payment promptly to pay in full all his laborers, subcontractors, materialmen and suppliers for all work, materials or equipment that are the subject of this waiver and release.

DATED: _____

_____
Company Name

_____
Authorized Signature

_____
Title



DS
TP
Initials

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# UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

Property Name: _____

Property Location: _____

Undersigned's Customer: _____

Invoice/Payment Application Number: _____

Payment Amount: _____

Amount of Disputed Claims: _____

The undersigned has been paid in full for all work, materials and equipment furnished to his Customer for the above described Property and does hereby waive and release any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property, except for the payment of Disputed Claims, if any, noted above. The undersigned warrants that he has already paid in full all his laborers, subcontractors, materialmen and suppliers for all work, materials and equipment that are the subject of this waiver and release.

DATED: _____

SR Construction, Inc.
Company Name

_____
Authorized Signature

President
Title

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

SAMPLE



DS TP Initials

# Exhibit D

## GENERAL SUBCONTRACT PROVISIONS

**A. INSURANCE** – Subcontractor shall at all times, and at Subcontractor's sole cost and expense, maintain and carry in full force and effect for the entire term of the Agreement the following types of insurance on all operations hereunder:

1. Worker's Compensation Insurance (including employer's liability) covering all of its employees with statutory limits and Employer's Liability in the limit of $1,000,000;
2. Commercial General Liability Insurance coverage, written on an occurrence basis, with minimum limits of $1,000,000 per occurrence $2,000,000 in the aggregate for bodily injury or property damage and without application of any self-insured retention or deductibles greater than $25,000 for: (a) all work and operations, (b) contractual liability obligations, and (c) products-completed operations hazard. Such Commercial General Liability Insurance coverage shall be effective no later than the date Subcontractor commences any work for Contractor and shall be maintained through a period no earlier than 10 years after such work by Subcontractor is completed;
3. Automotive Liability and Property Damage Insurance liability coverage, written on an occurrence basis, with minimum limits of $1,000,000 per occurrence for: (a) all owned vehicles, and (b) non-owned and hired vehicles; and
4. Such other insurance in such amounts, as may from time to time be reasonably required by Contractor, landowner, master developer, applicable governmental agency or any lender on a project where Subcontractor is performing work for Contractor.

For each of the insurance requirements set forth above in Provisions A (2)-(3), such insurance shall designate Owner and Contractor as an additional insured in accordance with Attachment A, Exhibit A Pages 1 and 2 (Insurance Requirements) to the Master Subcontract Agreement. Such additional insured coverage for the designated Owner and Contractor shall provide coverage on a primary and non-contributory basis to the designated Owner and Contractor without application of any self-insured retention for (a) any work or operations, (b) contractual liability obligations, or (c) products-completed operations hazard and shall include coverage that provides for a duty to defend the designated Owner and Contractor that qualify as an additional insured.

Before Subcontractor performs any work at, or prepares or delivers materials to the site of construction, Subcontractor shall furnish certificates of insurance evidencing the foregoing insurance coverage's and such certificates shall provide that the insurance is in full force and will not be canceled without ten days written notice to Contractor. The requirement for carrying the foregoing insurance shall not derogate from the provisions for indemnification of Contractor by Subcontractor under Provision B of this General Subcontract Provisions.

**B. INDEMNITY** – All work covered by this Agreement done at the site of construction, or in preparing or delivering materials or equipment to the site shall be at the sole risk of Subcontractor. To the fullest extent permitted by law, Subcontractor shall save and hold Contractor and Contractor's officers, directors, shareholders, partners, employees,

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representatives, affiliates, and parent and subsidiary companies, harmless from and against all of the following:

1. Any and all claims, liability, loss, damage, cost, expenses of every kind and nature, including reasonable attorneys' fees, awards, fines or judgments arising by reason of the death or bodily injury to persons, injury to property, design defects (if design originated by Subcontractor), or other loss, that in any way arise directly or indirectly from Subcontractor's performance of work for Contractor, including without limitation any alleged or actual negligent act or omission of Subcontractor and any alleged or actual breach of implied or express warranties by Subcontractor regardless of whether such act or omission is active or passive; and
2. Any and all claims, liability, loss, damage, cost, expenses of every kind and nature, including reasonable attorneys' fees, awards, fines or judgments arising by reason of any obligation or indemnity which Contractor has to the Owner of a project where Subcontractor performs work for Contractor.
3. Any and all liens, claims, liability, loss, damage, cost, expenses of every kind and nature, including reasonable attorneys' fees, awards, fines or judgments which may be made against Contractor or the Owner of any project where Subcontractor performs work for Contractor, and/or their respective property, on account of any claim alleged to be due from Subcontractor.

It is expressly acknowledged and agreed that each of the foregoing indemnities is independent and that each shall be given full effect and apply regardless of any active or passive fault on the part of any party indemnified hereunder or the active or passive fault of any other subcontractor or party. However, Subcontractor shall not be obligated under this agreement to indemnify Contractor with respect to the sole negligence or willful misconduct of Contractor or the Owner of any project where Subcontractor performs work for Contractor, their agents, servants, or other subcontractors who are directly responsible to Contractor or the Owner.

The indemnity obligations set forth herein under Provision B include a separate and independent duty to defend Contractor and Contractor's officers, directors, shareholders, partners, employees, representatives, affiliates, and parent and subsidiary companies, which arises immediately upon presentation of a claim in any way related to or arising from Subcontractor's performance of work for Contractor. As a separate and immediate duty to defend, the duty to defend set forth herein shall exist regardless of whether a determination of fault has been made, or will be made, concerning any alleged or actual act or omission on the part of the Subcontractor, Contractor, Owner, or any other party. The separate and independent duty to defend set forth herein shall be triggered and arise immediately upon mere allegations that in any way relate to or arise from Subcontractor's performance of work for Contractor.

**C. <u>BONDING OF SUBCONTRACTOR</u>** – Concurrently with the execution of this Agreement or at any time during its performance, Subcontractor shall, if required by Contractor

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execute a Labor & Material Bond and Faithful Performance Bond in any amount equal to 100% of the Work Order Price. Said bonds shall be executed by a corporate surety acceptable to Contractor and shall be in a form satisfactory to Contractor. Contractor shall pay the premium on said bonds unless otherwise provided herein or in the Contract Documents.

**D.** **TIME** – Time is the essence of this Agreement, it shall be Subcontractor's obligation to conform to Contractor's progress schedule, subject to Contractor's modification, which is incorporated herein by this reference and made a part hereof. Subcontractor shall prepare and obtain approval as required by Contract Documents for all shop drawings, details, samples, and do all other things necessary and incidental to the prosecution of his work in conformance with the said progress schedule. He shall coordinate the work covered by this Agreement with that of all other Contractors, subcontractors, in a manner that will facilitate the efficient completion of the entire work. Contractor shall have complete control of the premises in which the work is to be performed and shall have the right to decide the time or order in which the work is to be performed and shall have the right to decide the time or order in which the various portions of the work shall be installed or the priority of the work of other subcontractors, and, in general, all matters representing the timely and orderly conduct of the work of Subcontractor on the premises.

Should Subcontractor be delayed in the prosecution or completion of the work by the act, neglect or default of any Owner, of any Architect, or of Contractor, or should Subcontractor be delayed waiting for materials, if required by contract to be furnished by any Owner or Contractor, or by damage caused by fire or other casualty for which Subcontractor is not responsible, or by the combined action of the workmen, in no way caused by, or resulting from, default or collusion on the part of Subcontractor, or in the event of a lockout by Contractor, then the time herein fixed for the completion of the work shall be extended the number of days that Subcontractor has thus been delayed. However, no allowance or extension shall be made unless a claim therefore is presented in writing to the Contractor within 48 hours of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire project within the time that any Owner allows Contractor for such completion.

No claims for additional compensation or damages for delays, whether in the furnishing of material by Contractor, or delays by other subcontractors or any Owner, will be allowed by the Contractor, and said extension of time for the completion shall be the sole remedy of Subcontractor provided, however, that in the event, and in such event only, that Contractor obtains additional compensation from any Owner on account of such delays, Subcontractor shall be entitled to such portion of the additional compensation so received by Contractor from any Owner, as is equitable under all of the circumstances. Nothing herein contained shall require Contractor to make any claim against any Owner for such delays, and it is specifically agreed that the failure of Contractor to prosecute any such claim against any Owner shall not entitle Subcontractor to any claim for damages against Contractor.

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This Subcontractor shall complete its scope of work according to the Project Construction Schedule applicable to the performance of any work for Contractor and Contractor directed work sequence, which may be modified from time to time as the progress of the work dictates. Subcontractor shall maintain its work with the normal flow of the project. If weather conditions cause work delays during the normal work week (Monday through Friday), the Saturday following the weather delay may be designated as a make-up day if necessary in order to maintain the Project Schedule. This Subcontractor shall man the job with the same crew as normally used and no additional costs shall be accepted by Contractor. The duration established in the referenced schedule for this scope of work shall be maintained. The established duration of the work is a "sliding window" for the work to be performed. Contractor reserves the right to enforce Early Start/Early Finish dates, and/or exceed Late Start/Late Finish dates at no additional cost or extended General Conditions as long as the duration is maintained.

Any work that interferes with the ongoing operations of the Owner of a project where Subcontractor performs work for Contractor will be immediately shut down and rescheduled at a more appropriate time as determined by Contractor. The rescheduled work will be performed at no additional cost to such Owner or Contractor.

**E. <u>CHANGES IN THE WORK</u>** – Subcontractor hereby agrees to make any and all changes, furnish the materials and perform the work that Contractor may require without nullifying this Agreement, at a reasonable addition to, or reduction from, the Contract Price stated in the applicable Work Order. Subcontractor shall adhere strictly to the plans and specifications unless a change therefrom is authorized in writing. Under no conditions shall Subcontractor make any changes, whether as additions or deductions, without the written order of the Contractor and Contractor shall not pay any extra charges made by the Subcontractor that have not been agreed upon in writing by Contractor; and in no event, shall Contractor make payment for any such extra charges unless and until the Contractor itself receives payment from the Owner of the project where Subcontractor performed work for Contractor. Subcontractor shall submit immediately to the Contractor, written copies of his firm's cost or credit proposal for changes in the work. Disputed work shall be performed as ordered in writing by the Contractor and the proper cost or credit breakdowns therefore shall be submitted without delay by Subcontractor to Contractor.

If the Subcontractor initiates a substitution, deviation or change in the work that affects the scope of the work or the expense of their trades, Subcontractor shall be liable for the expense thereof. No change, alteration or modification in or deviations from this Agreement or the plans or specification, whether made in the manner herein provided or not, shall release or exonerate, in whole or in part any surety on any bond given in connection with this Agreement and neither the Owner of any project nor Contractor shall be under any obligation to notify the surety or sureties of any such change.

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Prior to the commencement of any changes to the work, Subcontractor shall submit a written request for any required adjustment to the Contract Price utilizing the Change Order Request form set forth in Exhibit "K" to the Master Subcontract Agreement or acceptable form. Any such adjustment shall be accepted in writing by Contractor utilizing the Change Order form set forth in Exhibit "L" attached to the Master Subcontract Agreement unless Contractor in its sole discretion believes such adjustment to be inequitable. If Contractor and Subcontractor cannot agree on the amount of the addition or deletion, Subcontractor shall nonetheless timely perform the work unless it receives Contractor's written direction to the contrary.

All requests for change shall include adequate breakdowns of detail for material, labor, equipment, supervision and markup associated with proposed change as required for Contractor's review and verification. All changes performed under a time and material basis must be signed by a representative of Contractor for verification of effort on a daily basis and any unsigned work orders will be disregarded. Any authorized change is limited to a 15% overhead & profit markup on self-performed work and 5% overhead and profit markup on all lower tiered subcontractors and suppliers; unless contract between Owner and Contractor demands a lower mark-up from subcontractors.

**F. <u>DAMAGES CAUSED BY DELAYS</u>** – Should Subcontractor default in the proper performance of any work, thereby causing delay to the prime contract work, he shall be liable for any and all loss and damages, including liquidated damages the parties agree that the amount to be assessed as liquidated damage is reasonable and not a penalty, sustained by Contractor as a result thereof. Subcontractor shall not be liable under this paragraph if such default were caused by strikes, lockouts, acts of God or other reasons beyond the control of Subcontractor; however, notice of occurrence of such circumstances shall be given in writing immediately by Subcontractor to Contractor.

**G. <u>RECOURSE BY CONTRACTOR</u>** – In the event that Subcontractor at any time refuses or neglects to supply a sufficient number of skilled workmen or a sufficient quantity of materials of proper quality, or be adjudicated a bankruptcy, or files an arrangement proceeding, or commits any act of insolvency, or makes an assignment for benefit of creditors without Contractor's consent, or fails to make prompt payment to his material men and laborers, or fails in any respect to properly and diligently prosecute the work covered by this Agreement, or becomes delinquent with respect to contributions or payments required to be made to any health and welfare pension, vacation, apprenticeship or other employee benefit program or trust, or fails to fulfill any of the provisions of Paragraph J of these General Subcontract Provisions by him to be performed, or otherwise fails to perform fully any and all of the agreements herein contained. Upon written notification, Contractor may, at his option after giving forty-eight (48) hours written notice to cure to Subcontractor, (1) provide any such labor and materials as may be necessary and deduct the cost thereof from any money then due or thereafter to become due to the Subcontractor under this Agreement; or (2) terminate Subcontractor's right to proceed with the work and, in that event, Contractor shall have the right to enter upon premises of the project

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and take possession, for the purpose to complete the work included in this Agreement, of all materials, tools, and appliances of Subcontractor, and may employ any other person or persons to finish the work and provide the materials therefore. In case of such termination of Subcontractor's right to proceed with the work, said Subcontractor shall not be completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by Contractor in finishing Subcontractor's work, such excess shall be paid by Contractor to Subcontractor; but if such expense shall exceed such unpaid balance, the Subcontractor shall promptly pay to Contractor the amount by which such expense exceeds such unpaid balance. The expense referred to in the last sentence shall include expenses incurred by Contractor for furnishing materials, for finishing the work for attorney's fees and any damages sustained by Contractor by reason of Subcontractor's default, plus a markup of 15% General Overhead and 10% Profit and any and all of such expenses; and Contractor shall have a lien upon all materials, tools, and appliances taken possession of, as aforesaid, to secure the payment thereof. The notice referred to in this paragraph will be sufficient and complete when mailed to Subcontractor at his address shown in the Master Subcontract Agreement.

Contractor may withhold, or on account of subsequently discovered evidence, nullify the whole or a part of any payment under Section 2 to the Master Subcontract Agreement to such extent as may be necessary to protect Contractor from loss, including costs and attorney's fees on account of (1) defective work not remedied; (2) claims filed or reasonable evidence indicating probable filing of claim; (3) failure of Subcontractor to make payments properly to his subcontractor or for material, labor or for fringe benefits; (4) a reasonable doubt that this Agreement can be completed for the balance then unpaid; (5) damage to another subcontractor.

When the above grounds are removed, such amounts as are then due and owing shall be paid or credited to Subcontractor.

**H. <u>TERMINATION OF AGREEMENT</u>** – In the event the prime contract is terminated prior to its completion, Subcontractor shall be entitled only to payment for the work actually completed by it at the pro rata of the price herein set forth unless Contractor itself receives additional compensation or damages on account of such termination; in which event, Subcontractor shall be entitled to such proportion of the additional compensation or damages actually received as is equitable under all of the circumstances. Nothing herein contained shall require Contractor to make any claim against any Owner for such additional compensation or damages in the event of termination before completion, and it is specifically agreed that the failure of Contractor to prosecute any such claim against any Owner shall not entitle Subcontractor to any claim for additional compensation or damages against Contractor.

Notwithstanding the preceding paragraph, Contractor reserves the absolute right to terminate this Agreement. In the event of termination without cause, Subcontractor shall be entitled to payment only as follows:

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1. Cost of the work actually completed in conformity with this Agreement; plus
2. Other costs actually incurred by Subcontractor; plus
3. 10% of costs referred to in Paragraph 1 above, for overhead and profit.

The sums provided in this paragraph shall be deducted from the amount of any payments made to Subcontractor prior to the date of termination of this Agreement. Subcontractor shall not be entitled to any claim, or claim of lien, against Contractor or against any Owner for any additional compensation or damages in the event of such termination and payment.

In the event this Agreement is terminated for cause, Subcontractor shall not be entitled to receive any further payment until the work undertaken by Contractor in his prime contract is completely finished. At that time, if the amounts earned but not paid Subcontractor before said termination exceed the expenses incurred by Contractor in finishing Subcontractor's work, any excess shall be paid by Contractor to Subcontractor; but, if such expense shall exceed the said amount earned and unpaid, Subcontractor shall promptly pay to Contractor the amount by which the expense exceeds said sum. The expense incurred by Contractor, as just referred to, shall include Contractor's expense for furnishing materials, for finishing the work, for attorneys' fees, and any damages incurred by Contractor by reason of Subcontractor's default.

Contractor may terminate this Agreement in the event that Subcontractor, or any of his subcontractors, are listed by the Administrative Office of the various Employee Fringe Benefits trusts, including, but not limited to Health and Welfare, Pension, Vacation, or Apprenticeship Trusts, as being delinquent in payment or payments to any such trust, regardless of the project in connection with which the delinquency or delinquencies occurred. With respect to any and all payments to be made by Contractor to said Subcontractor under this Agreement, Contractor at his option may issue joint checks payable to Subcontractor and any of the Employee Fringe Benefit Trusts referred to herein to the extent necessary to assure that payments required from Subcontractor or any of his subcontractors with respect to work performed under this Agreement are paid.

The Insurance and Indemnity requirements set forth in Provisions A and B of these General Subcontract Provisions shall survive the termination of this Agreement and any contract hereunder.

**I. <u>LABOR RELATIONS</u>** – Employment of labor by Subcontractor shall be effected under conditions that are satisfactory to Contractor. Subcontractor shall keep a representative at any job site during all times when Subcontractor's work is in progress, and such representative shall be authorized to represent Subcontractor as to all phases of the work. Prior to commencement of the work, Subcontractor shall notify Contractor who Subcontractor's representative is to be, and in the event of any change of representative, Subcontractor shall notify Contractor who the new representative is to be prior to such change becoming effective.

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Should there be picketing on the Contractor's job site and the Contractor establishes a reserved gate for the Subcontractor's purposes; it shall be the obligation of the Subcontractor to continue the proper performance of his work without interruption or delay.

Subcontractor further promises and agrees that he will bind and require all of his subcontractors and their subcontractors performing job site work of the type covered by any of the labor agreements specified above to agree to all of the foregoing promises and undertakings, to the same effect as herein provided with respect to him.

Subcontractor will indemnify and hold harmless Contractor from and against any liability, loss, damage cost, claims, awards, judgments, fines, expenses, including litigation expenses, reasonable attorney's fees and any other costs which may be incurred by the Contractor resulting from Subcontractor's failure to fulfill the covenant set forth in this paragraph.

Should a labor dispute arise due to the operations on the Subcontractor, the Subcontractor will be held liable for all costs incurred to establish a dual gate system.

**J. <u>LAYOUT RESPONSIBILITY</u>** – Contractor shall establish principal axis lines and levels whereupon Subcontractor shall lay out and shall be strictly responsible for the accuracy of his work, for the coordination of his work with others, and for any loss or damage to other Contractors engaged in work on the site by reason of failure of Subcontractor to set out or perform his work correctly or to coordinate his work with the work of others. Subcontractor shall exercise prudence in laying out and performing the subcontract work so that the actual final conditions and details shall result in perfect alignment of finished surfaces.

**K. <u>WORKMANSHIP</u>** – Every part of the work herein described shall be executed in strict accordance with the Contract Documents in the most sound, workmanlike, and substantial manner. Subcontractor will provide work and labor to the standard of the industry and in conformance with the required specifications and standards in any applicable contract documents.

**L. <u>PROVISIONS FOR INSPECTION</u>** – Subcontractor shall at all times furnish to Contractor and its representatives, safe and ample facilities for inspecting materials at the site of construction, shops, factories or any place of business of Subcontractor and its subcontractors and material men where materials under this Agreement may be in course of preparation, process, manufacture or treatment. Subcontractor shall furnish to Contractor as often as required by Contractor, full reports of the progress of the work at any place where materials under this Agreement may be in the course of preparation or manufacture. Such reports shall show the progress of such preparation and Contractor, including, but not limited to, any plans, drawings or diagrams in the course of preparation. Subcontractor shall provide a minimum of 48 hours' notice to Contractor for all inspections.

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**M. MATERIALS AND WORK FURNISHED BY OTHERS** – The Owner of any project where Subcontractor performs work for Contractor reserves the right to procure, under its name and on its form, equipment and materials for the project. In the event the scope of work includes installation of materials or equipment furnished by others or work to be performed in areas to be constructed or prepared by others, it shall be the responsibility of Subcontractor to examine and accept at the time of delivery or first access, the items or areas so provided thereupon handle, store and install the items or to protect such areas with such skill and care as to insure a satisfactory completion of the work in a timely manner to support construction. Use of such items or commencement of work by Subcontractor in such areas shall be deemed to constitute acceptance thereof by Subcontractor. Loss or damage due to acts of Subcontractor shall be charged to the account of Subcontractor and deducted from monies otherwise due under this Agreement.

**N. PROTECTION OF WORK** – Subcontractor shall effectively secure and protect the work done hereunder and assume full responsibility for the condition thereof until final acceptance by the Architect, Owner, and Contractor for any project where Subcontractor performs work for Contractor. Subcontractor further agrees to provide such protection as is necessary to protect the work and the workmen of the Contractor, Owner and other subcontractors from his operations.

Subcontractor shall be liable for any loss or damage to any work in place or to any equipment and materials on the job site caused by him or his agents, employees, or guests. Damage which may be caused to another Subcontractor's work or existing construction shall be repaired at the damaging Subcontractor's own expense and as directed by Contractor. If Contractor is unable to determine, to its own reasonable satisfaction, the party responsible for damage to the work then the installing Subcontractor shall repair the damaged work at its own cost.

**O. USE OF CONTRACTOR'S EQUIPMENT** – In the event Subcontractor shall use Contractor's equipment, materials, labor, supplies or facilities Subcontractor shall reimburse Contractor at a predetermined rate, unless otherwise stated herein. Further, Subcontractor assumes all responsibility for, and shall hold Contractor harmless from any claims, actions, demands, damages, liabilities, or expenses, including attorney's fees, resulting from the use of such equipment, materials, labor, supplies, or facilities by Subcontractor or his agents, employees, or permittees. In the event that Subcontractor uses Contractor's employees, Subcontractor shall have full responsibility for all acts or omissions of Contractor's employees with regard to such operation. Subcontractor accepts any and all of Contractor's equipment, materials, labor, supplies, or facilities as furnished.

**P. CLEAN-UP** – At all times during the course of construction, Subcontractor shall perform his work so as to maintain the site in a clean, safe and orderly condition. **Subcontractor is responsible for providing continuous/progressive daily cleanup of his work. Subcontractor shall provide adequate labor, brooms, shovels, mobile trash containers, carts, buggies and other cleaning equipment to support the quantity of trash and waste**

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**generated by this scope of work. All trash and debris shall be deposited in the designated dumpsters on a daily basis. Trash dumpsters will be provided by Contractor for Subcontractor's use for the disposal of normal construction debris in the event that this Subcontractor requires an inordinate amount of debris removal i.e. demolition then this Subcontractor shall provide dumpsters for Subcontractor's own use.** Upon completion of the work under this Agreement, Subcontractor shall remove from the site all temporary structures, debris and waste incident to his operation and clean all surfaces, fixtures, equipment, and other foreign materials, etc. relative to the performance of this Agreement. Contractor may order Subcontractor to clean up his areas at any time Contractor deems such action necessary. If Subcontractor fails to perform a clean-up function within **24 hours** after notification from Contractor to do so, Contractor may proceed with that function as he judges necessary and in the manner he may deem expedient, and the cost thereof shall be charged to Subcontractor and deducted from monies due under this Agreement. In the event Contractor is unable to determine which Subcontractor is responsible for the cleanup of any debris, etc., Contractor may apportion the cost of such clean up in such manner as he may determine to be equitable.

When off-site disposal of debris and/or materials is required by this scope of work, it shall be done by the Subcontractor in full compliance with all applicable laws and regulations. Subcontractor shall bear all costs thereof.

Subcontractor generating debris/waste classified as hazardous shall be responsible for the separation of such materials from normal construction debris and the removal/disposal of such materials in full compliance with all applicable laws and regulations.

Subcontractor shall be responsible for the necessary cleaning and repairing of adjacent streets and sidewalks from its operations.

**Q.** **WARRANTY** – Subcontractor shall provide a one-year written warranty, as set forth below, for any work performed for Contractor. The warranty start date is determined by Owner occupancy of any project where Subcontractor performs work for Contractor. Subcontractor guarantees all materials and workmanship and agrees to replace at his sole cost and expense and to the satisfaction of Contractor, any and all materials adjudged defective or improperly installed, as well as guarantee the Owner and Contractor against liability, loss or damage arising from said installation during a period of one year from completion and acceptance of the work. If, however, the period of guarantee is stipulated in excess of one year by the contract documents for any project where Subcontractor performs work for Contractor, Subcontractor shall be bound during the longer period provided in the contract documents.

**R.** **INDEMNIFICATION FROM PATENT RIGHTS** – Subcontractor shall indemnify and hold Contractor and the Owner, of any project where Subcontractor performs work for Contractor, harmless against any claim, suit or action or any alleged violation or infringement of patient rights which may be made against Contractor by reason of the use in connection with or as a part of the performance of the work or the furnishing of the materials hereunder of anything

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which is now or may hereafter be covered by patent, copyright or trademark, and also against all expense, including attorneys' fees which Contractor may incur in defending or adjusting any such claim, suit or action. The indemnity obligations set forth herein under Provision S include a separate and independent duty to defend Contractor and Contractor's officers, directors, shareholders, partners, employees, representatives, affiliates, and parent and subsidiary companies which arises immediately upon presentation of a claim in any way related to or arising from Subcontractor's performance of work for Contractor. The separate and immediate duty to defend shall arise irrespective if a determination of fault has been made concerning any alleged or actual act or omission on the part of the Subcontractor, Contractor, Owner, or any other party.

**S. ASSIGNMENT OF CONTRACT** – Subcontractor shall not, without written consent of Contractor, assign, transfer, nor sublet any portion or part of the work required by this Agreement nor assign any payments hereunder to others. Contractor may assign or transfer the whole or part of this agreement, and his rights hereunder, to any corporation, individual, or partnership.

**T. INDEPENDENT CONTRACTOR** – Subcontractor is an independent Contractor and shall, at his sole cost and expense, and without increase in the Contract Price, comply with all laws, rules, ordinances, and regulations of all governing bodies having jurisdiction over the work; obtain all necessary permits and licenses therefore; pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for Social Security and Unemployment which are measured by wages, salaries, or other remunerations paid to Subcontractor's employees, whether levied under existing or subsequently enacted laws, rules, or regulations. Subcontractor, upon request, shall furnish evidence satisfactory to Contractor that any or all of the foregoing obligations have been fulfilled.

**U. EXCUSE** – Any act of omission of Contractor which Subcontractor might claim as an excuse for his own failure to perform shall be deemed waived by Subcontractor unless he shall notify Contractor of his intention to assert such excuse within ten days after the occurrence of any such act of omission.

**V. ATTORNEYS' FEES** – In the event either Contractor or Subcontractor instituted suit in court against the other party, or against the surety of such party, in connection with any dispute or matter arising under this Agreement, the party which prevails in that suit shall be entitled to recover reasonable attorneys' fees, which shall be determined by the court and included in the judgment in said suit.

**W. DISPUTE RESOLUTION – ARBITRATION** – (a) Contractor and Subcontractor shall not be obligated to resolve disputes arising under this Subcontract by arbitration, unless: (i) the prime contract has an arbitration requirement; and (ii) a particular dispute between Contractor and Subcontractor involves issues of fact or law which the Contractor is required to arbitrate under the terms of the prime contract. In the event that arbitration is required under the terms of

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this Provision, the same arbitrator(s) utilized to resolve the dispute between any Owner and Contractor shall be utilized to resolve the dispute under this Provision; (b) In the event that the Contractor and any Owner or others arbitrate matters relating to this Subcontract, the Subcontractor shall be required, at the request of the Contractor, to prepare and present the Contractor's case at Subcontractor's expense to the extent the proceedings relate to this Subcontract; (c) Should the Contractor enter into arbitration with any Owner or others with regard to issues relating to this Agreement, the Subcontractor shall be bound by the result of the arbitration to the same degree as the Contractor.

**X. SAFETY -** Subcontractor shall, at its expense, conform to the basic safety policy of the Contractor and the Project Safety Program attached to the Master Subcontract as Exhibit "H", and comply with all specific safety requirements promulgated by local, state, or federal authority, including but not limited to OSHA 1926, and all successors and amendments thereto, and all standards and regulations which have been or shall be promulgated by the parties or agencies which administer said regulations.

Subcontractor shall have and exercise full responsibility for compliance hereunder by itself, its agents, employees, material men, and subcontractors with respect to its portion of the work on this project; and shall directly receive, respond to, defend and be responsible for any citation, assessment, fine or penalty by reason of Subcontractor's failure or failure of Subcontractor's agents, employees, material men and subcontractors to so comply. Subcontractor shall indemnify and hold harmless Contractor from and against any liability, loss, damage, costs, claims, awards, judgments, fines, expenses, including litigation expenses, reasonable attorneys' fees, claims or liability for harm to persons or property, expenses incurred pursuant to or attendant to any hearing or meeting and any other applicable cost which may be incurred by Contractor resulting from Subcontractor's failure to fulfill the covenants set forth in this paragraph.

In the event Subcontractor fails to comply with any citation issued by Occupational Safety and Health Review Commission or any order issued by the Division of Industrial Safety of the State of Nevada or of any other body responsible for the administration and/or enforcement of any statute, regulation or ordinance relating to occupational health and safety within the period specified in any such citation or order: Contractor may, in his discretion, exercise the rights and remedies provided him under the terms of this Master Subcontract Agreement, including, but not limited to, the rights and remedies provided in Paragraph H of these General Subcontract Provisions, Recourse by Contractor.
Contractor shall exercise the power of mandatory drug testing for cause, suspicion or post-accident investigation. Subcontractor will comply with testing and results will be kept in confidence and released only to Subcontractor's designated representative.

Subcontractor shall provide any documents, test results, safety plans, site specific plans/programs, and/or drawings if requested by Contractor for safety. Subcontractor will

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comply with Contractor safety program and/or site specific requirements. If Subcontractor's safety program conflicts with Contractors safety plan, Contractor's safety plan governs.

Subcontractor shall maintain and enforce an onsite safety program for its employees. A copy of such safety program shall be kept in Contractor's jobsite trailer or office. The safety program book shall be submitted to Contractor's superintendent no later than the first day Subcontractor is working on site.

Subcontractor shall provide Contractor copies of all Material Safety Data Sheets (MSDS) on any and all chemicals/materials used on the jobsite no later than the first day Subcontractor is working on site.

Subcontractor shall provide a designated on-site safety representative, and adequate safety equipment.

**Y. <u>STORAGE OF MATERIALS/ DELIVERIES</u>** – Subcontractor is responsible for his own materials until erected on jobsite and for the secure storage of his materials and equipment. However, Contractor may provide secure storage at his option.

Subcontractor is aware of the critical constraints of the jobsite storage and agrees if any off-site storage is necessary, Subcontractor will be responsible for rent, insurance, bonds, delivery, security, etc. All deliveries and storage shall be coordinated with and approved by Contractor. Materials shall be kept in an orderly and confined area as designated by Contractor within the construction limits so as not to impede the work of others and/or block means of safe access or egress. All material stored on site shall be kept on elevated supports and covered to provide protection from dust, water, mud, and other debris. All materials and/or equipment deemed to be dirty by Contractor will be cleaned by this Subcontractor, to the satisfaction of Contractor, prior to its placement inside the building.

Subcontractor shall be responsible for delivery, receiving, unloading, storing, handling, and distributing the materials and to coordinate with all appropriate trades, Contractor and the Owner of any project where Subcontractor performs work for Contractor. Subcontractor shall be required to provide its own traffic control and signage as required for delivery of materials, supplies, and equipment. This subcontractor shall provide a flag person during its delivery process.

Payment for stored materials will be evaluated on an individual basis. In any case, no payments will be made for stored materials unless Subcontractor complies with the following Stored Materials Procedure:

1. Owner Bill of Sale from Vendor to Subcontractor for materials which are stored.

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2. Warehouse Receipt by Storage Vendor to Subcontractor and Contractor.

3. Evidence that the storage facility is a bonded warehouse. Access and delivery of goods must be cleared for release by Contractor in the event of a failure by Subcontractor/Vendor.

4. Evidence of Property insurance on those specific goods covering goods in storage and during transportation to the jobsite naming Contractor and Owner as an additional insured.

5. Consent of Surety, if applicable, to make payment for materials stored off-site.

6. Provide for inspection by Architect, Engineer, Owner, and Contractor.

7. Notify Contractor and Owner of your request to store material in an off-site location in advance of your initial request for payment.

8. Provide actual invoice indicating the cost of goods. This shall be submitted to the Owner for payment along with Contractor Monthly Requisition.

For materials or equipment stored offsite, subcontractor must obtain, at their own expense, suitable all risk insurance to cover possible losses to said material or equipment prior to delivery to the offsite location. This insurance shall be for the specific amount requested for the stored material.

**Z. RECORD DRAWINGS** – Contractor will maintain a set of as-built drawings in the jobsite office. The Subcontractor agrees to incorporate all as-built information into these drawings on a weekly basis or as further describes as follows:

**Subcontractor installing work which is concealed in its final configuration are required to update the jobsite master set of "As-Built" drawings, maintained by the Contractor's jobsite superintendent ON A DAILY BASIS. Failure to record such concealed work will result in delayed payment.** This subcontractor is required to maintain separate up-to-date "As-Built" drawings at all times. At the completion of the project, this subcontractor will submit the required number of sets of record document "As-Built" drawings, as well as all applicable operation and maintenance manuals. **For record purposes, GPS data plots are required for locating all installed underground piping/conduit systems at the completion of your work.**

**AA. PROJECT CLOSEOUT** – All required warranties, as-built drawings, operation and maintenance manuals will be completed and/or submitted and all outstanding change orders must be settled prior to full retention release.

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Contractor shall issue interim and final punch-lists for this project which shall be addressed immediately by Subcontractor. Any objection Subcontractor may have with this punch-list shall be submitted in writing with five days of distribution. All undisputed items shall be completed within ten days of receipt of punch-list. If Subcontractor fails to perform required corrections in this ten day period, subcontractor shall be deemed in default of this agreement, at which point Contractor shall have work completed on behalf of Subcontractor at Subcontractor's sole expense.

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# Exhibit E

## ADDITIONAL PROVISIONS

1. GOVERNING DOCUMENTS
   a. Where General Conditions are included in the Specifications and where they conflict with the Additional Provisions, then the most stringent will govern.
2. SCOPE OF THE WORK – GENERAL
   a. The Contract Documents set forth in any Work Order are intended to represent a complete and fully-operational facility. All support systems and/or components reasonably required and necessary for a complete and operational facility shall be included.
   b. Where the specifications reference scheduling work with the Owner or Architect, note that this will be schedule through SR Construction. All work areas, phasing, storage provisions, claims for extra work, permission to shut down, etc. will be coordinated through SR Construction who will work in conjunction with the Owner, Architect, and Engineer.
   c. Additional plans and specifications will be provided at Subcontractor's expense.
   d. This Subcontractor agrees that the subject matter of this subcontract is confidential in nature and that Subcontractor will not provide any third party with any information contained herein without the expressed prior written consent of SR Construction.
   e. This Subcontractor warrants that he has visited and examined the project site and further that he shall make no claim for extra work on account of existing exposed site improvements.
   f. This Subcontractor shall inspect all surfaces and substrates prior to the commencement of any work. This Subcontractor shall notify SR Construction in writing at least 2 weeks prior to the commencement of this work of any deficiencies or unsuitable surface conditions. The commencement of any work implies the acceptance of all substrate conditions.
   g. No product substitutions are allowed without prior written authorization of the Owner.
   h. This Subcontract includes all escalation costs as required for the completion of the work in accordance with the applicable Project Schedule.
3. PERMITS AND FEES
   a. Subcontractor shall pay for and obtain all necessary permits and pay all fees associated with any scope of work. All fines resulting from non-compliance will be the responsibility of the Subcontractor.
4. TEMPORARY MEASURES
   a. If this Subcontractor is providing office trailers, storage trailers, etc., Subcontractor shall submit to SR Construction for approval prior to placing these items on site. Utilities and utility hookups for these facilities shall be the responsibility of the Subcontractor. Subcontractor shall comply and obtain all necessary permits and fees as required by the governing agencies associated with these temporary facilities. All office or storage trailers must be visually acceptable and approved by SR Construction prior to placing.
   b. Subcontractor shall provide their own temporary water supply as required prior to the completion of the initial building temporary service and distribution installation for the project. Piping material used must be approved by SR Construction before installation. Subcontractors shall be

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responsible for supplying their own extensions from the temporary water supply. All temporary work shall be maintained, protected and removed by the installing Subcontractor as directed by SR Construction. The cost of water service will be by others.

c. Subcontractor shall provide their own temporary electrical power and lighting as required until the Electrical Subcontractor completes the initial temporary service and wiring installation for the project. Once initial service installation is completed, temporary power, wiring, lighting and distribution will be provided in accordance with current OSHA requirements. Any requirements in excess of these shall be at the expense of the Subcontractor requiring same. Subcontractor shall bear the cost of hook-up of its tools and equipment to the power distribution system. Any electrical service in excess of single phase, 120V power shall be the responsibility of the Subcontractor. All temporary work shall be removed by the installing Subcontractor as directed by SR Construction.

d. Subcontractor shall provide its own drinking water, ice, and cups.

e. Temporary toilets shall be provided by SR Construction for use by all Subcontractors except as noted otherwise.

f. Subcontractor shall provide all protection, safety barricades, devices, covers, etc. as required for the safe conduct of their work and in accordance with the latest OSHA requirements. These measures shall be left in place until authorized to be removed by SR Construction or authority having jurisdiction. Existing safety measures disturbed by the subcontractor shall be restored or replaced in full compliance with OSHA standards.

g. Subcontractor shall provide all protection against the elements for the proper execution of its work. Include proper protection of all components that will become a permanent part of the project.

h. Subcontractor shall provide dust control during any scope of work if required.

5. ENGINEERING

a. Subcontractor shall provide all necessary professional engineering including design, certification, and sealing/stamping of design as required by this scope of work.

6. DESIGNATED AREAS

a. The use of tobacco products of any kind will not be allowed within the confines of the building. Subcontractor shall police its own employees to ensure compliance with this policy.

b. Eating will be allowed only in areas so designated by SR Construction. Designated break areas must be cleaned daily by all Subcontractors.

c. Limited parking will be available on site. SR Construction will designate the specific areas available for Subcontractor parking in the construction area. Requirements for parking in excess of that so designated shall be the responsibility of the Subcontractor.

d. No open fires for handwarming, trash disposal, or any other purpose will be permitted.

7. CUTTING AND PATCHING OF WORK

# Exhibit E

## ADDITIONAL PROVISIONS

a. All patching and replacement of existing materials shall be done in a neat and workmanlike manner to match adjacent surfaces.

8. COORDINATION AND COOPERATION

a. Subcontractor shall coordinate and cooperate with other Subcontractors as necessary to eliminate conflicts with previously installed work and to ensure continuous flow of the work without unnecessary delays, stoppages and damage to work in place by this Subcontractor and others working in the area. This shall include the placement and/or storage of materials and equipment so as not to interfere with other Subcontractors at any time.

b. It is intended that all contract documents are complimentary and are to be used in conjunction with each other. Discrepancies between trade disciplines shall be brought to the immediate attention of SR Construction.

c. In the event of a dispute arising between Subcontractors over the coordination of any work, SR Construction's ruling will be final and binding on all of the Subcontractors involved.

d. Subcontractor shall assist the testing laboratory in obtaining samples and gathering data as needed relative to its work.

9. JOB STAFF

a. For each Work Order, Subcontractor shall provide, at a minimum, a full-time, on-site fluent English speaking supervisor acceptable to SR Construction. This supervisor shall be responsible for the coordination of this Subcontractor's work with other trades and SR Construction for the duration of this work. This supervisor may not be changed without prior approval of SR Construction.

b. Subcontractor shall require the jobsite supervisor assigned to the project to attend all weekly Subcontractor Coordination meetings for the purpose of coordinating the day-to-day activities of the work.

c. For each Work Order, Subcontractor shall assign a project manager who must attend all meetings scheduled by SR Construction for the purpose of reviewing and updating the CPM schedule, pay requests, change order requests, etc.

d. Subcontractor's on-site employees will be required to comply with the requirements of SR Construction's Project Safety Plan (Exhibit H).

10. EQUIPMENT

a. Subcontractor shall be responsible for the cost of mobilization and demobilization for all equipment necessary to complete its work.

b. Subcontractor shall include the necessary equipment for lifting, hoisting, scaffolding, staging, rigging and materials transport as required within this scope of work except as noted below. All hoisting shall be executed in accordance with all applicable codes and regulations.

c. Subcontractor shall include a minimum of one (1) radio or cellular telephone for its supervisor that will communicate with SR Construction.

d. No radios, other than communication-type radios, will be permitted on the jobsite.

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# Exhibit E

## ADDITIONAL PROVISIONS

11. EXISTING CONDITIONS

a. Subcontractor shall check the accuracy of any building structure and/or surface to receive its work and notify SR Construction of any deficiencies prior to beginning its work. Subcontractors shall not proceed with work until unsatisfactory conditions have been corrected and shall not apply work over other Subcontractor's incomplete or defective work. Commencement of installation constitutes acceptance of structure and/or base surfaces and the cost of any corrective work due to faulty base surfaces shall be borne by the installer applying its materials thereon.

12. EXISTING FACILITIES AND SERVICES

a. Subcontractor shall provide and maintain shoring, bracing, underpinning and any other necessary means to protect any existing facilities from collapse or other types of damage until such time as they are to be removed, incorporated into the new work, or can be properly backfilled.

b. Subcontractor shall verify locations of all existing utilities, structures, structural elements, and building services prior to commencing work.

c. Any damage to existing facilities during construction shall be repaired at the damaging Subcontractor's expense.

d. Work will likely be required within or in close proximity to existing buildings and structures. Subcontractor shall provide the means of access to the areas in which its work occurs. Subcontractor shall adequately protect all existing buildings and real or personal property from damage due to its activities. The Subcontractor shall allow suitable access to existing buildings during construction. No fire exits or means of egress shall be blocked at any time.

e. All work relating to the disruption of existing services shall be performed in accordance with the schedule and be limited to the maximum time specified by SR Construction.

13. ACCESS PANELS/DOORS

a. Subcontractor shall be responsible for furnishing the necessary access panels for items of work installed under its Subcontract, including those required by code, regardless of whether or not they are required by the contract documents. If not specified, access panels must be approved by the Architect prior to installation.

b. Installation of all access panels shall be the responsibility of the Subcontractor erecting the wall or ceiling system.

14. SUBMITTALS

a. Subcontractor shall provide the required submittals within 7 calendar days of issuance of the Subcontract. Re-submittal of any items shall be returned to SR Construction within 5 calendar days after being returned to Subcontractor.

b. Subcontractor shall furnish SR Construction written evidence of confirmed shipping dates for major materials and equipment from suppliers and vendors.

c. Subcontractor shall be prepared to construct a mockup of its work as directed by SR Construction. When practical, mockups shall be placed so as to allow their incorporation into the work.

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# Exhibit E

## ADDITIONAL PROVISIONS

15. QUALITY CONTROL

a. As a minimum, this Subcontractor involved with the installation of systems within this any Work Order issued pursuant to the Master Subcontract Agreement shall be present at the following time frames or as directed by SR Construction:

i. Pre-work meeting.

ii. Periodic SR Construction inspections during installation with a minimum of two visits.

iii. Associated Subcontractor's and SR Construction's System Check.

iv. 3rd Party Agents and Owner Agents System Check.

v. All required local and/or state interim and final inspections.

b. Subcontractor shall provide all Special Warranties, bonds, and cost of inspections and observation by manufacturers' representatives, inspectors, agencies as required. Subcontractor shall submit with his initial submittal, for approval, the sample forms on which warranties are to be provided.

c. Unless stated otherwise, the Owner of any project where Subcontractor performs work for Contractor will retain an independent Agent to perform all on site testing and inspection. The Subcontractor shall cooperate with and assist such Agent in obtaining samples and gathering data as needed.

16. REGULATORY REQUIREMENTS

a. Subcontractor shall comply with all Federal, State, and Local codes and regulations pertaining to the execution of its work.

b. Subcontractor is responsible for all coordination and scheduling/calling in of all inspections. SR Construction must be notified of all scheduled inspections at least 48 hours in advance. This Subcontractor also shall submit to SR Construction all inspection reports from local, state, and federal inspection agencies. This Subcontractor shall be responsible for all costs for re-inspection due to deficiencies of this scope of work.

c. Subcontractor shall attend all local and/or state inspections applicable to any Work Order or scope of work. This Subcontractor shall provide the required Supervision and personnel to facilitate these inspections and fully demonstrate the operation of systems installed.

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# Exhibit F

## BUILDER'S RISK INSURANCE

For each Work Order or scope of work, the Owner or SR Construction, Inc. will furnish and pay for Builder's Risk Insurance to provide special form coverage not endorsed to delete or limit the coverage form. The Subcontractor's work performed and materials to be incorporated into any project and stored on the jobsite will be covered to the extent of such policy and paid to Subcontractor to the extent paid by the insurance company for Subcontractor's loss. The Builder's Risk Insurance does not include temporary buildings, Subcontractor's tools, or equipment not incorporated in the work.

If there is a loss insured under the Builder's Risk policy, Subcontractor will be bound by any adjustment that will be made between Contractor and/or any Owner and the insurance company or companies. Contractor's liability to Subcontractor for such loss will in all cases be limited to amounts actually paid on Subcontractor's claim.

If the Builder's Risk Insurance covering the Subcontractor's work contains any deductibles to any loss covered thereby, the risk of loss by reason of such deductible is upon Subcontractor. If Subcontractor causes damage or loss to other work or property covered by the Builder's Risk Insurance, then Subcontractor is responsible for applicable deductibles and will pay, and otherwise indemnify Contractor for liability on account of, any deductibles.

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# Exhibit G

## PROJECT QUALITY CONTROL PLAN

## Index


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### SECTION 1

### STATEMENT OF POLICY

SR Construction, Inc. (SR) has established this Quality Control Plan as an integral part of our continuing effort to comply fully with project requirements and to maintain the highest reliability in the finished product. The intent of the QC Plan is to provide procedures for monitoring activities that affect the quality imposed by any Contract Documents and applicable regulations.

Implementation of this program on any project is the responsibility of the SR Project Superintendent(s) and the designated Subcontractor competent persons, who have the authority to identify quality control problems and provide corrective solutions to the problems, including the removal and replacement of defective work. All project personnel should be familiar with this QC Plan and respect the responsibility and authority delegated to these individuals for the administration, control, implementation, and maintenance of this QC Plan.

SR Construction, Inc.

### SECTION 2

### PURPOSE / MISSION STATEMENT

This Quality Control Plan will serve as a tool to effectively manage and enforce the strict quality requirements of SR, the Owner, the designers, and any governmental authorities consistent with the applicable Contract Documents. We are committed to the working steps and continuous improvement process to ensure that our quality goals are met. SR and its subcontractors and suppliers must be committed and actively participate in order to achieve these goals.

We, the members of the SR Construction team, are committed to the timely and economical completion of this Project. We agree through teamwork, planning, communication, cooperation, and commitment that we can achieve a mutual goal of producing a quality, safe, expeditious, and profitable project for all. DS

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## SECTION 3

## RESPONSIBILITIES & DUTIES

**Responsibilities**

Those involved in any project share the responsibility for quality. However, specific individuals and companies have certain obligations to control the quality of the work and verify that the quality was achieved.

**SR:** SR has the responsibility for assuring that the Project is constructed in conformance with the applicable Contract Documents. The individual responsibilities of SR staff are as follows:

1. **Project Manager, shall:**
   a. Aid in coordination and execution of Quality Control Plan.
   b. Administer Subcontractor Pre-Installation Conferences.
   c. Administer Project Closeout and Owner In-Service Training.

2. **Project Superintendent, shall:**
   a. Initiate the Quality Control Plan and process.
   b. Administer the overall Quality Control Plan.
   c. Monitor all work in progress.
   d. Responsible for all areas of the building.
   e. Enforce requirements of contract documents.
   f. Prepare Monthly QC Status Report.
   g. Administer Subcontractor weekly QC meetings.
   h. Coordinate/Conduct Agency, A/E inspections.
   i. Administer First Work Inspections.
   j. Administer Major Milestone Inspections.

3. **Project Engineer, shall:**
   a. Review and Process submittals/shop drawings.
   b. Procure Samples and Mockups associated with MEP.
   c. Assist Superintendent with administration of QC Plan for above mentioned areas or disciplines.
   d. Facilitate Subcontractor Pre-Installation Conferences for above mentioned areas or disciplines.
   e. Develop First Work Inspection checklists for above mentioned areas or disciplines.
   f. Facilitate overhead coordination process.

4. **Assistant Superintendent, shall:**
   a. Assist the Superintendents and Project Managers as time and qualifications permit, including complete delegation of their tasks.
   b. Establishing and enforcing the preparation and filing of all documentation required by the QC Plan.

5. **The Subcontractor is responsible for the quality of materials and workmanship of their work. The Subcontractor shall:**
   a. Review, understand, and construct in accordance with the contract documents.
   b. Furnish and install approved specified materials.
   c. Control the quality of the work installed.
   d. Provide a competent person to Inspect the quality of work installed.
   e. Correct deficiencies, if necessary, in an acceptable and timely manner

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## SECTION 4

## SUBCONTRACTOR QUALITY CONTROL PLAN

Subcontractor will be required to furnish, administer, and implement its own Quality Control Plan consistent with this QC Plan developed for their installation scope. SR project staff will aid the Subcontractor in development of a QC Plan if they do not currently have one. This Subcontractor must submit the QC Plan for SR's approval prior to work commencing by the Subcontractor.

As with the SR QC Plan, the Subcontractor's Plan is expected to convey the methods they will employ to control the quality of their work and installations. The Subcontractor's Plan should include the activity descriptions, the inspection procedures, how reporting and follow-up will be done, and how steps for correction and improvement will be taken. The Subcontractor's Plan shall incorporate the following at a minimum.

1. Administrative & General Responsibilities.
   a. Who is in charge?
   b. Who is responsible for each category of work activities?
   c. What is the report method?
   d. What is the non-conformance follow-up method?
   e. How records are maintained?
2. Training & Certification.
   a. What certifications of training for craftsmen will be provided?
   b. What QC certifications for competent person will be provided?
3. Best Practices
   a. How will Best Practices or Do's & Don'ts be utilized
4. Preconstruction & Construction Activities.
   a. How will plan review be done?
   b. How will submittals be assembled, reviewed, distributed, and controlled?
   c. How will coordination drawings be handled?
   d. How will mockups and samples be handled?
   e. How will RFI's be handled?
5. Inspection Activities
   a. What inspections will be performed internally?
   b. What reports will be generated?
   c. How will reports be distributed?
   d. What are the methods for correction and improvement?
   e. How corrective actions are documented?
   f. How will governmental & other external inspections are to be handled; by whom?
6. Close-out Activities.
   a. How will the certification process be handled?
   b. How will final inspection reports be handled?
   c. Who will assemble Owner manuals?
   d. How will keys, spare inventory, etc., be handled?
   e. How will Owner training be accomplished?

Additionally, the Subcontractor verification and certification of the items listed in the attached Daily Quality Control Reports (as applicable) will also be required as a part of the Quality Control Plan.

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## SECTION 5

## QUALITY CONTROL FILING SYSTEM

The following Quality Control Filing System is used on Contractor's Project. The purpose of the filing system is to maintain an easily accessible record of all observation reports, inspection reports, punchlists, corrective action, report responses, etc. The following list contains the files Contractor and each subcontractor should maintain, as applicable:

1. Testing Laboratory Inspections: (i.e., Soils, Fireproofing, Concrete, Steel, Test Reports, etc.)
2. Quality Control Checklists.
3. Subcontractor Pre-Installation Conference Meeting Minutes.
4. First Work Inspections.
5. Ceiling Closure Inspections.
6. Systems Check-out Records.
7. SR Final Punch Lists.
8. Architect/Engineer Final Inspection Punch Lists.
9. Architect's Observation Reports with Responses.
10. Engineer's Observation Reports with Responses.
11. Owner's Observation Reports with Responses.
12. Agency Inspection Reports with Responses.
13. Monthly Quality Control Status Reports.

The competent persons are responsible for maintaining the files and inserting report responses with the appropriate observation reports as they are received.

## SECTION 6

## SUBMITTAL REVIEW PROCEDURE

All submittals will be made in accordance with the requirements of the project specifications and as per the project schedule. The project schedule will be used as appropriate to track appropriate dates for submittal, approval and delivery. Each submittal shall be labeled in accordance with SR Construction's submittal log and system number.

All shop drawings, samples, certificates or other submittals will be checked, approved and signed by the designated personnel.

All submittals, shop drawings, catalog cuts, samples, etc., unless otherwise specifically noted, shall be approved and certified by the subcontractor/supplier and SR as conforming to the drawings and specifications. Copies of all shop drawings, catalog cuts or other submittals, with SR approval indicated thereon, shall be sent to the A/E.

Each sheet of each submittal shall be stamped with the reviewer's approval stamp, except that data submitted in bound volume or on one sheet printed on two sides may be stamped on the front of the first sheet only. The signature on one copy must be an original. Additional copies may be photocopies. The approval stamp shall read: (SEE BELOW EXAMPLE)

Each item proposed to be incorporated into the project shall be clearly marked and identified in the submittals and catalog data and shall be cross referenced to the contract drawings and specifications so as to identify clearly the use for which it is intended.

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SR will maintain at every job site an up-to-date submittal register showing the status of all submittals required by the contract.

SR will provide an updated submittal register to the A/E at every Owner's meeting or more often if directed by the Owner.

The number of copies of submittals, shop drawings, catalog cuts, certificates of conformance, samples and O & M manuals to be submitted to the A/E will be as determined by individual project.

**SECTION 6 - SUBMITTAL REVIEW PROCEDURE (continued)**

Submittal Stamp Sheet (Enlarged for detail)

**SR CONSTRUCTION, INC.**

SUBMITTAL DOCUMENT REVIEW

| JOB NO. | SUBMITTAL NO. | SPEC SECTION |
|---|---|---|
| _____ | _____ | _____ |

☐ **REVIEWED – NO COMMENTS** ☐ **REVIEWED – WITH COMMENTS**

**BY:**_____ **DATE:**_____

**SR CONSTRUCTION, INC. IS NOT RESPONSIBLE FOR ANY DISCREPANCIES BETWEEN THIS SUBMITTAL AND THE CONTRACT DOCUMENTS, NOR FOR ANY DIMENSION OR QUANTITY ERRORS. REVIEW OF THIS SUBMITTAL DOES NOT RELIEVE THE SUBCONTRACTOR OF ITS RESPONSIBILITY TO COMPLY WITH THE CONTRACT DOCUMENTS. NO DEVIATIONS ARE AUTHORIZED UNLESS SPECIFICALLY DIRECTED BY SR CONSTRUCTION, INC. IN WRITING. THIS SUBMITTAL HAS BEEN REVIEWED FOR GENERAL COMPLIANCE WITH THE CONTRACT DOCUMENTS.**

**SECTION 7**

**CONTROL PROCEDURES**

The Project Team is responsible to complete and retain the necessary documentation forms, drawing, isometrics, etc., to record and control inspections, surveillance, and testing of fabrication, installation, and repairs completed both at the projects and off-sites, as required by the applicable Contract Documents.

The Subcontractor, through its designated competent person, shall inspect all of its work under the Subcontract or Work Order. Inspection procedures shall be performed and recorded on the appropriate form contained in this or the respective Subcontractor QC Plans. All forms shall be signed in ink.

In addition to the normal field inspection requirements under this QC Plan, certain special inspection and documentation requirements maybe contained on our subcontracts. A record of these requirements are to be independent of, but attached to each copy of the Construction Quality Control Report and is to be submitted for record purposes on an "as occurred" basis, unless otherwise indicated. Each documentation report is to be signed by certifying compliance with the specific contract requirement for all test and inspections.

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The four phases of quality control shall be conducted by the Project Team and appropriate third parties (including Owner's representatives, consultants, and designers) for each definable feature of work or, as a minimum, for each Subcontractor's work as follows:

1. Pre Job Conference - Shall be a mandatory meeting with Subcontractors to establish overall project guidelines and expectations by which their performance will be judged.
2. Preparatory Phase - After identifying the definable features of work a **Preparatory Phase** is performed prior to the beginning of work or each segment of the work, and after all required plans, documents, and materials have been approved and accepted. The preparatory meeting shall include a review of the contract drawings, applicable specifications, approved design drawings, approved shop drawings, and other submitted data. The project team shall ensure that only materials and equipment that comply with the contract documents and have been previously approved are being used. The project team shall verify that required control testing and inspection is provided, that materials and equipment are on hand and conform to requirements, and that preliminary work has been completed and is in compliance with the Contract Documents. The project team shall review the appropriate Safety Plan and Activity Hazard Analysis to assure all safety requirements are met.

   The Project Team shall discuss procedures for documenting and controlling quality of the work including repetitive deficiencies. Establish construction tolerances and workmanship standards for that segment of the work.
3. Initial Phase - The Initial Phase is performed as soon as a representative portion of the particular segment of work has been performed. During the Initial Phase, minutes of the Preparatory Meeting will be reviewed. Initial review includes performance of scheduled required tests; verification of the quality of workmanship to ensure that work is in full compliance with the contract requirements. The project team shall review test results and adequacy of controls to ensure full compliance with contract requirements. The project team shall review the workmanship and verify that it meets the minimum established standards. The project team shall review safety activities to ensure compliance with the Safety Plan and Activity Hazard Analysis Plan. The project team shall compare with required samples as required and resolve all differences.
4. Follow-Up Final Phase - The Follow-Up Final Phase includes routine inspections set forth in Section 8 to assure certain QC Activities, including control testing, are providing continued compliance with Contract Documents until completion of the particular feature of work. The inspections shall be made a matter of record in the QC documentation. Final follow-up inspection shall be conducted and all deficiencies corrected prior to the start of additional features of work that may be affected by the deficient work. The Subcontractor shall never build upon or conceal any nonconforming work.

Additional preparatory and initial phases will be necessary if the quality of ongoing work is unacceptable, if there are changes in supervision or work crew or if other problems exist.

The pre job conference, preparatory, initial, and follow-up phases will be performed for each specification section of work s required. These phases or inspections will be performed by the designated competent persons.

## SECTION 8

## INSPECTIONS AND HOLD POINTS

**DAILY INSPECTION REPORTS -** The Subcontractors' designated competent persons are required to complete the Daily Quality Control Reports in this Section applicable to the Subcontractor's work and submit the

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originals daily to the designated SR Superintendent. If none of the listed quality criteria are applicable to the Subcontractor's work then being performed, the Subcontractor is not required to submit Daily QC Report(s).

**CHECKLIST/HOLD POINTS -** SR will not permit those certain critical components of the work designated in this QC Plan to be covered or concealed until persons designated by this QC Plan have inspected the work and verified conformance with the Contract Documents. To that end, this QC Plan establishes "hold points" to reasonably ensure that the work is installed on accordance with the Contract Documents before it may proceed. The Subcontractor will coordinate with the responsible SR Superintendent(s) to establish a protocol for inspection by the SR Superintendent or the Subcontractor's designated competent person when the work reaches a designated "hold point" as set forth in this QC Plan. The Subcontractor is responsible to provide access for the inspection, such as ladders or man lifts where and when required.

Attached to this Section 8 are initial "hold point" checklists, by CSI Division, that will be utilized for this Project. SR reserves the right to reasonably modify the checklists to address other specific characteristics of the work at any time.

**COMPLETION INSPECTION -** Completion inspections are performed at the completion of all work or of any increment thereof. The responsible SR Superintendent will conduct an inspection of the work and prepare a punch list of items that require further action to satisfy all Contract requirements. The responsible SR Superintendent will make a second inspection to determine that all deficiencies have been corrected. The punch list items will be resolved and the punch list will be filed with the quality control documentation. SR will then notify the Owner or its designated representative that the area or facility is ready for Owner inspection and acceptance. After the Final inspection and development of a punch list, if necessary, the SR Superintendent will ensure that all deficiencies have been corrected.

In any event, the Subcontractor will submit a certification that all work has been inspected and that all work, except as specifically noted, is complete and in compliance with the Subcontract requirements.

The acceptance criteria for all work shall be in accordance with the requirements defined within the Contract Documents or applicable industry standards.

## SECTION 9

## SPECIAL PROCESS CONTROL

Special processes are those whose results are highly dependent on operator control and skill and should be vigorously monitored by SR's Superintendent(s) in addition to any other periodic inspections, if any, required under Section 8. Such processes include concrete placement, welding, electrical terminations, nondestructive examination [and other processes as may be required by individual specification requirements].

### 1. <u>Division 2 – Sitework</u>

**General:**

Various survey reports and inspection processes are utilized during this scope of work. The Subcontractor will be responsible for obtaining all usual and pertinent inspections and inspection reports as required by the contract documents. Copies of inspection reports obtained by the Subcontractor are to be submitted to SR immediately. Copies of survey or inspection reports obtained through other means will be made available to the Subcontractor when received by SR and on request.

**Earthwork:**

a. Soils reports.
b. Limits of work.
c. Spillage on streets and public areas removed promptly.

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d. Dust control measures.
e. Testing, inspections, and compacting used.
f. Backfill materials.
g. Compliance with pollution and erosion control measures.

**Utilities:**
a. Locations of existing utilities.
b. Site drainage.
c. Elevations of tops and bottoms of drainage structures.
d. Shoring requirements.
e. Required inspections completed.

**Foundation:**
a. Location of existing utilities.
b. Joint waterproofing.
c. Tolerances.
d. Required inspections.

**2. Division 3 – Concrete**

**General:**
Unless stated otherwise in the contract documents, all tests will be performed in accordance with applicable ASTM and ACI Standards. Testing and inspection of concrete activities will be performed by an independent test laboratory/third part agent as required by the contract documents. Distribution of testing and inspection reports will be in accordance with the contract documents. Defective work or other corrective/needed action will be responded to (in writing) within 3 days of issuance. All follow-up and completion inspections will be documented, and performed in the presence of a SR representative.

**Formwork:**
a. Materials are in new or in like new condition,
b. Grades and elevations
c. Installations comply with layout and dimensional requirements

**Reinforcing Subcontractor:**
a. Confirm grade and size of materials on delivery.
b. Rebar, wire mesh and accessories stacked on dunnage and kept out of the mud.
c. Placement of reinforcing complies with documents.

**Concrete:**
a. Under slab vapor retarder mil thickness, placement, and maintenance of material and installation.
b. Concrete placement Log.
c. Hot and cold weather measures.
d. Compliance with finishing methods such as Ff and Fl number system.
e. Curing methods appropriate and compliant with finish products.
f. Owner provided standards.
g. Compatibility with Division 9.

**3. Division 4 – Masonry**

**General:**
Standards used for this project are those stated in the contract documents. Where standards are not referenced, ACI and BIA will be followed at a minimum.

**Unit Masonry:**

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a. Flashing placement and installation.
b. Cavities kept clean.
c. Movement/control joints provided for.
d. Ties and anchors spaced and anchored correctly.
e. Reinforcing installed where required.
f. Work covered at end of day.
g. Grout joint size and tooling.
h. Proper cleaning solutions.
i. Bond pattern correct.
j. Cold/hot weather requirements.

**Stonework:**
a. Backup/substrate is suitable.
b. Drainage system where required.
c. Grout joint size and tooling.
d. Cold/hot weather requirements.
e. Movement/control joints provided for.
f. Reinforcing installed where required.
g. Grout joint size and tooling.
h. Proper cleaning solutions.

**4. <u>Division 5 – Metals</u>**

**General:**
An independent testing laboratory as required by the contract documents will perform testing and inspection of welding activities. Distribution of testing and inspection reports will be in accordance with the contract documents. Deficient work identified in reports will be corrected immediately.

Work will comply with the contract documents and applicable standards. Where standards are not specified, work will comply with ASTM and AISI.

All persons performing welding on this project will be qualified in accordance with AWS D.1.1 or ASME welding procedure qualifications, as applicable unless specifically stated otherwise in the contract documents. The designated competent person for each Subcontractor will be responsible for collecting, logging, and maintaining current welding qualifications for all welders. Copies of welder's certificates will be provided to SR for verification and filing.

Welders will only be permitted to weld within the essential variables of the process for which they are qualified. Welders will require re-qualification when (a) a change occurs in the performance qualification essential variables, (b) the welder has not welded for six months, (c) there is a specific reason to question the welder's ability.

Welding materials will be stored in a dry area protected from the weather. Certain materials require special controls (e.g. Low hydrogen-coated electrodes require heated ovens); it is therefore, essential and a requirement of this plan that all storage and controlled exposure periods for welding material be in accordance with the manufacturer's recommendations or as required by the code.

**Structural:**
a. Anchor bolt and embed locations at least three (3) weeks prior to erection.
b. Size, shape, and weight of materials.

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c. Storage is adequate.
d. Camber furnished where required.
e. Mill certificates, torque, and weld certifications where required.
f. Weld inspections take place.
g. Required access roads and staging areas for compliance with Subpart R.
h. Stair openings, handrails and miscellaneous metals components field measured prior to fabrication.
i. Stair pans thoroughly cleaned by Subcontractor within 24 hours of placement.

**Metal Deck:**
a. Approved materials and layout.
b. Proper storage.
c. Provisions for support hangers.
d. Reinforcement at columns, penetrations…
e. Panels not damaged

**Cold Formed Metals:**
a. Approved shop drawings being used
b. Bracing and bridging where required
c. Spacing of members
d. Attachment methods
e. Insulation in boxed members where required
f. Stair pan clearances (tread to tread and each riser)

**5. <u>Division 6 – Carpentry</u>**

**General:**
Mockups will be utilized extensively to ensure proper construction practices as well as acceptable finishes. SR Project Engineer will be responsible for coordinating the construction of these mockups and procuring the correct inspections and approvals. Mockups will remain in place until work begins on the final phase or sequence of work. Each Subcontractor will be responsible for not only constructing their portion of the mockup, but also for the appropriate use of the mockups to train the construction personnel.

**Rough Carpentry:**
a. In-wall/concealed blocking type and placement
b. Lumber grade
c. Lumber condition
d. Suitable for surface/materials contacted
e. Clearances from fireplace box, chimneys, and flues
f. Sealants and waterproofing where required

**Finish Carpentry:**
a. Environmental conditions appropriate
b. Back-priming and preservatives applied
c. Corrosion resistant fasteners
d. Minimal splices; joints staggered
e. Gluing and fastening appropriate to documents and material
f. Exposed edges protected

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**6. Division 7 – Thermal & Moisture Protection**

**General:**

Mockups will be utilized extensively to ensure proper construction practices as well as acceptable finishes. SR Project Engineer will be responsible for coordinating the construction of these mockups and procuring the correct inspections and approvals. Mockups will remain in place until work begins on the final phase or sequence of work. Each Subcontractor will be responsible for not only constructing their portion of the mockup, but also for the appropriate use of the mockups to train the construction personnel.

**Damp proofing/Waterproofing:**

a. Compliance with Building Envelope Consultant requirements.
b. Manufacturer approved installers
c. Surfaces properly prepared
d. Environmental conditions correct
e. Primer where needed
f. End of day treatment/protection
g. Mil thickness
h. Application tools/methods
i. Penetrations inspected/tested
j. Manufacturer's inspections

**Fireproofing:**

a. Bolts, welds, clips, etc... complete and checked before application
b. Manufacturer approved applicator
c. Thickness/rating as required
d. Third party confirmation report on bond strength, compressive strength, thickness, density
e. Temperature range correct
f. Substrate acceptable

**Sealant/Caulking:**

a. Compatible with adjacent materials
b. Environmental conditions correct for installation
c. Acceptance testing (pull, water intrusion)
d. Backer rod type
e. Joint depth to width ration
f. Primers used where needed
g. Weeps not covered

**2. Division 8 – Doors & Windows**

**General:**

Mockups will be utilized extensively to ensure proper construction practices as well as acceptable finishes. SR Project Engineer will be responsible for coordinating the construction of these mockups and procuring the correct inspections and approvals. Mockups will remain in place until work begins on the final phase or sequence of work. Each Subcontractor will be responsible for not only constructing their portion of the mockup, but also for the appropriate use of the mockups to train the construction personnel.

**Door/Hardware:**

a. ADA requirements
b. Door ratings correct for installation
c. Smoke seals, astragals where required

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d. Bottom, jamb, and edge to edge clearances correct
e. Frames labeled where required
f. Latch throw
g. Closing speed
h. Interface with power, power operators, fire alarm, security

**Glazing:**
a. Compliance with Building Envelope Consultant requirements
b. Use of approved shop drawings
c. Frames installed in strict accordance with shop drawings
d. Opening sizes confirmed
e. Opening size allows for properly developed sealant joint
f. Clearances maintained
g. Proper blocks, shims, seals, gaskets

**8. <u>Division 9 – Finishes</u>**

**General:**
Mockups will be utilized extensively to ensure proper construction practices as well as acceptable finishes. SR Project Engineer will be responsible for coordinating the construction of these mockups and procuring the correct inspections and approvals. Mockups will remain in place until work begins on the final phase or sequence of work. Each Subcontractor will be responsible for not only constructing their portion of the mockup, but also for the appropriate use of the mockups to train the construction personnel.

**Framing:**
a. Framing gage and member spacing
b. Fastener type and spacing
c. Wall priority
d. Corners built correctly
e. Framed openings utilize proper number and gage of framing members
f. Attachment/no attachment to top track appropriate for condition
g. Acoustic sealant applied where required
h. Box type and placement in rated walls correct per UL
i. Openings for HVAC Fire and Fire/Smoke dampers per damper manufacturer's instructions
j. Bridging
k. Bracing

**Wallboard:**
a. Proper type for application (wet, fire…)
b. Fastener spacing
c. Firestopping
d. Acoustic treatment
e. Cut to inside edge of rated openings
f. Fasted at rated openings

**Flooring:**
a. Concrete vapor transmission rates acceptable (confirm acceptable for product via 3rd party)
b. Concrete Ph (confirm acceptable for product via 3rd party)
c. Compatibility with Division 3

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d. Compatibility of floor prep materials with adhesives and finish products
e. Substrate prepared correctly and clean of all foreign materials
f. Proper application tools and methods
g. Environmental conditions appropriate

**Painting:**
a. Substrates acceptable
b. Drying/curing times
c. Mil thickness
d. Dust control
e. Environmental conditions appropriate
f. Adequate lighting

**9. <u>Division 10 – Specialties</u>**
**Louvers:**
a. Wind load rating
b. Air performance, water penetration, sound rating
c. Size of lover components
d. Fastener substrate
e. Fastener type
f. Fastener location/spacing
g. Flashings where required
h. Sealant
i. Testing

**Signage:**
a. ADA letters and installation location/height
b. Attachment methods
c. Scheduling

**10. <u>Division 11 – Equipment</u>**
**Food Service Equipment:**
a. Utilities provided and coordinated
b. Food grade sealants
c. Grade of stainless
d. Clearances between heat lamps and surfaces
e. Fire suppression
f. Measurements field verified

**Medical Equipment:**
a. Power
b. Gases
c. Clearances for operation of equipment
d. UL or other NRL approved
e. Room/area ready
f. Access/door clearances
g. Anchoring and support
h. Door switches

# Exhibit G
# PROJECT QUALITY CONTROL PLAN

**11. Division 12 – Furnishings**

**Manufactured Casework:**

a. Blocking where needed
b. Certificates or grade stamps provided
c. Accessible (ADA) locations provided
d. MP&E coordination
e. Acceptable temperature & humidity

**12. Division 13 – Special Construction**

**Seismic Control:**

a. Use of manufacturer's instructions
b. Periodic inspections by manufacturer
c. Engineered drawings
d. Manufacturer's written final report
e. Installers written final report

**13. Division 14 – Conveying Systems**

Not applicable.

**14. Division 15 – Mechanical**

**Plumbing:**

a. Provide contract document review comments.
b. Participate in a coordination drawing process.
c. Verify grades and locations for all underground piping, cleanouts.
d. Verify sleeve locations prior to concrete pours.
e. Provide expansion devices where needed.
f. Provide seismic restraints, braces, as required.
g. Provide dielectric unions where required
h. Complete system testing before concealment.

**HVAC:**

a. Provide contract document review comments.
b. Participate in a coordination drawing process.
c. Verify clearances are provided at equipment including boilers, AHU's, ATU's,
d. Confirm noise levels at equipment are in accordance with contract document requirements.
e. Verify systems are cleaned, flushed, etc… as needed for testing and turnover.
f. Fire and fire/smoke damper opening size and construction

**Controls:**

a. Completion of shop drawings in a timely manner.
b. Participate in a Systems Check Coordination process.
c. Use of approved firestopping systems at appropriate locations
d. Proper raceway and cable types
e. Control device operation per contract documents

**TAB:**

a. Use of calibrated instruments
b. Review of site conditions near the conclusion of overhead rough
c. Acceptable leakage limits for equipment

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d. Overall building pressure relationship to exterior
e. Daily work reports
f. Flow coefficients within normal guidelines
g. Balance report approved by engineer

**Fire Protection:**
a. Approved shop drawings with engineer's stamp
b. Head types appropriate for location; response, temperature…
c. Valve heights at hose cabinets and handle heights at extinguisher cabinets meet accessibility requirements
d. Double check assemblies certified

**15. <u>Division 16 – Electrical</u>**
**Electrical:**
a. Switchboard, panelboard, branch panel, etc…, clearances
b. Conductor types correct
c. Junction and pull boxes sized appropriately for type of pull and voltage
d. Conductor insulation rating separation maintained
e. Grounding electrode conductors continuous or spliced in an acceptable manner
f. Equipment grounds installed as required
g. Bonding appropriate for installation i.e., derived systems, 3 pole versus 4 pole transfer switches…
h. Equipment interrupting current ratings meet the requirements of the fault current study
i. Adjustable over-current protective devices set according to the coordination study
j. Medium and high voltage termination devices installed by properly trained personnel
k. Test agent utilized for critical installation verification such as patient care are ground integrity

**Fire Alarm:**
a. Approved shop drawings
b. Device locations (initiating and alerting)
c. Interface with associated HVAC, security, elevator, doors…
d. Third party connection
e. Proper cables/raceway

**Security:**
a. Interface with fire alarm, baby monitoring, etc…
b. Installation of cable in accordance with recognized standard
c. Cabling properly supported
d. Installation schedule follows established project schedule

**Lightning Protection:**
a. Proper materials based on use
b. Proper materials based on adjacent materials contacted
c. Bonding of other pipe systems
d. Bonding of adjacent metal bodies
e. Common grounding accomplished
f. Air terminal placement
g. Conductor routing, bending radius, supports, and attachments
h. LPI or UL inspections

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i. Application for UL label

**Telecommunications:**
a. Installations in accordance with current edition of the BiCSi Information Transport System Installation Manual or similar acceptable standard
b. Work recorded and labeled in accordance with ANSI/TIA/EIA-606-A
c. Installation schedule follows established project schedule
d. Approved firestopping installed where required
e. Correct raceways and cable supports
f. Cable rated for installation

## SECTION 10

## NONCONFORMING WORK

A "nonconformance" is a deficiency in a characteristic, documentation, or an in-process procedure, which renders the quality of an item unacceptable or indeterminable. All designated competent persons are responsible for the recognition of nonconformance work and insuring that it is corrected.

Nonconforming items or activities identified by SR shall be documented on a Nonconformance Report, which shall remain open until satisfactory resolution is completed and verified by the SR Superintendent. Each Nonconformance Report ("NCR") shall be tracked in a NCR Log stating specifically what is non-complying, the date the faulty work was originally discovered, and the date the work was corrected. A deficiency corrected the same day it was discovered should not be logged. In no event should the Subcontractors add to or build upon nonconforming item, then a Conditional Release may be initiated.

Delivered materials or fabricated items that SR determines to deviate from the submittal or the Contract Documents will be tagged "Hold" and a Nonconformance Report written. Material and items unacceptable due to lack of documentation will remain rejected until such time that proper and acceptable documentation has been received and approved. After approval, the "Hold" tag will be removed and the nonconformance will be closed. In the event the data is not approved, the material will be immediately removed from the jobsite.

Delivered items received damaged or unacceptable due to workmanship or other reasons shall be identified and described on a Nonconformance Report. When the disposition is repaired or reworked, the needed forms, sketches, instructions, etc., to control material(s) and special process (es) shall be prepared and attached to the Nonconformance Report.

The normal flow of Nonconformance Reports is as follow:
1. Initiate Nonconformance Report.
2. The Superintendent assigns identification number and enters nonconformance report details on Nonconformance Report Log.
3. The Superintendent prepares the necessary forms and additional sketches, which may be necessary to identify the noncompliance and attach to the Nonconformance Report.
4. The Superintendent submits to A/E for review and approval when so required.
5. After completion of the correction or repair, the Superintendent reviews for completion, compliance and acceptability.
6. The Superintendent enters "close out" date on Nonconformance Report Log and files the nonconformance report and any attachment(s).

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# Exhibit G
# PROJECT QUALITY CONTROL PLAN

## Commitment to Quality

This is to acknowledge that I, on behalf of my company, have received my copy of the Project Quality Control Plan that will apply to any project where Subcontractor performs work for Contractor pursuant to the Master Subcontract Agreements. The appropriate persons on any project will read and abide by all the rules and regulations in this Plan and maintain constant participation in the Program. For each project, job or scope of work, the company will supply a competent person to be responsible for compliance with the Quality Control Plan and all quality control issues that may arise. In addition, the company will participate in any future training concerning Quality Control that may be required as deemed necessary by SR. Subcontractor acknowledges its understand that maintaining Quality Control is a TEAM effort and it is the responsibility of each individual to help govern the quality of work set in place on this project. When deficiencies are recognized, the company, through its designated competent person, will notify SR so that corrective measures can be made.

**Subcontractor Signatures**

Principle: DocuSigned by: Travis Peck B3500ED107BD451...

Date: 10/8/2019

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# Exhibit H

## SR CONSTRUCTION PROJECT SAFETY PLAN

**Safety Policy Mission Statement**

SR Construction's commitment to Safety is total. Our Project Managers, Superintendents and the individuals who comprise the work force of this organization have the primary responsibility to effectively build each project and provide our employees and the employees of our trade contractors with a safe, healthy and drug free work environment. The only acceptable number of injuries or accidents is zero and zero is always our goal.

**SR Construction views safety as a "value" and we will not sacrifice the safety of people for production or monetary gains.**

Employees of Subcontractors, Suppliers, and other third parties, while on company property and in the performance of their work, shall comply with the safety and health regulations established by SR Construction, OSHA, state OSH programs as well as any "site specific" programs. All contractors on site are required to have their own written safety program to outline safe work practices for their own employees. Contractors, who in turn contract parts of their work, have the total responsibility to see that their lower tier contractors also comply with these requirements.

SR Construction reserves the right to remove, from company property, any Subcontractor or employee found in violation of any safety rules or policies.

**Drug Policy Statement**

Subcontractors and others performing work for Contractor shall have a "Substance Abuse" Program that is substantially similar to SR Construction's "Drug, Alcohol and other Prohibited Items Program." The Subcontractors shall supply verification to the authorized project representative indicating they will comply with said requirements.
SR Construction reserves the right to test anyone working on our projects for alcohol or drugs.

Firearms are forbidden on any SR Construction project (except for law enforcement officers) regardless of state "concealed - carry" regulations.

**Subcontractor Safety Representation**

Each Subcontractor, while working on a SR Construction project, shall appoint a Competent Person as their Safety Representative (as defined in 1926.32[f]). The Subcontractor's Safety Representative can be a Superintendent, Supervisor, or other designated individual whose safety responsibilities shall include, but may not be limited to, the following:

1. A Competent Person/Safety Representative shall be on the jobsite when Subcontractor employees are working on the project. No exceptions.
2. The Competent Person/Safety Representative shall be capable of instructing workers in safe work practices and work methods.
3. Take immediate action to correct unsafe acts and/or conditions when discovered and be able to stop the work of his employees if needed.
4. Provide, inspect, and enforce the proper use of personal protective equipment, tools and other equipment for workers.

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5. Attend supervisory safety meetings as scheduled.
6. Conduct and submit Weekly "Tool Box" Meetings with workers:
   a. Discuss observed unsafe acts and conditions.
   b. Review the accident or near miss experience of the crews and discuss corrective action taken to prevent reoccurrence.
   c. c. Proactively plan upcoming tasks and implement the use of Job Hazard Analysis (JHA's).
   d. Ensure each person understands this safety plan and all other safety requirements while working on this project.
7. Immediately notify SR Construction of any existing hazardous condition(s) to which the workers under his/her supervision may be exposed.
8. **Monitor and control housekeeping issues daily.**
9. Post SR Construction safety rules on project bulletin board.

## GENERAL SAFETY REQUIREMENTS (not to be considered all inclusive)

### Hazardous Communication (HAZCOM) - CFR 1926.59 Subpart D

1. All Subcontractors shall submit a complete copy of their written Hazardous Communication Program to SR Construction's site management.
2. This complete program shall include a copy of their Site Specific Chemical Inventory List and site specific MSDS's.
3. All Subcontractors are required to maintain their Hazcom program, update their Inventory sheet and submit copies of any new MSDS to their SR Construction designated representative as Hazardous Materials (Hazmats) are brought to the project.
4. It is the duty of each Subcontractor on site to train his employees to comply with the Hazcom program and it is also the Subcontractor's duty to train its employees in safe handling of any Hazmat that its employees may come in contact within the workplace.
5. All hazardous materials shall be appropriately labeled as to posed hazard(s), flammability, toxicity, medical treatment to be used, proper use, disposal and storage.

### Cranes – CFR 1926 Subpart N

1. A Current Annual Crane Inspection is required on all cranes. If the annual inspection is not current, the crane may not be allowed to start work until the inspection is provided.
2. The Manufacturer's Operation Maintenance and Instruction Manual shall be with the crane at all times; daily documented inspections are required on all cranes.
3. Before crane operation begins, a flag man shall be designated.
4. Crane Operators shall be in compliance with "SR Construction Drug, Alcohol and Other Prohibited Items Program."
5. Anti-two blocking devices for cranes are required. This requirement applies to all cranes except for tower cranes and pier drilling rigs.
6. The swing radius of cranes shall be barricaded or flagged.
7. All cranes shall be equipped with a 5BC rated fire extinguisher.
8. All cranes will have the hand signals posted in a conspicuous location.

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9. No crane shall work within 10' of any power line; additional distances may be required depending on the voltage of the lines.
10. Tag lines will be used on all loads.
11. The crane operator is ultimately responsible for safe operation of his crane.

**Excavations – CFR 1926 Subpart P**

1. Each employee in an excavation shall be protected from cave-ins at a depth of four (4) feet or more.
2. Spoil piles shall be stacked 2 feet from edge of trenches at a minimum.
3. A means of egress shall be provided at every 25' of trench distance.
4. Benching, sloping, shoring systems or trench boxes will be used to protect employee(s) from cave-ins in excavations that are deeper than 4'.
5. All Subcontractors shall have a Trench Safety Plan in place for all excavations or trenches prior to commencement of work.
6. A Competent Person for the excavation work shall be on site at all times and conducting daily inspections prior to working by supervising the safety of his employees.
7. Trenches or excavations in excess of 20 foot deep shall be designed by an Engineer.
8. Contractors will be responsible for keeping their excavations safe and protecting others from the hazards they may create.

**Medical Treatment and Accident Reporting**

1. Subcontractors should provide at least one (1) employee on each project who have a valid certificate in First Aid / CPR training.
2. Each contractor on site should provide his employees with a stocked and maintained first aid kit.
3. **All incidents and accidents shall be reported to SR Construction immediately**. In the event of an accident or injury, all Subcontractors shall follow the site specific emergency action plan.
4. A copy of all Subcontractor accidents or injury reports, and accident investigations must be forwarded to SR Construction's site management within 24 hours.
5. Projects that have "controlled insurance programs" may have site specific accident reporting procedures along with drug testing requirements.

**Scaffolding - CFR 1926 Subpart L**

1. All employees working on scaffolding shall be protected from falls at a height of 6 feet or greater.
2. A Competent Person for scaffolding shall be on site at all times; scaffolds shall be inspected daily prior to use.
3. All other scaffold regulations and rules will be followed per CFR 1926 Subpart L.

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**Job Hazard Analysis (JHA)**

The JHA is designed for the use as a specific training tool to help plan activities and to comply with OSHA's 29 CFR 1926.21(b).

1. Subcontractors shall complete a JHA for each major phase of work to be performed, before that phase starts.
2. Each contractor's Supervisor shall review the JHA with the individuals performing the work.
3. All JHA's should be submitted to SR Construction's designated representative.

**Electrical - CFR 1926 Subpart K**

1. GCFI protection is required on all 15 and 20 amp, 120 volt receptacles. When using "house power", welding machines or generators for 120 volt power GFCI protection is still required, a GFCI "pigtail" can be used to provide the required protection. GFCI pigtails should be plugged in at the source of power, this practice will protect the extension cord and all loads down line.
2. 16 gauge or flat extension cords are prohibited. All extension cords shall be rated for hard or extra hard usage (CFR 1926.405[a] [2] [ii] [J]).
3. Extension cords and electric power tools should be inspected daily before each use. Damaged extension cords, tools or equipment shall be removed from service.
4. Trades [other than electricians] shall not operate breakers, switch gears, motor control centers, starters or any other electrical devices without prior approval from the electrical contractors and on site management.
5. Energized electrical rooms, vaults or closets should be locked to prohibit the entry of unauthorized personnel.
6. Warning signs should be posted on doors, panel boards, switchgears, etc to inform workers of electrical hazards.
7. Energized equipment shall have covers in place to protect workers from electrical hazards.
8. Electrical contractors will be expected to have a practical and comprehensive "lockout / tagout" program.
9. "Hot work" should be avoided in most all situations; electrical contractors that are to perform hot work will be expected to have a program in place for this process. The program should include training, required PPE, testing and emergency procedures. **SR Construction favors "shut downs" as opposed to "hot work".**
10. Electrical work shall be performed by electricians.

**Housekeeping**

1. All trash and debris shall be removed from the work areas daily by the contractor who created it.
2. **Housekeeping shall be made an absolute priority for all contractors and employees on all SR Construction projects.**

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3. SR Construction reserves the right to stop the work of a contractor to clean up the trash and debris he may have created.
4. SR Construction also reserves the right to "back charge" cleanup costs for contractors that refuse to comply with proper housekeeping.

**Ladders and Stairs – CFR 1926 Subpart X**

1. All employees who use ladders shall be trained.
2. Ladders shall be inspected every day prior to use. Defective ladders shall be removed from service.
3. The manufacturer's recommendations and safety rules shall be followed as a minimum.
4. Steel stair pans are not to be used for access until they are filled with blocking or concrete and a handrail / stair rail system is in place.
5. Stairs shall be blocked or barricaded until they are safe for use.
6. All job-built ladders shall comply with ANSI A14.4-1979.

**Personal Protective Equipment [PPE] - CFR 1926 Subpart E**

1. Contractors are required to provide their workers with proper PPE in which to perform their work safely. They are also required to train their employees in the proper use and maintenance of the PPE provided.
2. Employees are required to wear a shirt with at least 4" of sleeves. Tank tops or sleeveless shirts will not be allowed. Safety Vests will be worn when any moving equipment is on site. Any moving hazard creates the need to wear a safety vest that is either orange or yellow with reflector stripes on both the FRONT and BACK.
3. Hard hats are to be worn at all times. **NO EXCEPTIONS**
4. Employees are required to wear proper footwear. A pair of leather hard sole boots or shoes is recommended. Tennis shoes or other soft sole shoes are not allowed. Any exceptions to this rule shall be decided by the Divisional Loss Prevention Director and Senior Site Management.
5. Employees are required to wear eye protection when they are grinding, drilling, sawing, chipping, cutting, using powder actuated tools, operating power tools or performing any other task that could cause an eye injury. It is recommended that all employees wear safety glasses 100% of the time while on a construction project. Many projects will require 100% eye protection as part of the site specific program.
6. Face shields are required when operating a chop saw to cut metal.
7. Gloves should be worn by any employee that is exposed to cuts or injuries to their hands.
8. Contractors that provide their employees with respirators shall also provide the required medical exams and testing along with the proper training, maintenance and use of this equipment.
9. Hearing protection will be utilized for all jackhammer work, circular, chopsaw, table saw, grinding or any other noise hazard above 90 decibels.

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**Fire Protection and Prevention - CFR 1926 Subpart F**

1. Contractors should help to eliminate fire hazards in the workplace by practicing proper housekeeping and proper storage of flammable and combustible products.
2. Contractors that are engaged in welding or cutting operations shall have a fire extinguisher in the area in which they are working. This operation may also require a "fire watch" to insure that fires will not be created.
3. Employees should all be trained in the use of fire extinguishers and be familiar with the "site specific emergency action plans".
4. Fire extinguishers shall not be tampered with or removed from their designated locations.

**Fall Protection – CFR 1926 Subpart M**

1. Fall protection is required when an employee is exposed to a fall of 6 feet or more. Exceptions [if approved by site management and included in the contractors program]:
   a. Scaffold erection when personal fall protection is not feasible.
   b. Ladders, except when working above perimeter handrails or cables.
   c. Certain residential framing applications.
   d. Steel erection activities under CFR 1926, Subpart R.
2. Personal fall protection shall be provided by a full body harness with a lanyard.
3. Fall protection "systems" shall be designed, installed and inspected by a qualified person.
4. Tie offs points shall be capable of supporting a 5000 pound static load without failure.
5. All manufacture's fall protection equipment guidelines and directions shall be followed.
6. Lanyards, snaphooks and tie off points shall be compatible as per manufactures design and directions.
7. Employees that are required to work with fall protection shall be trained in the hazards and proper use and inspection of their equipment.
8. Employees engaged in roofing operations [flat roofs] will be allowed to work inside of warning line systems; set up 6 feet or more back from the edge of the roof. **Monitors shall not take the place of personal fall protection for roofing operations** outside of warning line systems.
9. No employee shall alter a temporary guardrail, handrail, and perimeter cable or floor opening cover without specific authority. Any protective device removed shall be replaced immediately after task is performed. Subcontractors who remove any safety device are responsible for replacing it.

**Steel Erection – CFR 1926 Subpart R**

1. Steel erectors are required to submit a "site specific steel erection plan" before starting the steel erection process.
2. Steel erectors may be allowed to use a fall protection plan as per Subpart R, **100% fall protection over 6 foot in strongly encouraged.**
3. Trades other than Ironworkers are not allowed to work under steel erection activities.
4. The "site specific steel erection plan" will be expected to lay out the complete safety plan for the erection of the structure(s).

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**THE SUBCONTRACTOR'S SAFETY REPRESENTATIVES OR SUPERVISORS SHALL REVIEW WITH THEIR WORKERS THE FOLLOWING GENERAL SAFETY GUIDELINES, ALONG WITH ANY OTHER SITE SPECIFIC REQUIREMENTS, PRIOR TO COMMENCING WORK ON THIS PROJECT.**

## GENERAL SAFETY GUIDELINES

All employees have a safety responsibility to themselves and to their fellow workers around them. These "General Safety Guidelines" apply to all employees and personnel of Subcontractor that perform work for Contractor. **These rules listed below are not all the rules and regulations that apply to the construction industry** but they are a general set of guidelines. OSHA CFR 1926 will explain the rules and regulations in better detail. Special additional or site specific safety rules may be established by your Superintendent or Supervisor.

1. Unsafe conditions or unsafe acts should be reported immediately to your Supervisor for correction.
2. Report all injuries, regardless of how slight, to your Supervisor or to the SR Construction designated representative as soon as possible.
3. Fighting, creating a disturbance or horseplay will not be tolerated.
4. Hard hats shall be worn by everyone at all times – there are no exceptions to this rule.
5. All employees are expected to act in a professional manner. Sexual harassment of any kind will be grounds for removal from any CC project.
6. All employees shall wear attire suitable for construction work. Employees shall wear shirts with sleeves (4" minimum), long trousers, and proper work boots/shoes at all times. All work boots/shoes shall be of all leather type. No tennis shoes or sandals shall be permitted.
7. "No Smoking" rules shall be observed in posted areas.
8. Riding on any construction equipment outside the operator's seat is prohibited.
9. Seat belts shall be worn on all equipment where a seat belt is provided.
10. Employees that operate forklifts shall have a training card on their person for proof of their training.
11. All employees should be trained in proper lifting techniques.
12. Gloves shall be worn when handling rough edges or abrasive material or when work subjects hands to lacerations, punctures, or burns. Your supervisor may designate other hand protection.
13. Eye protection shall be worn where eye injuries are a possibility. Other site specific eye protection requirements may be required. A standard pair of safety glasses [Z-87 Rated] will not protect your eyes in all situations. Dark safety glasses shall not be worn indoors. SR Construction strongly advises all employees to wear eye protection at all times when working on when working on any construction project.
14. Noise Control – hearing conservation shall be in accordance with OSHA 1926.52
15. Respiratory Protection shall be in accordance with OSHA 1910.134.

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16. Use of gasoline is prohibited for cleaning equipment, tools, or starting fires. Small quantities of gasoline may be transported only in approved safety containers. Shut off gasoline engines when refueling. SR Construction does not allow plastic gas cans or "Jerry" cans on any SR Construction project at any time. ABC fire extinguishers will be on hand at any flammable operation.
17. All tools shall be inspected prior to use. Unsafe tools, defective or frayed electrical cords and unguarded machinery shall be removed from service and not used until the tool has been repaired. Employees shall be trained in the proper use of tools they are using.
18. Tampering with, or unauthorized removal of, fire extinguishers from assigned any location is prohibited. All employees should be trained in the proper use of the fire extinguishers.
19. The operation of any equipment without proper authorization is prohibited.
20. Cranes, backhoes, or other equipment with booms must be operated with caution around power lines. A safety plan/JHA should be in place prior to the performance of operations around power lines or underground utilities.
21. Defective ladders shall be removed from service immediately. Employees shall be trained in proper use according to OSHA 1926.1050, Subpart X, and manufacturer's recommendations. All job made ladders shall comply with ANSI A14.4-1979.
22. All machine and tool guards shall be kept in place while machinery is in operation. Tampering with or removing guards is prohibited.
23. Hand tools shall not be used for any other purpose than that intended. All damaged tools shall be removed and replaced.
24. When working on multistory projects, all equipment, tools, materials or debris shall be secured at all times or move to grade level.
25. Electric power operated tools shall be properly grounded or double insulated before being put into operation.
26. No employee shall remove a cover, or alter a temporary guardrail, handrail, and perimeter cable or floor opening cover without specific authority. Any protective device removed shall be replaced immediately after task is performed. Subcontractors who remove any safety device are responsible for replacing it.
27. Nails are to immediately removed or bent over from disassembled lumber.
28. No employee shall work on any typed of scaffold until the Competent Person inspects and deems scaffold is in compliance with OSHA 1926.450, Subpart L, and manufacturer's recommendations. Guardrails or other fall protection devices shall be provided at 6 feet. Scaffold base plates are always required.
29. 100% fall protection is required when employees are exposed to falls of six (6) feet or greater with the exceptions that are allowed in the OSHA standards such as ladders, certain steel erection operations and some roofing operations.
30. Explosives and detonators are to be handled by authorized employees only.
31. **HOUSEKEEPING SHALL BE MADE AN ABSOLUTE PRIORITY FOR ALL EMPLOYEES**. All rubbish and debris generated shall be removed daily.
32. Health and sanitation rules shall be observed.

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33. Operators of powder actuated tools shall have in their possession a qualified operator's card or documentation of training for that particular tool being used. Training shall be updated as required. Spent powder loads shall not be thrown on the floor at any time.
34. GFCI protection is required on all 15 and 20 amp 120-volt receptacles. GFCI protection is required for all generators at all times. All extension cords and electric tools shall be inspected prior to use each day. Report any electrical hazards on the jobsite to your SR Construction representative.
35. A fire watch and a fire extinguisher are required for hot work; i.e. cutting, welding, or burning. The fire watch shall be trained; have a clear line of site and clear path to hot work area; be stationed within 100 feet of hot work, and have a fully charged ABC fire extinguisher within his stationed area.
36. Compressed gas cylinders shall be stored in the upright position, handled properly, secured by tying or blocking into position per OSHA 1926.350. Flash arrestors or back flow preventors shall be used on all oxygen / acetylene torches, and when not in use, oxygen and acetylene shall be stored separately per OSHA guidelines.
37. Glass containers of any kind are not permitted on the jobsite.
38. Operators of powder actuated tools shall have in their possession a qualified operator's card or documentation of training for that particular tool being used. Training shall be updated as required. Spent powder loads shall not be thrown on the floor at any time.
39. Radios are not allowed on SR Construction projects; this also includes personal radios with headphones or earphones.
40. No material should be stored within six (6) feet of a floor opening or ten (10) feet of the perimeter of the building. Contractors are responsible for securing their own tools, materials and equipment.
41. Each Subcontractor should provide their employees an adequate supply of fresh drinking water and disposable cups for its employees. Used paper cups must be thrown into a trash receptacle, no exceptions.
42. A Subcontractor who creates a hazard is responsible for correcting the hazard or making the area safe.

Any questions regarding this program or any other safety program can be directed to the SR Construction designated representative.

**Note:**

This Exhibit "H" is **a basic set of guidelines** that is used as a contract attachment or possibly an orientation for all employees who are working on a SR Construction project. **This is not an all inclusive safety plan**. If additional information is required, refer to CFR 1926 for a full set or standards and regulations.

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# Exhibit H

## SR CONSTRUCTION PROJECT SAFETY PLAN

TO: Peek Brothers Construction Inc

**Acknowledgement of Safety Policy on Drugs, Alcohol and Other Prohibited Items**

1. I am familiar with the Safety Guidelines for my trade and I understand the content of the attached Safety Plan.
2. I have been advised and understand that failure to comply with the safety rules of this project could lead to serious injury, possible death, property damage, lost wages and/or dismissal from this project.
3. I understand that safety is part of my job and a condition of my employment. No one is more responsible for my own safety than me.
4. I understand that SR Construction can remove me or my company from this project for not working in a safe, healthy or productive manner.
5. I have received, read and understand the SR Constructions' Safety Policy on Drugs, Alcohol and Prohibited Items.
6. I have been advised and understand that failure to comply with Safety Regulations of Federal, State and Local Government and the SR Constructions' policy on Drugs, Alcohol and Prohibited Items could result in dismissal from this Project. Any willful or deliberate violation of Safety Regulations or Company Policies will be automatic dismissal from this Project.
7. I understand all of the requirements asked of me and was given an opportunity to ask any questions.

I understand that SR Construction's intent in establishing rigid safety regulations and a safety policy on drugs and alcohol is necessary to ensure a safe, healthy and productive work environment for employees and others on company property.

I further indicate by my signature below that I fully understand all that is expected of me with regard to safety and agree to abide by all of SR Construction policies and all other applicable safety rules while on this project.

A machine copy of this Authorization and Release shall have the same force and effect as the original.

DocuSigned by:
Travis Peek
B3500ED107BD451...

| Signature | Witness |
|---|---|
| Travis Peek | 10/8/2019 |
| Printed Name | Date |

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TP

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# Exhibit I

## SR CONSTRUCTION EEO / SEXUAL HARASSMENT POLICY

**Sexual Harassment Policy**

It is the policy of SR Construction (Contractor) to employ, retain, promote, terminate, and otherwise treat any and all employees and job applicants on the basis of merit, qualifications and competence. No person shall be illegally discriminated against with respect to the terms of employment because of such individual's age, color, race, religion, disability, sex or national origin. An employee who believes he/she has been the victim of unlawful discrimination may complain, without fear of retaliation, to his/her immediate supervisor, who will then obtain all information from the complainant and refer the matter to the appropriate party for investigation. The complaint should be made in writing. An employee who believes that such discrimination has not ceased after lodging a complaint with his/her supervisor, or does not want to complain directly to his/her supervisor, may make such complaint to Contractor's Project Manager for further action.

**No Harassment Policy**

It is the policy of SR Construction (Contractor) to provide a workplace free from unlawful and improper "harassment" of employees by employees or agents of Contractor or by its customers, accounts and vendors. It is the responsibility of every employee to cooperate in reaching this goal. Harassment is considered a serious act of misconduct and may subject an employee to disciplinary action, including immediate discharge. As used in this policy, the term "harassment" includes sexual and racial harassment as well as harassment based on any other protected classification.

Some examples of what may be considered harassment, depending on the facts and circumstances, include the following:

1. Verbal harassment, e.g., derogatory comments regarding a person's race, color, sex, sexual orientation, religion, ancestry, ethnic heritage, mental or physical disability, age, appearance or other classification protected by law; threats of physical harm; or distribution of written graphic material having such effects.
2. Physical harassment, e.g, hitting, pushing or other aggressive physical contact; touching or threats to take such action; gestures or the display of signs or pictures.

It is considered harassment if:

3. Submission to such conduct is made either explicitly or implicitly or condition of an individual's employment;
4. Submission to or rejection of such conduct by an individual; i.e., promotion, demotion, transfer;
5. Such conduct substantially interferes with an employee's job performance or creates an intimidating, hostile or offensive working environment.

It is <u>not</u> considered harassment of any sort for members of management to enforce job performance and conduct standards in a fair and consistent manner.

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In particular, sexual harassment may be defined as unwelcome verbal, physical or sexual conduct, including without limitation, sexual advances, demands for sexual favors, or other verbal or physical conduct of a sexual nature, regardless of whether designed or intended to promote an intimate relationship.

Employees who violate this policy will be subject to disciplinary action at the discretion of management, including without limitation, suspension and termination. Supervisors or members of management who violate this policy, or fail to report violations by others of which they become aware, will also be subject to disciplinary action, including without limitation, suspension and termination. This policy does not create any contractual rights.

If you feel you are being harassed, you should consider telling the offending party that you object to that conduct. This often solves the problem. However, if you are not comfortable confronting the offending party (or if the offending party's unwelcome conduct continues), you may advise your supervisor of the offending conduct. You may also bring your problem to another management member with whom you feel more comfortable discussing the issue, or you may address your complaint to Contractor's Project Manager.

Complaints will be investigated confidentially and thoroughly. Where there is a valid complaint, prompt, reasonable corrective action will be taken. Depending on the circumstances, such action may range from a simple warning to suspension or termination. Throughout this process, the Contractor will endeavor to protect the reputations of all parties and to prevent retaliation against the complaining employee by the alleged harasser or others who might sympathize with their friend or business colleague.

**Job Description**

We all have duties to perform, and everyone, including your supervisor, must follow directions from someone. The Contractor's supervisor will describe duties you are expected to perform to you, either verbally or in writing; and these duties may change from time to time. Part of Subcontractor's duties may involve taking directions from or producing work product for numerous individuals. The Contractor's supervisor will be responsible from or producing work product for numerous individuals. The Contractor's supervisor will be responsible for setting priorities or coordinating conflicting information or directions given to you.

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# Exhibit J

## PROJECT RULES & REGULATIONS

**Purpose:**

All Subcontractors performing work for Contractor must comply with the following rules as part of the contract requirements under the Master Subcontract Agreement. Noncompliance will result in actions that may include immediate stoppage of the Subcontractor's work until any deficiency is corrected and/or removal from the project.

Most importantly, all Subcontractors must comply with the instructions of all SR Construction's personnel when any work being done affects residents of the operation of the existing facilities. When work progress is impeded or work scheduling conflicts exist, SR Construction must be notified for scheduling with adjacent property owners and tenant.

1. **Definitions:**

   **Authority:** The authority for administration of these rules, including but not limited to application, enforcement, appeal, etc…, rests with SR Construction.

   **System:** Includes fire alarm, fire sprinkler, fire standpipe, energy management, electrical, domestic water, natural gas, steam condensate, chilled water, condensing water, air conditioning, ventilation, control air, elevator, data communication, etc…

   Work: Includes the construction, addition, repair, maintenance, and removal of structural, interior, exterior, and ground improvements. Regarding Systems, "work" includes turning off, connecting to, disconnecting from, turning on, adjusting, etc…

2. **General:**

   Communication: Before starting work, the Subcontractor must sign and return a copy of page four (4) of the "Project Rules and Regulations" to SR Construction project office. Also, Subcontractor must furnish SR Construction the name, home phone number and/or digital/cell phone number of Subcontractor's primary and alternate official to be contacted in the event of an emergency occurring during normal working hours, and after normal working hours. Names and numbers for daily routine communication must be provided. All names and numbers for normal and emergency contact must be kept current.

3. **Project Requirements:**

   **Authorization:** Secure all required permits, shutdown notices, etc… and post on the site. Forward a copy to SR Construction prior to commencement of work. The subcontractor will not perform any work without the authorization of SR Construction.

   Supervision: Some of the work may require the assistance and or supervision of SR Construction, and must be scheduled with SR Construction.

   **Hours of Work:** Subcontractors are allowed to work from 6:30 AM to 3:30 PM, Monday through Sunday. Any alternated work hours and/or any overtime required by the Subcontractor to maintain the project schedule must be scheduled with and approved by SR Construction. Subcontractor has to submit a request to SR Construction to work Saturdays or Sundays no later that the previous Thursday afternoon.



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**Inspections:** The Subcontractor is responsible for assuring all inspection required by federal, state, or local law, code or ordinance are conducted and will assure all deficiencies resulting form the work are corrected to the satisfaction of the inspecting authority having jurisdiction. Any specification or contract requirements apply in conjunction with this paragraph.

**Licensing:** Where required by federal, state, or local law, ordinance, or the authority having jurisdiction, Subcontractor or its personnel must possess a current license. A copy of all current licenses must be provided when requested by SR Construction.

**Welding**: Subcontractor must secure and keep current a cutting and welding permit as required and issued by authorities having jurisdiction. Fire blankets, fire extinguishers, vision panels and fire watch personnel must be used if applicable.

**Deliveries:** The Subcontractor must arrange for the delivery of material and equipment to the work site or a storage area designated by the SR Construction Superintendent. SR Construction will not accept responsibility for receiving, unloading, or storing Subcontractor's material or equipment.

**Retesting and Re-inspection:** Where results of required inspections, test, or similar services prove unsatisfactory and do not indicate compliance of the related with the requirements of the Contract Documents, then the costs of retesting, re-inspections or similar services are the subcontractor's responsibility. The cost of retesting, re-inspecting or similar services for not ready for scheduled inspections shall be the responsibility of this Subcontractor. See technical Specifications for additional requirements.

**Operation of Existing Facilities:** Special attention is called to the existing facilities of these projects. All construction activities shall be executed in a manner to prevent interruption to any existing facilities when occupied or in use. This will require all existing utilities or building systems to remain in service until new parallel services are constructed, tested, and ready for use.

All connections, tie-ins, shut-down of existing facilities and/or construction activities that generate excess noise, obnoxious odors, toxic fumes, shall only be permitted when existing facilities are not occupied or in use or as allowed by SR Construction and Owner/User. This subcontractor is required to coordinate this work closely with SR Construction.

**Felony Conviction Policy:** Each Subcontractor is to insure that no personnel working on site under their subcontract, including lower-tier Subcontractors and Suppliers, have any Felony Convictions. A letter on the Subcontractor's letterhead that is signed and sealed by a company executive must be provided to SR Construction, which states that the Subcontractor will ensure no personnel working on site under their Subcontract, including lower-tier Subcontractors and supplier, have any felony convictions.

**4. Site Utilization Requirements:**

The Subcontractor at the completion of the work must remove from the project all tools and construction gang boxes, ladders, excess material, and any supplies not specified in the

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contract to be provided to SR Construction at the completion of work and/or phase of work. Any items not removed within one week of notification, either verbally or by written documentation, will be inventories by SR Construction and then distributed as SR Construction sees fit.

**Site Utilization Plan:** Attached to the Purchase Order will be a copy of the site utilization plan, which shows the location of the construction fencing, access gates, and required storm water protection.

**Temporary Structures**: The SR Construction Superintendent must approve placement and utility hookup for portable construction offices, shacks toilet facilities, welding machines, air compressors, trash chutes, portable scaffolds, whether internal to the building or external to the building. The only exception is off facility storage.

**Temporary Utilities:** This Subcontractor is cautioned that there will be limited temporary utilities available at the project site. All temporary water, power, and/or lighting required beyond that which SR Construction provides, is the responsibility of this Subcontractor. If water hoses are used, they must be in good condition with no leaking. It is the Subcontractors responsibility to maintain all temporary services provided by them. Should Subcontractor fail to maintain utilities properly, SR Construction reserves the right to have utilities taken out of service at the expense of the Subcontractor.

a. SR Construction will provide construction water to one location on site. All additional construction water required to complete this Scope of Work is the responsibility of this subcontractor. This Subcontractor is also responsible for providing all crews associated with this Scope of Work with drinking water, cups and trash receptacle as required by OSHA.

b. The permanent utilities will be made available to all Subcontractors as soon as they are available. It is each Subcontractor's responsibility to ensure their work does not damage the permanent utilities. Each Subcontractor is also responsible for providing a GFI pigtail for all lines plugged into the permanent utilities.

**Trash Dumpsters:** SR Construction will provide a general trash dumpster for the following items only: Office trash, lunch trash, boxes, paper and other miscellaneous trash. It is the responsibility of each subcontractor to remove the following items from the site: All demolition debris, concrete, concrete debris, steel, rebar, aggregate, gravel, soil, pipes, masonry, hazardous waste, asphalt, excess fill, conduit, formwork, lumber, pallets and any other materials which can be directly related to a Subcontractor's work.

Subcontractor and Subcontractor's personnel will be responsible to place all trash generated from lunch into a trash container and remove any lunch debris, plastic bottles, cans, etc. from the building on a daily basis.

**Site Appearance:** All areas accessed by the Subcontractor for the performance of work must be left in like or better condition as originally found. Specific attention must be given to the timely removal of excess material and equipment.

# Exhibit J

## PROJECT RULES & REGULATIONS

**Conduct**: While on duty, Subcontractor personnel must conduct themselves in a manner acceptable to SR Construction. Improper conduct will not be tolerated and offending personnel will be reported to the Subcontractor for corrective action and/or removal from jobsite. Sexual Harassment is strictly prohibited.

**Smoking**: Buildings are smoke free facilities and no smoking or use of tobacco products will be accepted while inside any buildings.

**Authorized Use of Premises:** The Subcontractor must use routes designated by SR Construction for the internal or external movement of material or equipment, and where applicable, personnel. Route designations will include streets, sidewalks, corridors, stairwells, elevators, etc…Subcontractor personnel must remain in authorized work areas while on duty. If access is necessary to other areas, approval must be obtained from SR Construction.

**Access:** Arrangements must be made through SR Construction when access to secured areas is required. Security is of the utmost importance and any security breaches will not be tolerated. If keys are available, a sign-out log will be maintained at SR Construction project office. Keys will have to be checked out on a daily basis with proper ID unless other arrangements are made.

**Signage**: Warning signs, barricades, negative air machines and other safety equipment must be provided and maintained by the Subcontractor where limited or no access must be enforced due to hazard level of the work being performed.

I have read all four (4) pages of the document entitled "Project Rules and Regulations" and agree to abide by the guidelines contained therein concerning all work performed for SR Construction pursuant to the Master Subcontract Agreement.

I agree to communicate the guidelines to all Subcontractor personnel assigned to an SR Construction project, job or scope of work performed pursuant to the Master Subcontract Agreement for the calendar year during which it is signed and dated below.

Peek Brothers Construction Inc

Company Name

Travis Peek

Company Representative (Print or Type)

DocuSigned by:
Travis Peek 10/8/2019
B3500ED107BD451...

Signature and Date



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# Exhibit K
# SUBCONTRACTOR CHANGE REQUEST FORM

**Project:**

**Attention:**
**Project Manager**
**SR Construction**
**(702) 877-6111 phone (702) 258-6326 fax**

**SUBCONTRACTOR INFORMATION:**

Date _____ Quoted by: _____
Subcontractor _____ Telephone _____
Address _____ Fax _____
_____

Description of Work, Location & Reason:
_____ Additional Work Not Shown On Plans
_____ Repair of Damage by Other Trade
_____ Modification of Work Shown on Plans
_____ Other (explain)

**LABOR RECAP (Attach Sign Field Work Orders)**

| No of Men | Classification | Hours per Man | Total Hours Worked | Regular Rate | Extension | OT Hours | Premium Rate | Extension | Total |
|---|---|---|---|---|---|---|---|---|---|
| 0 | | 0 | 0 | $ - | $ - | 0 | $ - | $ - | $ - |
| | | | | | $ - | | | $ - | $ - |
| | | | | | $ - | | | $ - | $ - |
| | | | | | $ - | | | $ - | $ - |
| | | | | | $ - | | | $ - | $ - |
| | | | | | $ - | | | $ - | $ - |
| | | | | | $ - | | | $ - | $ - |
| | | | | | | | | **Sub Total** | $ - |

**PURCHASE OF OUTSIDE SERVICES OR MATERIALS RECAP(Attach Receipts)**

| Description of Materials or Services | Quantity | Unit | Unit Price | Extension | Total |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | **Sub Total** | $ - |

**EQUIPMENT RECAP**

| Type | | Make | | Size | Hours per Shift | Regular Rate | Premium Rate | Extension | Total |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | **Sub Total** | $ - |

**SUMMARY**

| | |
|---|---|
| Total Labor + Material+Equipment | $ - |
| Overhead & Profit not to Exceed 15% | $ - |
| Grand Total | $ - |

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**SR Construction, Inc.**
3579 Red Rock Street
LAS VEGAS, NEVADA 89103
Phone: 702-877-6111 Fax: 702-258-6326

**CHANGE ORDER**
**No. 00001**

## SUBCONTRACTOR CHANGE ORDER

**TITLE:** **DATE:**

**PROJECT:** **JOB:**

**TO:** **ACCOUNT NO.:**

**RE:** CO **To:** **From:** SR Construction, Inc. **Number:** 00001

**The following changes hereby authorized in your agreement referred to the above, subject to all of the terms and conditions in said agreement:**

# Exhibit L – Example of Change Order

| | |
|---|---|
| **Unit Cost:** | **$0.00** |
| **Unit Tax:** | **$0.00** |
| **Lump Sum:** | **$0.00** |
| **Lump Tax:** | **$0.00** |
| **Total:** | **$0.00** |

**This Change Order constitutes FULL AND COMPLETE SETTLEMENT of any and all costs, expenses, compensation or other consideration referred to and/or described herein including but not limited to all applicable taxes, insurance, delivery, supervision, overhead, profit, labor, labor impact, materials, changes, delays, acceleration and inefficiencies, impact or any claims therefore, and the Subcontractor hereby waives any and all claims for such items associated with or related to the Work covered by this Change Order, all previous Change Orders, claims under the base contract and all conditions incurred through the date of this Change Order it being the intent of the parties hereto that this Change Order constitute a full ACCORD AND SATISFACTION as to any Subcontract adjustments Subcontractor may have or claim to have through the date of the executed of this Change Order.**

**The Original Contract Sum was ..... $0.00**
**Net Change by Previously Authorized Requests and Changes ..... $0.00**
**The Contract Sum Prior to This Change Order was ..... $0.00**
**The Contract Sum Will Not be Changed ..... $0.00**
**The New Contract Sum Including This Change Order ..... $0.00**
**The Contract Time Will Not be Changed .....**
**The Date of Substantial Completion as of this Change Order Therefore is.....**

**ACCEPTED:**

| | | |
|---|---|---|
| **(Subcontractor Name)** | **SR Construction** | |
| **By:**_____ | **By:**_____ | **By:**_____ |
| **Date:** _____ | **Date:** _____ | **Date:** _____ |

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# Exhibit M

## SPECIAL SEQUENCNG REQUIREMENTS

1. Each Subcontractor affected shall install its work in corridors in sequences as directed by SR Construction. Generally, the sequence will frame life safety walls first and install above ceiling gypsum board. Installations of dampers and sleeves for penetrations will run concurrently and is coordinated between all trades affected to minimize interference and disruption.

2. No overhead service running parallel to and within 18” of any partition requiring above ceiling applied materials shall be installed until the above ceiling work on the partition or segment thereof is completed.

3. Ample room for all required framing at door and other openings is to be allowed by trades with in-wall construction.

4. Horizontal pipe and conduit assemblies shall not be fabricated unless otherwise approved by SR Construction. Horizontal piping and conduit shall be installed after wall framing is in place.

5. All penetrations through life safety walls are to be sleeved in conjunction with construction of the partition. The trade whose work passes through the sleeve shall install required safing, firestopping or insulation as applicable.



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