

**DRAFT AIA® Document A141™ – 2004*****Standard Form of Agreement Between Owner and Design-Builder***

**AGREEMENT** made as of the  day of  in the year of  
*(In words, indicate day, month and year)*

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

The Board of Regents of the Nevada System of Higher Education on behalf of the  
 University of Nevada, Las Vegas  
 4505 South Maryland Parkway  
 Box \_\_\_\_\_  
 Las Vegas, Nevada 89154-\_\_\_\_\_

and the Design-Builder:  
*(Name, address, FTIN and other information)*

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

AIA Form Docs  
 n/a  
 N/A

The Owner and Design-Builder agree as follows.

**ADDITIONS AND DELETIONS:**

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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### ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

**§ 1.1** The Design-Build Documents form the Design-Build Contract. The Design-Build Documents consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits as modified; Supplementary and other Conditions; all design documents, construction documents or other submittals approved by Owner pursuant to Section A.2.3 of AIA Document A141-2004 Exhibit A, as modified; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; the Design-Builder's Proposal and written modifications to the Proposal accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8.

**§ 1.2** The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. Owner and Design-Builder each represent and warrant to each other that each respectively has the authority to execute and deliver the Design-Build Documents and perform their respective obligations thereunder and that the execution delivery and performance of the Design-Build Documents have been duly authorized by all necessary action by each respective party.

**§ 1.3** The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build 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 Owner.

### ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

**§ 2.1** The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others. Design-Builder shall design and construct the Work in strict accordance with the Design-Build Documents in a good and workmanlike

manner. Except as otherwise provided in the Design-Build Documents, Design-Builder shall provide all labor, services and efforts necessary to complete the Work within the agreed Contract Time.

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

**§ 3.1** The date of commencement of the Work shall be date of the issuance of a Purchase Order and Notice to Proceed by the Owner. Owner may issue separate Purchase Orders or Purchase Order Modifications and Notices to Proceed for the Design/Pre-Construction Phase of the Design-Build Contract and the Construction Phase of the Design-Build Contract, at the Owner's determination.

*(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

*(Insert Owner's time requirements.)*

**§ 3.2** The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)*

In the event Substantial Completion is not achieved by the date specified above except as result only of delays for which the Owner is chargeable under the Design-Build Documents or from Unavoidable Delay, Design-Builder agrees that Owner shall have the right to deduct from any sums due to Design-Builder hereunder the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_.00) for each day that Substantial Completion is actually delayed, provided, however, that (i) Owner may commence to make such deductions prior to the scheduled date of Substantial Completion in the event Owner reasonably projects that the Project will not be completed on the scheduled date of Substantial Completion and (ii) Design-Builder shall pay to Owner in cash any amounts which Owner is entitled to deduct in the event the remaining amount of funds due hereunder is less than the amounts Owner has the right to deduct. Owner and Design-Builder agree and acknowledge that (i) Owner's actual damages for the failure of Substantial Completion would be substantial but extremely difficult to ascertain and (ii) such sum represents a fair and reasonable estimate of the costs Owner will incur as a result of such late achievement of Substantial Completion.

"Unavoidable Delays" means delays due to any of the following, and only the following, (provided that such delay is beyond Design-Builder's reasonable control): war, insurrection, civil commotion, strikes, slowdowns, lock outs, riots, flood, earthquakes, fires, casualties, acts of God, acts of a public enemy, acts of terrorism, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental moratoriums, unusually severe or abnormal weather conditions, failure of utilities, or a court order which causes a delay (unless resulting from a wrongful act of Design-Builder). In no event shall the application to Design-Builder of any applicable law, regulation, rule or other governmental requirement constitute an Unavoidable Delay. Design-Builder shall use reasonable good faith efforts to notify Owner not later than five (5) days after Design-Builder knows of the occurrence of an Unavoidable Delay. An extension of time for an Unavoidable Delay shall only be for the period of the Unavoidable Delay, which period shall commence to run from the time of the commencement of the cause of the Unavoidable Delay.

**§ 3.3** The Design-Builder shall achieve Substantial Completion of the Work not later than \_\_\_\_\_ days from the date of commencement, or as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Design-Build Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)*

**Portion of Work**

**Substantial Completion Date**

### ARTICLE 4 CONTRACT SUM

**§ 4.1** The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

☐ Stipulated Sum in accordance with Section 4.2 below;

☐ Cost of the Work Plus Design-Builder's Fee in accordance with Section 4.3 below;

☒ Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

(Based on the selection above, complete either Section 4.2, 4.3 or 4.4 below.)

#### § 4.2 STIPULATED SUM

§ 4.2.1 [Intentionally Deleted]

§ 4.2.2 [Intentionally Deleted]

§ 4.2.3 [Intentionally Deleted]

§ 4.2.4 [Intentionally Deleted]

§ 4.2.5 [Intentionally Deleted]

#### § 4.3 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE

§ 4.3.1 [Intentionally Deleted]

§ 4.3.2 [Intentionally Deleted]

#### § 4.4 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE WITH A GUARANTEED MAXIMUM PRICE

§ 4.4.1 The Cost of the Work is as defined in Exhibit B, plus the Design-Builder's Fee.

§ 4.4.2 The Design-Builder's Fee is:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)

#### § 4.4.3 GUARANTEED MAXIMUM PRICE

§ 4.4.3.1 The sum of the Cost of the Work, the Design-Builder's Fee and the Design-Builder's Contingency specified in § 4.4.3.6 below is guaranteed by the Design-Builder not to exceed  ( \$  ), subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner and shall not be a basis of any Change Order.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

In the event there are unused Design-Builder contingency funds at the conclusion of the Contract, please reference § A.13.7.

§ 4.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

§ 4.4.3.3 Unit Prices, if any, are as follows:

Description	Units	Price (\$ 0.00)
<input type="text"/>	<input type="text"/>	<input type="text"/>

§ 4.4.3.4 Allowances, if any, are as follows:

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

Allowance	Amount (\$ 0.00)	Included Items

§ 4.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based, are as follows:

(Identify the assumptions on which the Guaranteed Maximum Price is based.)

§ 4.4.3.6 Design-Builder's Contingency Amount (Included in the Guaranteed Maximum Price specified in Section 4.4.3.1):

§ 4.4.3.7 Design-Builder's Design/Pre-Construction Fee to complete Drawings and Specifications and submit for all plan check processes and regulatory reviews (Included in the Guaranteed Maximum Price specified in Section 4.4.3.1):

## § 4.5 CHANGES IN THE WORK

§ 4.5.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.

§ 4.5.2 Where the Contract Sum is the Cost of the Work, with or without a Guaranteed Maximum Price, and no specific provision is made in Sections 4.3.2 or 4.4.2 for adjustment of the Design-Builder'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 will cause substantial inequity to the Owner or Design-Builder, the Design-Builder's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Contract Sum shall be adjusted accordingly.

## ARTICLE 5 PAYMENTS

### § 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

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

§ 5.1.3 Provided that a complete and approved Application for Payment is received by the Owner not later than the 25<sup>th</sup> day of a month, the Owner shall make payment of the certified amount to the Design-Builder not later than the 25<sup>th</sup> day of the next month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the complete and approved Application for Payment.

§ 5.1.4 [Intentionally Omitted]

§ 5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work and shall provide separate values for construction photographs and as-builts. Compensation for design services shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee and Design-Builder's Contingency shall be shown separately. 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 of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be required to or deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used

amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

**§ 5.1.7** Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site, or, with the agreement of the Owner, stored at a bonded and licensed facility where the Owner can reasonably visually verify or receive other acceptable verification of the storage of materials. If verification is necessary or required by Owner by a site visit outside of a local site visit for materials and equipment suitably stored off the site in a licensed and bonded facility and to consider payment for these items, Design-Builder shall pay all costs associated with site visits/review outside of local site visits by Owner.

## **§ 5.2 PROGRESS PAYMENTS - STIPULATED SUM**

**§ 5.2.1** [Intentionally Omitted]

**§ 5.2.2** [Intentionally Omitted]

**§ 5.2.3** [Intentionally Omitted]

**§ 5.2.4** [Intentionally omitted]

## **§ 5.3 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE** [Intentionally Omitted]

**§ 5.3.1** [Intentionally Omitted]

**§ 5.3.2** [Intentionally Omitted]

**§ 5.3.3** [Intentionally Omitted]

**§ 5.3.4** [Intentionally Omitted]

## **§ 5.4 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE**

**§ 5.4.1** Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price 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 based on the approved schedule of values submitted with 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 Design-Builder on account of that portion of the Work for which the Design-Builder 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.

**§ 5.4.2** Subject to other provisions of the Design-Build 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 A.7.3.8 of Exhibit A, Terms and Conditions;
- .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, with the agreement of the Owner, stored at a bonded and licensed facility where the Owner can reasonably visually verify or receive other acceptable verification of the storage of materials per Section 5.1.7.;
- .3** Add the Design-Builder's Fee, less retainage of **ten percent ( 10.0% )**. The Design-Builder's Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in Section 4.4.2 or, if the Design-Builder'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 in the two preceding sections bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4** Subtract the aggregate of previous payments made by the Owner;

- .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

**§ 5.4.3** Payments for the Work shall be subject to retainage of not less than **ten percent** ( **10.0%** ). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Design-Builders, Contractors, Design Professionals and Consultants.

## **§ 5.5 FINAL PAYMENT**

**§ 5.5.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Section A.9.10 of Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment. Final Completion and Final Payment are also subject to completion of all notices of retention release, notices/certificates of completion and related processes as provided in Section A.9.10 of AIA A141 Exhibit A.

## **ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1** [Intentionally omitted.]

**§ 6.2** If the parties do not resolve their dispute through mediation pursuant to Section A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following  
*(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.)*  
*(Check one.)*

- ☐ Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other *(Specify)*

**§ 6.3 ARBITRATION** [Intentionally Omitted]

**§ 6.3.1** [Intentionally Omitted]

## **ARTICLE 7 MISCELLANEOUS PROVISIONS**

**§ 7.1** The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed as follows:

*(Insert name, address, license number, relationship to Design-Builder and other information.)*

Name and Address	License Number	Relationship to Design-Builder	Other Information

**§ 7.2** Consultants, if any, engaged directly by the Owner, their professions and responsibilities are listed below:  
*(Insert name, address, license number, if applicable, and responsibilities to Owner and other information.)*

Name and Address	License Number	Responsibilities to Owner	Other Information

**§ 7.3** Separate Design-Builder or contractors, if any, engaged directly by the Owner, their trades and responsibilities are listed below:

*(Insert name, address, license number, if applicable, responsibilities to Owner and other information.)*

Name and Address	License Number	Responsibilities to Owner	Other Information

**§ 7.4** The Owner's Designated Representative is:  
(Insert name, address and other information.)

**§ 7.4.1** The Design-Builder shall submit to Owner's Designated Representative identified and designated pursuant to Section A.2.1.1 of AIA A141 Exhibit A above all matters requiring the Owner's approval or authorization.

**§ 7.5** The Design-Builder's Designated Representative is:  
(Insert name, address and other information.)

Project Executive:  
Project Manager:  
Superintendent:  
Safety Director:  
Licensed Design Professional In Charge  
Design Project Manager

**§ 7.5.1** The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.

**§ 7.6** Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

**§ 7.7** Other provisions:

Liquidated damages in the sum of \_\_\_\_\_ thousand dollars (\$\_\_\_\_\_,000) for changes to Design-Builder's Authorized Representatives per Section A.3.2.13 of Exhibit A, Terms and Conditions.

**§ 7.7.1** Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

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

Interest on any amounts due from Owner to Design-Builder, or from Design-Builder to Owner, as the case may be, shall bear interest from the date due until paid at a rate equal to the lesser of (i) six percent (6%) per annum, (ii) that fluctuating rate of interest announced from time to time by the Bank of America National Trust and Savings Association as its prime or reference commercial lending rate of interest (or in the event such bank is no longer announcing such rate, by such other federally regulated banking institution of comparable stature as Owner shall determine) or (iii) the maximum interest rate permitted by law. Under no circumstances, however, shall Design-Builder be entitled to interest on retainage.

( ) per annum

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design-Builder's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

## **§ 7.8 COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and

the same Agreement.

#### § 7.9 BUSINESS DAY

The term "Business Day" shall mean Monday through Friday, excluding holidays recognized by the State of Nevada.

#### § 7.10 INVALIDITY

If any one or more of the provisions (or any part thereof) contained in the Design-Build Documents are for any reason held to be illegal, invalid or otherwise unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision (or part thereof) of the Design-Build Documents.

#### § 7.11 INDEPENDENT CONTRACTOR

The parties agree that the contractual relationship of Design-Builder to Owner is one solely of an independent contractor in all respects and that the Design-Build Documents do not in any way create a partnership, joint venture or any other relationship between Owner and Design-Builder other than the contractual relationship as specified in this Agreement.

### ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2004.

§ 8.1.2 The Supplementary and other Conditions of the Agreement, if any, are as follows:  
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Title of the Supplementary and Other Conditions exhibit:

§ 8.1.3 The Project Criteria, including changes to the Project Criteria proposed by the Design-Builder, if any, and accepted by the Owner, consist of the following:  
(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)

Title of the Project Criteria exhibit:

§ 8.1.4 The Design-Builder's Proposal, dated [REDACTED], consists of the following:  
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Title of the Design-Builder's Proposal:

§ 8.1.5 Amendments to the Design-Builder's Proposal, if any, are as follows:  
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Title of the Amendments to Design-Builder's Proposal exhibit:

§ 8.1.6 The Addenda, if any, are as follows:  
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Title of the Addenda exhibit:

§ 8.1.7 Exhibit A, Terms and Conditions as modified.

(If the parties agree to substitute terms and conditions other than those contained in AIA Document A141-2004, Exhibit A, Terms and Conditions, then identify such terms and conditions and attach to this Agreement as Exhibit A.)

§ 8.1.8 Exhibit B, Determination of the Cost of the Work, if applicable as modified.

(If the parties agree to substitute a method to determine the cost of the Work other than that contained in AIA Document A141-2004, Exhibit B, Determination of the Cost of the Work, then identify such other method to determine the cost of the Work and attach to this Agreement as Exhibit B. If the Contract Sum is a Stipulated Sum, then Exhibit B is not applicable.)

§ 8.1.9 Exhibit A.11, Insurance and Bonds, if applicable as modified.

(Complete AIA Document A141-2004, Exhibit A, Insurance and Bonds or indicate "not applicable.")

**§ 8.1.10** Other documents, if any, forming part of the Design-Build Documents are as follows:  
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Title of the Other Documents exhibit:  
UNLV Design, Construction and Sustainability Standards found at:  
[http://facilities.unlv.edu/plancon/sustainability\\_standards.html](http://facilities.unlv.edu/plancon/sustainability_standards.html)

**ADD APPROPRIATE SIGNATURE PAGE!**



## **SIGNATURE PAGE FOR OVER \$1 MILLION**

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed the day and year first above written.

(1) CONTRACTOR

DATE APPROVED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name and title)

(2) OWNER - BOARD OF REGENTS OF THE NEVADA  
SYSTEM OF HIGHER EDUCATION ON BEHALF  
OF THE UNIVERSITY OF NEVADA, LAS VEGAS

DATE RECOMMENDED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

David S. Frommer, AIA  
Executive Director of Planning and Construction

(3) OWNER - BOARD OF REGENTS OF THE NEVADA  
SYSTEM OF HIGHER EDUCATION ON BEHALF OF  
THE UNIVERSITY OF NEVADA, LAS VEGAS

DATE RECOMMENDED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Gerry J. Bomotti  
Senior Vice President of Finance and Business

(4) OWNER - BOARD OF REGENTS OF THE  
NEVADA SYSTEM OF HIGHER EDUCATION ON  
BEHALF OF THE UNIVERSITY OF NEVADA, LAS  
VEGAS

DATE RECOMMENDED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Neal J. Smatresk  
President

(5) OWNER -  
NEVADA SYSTEM OF HIGHER EDUCATION

DATE APPROVED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Daniel J. Klaich  
Chancellor, Nevada System of Higher Education

APPROVED AS TO LEGAL FORM:  
DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
(Signature)  
Elda Luna Sidhu, General Counsel



**SIGNATURE PAGE FOR OVER \$400,000 UP TO & INCLUDING \$1 MILLION**

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed the day and year first above written.

(1) CONTRACTOR

DATE APPROVED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

(2) OWNER - BOARD OF REGENTS OF THE NEVADA  
SYSTEM OF HIGHER EDUCATION ON BEHALF OF  
THE UNIVERSITY OF NEVADA, LAS VEGAS

DATE RECOMMENDED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

David S. Frommer, AIA  
Executive Director of Planning and Construction

(3) OWNER - BOARD OF REGENTS OF THE NEVADA  
SYSTEM OF HIGHER EDUCATION ON BEHALF OF  
THE UNIVERSITY OF NEVADA, LAS VEGAS

DATE RECOMMENDED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Gerry J. Bomott  
Senior Vice President of Finance and Business

(4) OWNER - BOARD OF REGENTS OF THE NEVADA  
SYSTEM OF HIGHER EDUCATION ON BEHALF OF  
THE UNIVERSITY OF NEVADA, LAS VEGAS

DATE APPROVED: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Neal J. Smatresk  
President

APPROVED AS TO LEGAL FORM:  
DATE: \_\_\_\_\_

BY: \_\_\_\_\_

(Signature)  
Elda Luna Sidhu, General Counsel

**SIGNATURE PAGE FOR UP TO & INCLUDING \$400,000**

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed the day and year first above written.

**(1) CONTRACTOR**

**DATE APPROVED:** \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name and title)

**(2) OWNER - BOARD OF REGENTS OF THE NEVADA  
SYSTEM OF HIGHER EDUCATION ON BEHALF OF  
THE UNIVERSITY OF NEVADA, LAS VEGAS**

**DATE RECOMMENDED:** \_\_\_\_\_

\_\_\_\_\_  
(Signature)

David S. Frommer, AIA  
Executive Director of Planning and Construction

**(3) OWNER - BOARD OF REGENTS OF THE NEVADA  
SYSTEM OF HIGHER EDUCATION ON BEHALF OF  
THE UNIVERSITY OF NEVADA, LAS VEGAS**

**DATE APPROVED:** \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Gerry J. Bomotti  
Senior Vice President of Finance and Business

# DRAFT AIA<sup>®</sup> Document A141<sup>™</sup> – 2004

## Exhibit A

### *Terms and Conditions*

for the following PROJECT:

*(Name and location or address)*

AIA Form Docs

n/a

**THE OWNER:**

*(Name and location)*

The Board of Regents of the Nevada System of Higher Education on behalf of the  
University of Nevada, Las Vegas  
4505 South Maryland Parkway  
Box \_\_\_\_\_  
Las Vegas, Nevada 89154-\_\_\_\_\_

**THE DESIGN-BUILDER:**

*(Name and location, contact information and FTIN)*

#### **ADDITIONS AND DELETIONS:**

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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## **ARTICLE A.1 GENERAL PROVISIONS**

### **§ A.1.1 BASIC DEFINITIONS**

#### **§ A.1.1.1 THE DESIGN-BUILD DOCUMENTS**

The Design-Build Documents are identified in Section 1.1 of the Agreement.

#### **§ A.1.1.2 PROJECT CRITERIA**

The Project Criteria are identified in Section 8.1.3 of the Agreement and may describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

#### **§ A.1.1.3 ARCHITECT**

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

#### **§ A.1.1.4 CONTRACTOR**

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.6.1.2, or subcontractors of a separate contractor.

#### **§ A.1.1.5 SUBCONTRACTOR**

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

#### **§ A.1.1.6 THE WORK**

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

#### **§ A.1.1.7 THE PROJECT**

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

#### **§ A.1.1.8 NEUTRAL**

The Neutral is the individual appointed by the parties to decide Claims and disputes pursuant to Section A.4.2.1.

### **§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS**

**§ A.1.2.1** If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which they believe will violate any applicable law, ordinance, rule or regulation.

**§ A.1.2.2** The Design-Builder shall be entitled to rely on the completeness and accuracy of the information contained in the Project Criteria, but not that such information complies with applicable laws, regulations and codes, which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, the Design-Builder shall furnish Work which complies with such laws, regulations and codes. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder recognized such non-compliance prior to execution of this Agreement and failed to notify the Owner.

## **§ A.1.3 CAPITALIZATION**

**§ A.1.3.1** Terms capitalized in these Terms and Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document, or (3) the titles of other documents published by the American Institute of Architects.

## **§ A.1.4 INTERPRETATION**

**§ A.1.4.1** In the interest of brevity, the Design-Build 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.

**§ A.1.4.2** Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

## **§ A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS**

**§ A.1.5.1** The Design-Build Documents shall be signed by the Owner and Design-Builder.

**§ A.1.5.2** Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder 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 Design-Build Documents.

## **§ A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA**

**§ A.1.6.1** Drawings, specifications, and other documents including those in electronic form, prepared by the Architect and furnished by the Design-Builder are Instruments of Service. The Design-Builder, Design-Builder's Architect and other providers of professional services individually shall retain all common law, statutory and other reserved rights, including copyright in those Instruments of Services furnished by them. Drawings, specifications, and other documents and materials and electronic data are furnished for use solely with respect to this Project.

**§ A.1.6.2** Upon execution of the Design-Build Contract, the Design-Builder grants to the Owner a non-exclusive license to reproduce and use the Instruments of Service solely in connection with the Project, including use, maintenance and the Project's further development by the Owner and others retained by the Owner for such purposes. Such license shall extend to those parties retained by the Owner for such purposes, including other design professionals. The Design-Builder shall obtain similar non-exclusive licenses from its design professionals, including the Architect. The Owner shall not otherwise assign or transfer any license herein to another party without prior written agreement of the Design-Builder. Any unauthorized reproduction or use of the Instruments of Service by the Owner or others shall be at the Owner's sole risk and expense without liability to the Design-Builder and its design professionals..

**§ A.1.6.3** Prior to any electronic exchange by the parties of the Instruments of Service or any other documents or materials to be provided by one party to the other, the Owner and the Design-Builder shall agree in writing on the specific conditions governing the format thereof, including any special limitations or licenses not otherwise provided in the Design-Build Documents.

**§ A.1.6.4** If this Agreement is terminated for any reason other than the default of the Owner, each of the Design-Builder's design professionals, including the Architect, shall be contractually required to convey to the Owner a non-exclusive license to use that design professional's Instruments of Service for the completion, use and maintenance of the Project. The Design-Builder shall incorporate the requirements of this Section A.1.6.4 in all agreements with its design professionals.

**§ A.1.6.5** Submission or distribution of the Design-Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section A.1.6.1.

## **ARTICLE A.2 OWNER**

### **§ A.2.1 GENERAL**

**§ A.2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized

representative. The Owner shall designate in writing a representative authorized (the Owner's Project Manager) to whom all matters requiring the Owner's approval or authorization shall be submitted. This representative shall convey such matters to Owner's officers and/or governing bodies, as appropriate.

**§ A.2.1.2** Owner is the sole party liable for Owner's obligations under the Design-Build Documents and no officer or board member of Owner shall be liable in any way with respect to the Design-Build Documents and any actions on their part shall not create any liability under the Design-Build Documents.

## **§ A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ A.2.2.1** Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Design-Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services.

**§ A.2.2.2** The Owner shall be responsible to provide surveys, if not required by the Design-Build Documents to be provided by the Design-Builder, describing physical characteristics, legal limitations, and utility locations for the site of this Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining 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.

**§ A.2.2.3** The Owner shall provide, to the extent available to the Owner and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Owner makes no representation or warranty as to the accuracy or completeness of such results, reports, inspection or investigations and shall have no liability in connection therewith.

**§ A.2.2.4** The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Design-Builder shall cooperate and facilitate such independent review, provided that such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

**§ A.2.2.5** Subject to Section A.3.7, the Owner shall provide reasonable cooperation with the Design-Builder in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees or incur any other costs for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Design-Builder under the Design-Build Documents. Refer to Section A.3.7 for additional requirements for fees.

**§ A.2.2.6** The services, information, surveys and reports required to be provided by the Owner under Section A.2.2, shall be furnished at the Owner's expense, and the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof, except as otherwise specifically provided in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing.

**§ A.2.2.7** If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

**§ A.2.2.8** [Intentionally omitted.]

**§ A.2.2.9** The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder or in the event Design-Builder is in material default under the Design-Build Documents.

**§ A.2.2.10** The Owner shall furnish the services of geotechnical engineers or other consultants, if not required by the Design-Build Documents to be provided by the Design-Builder, for subsoil, air and water conditions when such services are deemed reasonably necessary by the Design-Builder to properly carry out the design services provided by the Design-Builder and the Design-Builder's Architect. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

**§ A.2.2.11** The Owner shall use commercially reasonable efforts to promptly obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the Owner's program, provided, however, that in no event shall Owner be required to commence any legal actions in connection therewith. Design-Builder shall assist Owner in obtaining these items.

### **§ A.2.3 OWNER REVIEW AND INSPECTION**

**§ A.2.3.1** The Owner shall review and approve or take other appropriate action upon the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. 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 Design-Builder as required by the Design-Build Documents. The Architect and its consultants shall review all submittals for compliance with the Design-Build Documents and this Agreement and shall coordinate their submittal review/comments with the Owner.

**§ A.2.3.2** Upon review of the design documents, construction documents, or other submittals required by the Design-Build Documents, the Owner shall take one of the following actions:

- .1 Determine that the documents or submittals are in conformance with the Design-Build Documents and approve them.
- .2 Determine that the documents or submittals are in conformance with the Design-Build Documents but request changes in the documents or submittals which shall be implemented by a Change in the Work.
- .3 Determine that the documents or submittals are not in conformity with the Design-Build Documents and reject them.
- .4 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them by implementing a Change in the Work.
- .5 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them and request changes in the documents or submittals which shall be implemented by a Change in the Work.

**§ A.2.3.3** The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determinations described in Section A.2.3.2.

**§ A.2.3.4** Notwithstanding the Owner's responsibility under Section A.2.3.2, the Owner's review and approval of the Design-Builder's documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents unless a) the Design-Builder has notified the Owner in writing of the deviation prior to approval by the Owner and the Owner accepts it in writing or, b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents.

**§ A.2.3.5** The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have

control over or charge of, nor be responsible 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 Design-Builder's rights and responsibilities under the Design-Build Documents, except as provided in Section A.3.3.7. The Architect with appropriate subconsultants relative to the nature of the work, will visit the site at intervals appropriate to the stage of construction, weekly minimum, 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 Design-Build Documents.

**§ A.2.3.6** The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

**§ A.2.3.7** The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner 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 Owner to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ A.2.3.8** The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner deems necessary for the Project

**§ A.2.3.9** The Owner shall conduct inspections with the Design-Builder, to include the Architect to determine the date or dates of Substantial Completion and the date of final completion as well as any punchlists or lists of items upon which retention will be held after Substantial Completion is issued.

#### **§ A.2.4 OWNER'S RIGHT TO STOP WORK**

**§ A.2.4.1** If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section A.12.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, or is in default of its material obligations under the Design-Build Documents, then, in addition to all other rights and remedies available to Owner under the Design-Build Documents, at law or equity, Owner may issue a written order to the Design-Builder 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 Design-Builder or any other person or entity, except to the extent required by Section A.6.1.3.

#### **§ A.2.5 OWNER'S RIGHT TO CARRY OUT THE WORK**

**§ A.2.5.1** If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build 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 after such seven-day period give the Design-Builder a second written notice to correct such deficiencies within a three-day period. If the Design-Builder within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, then, in addition to all other rights and remedies available to Owner under the Design-Build Documents, at law or equity, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner immediately upon Owner's written demand.

### **ARTICLE A.3 DESIGN-BUILDER**

#### **§ A.3.1 GENERAL**

**§ A.3.1.1** The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The Design-Builder prime contractor, 'General Contractor' shall be a licensed construction contractor who is legally permitted to provide construction services as the prime contractor and can obtain directly all bonds and insurance required under the Design-Build Documents relative to

construction. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project. The Owner shall have access to meet and communicate with the Architect and design/engineering consultants who are a part of the Design-Builder. The Design-Builder's authorized representative shall participate in these meetings and communications unless they choose not to participate.

**§ A.3.1.2** The Design-Builder shall perform the Work in accordance with the Design-Build Documents. Owner shall have the right to reject any Work or materials as necessary to achieve compliance with the Design-Build Documents. Design-Builder shall not be relieved of obligations to perform the Work in accordance with the Design-Build Documents by any reviews, test, inspections or approvals of the Work by third persons.

**§ A.3.1.3** The Architect shall contract directly with the Contractor as the Design-Builder. The construction subcontractors, material suppliers and other parties responsible for construction and related work shall be contracted with the Construction Contractor or a construction subcontractor. The design and engineering subconsultants shall be contracted with the Architect. The Architect shall be the prime design professional for the Design-Builder, and shall be responsible for contracting with and coordinating the services of all of the design and engineering subconsultants. Any deviations from this contract structure must be clearly submitted to the Owner in advance for review and must meet the intent and requirements of all bond and insurance requirements of the Owner. The Owner shall provide the Design-Builder any comments or objections to alternate team and contracting structures. In all instances, the Owner shall have direct access, with the participation and presence of the Design-Builder (and any subcontractors as necessary), to all licensed design and engineering professionals and all design/engineering consultants for the Project, and the Architect shall coordinate all of the design and engineering disciplines and scope for the Project to provide full design and engineering integration.

**§ A.3.1.4** Design-Builder has and throughout the term of the Design-Build Contract shall maintain all required authority, license status, professional ability, skills and capacity to perform Design-Builder's obligations under the Design-Build Documents. Design-Builder has carefully evaluated the feasibility of performing the Work within the Contract Time and within the Guaranteed Maximum Price and represents that such performance is feasible and practical.

### **§ A.3.2 DESIGN SERVICES AND RESPONSIBILITIES**

**§ A.3.2.1** When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions. The Owner understands and agrees that the services performed by the Design-Builder's Architect and the Design-Builder's other design professionals and consultants are undertaken and performed in the sole interest of and for the exclusive benefit of the Design-Builder, except as otherwise may be provided in the contracts with such professionals.

**§ A.3.2.2** The agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner's written request.

**§ A.3.2.3** The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities, including the Architect and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

**§ A.3.2.4** The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered.

**§ A.3.2.5** The Design-Builder shall have provided to the Owner as a part of the Design-Build proposal submittal process design documents/specifications sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical/plumbing, electrical, landscape, audio-visual, architectural interior, low voltage lighting, telecommunications/data and sustainable and other specified systems; and the materials and such other

elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing.

**§ A.3.2.6** Upon the Owner's acceptance of the design documents submitted as a part of the Design-Build Proposal and execution of this Agreement, the Design-Builder shall provide phased design documents as a part of the design process, including design development documents/specifications and subsequent construction documents/specifications for review and written approval by the Owner. The design development documents shall in more detail describe the size, quality and character of the Project; its architectural, structural, mechanical/plumbing, electrical, landscape, audio-visual, architectural interior, low voltage lighting, telecommunications/data and sustainable and other specified systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved design documents;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

Written approval of Owner is for the sole purpose of determining compliance with the Project Criteria and for no other purpose and such approval shall not relieve Design-Builder of any of its obligations under the Design-Build Documents.

**§ A.3.2.7** The Design-Builder, including the Architect and any design/engineering consultants and subcontractors appropriate to the scope of the meeting, shall meet with the Owner periodically, weekly at a minimum unless otherwise agreed to by the Design-Builder and the Owner, to review progress of the design and construction documents.

**§ A.3.2.8** Upon the Owner's written approval of construction documents, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project. Written approval of Owner is for the sole purpose of determining compliance with the Project Criteria and for no other purpose and such approval shall not relieve Design-Builder of any of its obligations under the Design-Build Documents.

**§ A.3.2.9** The Design-Builder shall obtain from each of the Design-Builder's licensed design/engineering professionals, at a minimum and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria set forth in the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

**§ A.3.2.10** If the Owner requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates other than those required by Section A.3.2.9, the proposed language of such certificates shall be submitted to the Design-Builder, or the Architect and such design professionals through the Design-Builder, for review and negotiation at least 14 days prior to the requested dates of execution. Neither the Design-Builder, the Architect nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective agreements with the Owner or Design-Builder.

**§ A.3.2.11** The Design-Builder shall comply with all project planning, design, sustainability, operations and procedures standards of the Owner during design, and will not deviate from these standards unless agreed upon in writing by the Owner in accordance with Owner's Standards.

**§ A.3.2.12** During design, the Design-Builder shall present for Owner review and approval the proposal for construction staging, operations, and parking that affects the site/adjacent sites or Owner's use of the site/adjacent site in any way.

### **§ A.3.2.13 PROJECT EXECUTIVE, SUPERINTENDENT, PROJECT MANAGER, SAFETY DIRECTOR, LICENSED DESIGN PROFESSIONAL IN CHARGE AND DESIGN PROJECT MANAGER.**

The Design-Builder shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during all performance of all of the Work. The superintendent shall represent the Design-Builder and communications given to the superintendent shall be as binding as if given to the Design-Builder. The Design-Builder shall further employ a project manager who shall represent the Design-Builder in the overall planning, execution and closing of the Project including but not limited to observing all constraints related to the cost, timing and scope of the Project. The Design-Builder shall also designate a project executive who will serve as an 'executive' Design-Builder representative for the project and a safety director who will be a primary contact for the Owner regarding project safety. The Lead Licensed Design Professional in the Design-Build team shall also employ and designate a Licensed Design Professional in Charge and a Design Project Manager.

In the case of a solicitation where these Design Builder Authorized Representatives were designated as a part of the Design-Builder's submittal(s) (statement of qualifications, proposal or other) and Owner has not objected during the solicitation process or during the period of this provision, Design-Build shall designate those Authorized Representatives as a part of this Agreement. This does not change Owner's right to review and object to any Design-Builder proposed Authorized Representatives as a part of Section A.3.2.13 as a part of this Agreement.

The Design-Builder, as soon as practicable after award of the Agreement, shall furnish in writing to the Owner names and qualifications of the proposed project executive, safety director, superintendent, project manager, licensed design professional in charge and design project manager. The Owner may reply within 14 days to the Construction Manager in writing stating (1) whether the Owner has reasonable objection to the proposed superintendent, project executive, safety director, project manager, licensed design professional in charge and/or design project manager, or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14 day period shall constitute notice of no reasonable objection.

The Design-Builder shall not employ a project executive, safety director, superintendent, project manager, licensed design professional in charge and/or design project manager to whom the Owner has made reasonable and timely objection. The Design-Builder shall not change the project executive, safety director, superintendent, project manager, licensed design professional in charge and/or design project manager without the Owner's consent, which shall not unreasonably be withheld or delayed. The parties recognize that in the event Design-Builder changes the project executive, safety director, superintendent, project manager, licensed design professional in charge and/or design project manager without the consent of Owner, Owner may incur additional expenses and delay that will be difficult or impossible to quantify. Accordingly, in such an event, Design-Builder may pay to Owner liquidated damages. Owner also reserves the right to withhold reasonable payment from the Design-Builder in the instance of a change in these Design-Builder's staff without Owner consent. In the event of an unforeseen instance, generally termination, resignation, death or serious illness precluding the ability to carry out duties, requiring a change in Design-Builder's representatives, the Design-Builder shall contact the Owner immediately to determine any adjustments in the Design-Builder's representatives.

### **§ A.3.3 CONSTRUCTION**

**§ A.3.3.1** The Design-Builder shall perform no construction Work prior to the Owner's review and approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals (which shall also include the review of these submittals by the Architect and its design/engineering consultants in all instances), such as Shop Drawings, Product Data and Samples, until the Owner has approved and the Architect and its design/engineering consultants have reviewed each submittal.

**§ A.3.3.2** The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's approval and the Architect and its design/engineering consultants review of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the Owner and the Architect and its design/engineering consultants in writing of such deviation at the time of submittal and (1) the Owner 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 Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner's approval thereof.

**§ A.3.3.3** The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner and the Architect and its design/engineering consultants on previous submittals. In the absence of such written notice, the Owner's approval and the Architect and its design/engineering consultant's review of a resubmission shall not apply to such revisions.

**§ A.3.3.4** When the Design-Build Documents require that a Contractor provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Contractor, the Design-Builder shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by others, shall bear such design professional's written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

**§ A.3.3.5** The Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents.

**§ A.3.3.6** The Design-Builder shall keep the Owner informed of the progress and quality of the Work. The Design-Builder shall provide written reports to the Owner on a weekly basis on the progress of the work in a format agreed to by the Owner and the Design-Builder.

**§ A.3.3.7** The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design-Builder is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage.

**§ A.3.3.8** The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

**§ A.3.3.9** The Design-Builder shall comply with all project planning, design, sustainability, operations and procedures standards of the Owner during construction, and will not deviate from the standards unless agreed upon in writing by the Owner in accordance with Owner's Standards.

**§ A.3.3.10** The Design-Builder shall follow and enforce all Design-Builder developed and Owner approved plans for construction staging, operations and parking that affects the site/adjacent sites or Owner's use of the site/adjacent site in any way.

#### **§ A.3.4 LABOR AND MATERIALS**

**§ A.3.4.1** Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, required insurance and bonds, 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. Only workers who are skilled in performing the Work shall be hired by Design-Builder.

**§ A.3.4.2** When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the consent of the Owner and, if appropriate, in accordance with a Change Order.

**§ A.3.4.3** The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Design-Builder shall promptly remove any such employees or persons causing disruption or disorder.

**§ A.3.4.4** Pursuant to NRS, any contract for construction work for which the estimated cost exceeds \$100,000 shall be subject to the provisions of NRS, including but not limited to payment of prevailing wages, regardless of whether the construction work qualifies as a "public work" as defined by NRS. In accordance with NRS, Design-Builder agrees that the Project is subject to prevailing wage requirements under Nevada Law. Design-Builder agrees to comply with the Prevailing Wage Act and all other provisions of NRS that are applicable to the Project. Design-Builder shall obtain a State of Nevada Public Works Number as required by the State Labor Commissioner. Design-Builder shall use the State Labor Commissioner's prevailing rate of per diem wages in the locality in which the improvements are to be constructed for each craft or type of workman needed to construct the improvement. Subject to the provisions of applicable law, Design-Builder agrees not to pay less than the specified prevailing rate of wages to the Design-Builder and its employees selected to construct the improvements. Design-Builder will include the substance of the prevailing wages requirement of this Section as contractual language in all contracts and lower tier subcontracts. In addition, all solicitations and contracts shall contain the applicable prevailing wage rates. Design-Builder will monitor compliance to the payment of prevailing wages pursuant to Nevada Administrative Code §338. Design-Builder shall keep accurate records showing the name, occupation and actual per diem wages paid to each employee used in connection with construction of the improvements. Such records shall be open to inspection and reproduction by the Owner during normal business hours. Design-Builder will send one (1) copy of each wage report to Owner.

**§ A.3.4.5** All Work necessary to be performed after regular working hours, on weekends or legal holidays, shall be performed without additional cost or expense to the Owner.

**§ A.3.4.6** Unless otherwise specifically required, all materials and equipment incorporated in the Work shall be new, free of faults and defects, and shall conform to the Design-Build Documents. If required, the Design-Builder shall furnish satisfactory evidence as to the type and quality of materials and equipment.

**§ A.3.4.7** The Design-Builder shall also install only those materials that are asbestos free. A certification statement shall be incorporated into the submittal process and shall accompany each submittal. The certification statement must be signed by the Design-Builder to ensure that the review process has been accomplished. Any materials brought to the job that have not been certified must be removed until certified. This certification is not required for steel, aluminum, brass, masonry, concrete and glass unless materials have been treated with any coatings or finishes.

**§ A.3.4.8** Except for liens resulting from Owner's failure to pay any amounts actually due to Design-Builder under the Design-Build Documents, Design-Builder agrees to keep the Project free and clear from all mechanic's liens, materialmen liens and other liens. The Design-Builder shall discharge any such lien immediately but in no event more than thirty (30) days after the filing of such a lien by payment thereof or by providing statutory bond. In the event such lien is not released or discharged within such thirty (30) days period, Owner shall have the right to pay all sums necessary to discharge such liens and Owner shall have the right to deduct such amounts from any amounts due hereunder or demand immediate reimbursement from Design-Builder. In the event of any such deduction, the Contract Sum due under the Design-Build Documents automatically shall be reduced by the amount of such payment without the need for any Change Order. In no instance shall this provision affect any restrictions on liens based on any applicable law or regulation.

## **§ A.3.5 WARRANTY**

**§ A.3.5.1** The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The

Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranty provided in this Section A.3.5.1 shall be in addition to and not in limitation of any other warranty or remedy required or provided by law or by the Design-Build Documents and (ii) notwithstanding anything to the contrary contained in the Design-Build Documents, this warranty shall commence on Final Completion (notwithstanding any partial occupancy prior thereto). Contractor shall promptly repair and replace, at Contractor's sole cost and expense, any materials, equipment or Work covered by this warranty which is in violation of this warranty. All warranty Work shall be coordinated with Owner in order to limit the disruption of operation of the completed Project. All such warranty Work shall be completed in compliance with the terms and conditions of the Design-Build Documents.

### **§ A.3.6 TAXES**

**§ A.3.6.1** The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

### **§ A.3.7 PERMITS, FEES AND NOTICES**

**§ A.3.7.1** The Design-Builder shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work pursuant to the Design-Build Documents and which were legally required on the date the Owner accepted the Design-Builder's proposal. If Design-Builder's Guaranteed Maximum Price includes fees that Owner has paid or is required to pay, Design-Builder shall deduct these fees from Contract Sum as a deductive change order. Design-Builder shall undertake and perform all actions required by and all actions necessary to maintain in full force and effect all permits and licenses required for the Work.

**§ A.3.7.2** The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

**§ A.3.7.3** It is the Design-Builder's responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

**§ A.3.7.4** If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

### **§ A.3.8 ALLOWANCES**

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

**§ A.3.8.2** Unless otherwise provided in the Design-Build Documents:

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

**§ A.3.8.3** Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

### **§ A.3.9 DESIGN-BUILDER'S SCHEDULE**

**§ A.3.9.1** The Design-Builder, promptly after execution of the Design-Build Contract, shall prepare and submit for the Owner's information the Design-Builder's schedule for the Work. The schedule shall not exceed time limits and shall be in such detail as required under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. The schedule shall show all design phase and timeline elements as well as plan check/permitting and construction elements and sub-elements of the work in a manner and format reasonable to guide, assess and promote the timely and quality completion of Work and shall be in a format and with content acceptable to the Owner and the Architect. The schedule must be a CPM method schedule with no durations listed over 10 days for construction activities. Construction work with durations over 10 days must be broken down into specific Work activities less than 10 days in duration.

**§ A.3.9.2** The Design-Builder shall prepare and keep current a schedule of submittals required by the Design-Build Documents.

**§ A.3.9.3** The Design-Builder shall maintain the approved construction schedule and meet all critical path dates for the Work. If the Design-Builder fails to do so, Owner may request a recovery schedule from the Contractor. If within seven (7) days after such notice, the Design-Builder fails to submit a recovery schedule reasonably acceptable to Owner (or submits a schedule which the Owner reasonably deems to be unworkable) where recovery schedule must show how the Work may plausibly be brought back on schedule, then the Owner shall have the right to order the Design-Builder to take corrective measures necessary to expedite the progress of construction, including, without limitation, additional overtime, additional man-power, equipment and facilities, and other similar measures. The additional cost of such measures (i.e., the cost over and above the costs of the Work that would have been incurred had such measures not been taken) will be included in the Cost of Work, with no additional cost to the Owner. If such delays are the result of the negligence of the Design-Builder, Subcontractors or suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable or by the breach of Design-Builder's obligations under the Contractor, or such costs are recoverable from insurance, sureties, Subcontractors or suppliers or would have been recoverable but for Design-Builder's acts of omissions, the Contract Sum shall not be increased as a result thereof unless there is a recovery of funds from Design-Builder's insurance carrier, sureties, Subcontractors or suppliers expressly expressed for recovery schedule purposes.

### **§ A.3.10 DOCUMENTS AND SAMPLES AT THE SITE**

**§ A.3.10.1** The Design-Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the Owner upon completion of the Work.

### **§ A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**§ A.3.11.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**§ A.3.11.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

**§ A.3.11.3** Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**§ A.3.11.4** Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

**§ A.3.11.5** The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents 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.

**§ A.3.11.6** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder and the Architect and its design/engineering consultants has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents. The accuracy of all such information is the responsibility of the Design-Builder. In approving Shop Drawings, Product Data, Samples, and similar submittals, the Owner shall be entitled to rely upon the Design-Builder's representation that such information is accurate and in compliance with the Design-Build Documents.

**§ A.3.11.7** If submittals or shop drawings require multiple reviews by the Owner based on incompleteness, non-compliance with the Agreement or other, this shall not relieve the Design-Builder from any provisions for its performance or obligations of the Agreement.

### **§ A.3.12 USE OF SITE**

**§ A.3.12.1** The Design-Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment. The Design-Builder shall submit to the Owner, for Owner's review and approval, at Design Development and Construction Document phases of a construction staging and operations plan that indicates all Design-Builder impacts to the site for staging, operations, storage, traffic control, Design-Builder parking and other activities for construction. The Owner shall review and approve this document.

**§ A.3.12.2** The Design-Builder shall notify the Owner of all activities that will impact Owner's use, access and operations of any facilities in operation at the site of or related to any part of the Work. This shall include but not be limited to items such as disruptions to utilities/related services, vehicle, pedestrian and service access, noise, fumes and other items. Notification shall be provided to the Owner not less than 7 days in advance of any disruptions.

### **§ A.3.13 CUTTING AND PATCHING**

**§ A.3.13.1** The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

**§ A.3.13.2** The Design-Builder 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 Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

### **§ A.3.14 CLEANING UP**

**§ A.3.14.1** The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Design-Build Contract on a weekly basis minimum, and more often as needed to maintain a functional, efficient and safe construction site to the reasonable satisfaction of Owner. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials.

**§ A.3.14.2** If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and the cost thereof shall be charged to the Design-Builder.

### **§ A.3.15 ACCESS TO WORK**

**§ A.3.15.1** The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located and shall provide Owner with such access to Design-Builder's employees, safety equipment or other measures to assure their safety.

## **§ A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS**

**§ A.3.16.1** The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design-Builder by the Owner. However, if the Design-Builder has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. The provisions of this § A.3.16.1 shall survive the completion of the Work or earlier termination of the Agreement.

## **§ A.3.17 INDEMNIFICATION**

**§ A.3.17.1** To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, Owner'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, and other costs of litigation arising directly or indirectly 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 Design-Builder, Architect, a 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 A.3.17. Design-Builder shall provide Owner with written notification as to any circumstances to which this § 3.17.1 may give rise to an Owner indemnification promptly after Design-Builder becomes aware of such circumstances. The provisions of this § 3.17.1 shall survive the completion of the Work or earlier termination of the Agreement.

**§ A.3.17.2** In claims against any person or entity indemnified under this Section A.3.17 by an employee of the Design-Builder, the Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section A.3.17.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, the Architect or a Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **ARTICLE A.4 DISPUTE RESOLUTION**

### **§ A.4.1 CLAIMS AND DISPUTES**

**§ A.4.1.1 Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**§ A.4.1.2 Time Limits on Claims.** Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other party.

**§ A.4.1.3 Continuing Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A.14, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

**§ A.4.1.4 Claims for Concealed or Unknown Conditions.** If conditions are encountered at the site which the Design-Builder was not aware at the time the Design-Build Contract was entered into and are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, then the observing party shall give notice to the other party promptly. The Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's

cost of, or time required for, performance of any part of the Work, shall negotiate with the Design-Builder an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Design-Build Contract is justified, the Owner shall so notify the Design-Builder in writing, stating the reasons. Claims by the Design-Builder in opposition to such determination must be made within 21 days after the Owner has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Design-Builder cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall proceed pursuant to Section A.4.2.

**§ A.4.1.5 Claims for Additional Cost.** If the Design-Builder wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section A.10.6.

**§ A.4.1.6** If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of the Design-Build Contract by the Owner, (5) Owner's suspension or (6) other reasonable grounds, Claim shall be filed in accordance with this Section A.4.1.

**§ A.4.1.7 Claims for Additional Time**

**§ A.4.1.7.1** If the Design-Builder wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ A.4.1.7.2** 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.

**§ A.4.1.7.3** All claims for extensions of the Contract shall be made in writing to the Owner within 7 days after the beginning of the delay; otherwise, they may be disallowed.

If as a result of Unavoidable Delay it is impractical to perform Work and additional time for this Agreement is justified and agreed to by the Owner and Contractor, the Contractor may be due direct costs only excluding profit. These costs may include general conditions, overhead, bonds and insurance.

**Owner Caused Delay** - If the Design-Builder is delayed at any time in the progress of the Work by any negligent act or omission of the Owner, or by any neglect act or omission by any separate Contractor employed by the Owner, the Contract Time may be extended by Change Order for such reasonable time. It is further expressly understood and agreed that the Design-Builder shall be entitled to compensation for direct costs only, including general conditions, overhead, bonds and insurance on account of any delay resulting from any of the aforesaid causes.

**Working Days** - An extension in Contract Time for a delay will be allowed only in the case that a normal working day is lost. A normal working day is defined as any day, except weekends and holidays, during which the Contractor can work for at least four hours. Delays will not be allowed for non-working days (e.g., weekends and official holidays observed by the Owner) unless the Design-Builder's approved schedule indicated working these days prior to the occurrence of the delay.

**Critical Path Delays** - Claims by the Design-Builder for delays will not be allowed due to failure of the Owner to furnish interpretations, responses to Requests for Information inquiries unless Design-Builder can demonstrate that such failures delayed the critical path as defined in the Associated General Contractor's publication "The Use of CPM in Construction" and 14 days are allowed from the date of the request by the Design-Builder, for interpretation by the Owner.

**Extensions of Contract Time Requests** – the Design-Builder must clearly demonstrate that the critical path of activities that are defined in the Associated General Contractor's publication "The Use of CPM in Construction" was impacted and that the impact was due to causes beyond the control of the Design-Builder. Extensions of the Contract will not be granted for:

Delays which could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Design-Builder;

Delays in the execution of parts of the Work, which may in themselves be unavoidable, but do not prevent or delay execution of other parts of the Work, nor the completion of the whole Work within the time specified;

Delays arising from interruptions occurring in the execution of the Work on account of reasonable interference of other Contractors employed by the Owner, which consume float but do not impact the critical path. Both the term "float" and "critical path" shall be as defined in the Associated General Contractor's publication "The Use of CPM in Construction"; or

Delays resulting from correction of Work rejected as defective or as failing to conform to the Design-Build Documents or otherwise resulting from Design-Builder's default under the Design-Build Documents..

**§ 4.1.7.4** No additional compensation will be allowed to the Design-Builder for delays to an early completion schedule.

**§ A.4.1.8 Injury or Damage to Person or Property.** If either party to the Design-Build Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 2 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ A.4.1.9** If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

**§ A.4.1.10 Claims for Consequential Damages.** [Intentionally Omitted]

**§ A.4.1.11** If the enactment or revision of codes, laws or regulations or official interpretations which govern the Project and which could not have been reasonably anticipated at the time of the Design-Build Documents cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in Contract Sum or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the Contract Sum or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A.4.1.

## **§ A.4.2 RESOLUTION OF CLAIMS AND DISPUTES**

**§ A.4.2.1** [Intentionally omitted.]

**§ A.4.2.2 Decision by Owner.** If the parties have not identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents then, except for those claims arising under Sections A.10.3 and A.10.5, the Owner shall provide an initial decision. An initial decision by the Owner shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner.

**§ A.4.2.3** The initial decision pursuant to Sections A.4.2.1 and A.4.2.2 shall be in writing, shall state the reasons therefore and shall notify the parties 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 first to mediation under Section A.4.3 and thereafter to such other dispute resolution methods as provided in Section 6.2 of the Agreement or elsewhere in the Design-Build Documents.

**§ A.4.2.4** In the event of a Claim against the Design-Builder, 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 Design-Builder's

default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ A.4.2.5** 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 prior to initial resolution of the Claim.

### **§ A.4.3 MEDIATION**

**§ A.4.3.1** Any Claim arising out of or related to the Design-Build Contract, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, shall, after initial decision of the Claim or 30 days after submission of the Claim for initial decision, be subject to mediation as a condition precedent to binding dispute resolution proceedings by either party.

**§ A.4.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for binding dispute resolution proceedings but, in such event, mediation shall proceed in advance thereof or of legal or equitable 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.

**§ A.4.3.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### **§ A.4.4 ARBITRATION** [Intentionally Omitted]

**§ A.4.4.1** [Intentionally omitted.]

**§ A.4.4.2** [Intentionally Omitted]

**§ A.4.4.3** [Intentionally Omitted]

**§ A.4.4.4** [Intentionally Omitted]

**§ A.4.4.5** [Intentionally Omitted]

## **ARTICLE A.5 AWARD OF CONTRACTS**

**§ A.5.1** Unless otherwise stated in the Design-Build Documents or the bidding or proposal requirements, the Design-Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Design-Builder in writing stating whether or not the Owner has reasonable objection to any such proposed additional person or entity. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.

**§ A.5.2** The Design-Builder shall not contract with a proposed person or entity to whom which the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.

**§ A.5.3** If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected additional person or entity 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 person's or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

**§ A.5.4** The Design-Builder shall not change a person or entity previously selected if the Owner makes reasonable objection to such substitute.

#### **§ A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS**

**§ A.5.5.1** Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

- .1 assignment is effective only after termination of the Design-Build Contract by the Owner for cause pursuant to Section A.14.2 and only for those agreements which the Owner accepts by notifying the contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Design-Build Contract.
- .3 Owner shall only be responsible for obligations arising after the assignment.

**§ A.5.5.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Contractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension. Upon such assignment to the Owner under this Section A.5.5.1, the Owner may further assign the contract to a successor contractor or other entity. If the Owner assigns the contract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the contract.

#### **ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

##### **§ A.6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**§ A.6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section A.4.1.

**§ A.6.1.2** The term "separate contractor" shall mean any contractor retained by the Owner pursuant to Section A.6.1.1.

**§ A.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 Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

##### **§ A.6.2 MUTUAL RESPONSIBILITY**

**§ A.6.2.1** The Design-Builder 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 Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

**§ A.6.2.2** If part of the Design-Builder's Work depends for proper execution or results upon design, construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Design-Builder so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

**§ A.6.2.3** The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

**§ A.6.2.4** The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors.

**§ A.6.2.5** The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

#### **§ A.6.3 OWNER'S RIGHT TO CLEAN UP**

**§ A.6.3.1** If a dispute arises among the Design-Builder, 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 Owner shall allocate the cost among those responsible.

### **ARTICLE A.7 CHANGES IN THE WORK**

#### **§ A.7.1 GENERAL**

**§ A.7.1.1** Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, by written Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

**§ A.7.1.2** A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

**§ A.7.1.3** Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

#### **§ A.7.2 CHANGE ORDERS**

**§ A.7.2.1** A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

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

**§ A.7.2.2** Change order fees, including overhead, profit, bonds, insurance and general conditions are limited to no more than 10% of the Change Order amount up to \$10,000, and no more than 7% of the Change Order amount for amounts over \$10,000 for all contractors and subcontractors.

**§ A.7.2.2** [Intentionally omitted.]

**§ A.7.2.3** Methods used in determining adjustments to the Contract Sum may include those listed in Section A.7.3.3.

#### **§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES**

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

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

**§ A.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 Design-Build Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.9;
- .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 A.7.3.6.

**§ A.7.3.4** Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ A.7.3.5** A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be subsequently and separately executed and recorded formally as a Change Order.

**§ A.7.3.6** If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner 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, a reasonable allowance for overhead and profit. In such case, and also under Section A.7.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section A.7.3.6 shall be limited to the following:

- .1 additional costs of professional services;
- .2 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 additional costs of supervision and field office personnel directly attributable to the change.

**§ A.7.3.7** The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost and net of any costs or fees that Design-Builder anticipated for the portion of the work that will not be executed, including but not limited to general conditions, overhead profit, insurance, bonds and other costs. 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 and net decrease of any costs or fees that Design-Builder anticipated for the portion of the work that will not be executed, including but not limited to general conditions, overhead profit, insurance, bonds and other costs.

**§ A.7.3.8** Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall not be included in Applications for Payment until a Change Order has been executed, indicating the parties' agreement with part or all of such costs.

**§ A.7.3.9** When the Owner and Design-Builder reach agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

## **§ A.7.4 MINOR CHANGES IN THE WORK**

**§ A.7.4.1** The Owner shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and in compliance with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

## **ARTICLE A.8 TIME**

### **§ A.8.1 DEFINITIONS**

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

**§ A.8.1.2** The date of commencement of the Work shall be the date of the issuance of a Purchase Order and Notice to Proceed by the Owner.

**§ A.8.1.3** The date of Substantial Completion is the date determined by the Owner in accordance with Section A.9.8.

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

## **§ A.8.2 PROGRESS AND COMPLETION**

**§ A.8.2.1** Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

**§ A.8.2.2** The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

**§ A.8.2.3** The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

## **§ A.8.3 DELAYS AND EXTENSIONS OF TIME**

**§ A.8.3.1** If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by Unavoidable Delay, or by delay authorized by the Owner pending resolution of disputes pursuant to the Design-Build Documents, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine and only if such delay will prevent Design-Builder from achieving Substantial Completion by the required date.

**§ A.8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Section A.4.1.7.

**§ A.8.3.3** This Section A.8.3 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

## **ARTICLE A.9 PAYMENTS AND COMPLETION**

### **§ A.9.1 CONTRACT SUM**

**§ A.9.1.1** The Contract Sum is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents and Design-Builder guarantees completion of the Work for such amount.

### **§ A.9.2 SCHEDULE OF VALUES**

**§ A.9.2.1** Before the first Application for Payment, where the Contract Sum is based upon a Stipulated Sum or the Cost of the Work plus General Contractor's Fee with a Guaranteed Maximum Price, the Design-Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work 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 Design-Builder's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum. Schedule of values, in addition to Cost of the Work and fee items, shall include line items for project photographs and as-built drawings.

### **§ A.9.3 APPLICATIONS FOR PAYMENT**

**§ A.9.3.1** At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from Contractors and material suppliers, and reflecting retainage if provided for in the Design-Build Documents: Unless otherwise expressly provided in an Application for Payment, each Application for Payment shall constitute Design-Builder's certification to Owner that Design-Builder is unaware of any facts or circumstances giving rise to Claims or

extensions of Contract Time by Design-Builder as of the date of such Application of Payment. Design-Builder shall provide Applications for Payment, releases and other related documents in a format acceptable to the Owner.

**§ A.9.3.1.1** As provided in Section A.7.3.8, such applications may not include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

**§ A.9.3.1.2** Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

**§ A.9.3.2** Unless otherwise provided in the Design-Build Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or, with the agreement of the Owner, stored at a bonded and licensed facility where the Owner can reasonably visually verify or receive other acceptable verification of the storage of materials. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder 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. If verification is necessary or required by the Owner by a site visit outside of a local site visit for materials and equipment suitably stored off the site in a licensed and bonded facility and to consider payment for these items, Contractor shall pay all costs associated with site visits/review outside of local site visits by Owner.

**§ A.9.3.3** The Design-Builder warrants that title to all Work other than Instruments of Service covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder 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 Design-Builder's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT**

**§ A.9.4.1** [Intentionally omitted.]

#### **§ A.9.5 DECISIONS TO WITHHOLD PAYMENT**

**§ A.9.5.1** The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions, because of but not limited to the following:

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to Contractors or for design services labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 persistent failure to carry out the Work in accordance with the Design-Build Documents or unsatisfactory execution of the Work;
- .8 failure of Design-Builder to comply with applicable Codes, Laws or Regulations;
- .9 failure to update as-built drawings or provide construction photographs with the Application for Payment. If these documents/items are not provided for actual work performed for a period of work covered by an Application for Payment and cannot be accurately provided due to passage of time,

Owner may deduct a reasonable amount from the Agreement sum to reflect work not performed that cannot be recovered due to progress of work;

- .10 failure to update the CPM schedule concurrent with the request for Application of Payment; or
- .11 Any other reasonable basis to withhold certification.

Owner shall have no liability whatsoever for interest or other charges resulting from withholding of payment for any reason stated in Article 9.

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

#### **§ A.9.6 PROGRESS PAYMENTS**

**§ A.9.6.1** After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

**§ A.9.6.2** The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

**§ A.9.6.3** The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

**§ A.9.6.4** The Owner shall have no obligation to pay or to see to the payment of money to a Contractor except as may otherwise be required by law.

**§ A.9.6.5** Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

**§ A.9.6.6** 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 Design-Build Documents.

**§ A.9.6.7** [Intentionally omitted.]

#### **§ A.9.7 FAILURE OF PAYMENT**

**§ A.9.7.1** If for reasons other than those enumerated in Section A.9.5.1, the Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Design-Build Documents.

#### **§ A.9.8 SUBSTANTIAL COMPLETION**

**§ A.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 Design-Build Documents so that the Owner can occupy or use the Work or a portion thereof for its intended use.

The work will not be considered ready for Substantial Completion if any of the following conditions exist:

Excessive punch list work remains to be completed that would prevent or interfere with the occupancy and intended use of the facility in Owner's reasonable judgment.

Incomplete or defective work remains which would prevent or interfere with the occupancy and intended use of the facility.

The building mechanical systems have not been tested, balanced, and accepted as being fully complete.

The building electrical and life safety systems have not been tested and accepted as being fully complete.

The building commissioning process is not complete.

Final clean-up is not complete to support the occupancy and intended use of the facility, outside of clean-up associated with punchlist items to be completed (outside of cleaning as an item).

Final Inspections, Approvals and Temporary or Full Certificates of Occupancy by regulatory officials are not received and complete.

Successful/compliant testing of all data cabling (copper, fiber or other) and labeling of all data ports is incomplete and not fully correct.

Any other basis for Owner's reasonable determination that Substantial Completion has not been achieved.

**§ A.9.8.2** When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete and it has received all inspections and regulatory approvals to permit occupancy, the Design-Builder, including the Architect and its design/engineering consultants, shall prepare and submit to the Owner 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 Design-Builder to complete all Work in accordance with the Design-Build Documents.

**§ A.9.8.3** Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete.

**§ A.9.8.4** In the event of a dispute regarding whether the Design-Builder's Work is substantially complete, the dispute shall be resolved pursuant to Article A.4.

**§ A.9.8.5** When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner's signature an Acknowledgement of Substantial Completion which, when approved and signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner's inspection discloses that the Work or a designated portion thereof is substantially complete, the Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion. The Certificate of Substantial Completion is subject to Owner's approval which approval shall not be unreasonably withheld or delayed.

**§ A.9.8.6** Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

#### **§ A.9.9 PARTIAL OCCUPANCY OR USE**

**§ A.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 Design-Builder, provided such occupancy or use is consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder 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 completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section A.9.8. Consent of the Design-Builder 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 Design-Builder.

**§ A.9.9.2** Immediately prior to such partial occupancy or use, the Owner and Design-Builder (including the Architect and its design/engineering consultants) shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

**§ A.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 Design-Build Documents.

#### **§ A.9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§ A.9.10.1** Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner shall promptly make such inspection and, when the Owner finds the Work acceptable under the Design-Build Documents and fully performed, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder. The final Application of Payment shall include Design Builder's application for payment of any amounts due to Design Builder relating to sharing in savings in the Cost of Work and unused contingency as provided in the Design-Build Documents. All sharing provisions shall require adjustment by written Change Order prior to final payment. Final Completion and Final Payment are subject to completion of all notices of retention release and notices/certificates of completion and related processes. Final Completion and Payment also cannot be issued unless:

- a. No items or work remains relative to the testing, adjusting and balancing of any equipment and systems, and any building commissioning verifications after Substantial Completion are complete;
- b. All operating and maintenance instructions, documents and training have been completed and submitted to the Owner and have been approved as complete by the Owner;
- c. All guarantees, warranties and surety releases required by the Contract Documents have been provided;
- d. As-Built in digital and hard copy format have been submitted to the Owner and are accepted as complete;
- e. Prevailing wage reports have been submitted to the Owner and are complete, and all pending or on-going prevailing wage compliance issues or actions are resolved, as required by law and as prevailing wage applies.

**§ A.9.10.2** Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Design-Build Contract, to the extent and in such form as may be designated by the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees. (5) All notices of retention release and notices/certificates of completion and related processes are not complete.

**§ A.9.10.3** If, after the Owner determines that the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion or all notices of retention release and notices/certificates of completion and related processes are not complete, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed

and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. Settlement of all sharing provisions on the Cost of the Work, the Design-Builder's Construction Contingency or other applicable provisions through a deductive change shall be completed prior to the Design-Builder's submittal of an Application for Final Payment.

**§ A.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 Design-Build Documents and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

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

## **ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY**

### **§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS**

**§ A.10.1.1** The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract.

### **§ A.10.2 SAFETY OF PERSONS AND PROPERTY**

**§ A.10.2.1** The Design-Builder 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 or under the care, custody or control of the Design-Builder or the Design-Builder's Contractors or Subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**§ A.10.2.2** The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

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

**§ A.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 Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. Explosion, collapse and underground insurance coverage shall be included in insurance provided by the Design-Builder per the insurance provisions of this Agreement.

**§ A.10.2.5** The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design-Builder, the Architect, a Contractor, a 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 Design-Builder is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

**§ A.10.2.6** The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents. This person shall coordinate all safety planning and activities with the Safety Director specified by the Design-Builder per Section A.3.2.13.

**§ A.10.2.7** The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

### **§ A.10.3 HAZARDOUS MATERIALS**

**§ A.10.3.1** The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents and all applicable laws, rules and regulations regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build 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 Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner. The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder 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. Design-Builder shall provide Owner with notice of all hazardous substances as regulated by the Comprehensive Environmental and Liability Act as amended and/or regulated under any other applicable law which Design-Builder brings on to the site.

**§ A.10.3.2** The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder shall promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has 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 Design-Builder. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article A.7.

**§ A.10.3.3** [Intentionally omitted.]

**§ A.10.4** The Owner shall not be responsible under Section A.10.3 for materials and substances brought to the site by the Design-Builder unless such materials or substances were required by the Design-Build Documents. Design-Builder shall be responsible to provide Design-Build Documents that use materials and substances, where feasible to accomplish the Work, that are not hazardous materials or substances, and this shall be verified and alternate recommendations provided through the submittal and shop drawing process, and through the Design-Builder's review of and plans for their means and methods to accomplish the Work. Design-Builder shall be responsible to be knowledgeable about the proper handling and use requirements/practices for any such substances and shall administer the use and handling of such substances and materials accordingly.

**§ A.10.5** [Intentionally omitted]

### **§ A.10.6 EMERGENCIES**

**§ A.10.6.1** In an emergency affecting safety of persons or property, the Design-Builder shall take reasonable measures to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7. Design-Builder shall notify the Owner and UNLV Police as soon as an emergency affecting safety of persons or property is discovered.

## **ARTICLE A.11 INSURANCE AND BONDS**

**§ A.11.1** Except as may otherwise be set forth in the Agreement or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.11.

### **§ A.11.2 DESIGN-BUILDER'S LIABILITY INSURANCE**

The Design-Builder shall provide insurance acceptable to the Owner based on the structure, contracting relationship and scope/risk assignment of the Design-Build Team members, subcontractors, Architect, its Consultants and Licensed/Professional Design Subcontractors and any Licensed/Professional Design Consultants/Subcontractors in a subDesign-Build and sub-subDesign-Build team.

#### **INSURANCE FOR CONSTRUCTION (LICENSED CONTRACTOR)**

**§ A.11.2.1.1** Contractor, as lead contracting entity of the Design-Build team shall, at Contractor's sole expense procure, maintain and keep in force for the duration of the Agreement the following insurance conforming to the minimum requirements specified below. Unless specifically noted herein or otherwise agreed to by the Owner the required insurance shall be submitted to the Owner and accepted prior to the issuance of a Purchase Order and Notice to Proceed, and shall be in effect by the Contractor on or prior to the issuance of a Purchase Order and Notice to Proceed. Such insurance must remain in full force and effect until the later of:

- a. Final acceptance by the Owner of the completion of the work in this Agreement; or
- b. Such time as the insurance is no longer required by the Owner.

#### **§ A.11.2.1.2 COMMERCIAL GENERAL LIABILITY AND UMBRELLA/EXCESS INSURANCE:**

.1 Commercial General liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Coverage shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 10 01 and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, and liability assumed under contract. Explosion, collapse and underground coverage shall not be excluded.

.2 Umbrella/excess liability insurance in the amounts as follows:

\$5,000,000 Each Occurrence/Aggregate and must be project specific/dedicated limit for construction contracts between \$1,000,001 and \$5,000,000 or:

\$10,000,000 Each Occurrence/Aggregate and must be project specific/dedicated limit for construction contracts over \$5,000,000.

May be used to achieve the above minimum liability limits.

Shall be endorsed to state it is as broad as primary policies.

#### **§ A.11.2.1.3 [Intentionally Omitted]**

#### **§ A.11.2.1.4 AUTOMOBILE LIABILITY INSURANCE:**

Automobile liability insurance in the amount of \$1,000,000 Combined Single Limit per occurrence.

Coverage shall include owned, non-owned, and hired vehicles and be written on ISO form CA 00 01 10 01 or a substitute providing equal or broader liability coverage.

#### **§ A.11.2.1.5 WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:**

Employers Liability Limits shall be at least \$100,000 per occurrence and for occupational disease.

Workers' Compensation is required by law for anyone with employees. Sole proprietors and corporate officers can waive coverage with mandatory affidavit available from the Owner. All contractors providing services shall provide proof of Workers' Compensation insurance as required by NRS 616B.627 or proof that compliance with the provisions of Nevada Revised Statutes, Chapter 616A-D and all other related chapters, is not required.

#### **§ A.11.2.1.6 POLLUTION LIABILITY:**

If applicable, the minimum limit of liability required will be \$5,000,000 per occurrence/aggregate if this coverage is required.

#### **§ A.11.2.1.6.1 Design-Builder shall:**

- a. Have each of their insurance policies endorsed to provide ten (10) days notice for non-payment of premium, and;
- b. Specify that the policies cannot be canceled, non renewed, coverage and/or limits reduced or coverage materially altered that can effect Owner without sixty (60) days prior written notice to Owner and the notices required by this paragraph shall be sent by certified mail to Owner;
- c. A copy of this signed endorsement must be attached to the Certificate of Insurance.
- d. Design-Builder shall send to the Owner a facsimile copy of the policy cancellation and/or change of policy and conditions notice in this paragraph to the Owner with three (3) business days upon their receipt.

Until such time as the insurance is no longer required by the Owner, Design-Builder shall provide Owner with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by this contract, an insurer or surety shall fail to comply with the requirements of this contract, as soon as Design-Builder has knowledge of any such failure Design-Builder shall immediately notify Owner and immediately replace such insurance or bond with insurance or bond meeting the contract's requirements.

**§ A.11.2.1.7** Each insurance policy shall be:

- .1: Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made, and
- .2: Currently rated by A.M. Best as A - IX or better.

**§ A.11.2.1.8** Evidence of Insurance: Prior to the start of any work the design-builder must provide the following documents to the Owner:

- .1 Certificate of Insurance: The Accord 25 Certification of Insurance form or a form substantially similar must be submitted to UNLV to evidence the insurance policies and coverage required of contractor.
- .2 Additional Insured Endorsements: Original Additional Insured Endorsement(s) signed by an authorized insurance company representative(s).
- .3 Policy Cancellation Endorsement.
- .4 Waiver of Subrogation Endorsement.
- .5 Endorsement reflecting the contractor's insurance is primary over any other applicable insurance.
- .6 Loss Payee Endorsement.

**§ A.11.2.1.9** The insurance required by Article A.11 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

**§ A.11.2.1.10** The Board of Regents of the Nevada System of Higher Education shall be named as additional insured on the Commercial General Liability, and Excess/Umbrella policy with the exception of Professional Liability Insurance by Insurance Services Office (ISO) standard endorsement CG 20 26 07 04 entitled ADDITIONAL INSURED-DESIGNATED PERSON OR ORGANIZATION.

**§ A.11.2.1.11** Parties contracting directly with the Owner must have their policy endorsed to reflect that their insurance coverage is primary over any other applicable insurance coverage available.

**§ A.11.2.1.12** Loss Payee: The Board of Regents of the Nevada System of Higher Education on behalf of UNLV shall be named as loss payee as respects their interest in any property that the contractor has an obligation to insure on behalf of the Board of Regents of the Nevada System of Higher Education on behalf of UNLV.

**§ A.11.2.1.13** Policy Cancellation Endorsement: Except for ten (10) days notice for non-payment of premium, each insurance policy shall be endorsed to specify that, without sixty (60) days prior written notice to UNLV, the policy shall not be canceled, non-renewed, or coverage and/or limits reduced or materially altered. The endorsement shall also provide that notices required by this paragraph be sent by certified mail to the Owner and their Risk

Management and Safety Department. A copy of this signed endorsement must be attached to the Certificate of Insurance.

**§ A.11.2.1.14** The insurance as specified shall not be cancelled, non-renewed, or coverage and/or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to the Owner. A copy of this signed endorsement must be attached to the certificate of insurance.

**§ A.11.2.1.15** Insurance maintained by contractors shall apply on a first dollar basis without application of a deductible or self-insured retention, which shall not exceed \$5,000.00 per occurrence unless otherwise specifically agreed to by Owner. Such approval shall not relieve contractors from the obligation to pay any deductible or self-insured retention.

**§ A.11.2.1.16** The Contractor shall make available to the Owner, upon request by the Owner, at the Design-Builder's expense a copy of each policy and/or loss history related to insurance coverage required by Article A.11. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project.

**§ A.11.2.1.17 INSURANCE FOR ARCHITECTURE/DESIGN (ALL LICENSED DESIGN PROFESSIONALS – ARCHITECT, ARCHITECT'S CONSULTANTS AND DESIGN PROFESSIONALS IN SUBDESIGN-BUILD AND SUB-SUBDESIGN-BUILD TEAMS)**

**§ A.11.2.1.17.1** The Architect, its Consultants and Licensed/Professional Design Subcontractors and any Licensed/Professional Design Consultants/Subcontractors in a subDesign-Build and sub-subDesign-Build team shall procure and maintain insurance acceptable to the Owner based on the structure, contracting relationship and scope/risk assignment of the Architect and its Consultants and Licensed/Professional Design Subcontractors, and all other design entities. All such insurance shall be in compliance with the terms and conditions of this Agreement.

The Architect, its Consultants and Licensed/Professional Design Subcontractors and any Licensed/Professional Design Consultants/Subcontractors in a subDesign-Build and sub-subDesign-Build team shall procure and maintain the following insurance as a part of the Design-Build team at their respective own and sole expense:

**§ A.11.2.1.17.1.1.** Commercial General liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Coverage shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 10 01 and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, and liability assumed under contract.

**§ A.11.2.1.17.1.2** Automobile liability insurance in the amount of \$1,000,000 Combined Single Limit per occurrence. Coverage shall include owned, non-owned, and hired vehicles and be written on ISO form CA 00 01 10 01 or a substitute providing equal or broader liability coverage.

**§ A.11.2.1.17.1.3** Employers Liability Limits shall be at least \$100,000 per occurrence and for occupational disease. Workers' Compensation is required by law for anyone with employees. Sole proprietors and corporate officers can waive coverage with mandatory affidavit available from the Owner. All contractors providing services shall provide proof of Workers' Compensation insurance as required by NRS 616B.627 or proof that compliance with the provisions of Nevada Revised Statutes, Chapter 616A-D and all other related chapters, is not required.

**§ A.11.2.1.17.1.4** Professional Liability in the amount of \$1,000,000 per claim and \$3,000,000 aggregate minimum.

**§ A.11.2.1.17.1.5** In addition to Professional Liability Insurance specified in A.11.2.1.16.1.4 for construction cost between \$1,000,000 and \$9,999,999, limit of liability shall be \$3,000,000 project specific/dedicated limit per claim/aggregate. For construction cost over \$10,000,000, limit of liability shall be \$5,000,000 project specific/dedicated limit per claim/aggregate.

- a. Retroactive date must be prior to commencement of the performance of this agreement.
- b. The discovery period is to be three (3) years after termination date of contract. A thirty six month (36) Supplemental Extended Reporting Period must be endorsed to the insurance policy.
- c. The Board of Regents on behalf of UNLV shall not be added as an additional-insured on contractor's professional insurance policies.

**§ A.11.2.1.17.2** The Board of Regents of the Nevada System of Higher Education shall be named as additional insured on the Commercial General Liability, and Excess/Umbrella policy by Insurance Services Office (ISO) standard endorsement CG 20 26 07 04 entitled ADDITIONAL INSURED-DESIGNATED PERSON OR ORGANIZATION.)

**§ A.11.2.1.17.3** Loss Payee: The Board of Regents of the Nevada System of Higher Education on behalf of UNLV shall be named as loss payee as respects their interest in any property that the Architect has an obligation to insure on behalf of the Board of Regents of the Nevada System of Higher Education on behalf of UNLV.

**§ A.11.2.1.17.4** Policy Cancellation Endorsement: Except for ten (10) days notice for non-payment of premium, each insurance policy shall be endorsed to specify that, without sixty (60) days prior written notice to UNLV, the policy shall not be canceled, non-renewed, or coverage and/or limits reduced or materially altered. The endorsement shall also provide that notices required by this paragraph be sent by certified mail to the Owner and their Risk Management and Safety Department. A copy of this signed endorsement must be attached to the Certificate of Insurance.

**§ A.11.2.1.17.5** Each insurance policy shall be:

- .1: Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made, and
- .2: Currently rated by A.M. Best as A - IX or better.
- .3: Until such time as the insurance is no longer required by the Board of Regents of the Nevada System of Higher Education on behalf of UNLV, contractors shall provide the Owner with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the contract, an insurer or surety shall fail to comply with the requirements of this contract, as soon as contractor has knowledge of any such failure, contractor shall immediately notify the Owner and immediately replace such insurance or bond with insurance or bond meeting the contract requirements.

**§ A.11.2.1.17.6** Evidence of Insurance: Prior to the start of any work the Design-Builder must provide the following documents to the Owner:

- .1 Certificate of Insurance: The Accord 25 Certification of Insurance form or a form substantially similar must be submitted to UNLV to evidence the insurance policies and coverage required of contractor.
- .2 Additional Insured Endorsements: Original Additional Insured Endorsement(s) signed by an authorized insurance company representative(s).
- .3 Policy Cancellation Endorsement.
- .4 Waiver of Subrogation Endorsement.
- .5 Endorsement reflecting the contractor's insurance is primary over any other applicable insurance.
- .6 Loss Payee Endorsement.

**§ A.11.2.1.17.7** Insurance maintained by per Section A.11.2.1.16 shall apply on a first dollar basis without application of a deductible or self-insured retention, which shall not exceed \$5,000.00 per occurrence unless otherwise specifically agreed to by the Owner. Such approval shall not relieve the Architect, its Consultants and Licensed/Professional Design Subcontractors and any Licensed/Professional Design Consultants/Subcontractors in a subDesign-Build and sub-subDesign-Build team from the obligation to pay any deductible or self-insured retention.

**§ A.11.2.1.17.8** Parties contracting directly with the Owner must have their policy endorsed to reflect that their insurance coverage is primary over any other applicable insurance coverage available.

**§ A.11.2.1.17.9** Any insurance or self-insurance available to the Board of Regents of the Nevada System of Higher Education on behalf of UNLV shall be in excess of and non-contributing with any insurance required.

**§ A.11.2.1.17.10** The insurance as specified shall not be cancelled, non-renewed, or coverage and/or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mail to the Owner. A copy of this signed endorsement must be attached to the certificate of insurance.

**§ A.11.2.1.17.11** The Architect, its Consultants and Licensed/Professional Design Subcontractors and any Licensed/Professional Design Consultants/Subcontractors in a subDesign-Build and sub-subDesign-Build team shall make available to the Owner, upon request by the Owner, at the Design-Builder's expense a copy of each policy and/or loss history related to insurance coverage required by Article A.11. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project.

**§ A 11.2.1.18** The insurance required by Article A 11 shall be written for not less than limits of liability specified in the Design-Build Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Design-Builder's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

**§ A 11.2.1.19 OWNER'S LIABILITY INSURANCE**

The Owner shall be responsible for maintaining the Owner's usual liability insurance. Any insurance or self-insurance available to the Board of Regents of the Nevada System of Higher Education on behalf of UNLV shall be in excess of and non-contributing with any insurance required.

**§ A.11.2.1** [Intentionally omitted]

**§ A.11.2.2** [Intentionally omitted]

**§ A.11.2.3** [Intentionally omitted.]

**A.11.3.1** [Intentionally omitted.]

**§ A.11.4 PROPERTY INSURANCE/BUILDERS RISK**

**§ A.11.4.1** Unless otherwise provided, the Design-Builder shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk, "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Design-Build Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section A.9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section A.11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Project.

If the property insurance requires deductibles, the Design-Builder shall pay costs not covered because of such deductibles.

**§ A.11.4.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design-Builder's services and expenses required as a result of such insured loss.

**§ A.11.4.1.2** [Intentionally omitted]

**§ A.11.4.1.3** [Intentionally omitted]

**§ A.11.4.1.4** This property insurance shall cover portions of the Work stored off the site and also portions of the Work in transit.

**§ A.11.4.1.5** Partial occupancy or use in accordance with Section A.9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use, by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

**§ A.11.4.2 Boiler and Machinery Insurance or INSTALLATION FLOATER**

The Design-Builder shall purchase and maintain boiler and machinery and/or marine installation floater insurance as required by the Contract Documents or by law, which shall specifically cover such insured objects like machinery, equipment, and other similar property during installation and prior to installation until final acceptance by the Owner; this insurance shall include interests of the Owner, Design-Builder, Subcontractors, sub-Design-Builders, sub-subDesign-Builders, and Sub-subcontractors in the Work and be at least in the amount of the actual cash value of the property being installed.

**§ A.11.4.3 Loss of Use Insurance.** The Design-Builder shall purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

**§ A.11.4.4** If the Design-Builder requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, and agreeable to the Owner, include such insurance, and the cost thereof shall be charged to the Design-Builder by appropriate Change Order.

**§ A.11.4.5** [Intentionally omitted.]

**§ A.11.4.6** The Design-Builder shall make available to the Owner, upon request by the Owner, at Design-Builder's expense a copy of each policy and/or loss history related to insurance coverage required by Article 11. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project.

**§ A.11.4.7 WAIVERS OF SUBROGATION**

Subrogation must be waived against the Board of Regents of the Nevada System of Higher Education on behalf of UNLV.

**§ A.11.4.8** A loss insured under Owner's property insurance 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 A.11.4.10. The Design-Builder shall pay Contractors their just shares of insurance proceeds received by the Design-Builder, and, by appropriate agreements, written where legally required for validity, shall require Contractors to make payments to their Subcontractors in similar manner.

**§ A.11.4.9** [Intentionally Omitted]

**§ A.11.4.10** [Intentionally Omitted]

**§ A.11.5 PERFORMANCE BOND AND PAYMENT BOND**

**§ A.11.5.1** The Design-Builder shall furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Design-Builder, as stipulated in bidding requirements or specifically required in the Agreement or elsewhere in the Design-Build Documents prior to the issuance of a Purchase Order or Notice to Proceed.

The Design-Builder shall execute a Performance and Payment Bond on a form acceptable to the Owner covering the faithful performance and completion of the Agreement and the payment of all obligations arising thereunder .

A. Performance Bond in the amount of 100% of the total Contract Sum.

B. Payment Bond (Labor & Material) in the amount of 100% of the total Contract Sum.

Bonds shall be in the exact form as included in the Contract Documents. The Surety shall be registered with the Insurance Division of the Nevada Department of Commerce, and shall be satisfactory to the Owner.

If at any time the Owner, for justifiable cause, shall be or become dissatisfied with any Surety as providers of the required Performance Bond or the Payment Bond, the Design-Builder shall within five calendar days after being notified by the Owner, substitute an acceptable bond in the form and sum and signed by such other Surety as may be satisfactory to the Owner. The premiums on such Bonds shall be paid by the Design-Builder. No further progress payments to the Design-Builder shall be deemed due or payable until acceptable bonds are furnished. The new bond amount shall be for the remaining balance of the Design-Build Contract. In the event that the Design-Builder is unable to obtain a new bond, the Owner may obtain the bond and charge the Design-Builder for the cost required to obtain said bond. Owner shall have the right to demand reimbursement for any cost or automatically deduct the cost of the bond from the cost of the work without a Change Order. The new bond amount shall be for the remaining balance of the contract. In the event that the Design-Builder is unable to obtain a new bond, the Owner will obtain the bond and charge the Design-Builder for the cost required to obtain said bond.

If the Performance and Payment Bond is not furnished within the time specified in the contract documents after the Agreement is awarded, any bonds may be forfeited and the Contract may be awarded to an alternate proposal.

The Owner will require the Design-Builder to increase the Performance and Payment Bond to accommodate Change Orders.

The Owner reserves the right to require the Design-Builder to obtain Performance Bonds and Payment Bonds, each in the amount of 100% of any subcontractor contract. The Owner will pay the actual cost of any bond so required, not including any overhead and profit. If said bonds cannot be obtained within 60 calendar days of notification, the subcontractor shall be replaced at no additional cost to the Owner.

- .1 The Design-Builder shall deliver the required original bonds to the Owner at the time the Agreement is entered into.
- .2 The Design-Builder shall require the attorney-in-fact who executes the required bond on behalf of the surety to affix thereto a certified and current copy of the Power of Attorney.
- .3 The bonds shall be payable to the Owner as UNLV and NSHE.

**§ A.11.5.2** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

## **ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK**

### **§ A.12.1 UNCOVERING OF WORK**

**§ A.12.1.1** If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

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

### **§ A.12.2 CORRECTION OF WORK**

#### **§ A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION.**

**§ A.12.2.1.1** The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

#### **§ A.12.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ A.12.2.2.1** In addition to the Design-Builder's obligations under Section A.3.5, if, within one year after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be defective or not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder 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 Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5. All such work shall be coordinated with Owner in order to limit the disruption of operation of the completed Project. All such warranty work shall be completed in compliance with the terms and conditions of the Contract Documents. This provision or any other provision in Section 12.2.2 does not relieve the Design-Builder in any way of conforming to the requirements of the Contract Documents or correcting items not compliant with the Contract Documents per applicable laws, statutes or any regulations, whether they are observable, concealed or in any other condition or status.

**§ A.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 performance of the Work.

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

**§ A.12.2.3** The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

**§ A.12.2.4** The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

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

#### **§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK**

**§ A.12.3.1** If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

### **ARTICLE A.13 MISCELLANEOUS PROVISIONS**

#### **§ A.13.1 GOVERNING LAW**

**§ A.13.1.1** The Design-Build Contract shall be governed by the law of the State of Nevada without regard to conflict of law principles that would result in the application of any law other than the law of the State of Nevada.

#### **§ A.13.2 SUCCESSORS AND ASSIGNS**

**§ A.13.2.1** The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section A.13.2.2, neither party to the Design-Build Contract shall assign the Design-Build Contract as a

whole without written consent such assignment shall not be effective and shall constitute a default under the Contract Documents of the other. Any party assigning its interest pursuant to properly granted consent of the other party shall nevertheless remain legally responsible for all of its obligations under the Design-Build Contract.

**§ A.13.2.2** The Owner may, without consent of the Design-Builder, assign the Design-Build Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

### **§ A.13.3 WRITTEN NOTICE**

**§ A.13.3.1** Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail or delivered by courier service with return receipt providing proof of delivery to:

Owner	Design-Builder
David S. Frommer, AIA Executive Director, Planning and Construction University of Nevada, Las Vegas Box 451027, 4505 Maryland Pkwy. Las Vegas, NV 89154-1027	Design-Builder (Owner) Title Company Name Address Las Vegas, NV 89xxx
Sharrie Mayden, C.P.M. Director of Purchasing University of Nevada, Las Vegas Box 451033, 4505 Maryland Pkwy. Las Vegas, NV 89154-1033	

### **§ A.13.4 RIGHTS AND REMEDIES**

**§ A.13.4.1** Duties and obligations imposed by the Design-Build 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.

**§ A.13.4.2** No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

### **§ A.13.5 TESTS AND INSPECTIONS**

**§ A.13.5.1** Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder 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 Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

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

**§ A.13.5.3** If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ A.13.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

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

#### § A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ A.13.6.1 As between the Owner and Design-Builder:

- .1 **Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2 **Between Substantial Completion and Final Application for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Application for Payment; and
- .3 **After Final Application for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design-Builder pursuant to any Warranty provided under Section A.3.5, the date of any correction of the Work or failure to correct the Work by the Design-Builder under Section A.12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design-Builder or Owner, whichever occurs last.

#### § A.13.7 CONTINGENCIES

Design Builder's Construction Contingency – The Contingency amount was established by the Design-Builder and itemized in the response to the RFP documents. The Design-Builder's construction contingency shall be monitored by the Design-Builder and Owner for the sole use of the Design-Builder to accommodate cost issues not anticipated in the original proposal that do not qualify as Change Orders. The Design-Builder's construction contingency amount may vary within each application for payment. The amount remaining in the Design-Builder's construction contingency at final completion belongs to both UNLV and the Design-Builder in the ratio of 70% to Owner and 30% to Design-Builder and may be included in the final request for payment.

Owner's Contingency – A contingency may be established by the Owner. The Owner's Contingency is not part of the Design-Builder's Guaranteed Maximum Price and is for the sole use of the Owner to accommodate any Owner requested changes of the subject project which were not part of the Design-Builder's Guaranteed Maximum Price and approved proposal submission, or reasonably inferred by the requirements of this Agreement. The amount remaining in the Owner's Contingency at the end of the project belongs 100% to the Owner.

#### § A.13.8 SAVINGS

In the event the Cost of the Work plus the Design-Builder's fee shall be less than the Guaranteed Maximum Price (excluding contingencies) as adjusted by Change Orders, the resulting savings shall be shared by the Owner and the Design-Builder as follows: 30% to the Design-Builder and 70% to the Owner.

#### § A.13.9 3 SMALL AND LOCAL BUSINESS CONCERNS REPORTING REQUIREMENTS

1. The Nevada System of Higher Education supports equal opportunity for minority owned, women-owned, and other small disadvantaged business concerns (*MWDBE*) to compete for contracts awarded by NSHE. NSHE also supports efforts to encourage local businesses to compete for NSHE contracts. In some situations, MWDBE and local business concerns may not have the depth or full capability to meet all the requirements of large contracts. Nevertheless, NSHE supports finding opportunities for such MWDBE and local business concerns to participate as subcontractors or Tier 2 suppliers in large contracts.

2. For purchase of goods or services that exceed \$1,000,000 the Contractor must provide, at a minimum, annual reports listing expenditures with MWDBE business concerns and local subcontractors. These reports pertain only to expenditures that are directly attributable to the NSHE prime contract. The report should contain the following information:
  - a. The name, address, phone number, and type of each local, women-owned, minority and/or disadvantaged subcontractor (Tier 2 supplier or local subcontractor). If a business concern meets more than one definition (e.g. local and women-owned, or minority and women owned), that should be identified;
  - b. A description of the goods or services purchased; and
  - c. The amount of expenditures with the subcontractor attributed to the prime contract for the 12 month period.
3. Definitions:

Definition of Local Subcontractor. "Local subcontractor" is intended to mean a business concern that is a) owned 51% or more by Nevada residents, b) is headquartered in Nevada, or c) a majority of employees of the business are Nevada residents.

Definition of Disadvantaged Business Enterprise (DBE). "Disadvantaged Business Enterprise" is intended to mean a business concern owned by a minority or woman that is at least fifty-one percent (51%) unconditionally owned by one or more minority or women individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals. Individuals who certify that they are a member of named groups, i.e. African Americans, Hispanic Americans, American Indians and Alaska Natives (Eskimos and Aleuts) and Asian and Pacific Island Americans are to be considered socially and economically disadvantaged.

Definition of Minority Business Enterprise (MBE). "Minority Business Enterprise" is intended to mean a business concern owned by one or more minority individuals that is at least fifty-one percent (51%) unconditionally owned by one or more minority individuals, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals. Individuals who certify that they are a member of named groups, i.e. African Americans, Hispanic Americans, American Indians and Alaska Natives (Eskimos and Aleuts) and Asian and Pacific Island Americans are to be considered socially and economically disadvantaged.

Definition of Women-Owned Business Enterprise (WBE). "Women-Owned Business Enterprise" is intended to mean a business concern owned by one or more women that is at least fifty-one percent (51%) unconditionally owned by one or more women, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals.

Definition of Veteran/Disabled Veteran Business Enterprise (VDBE). "Veteran/Disabled Veteran Business Enterprise" is intended to mean a business concern which performs a commercially useful function and is at least 51% owned and controlled by one or more veterans/disabled veterans who have served in the active military and discharged under conditions other than dishonorable.

Definition of Small Business Enterprise (SBE). "Small Business Enterprise" is intended to mean a business concern which performs a commercially useful function, is not owned and controlled by individuals designated as minority, women, veterans, or physically-challenged, and where gross annual sales does not exceed \$2,000,000.

## **ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT**

### **§ A.14.1 TERMINATION BY THE DESIGN-BUILDER**

**§ A.14.1.1** The Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3 the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents; or
- .4 the Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section A.2.2.8.

**§ A.14.1.2** The Design-Builder may terminate the Design-Build Contract if, through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner, as described in Section A.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.

**§ A.14.1.3** If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit on Work executed only.

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

### **§ A.14.2 TERMINATION BY THE OWNER FOR CAUSE**

**§ A.14.2.1** The Owner may terminate the Design-Build Contract if the Design-Builder:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials or equipment to complete the Work in a diligent, efficient, timely, workmanlike, skillful and careful manner;
- .2 fails to make payment to Contractors for services, materials or labor in accordance with the respective agreements between the Design-Builder and the Architect and Contractors;
- .3 persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction;
- .4 otherwise is guilty of substantial or material breach of a provision of the Design-Build Documents; or
- .5 (i) If Design-Builder makes a general assignment or general arrangement for the benefit of creditors; (ii) if a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Design Builder and is not dismissed within thirty (30) days; (iii) if a trustee or receiver is appointed to take possession of substantially all of Design-Builder's assets located at the Project of Design-Builder's interest in this Agreement and possession is not restored to Design-Builder within thirty (30) days; or (iv) if substantially all of Design-Builder's assets located at the Project or of Design-Builder's interest in this Agreement is subjected to attachment, execution or other judicial seizure which is not discharged within thirty (30) days.

**§ A.14.2.2** When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 accept assignment of contracts pursuant to Section A.5.5.1; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

**§ A.14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages, costs or expenses of Owner, including, without limitation, costs of Owner's consultants and attorneys, incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner.

#### **§ A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

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

**§ A.14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section A.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 Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

#### **§ A.14.4 TERMINATION BY THE OWNER FOR CONVENIENCE OR NON-APPROPRIATION OF FUNDS**

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

**§ A.14.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder 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 contracts and purchase orders and enter into no further contracts and purchase orders.

**§ A.14.4.3** In the event of termination for the Owner's convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment for design services performed, and costs incurred by reason of such termination including reasonable overhead and profit on Work executed only. In case of termination for the Owner's convenience after commencement of construction, the Design-Builder shall be entitled to receive payment for Work executed including reasonable overhead and profit on Work executed only.

**§ A.14.4.4** The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Owner for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the Owner, this Agreement shall terminate, without penalty or expense to the Owner of any kind whatsoever, upon written notice being given by the Owner to the Design-Builder. Upon receipt of such notice, the Design-Builder shall take immediate action to mitigate any damage or additional expense.

# DRAFT AIA<sup>®</sup> Document A141<sup>™</sup> – 2004

## Exhibit B

### *Determination of the Cost of the Work*

for the following PROJECT:

*(Name and location or address)*

AIA Form Docs

n/a

#### THE OWNER:

*(Name and address)*

The Board of Regents of the Nevada System of Higher Education on behalf of the  
University of Nevada, Las Vegas  
4505 South Maryland Parkway  
Box \_\_\_\_\_  
Las Vegas, Nevada 89154-\_\_\_\_\_

#### THE DESIGN-BUILDER:

*(Name, address, contact information and FTIN)*

#### ADDITIONS AND DELETIONS:

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

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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**ARTICLE B.1** [Intentionally omitted.]

**ARTICLE B.2 COSTS TO BE REIMBURSED**

**§ B.2.1 COST OF THE WORK**

The term Cost of the Work shall mean costs necessarily incurred by the Design-Builder 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 this Article B.2.

**§ B.2.2 LABOR COSTS**

**§ B.2.2.1** Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's approval, at off-site locations.

**§ B.2.2.2** Wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site with the Owner's approval.

**§ B.2.2.3** Wages and salaries of the Design-Builder'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.

**§ B.2.2.4** Costs paid or incurred by the Design-Builder 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 B.2.2.1 through B.2.2.3.

**§ B.2.2.5** Pursuant to NRS 338.075, any contract for construction work for which the estimated cost exceeds \$100,000 shall be subject to the provisions of NRS 338.020 through 339.090, including but not limited to payment of prevailing wages, regardless of whether the construction work qualifies as a "public work" as defined by NRS 338.010. In accordance with NRS 279.500, Design Builder agrees that the Project is subject to the Prevailing Wage Act, NRS 338.010 through 338.094, inclusive. Design Builder agrees to comply with the Prevailing Wage Act and all other provisions of NRS that are applicable to the Project. Design Builder shall obtain a State of Nevada Public Works Number as required by the State Labor Commissioner. Design Builder shall use the State Labor Commissioner's prevailing rate of per diem wages in the locality in which the improvements are to be constructed for each craft or type of workman needed to construct the improvement. Design-Builder represents and warrants that the Guaranteed Maximum Price was established in compliance with these requirements.

**§ B.2.3 CONTRACT COSTS**

**§ B.2.3.1** Payments made by the Design-Builder to Contractors in accordance with the requirements of their contracts.

**§ B.2.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION**

**§ B.2.4.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ B.2.4.2** Costs of materials described in the preceding Section B.2.4.1 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 Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**§ B.2.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS**

**§ B.2.5.1** Costs, including transportation and 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 Design-Builder at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design-Builder. The basis for the cost of items previously used by the Design-Builder shall mean the fair market value.

**§ B.2.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site, whether rented from the Design-Builder or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

**§ B.2.5.3** Costs of removal of debris from the site.

**§ B.2.5.4** Cost of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

**§ B.2.5.5** That portion of the reasonable expenses of the Design-Builder's personnel incurred while traveling in discharge of duties connected with the Work.

**§ B.2.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner.

## **§ B.2.6 DESIGN AND OTHER CONSULTING SERVICES**

**§ B.2.6.1** Compensation, including fees and reimbursable expenses, paid by the Design-Builder for design and other consulting services required by the Design-Build Documents .

## **§ B.2.7 MISCELLANEOUS COSTS**

**§ B.2.7.1** That portion of insurance and bond premiums that can be directly attributed to this Design-Build Contract.

**§ B.2.7.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

**§ B.2.7.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

**§ B.2.7.4** Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or non-conforming Work for which reimbursement is excluded by Section A.13.5.3 of Exhibit A, Terms and Conditions, or other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.13.5.3.

**§ B.2.7.5** Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder 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 Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section A.3.16.1 of Exhibit A, Terms and Conditions, or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

**§ B.2.7.6** [Intentionally omitted.]

**§ B.2.7.7** Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Design-Build Documents.

**§ B.2.7.8** [Intentionally omitted.]

**§ B.2.7.9** Expenses incurred in accordance with the Design-Builder's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.

## **§ B.2.8 OTHER COSTS AND EMERGENCIES**

**§ B.2.8.1** Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

**§ B.2.8.2** Costs due to emergencies 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 A.10.6 of Exhibit A, Terms and Conditions.

**§ B.2.8.3** Cost of repairing or correcting damaged or non-conforming Work executed by the Design-Builder, Contractors, Subcontractors or suppliers, provided that such damaged or non-conforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recoverable by the Design-Builder from insurance, sureties, Contractors, Subcontractors or suppliers.

### **ARTICLE B.3 COSTS NOT TO BE REIMBURSED**

**§ B.3.1** The Cost of the Work shall not include:

**§ B.3.1.1** Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Sections B.2.2.2 and B.2.2.3.

**§ B.3.1.2** Expenses of the Design-Builder's principal office and offices other than the site office.

**§ B.3.1.3** Overhead and general expenses, except as may be expressly included in Article B.2 of this Exhibit.

**§ B.3.1.4** The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work.

**§ B.3.1.5** Rental costs of machinery and equipment, except as specifically provided in Section B.2.5.2.

**§ B.3.1.6** Except as provided in Section B.2.8.3 of this Agreement, costs due to the negligence or failure of the Design-Builder to fulfill a specific responsibility of the Design-Builder, Contractors, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

**§ B.3.1.7** Any cost not specifically and expressly described in Article B.2, Costs to be Reimbursed.

**§ B.3.1.8** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price, if any, to be exceeded.

**§ B.3.1.9** Any deductibles arising under any insurance required to be provided by Design-Builder pursuant to the Contract Documents.

**§ B.3.1.10** Any uninsured losses which result from a failure of Design-Builder to maintain insurance required by the Contract Documents or the denial of coverage under such insurance or the failure of an insurer to otherwise pay claims under such insurance.

### **ARTICLE B.4 DISCOUNTS, REBATES AND REFUNDS**

**§ B.4.1** Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be secured. All discounts, rebates and refunds shall be credited against the Cost of the Work and placed in the Design-Builder's Construction Contingency and shall be subject to savings and sharing provisions as defined in A.13.7.

**§ B.4.2** Amounts that accrue to the Owner in accordance with the provisions of Section B.4.1 shall be credited to the Owner as a deduction from the Cost of Work.

## **ARTICLE B.5 CONTRACTS AND OTHER AGREEMENTS OTHER THAN FOR DESIGN PROFESSIONALS HIRED BY THE DESIGN-BUILDER**

**§ B.5.1** Those portions of the Work that the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed by others under contracts or by other appropriate agreements with the Design-Builder. The Owner may designate specific persons or entities from whom the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from Contractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner as part of the Design-Build Agreement. The Owner shall then determine, with the input of the Design-Builder, which bids will be accepted. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection. All terms of the Agreement shall apply to work performed under this provision of the Agreement.

**§ B.5.2** Contracts or other agreements shall conform to the applicable payment provisions of this Design-Build Contract, and shall not be awarded on the basis of cost plus a fee without the Owner's prior consent.

## **ARTICLE B.6 ACCOUNTING RECORDS**

**§ B.6.1** The Design-Builder or any affiliated person or entity which performs a portion of the Work shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and the Design-Builder shall preserve these for a period of ten years after final payment, or for such longer period as may be required by law.

**§ B.6.2** When the Design-Builder believes that all the Work required by the Agreement has been fully performed, the Design-Builder shall deliver to the Owner's accountant a final accounting of the Cost of the Work.

**§ B.6.3** The Owner's accountants will review and report in writing on the Design-Builder's final accounting within 21 days after delivery of the final accounting. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section A.9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's accountants, notify the Design-Builder in writing of the Owner's intention to make final payment or to withhold final payment. All other terms of final payment shall apply per the Agreement.

**§ B.6.4** If the Owner's accountants report the Cost of the Work as substantiated by the Design-Builder's final accounting to be less than claimed by the Design-Builder, the Design-Builder shall be entitled to initiate resolution of the dispute pursuant to Article 6 of the Agreement and Article A.4 of Exhibit A, Terms and Conditions, for the disputed amount. If the Design-Builder fails to so initiate resolution of the dispute within the period of time required by Section A.4.1.2 of Exhibit A, Terms and Conditions, the substantiated amount reported by the Owner's accountants shall become binding on the Design-Builder. Pending a final resolution pursuant to Article 6 of the Agreement and Article A.4 of Exhibit A, Terms and Conditions, the Owner shall pay the Design-Builder the amount, if any, determined by the Owner's accountant to be due the Design-Builder.

**§ B.6.5** If, subsequent to final payment and at the Owner's request, the Design-Builder incurs costs in connection with the correction of defective or non-conforming work as described in Article B.2, Costs to be Reimbursed, and not excluded by Article B.3, Costs Not to be Reimbursed, the Owner shall reimburse the Design-Builder such costs and the Design-Builder'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 any. If the Design-Builder has participated in savings as provided in Section 4.4.3.1 of the Agreement, 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 Design-Builder.