



# AIA<sup>®</sup> Document A105<sup>™</sup> – 2007

## Standard Form of Agreement Between Owner and Contractor for a Residential or Small Commercial Project

AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_  
*(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 Contractor:  
*(Name, address and other information)*

*Name: Successful Bidder*  
*Address:*  
*Contact Information:*  
*FTIN:*

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

UNLV Data Cabling and Wireless Access Points Phase 2 as described in IFB 5316-FG. UNLV Main Campus 4505 S. Maryland Parkway, Las Vegas, NV 89154. Contractor shall provide installation of data cabling and new wireless access points in several UNLV buildings.

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

*Name:*  
*Address:*  
*Contact Information:*  
*FTIN:*

The Owner and Contractor agree as follows.

### ADDITIONS AND DELETIONS:

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

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

State or local law may impose requirements on contracts for home improvements. If this document will be used for Work on the Owner's residence, the Owner should consult local authorities or an attorney to verify requirements applicable to this Agreement.

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**ARTICLE 1 THE CONTRACT DOCUMENTS**

§ 1.1 The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of

- .1 this Agreement signed by the Owner and Contractor;
- .2 the drawings and specifications prepared by the Architect, dated \_\_\_\_\_, and enumerated as follows:

Drawings:  
**Number**

**Title**

**Date**

Specifications:

**Section**

**Title**

**Pages**

EXHIBIT B

Campus Cable Plant

78

Specifications

EXHIBIT C

Campus Wiring Specifications

42

EXHIBIT D

J Hook Requirements

2

EXHIBIT E

NFPA EMT Requirements

3

- .3 addenda prepared by the Architect as follows:

Init.

Number	Date	Pages
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.4 written orders for changes in the Work issued after execution of this Agreement; and

.5 other documents, if any, identified as follows:

The Contract Documents consist of this Agreement, Exhibits A,B, C, D, and EConditions of the (General, Supplementary and other Conditions), the Solicitation identified below (e.g. RFP, RFQ, or IFB), the Proposal, Drawings, Specifications, Addenda issued prior to execution of this Agreement, or other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the "Contract", and are as fully a part of the Contract as if attached to this Agreement or repeated herein

IFB Solicitation: 5316-FG

**ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

The number of calendar days available to the Contractor to substantially complete the Work is the Contract Time. 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. The Contractor shall substantially complete the Work, no later than ninety (90) calendar days from the date of commencement, subject to adjustment as provided in Article 10 and Article 11. The Purchase Order constitutes the Notice to Proceed.

*(Insert the date of commencement, if it differs from the date of this Agreement.)*

In the event Substantial Completion is not achieved by the date specified above except as result only from delays for which the Owner is chargeable under the Contract Documents or from Unavoidable Delay, Contractor agrees that Owner shall have the right to deduct from any sums due to Contractor hereunder the sum of five hundred dollars (\$500.00) for each day that Substantial Completion is actually delayed, provided, however that (i) Owner may 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) Contractor shall pay to Owner in cash any amounts which Owner is entitled to deduct in the event the remaining amount of funds due Contractor hereunder is less than the remaining amounts Owner has the right to deduct. Owner and Contractor 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 Contractor’s reasonable control): war, insurrection, civil commotion, strikes, slowdowns, lock outs, riots, floods, 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). In no event shall the application to Contractor or any applicable law, regulation, rule or other governmental requirement constitute an Unavoidable Delay. Contractor shall use reasonable good faith efforts to notify Owner not later than five (5) days after Contractor knows of the occurrence of an Unavoidable Delay. An extension of time for an Unavoidable Delay shall only be for a period of the Unavoidable Delay, which period shall commence to run from the time of the commencement of the cause of the Unavoidable Delay.

**ARTICLE 3 CONTRACT SUM**

§ 3.1 Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

( \$ )

§ 3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work:

*(Itemize the Contract Sum among the major portions of the Work.)*

Portion of Work	Value
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§ 3.3 Unit prices, if any, are as follows:  
(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit
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§ 3.4 Allowances included in the Contract Sum, if any, are as follows:  
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
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§ 3.5 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and hereby accepted by the Owner:  
(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 3.6 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work.

#### ARTICLE 4 PAYMENT

§ 4.1 Based on Contractor's Applications for Payment certified by the Architect, the Owner shall pay the Contractor, in accordance with Article 12 within thirty days.  
(Insert below timing for payments and provisions for withholding retainage, if any.)

§ 4.2 Unless otherwise stated in this Agreement, all sums payable by the Owner shall be subject to retainage of not less than five percent (5%). Retention shall comply with the applicable requirements of NRS Chapter 338.

§ 4.3 Contractor shall pay all taxes, levies, duties and assessments of every nature, which may be applicable to any Work under this Contract. The Contract Sum and any agreed variations thereof shall include all taxes imposed by law. Contractor shall make any and all payroll deductions required by law. Contractor herein indemnifies and holds Owner harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

§ 4.4 Interest on outstanding amounts shall be payable only as required by Nevada Revised Statutes Chapter 338.

§ 4.5 In accordance with NRS §338.020 (if applicable), attached hereto is a list of all classes of mechanics and workers setting forth the hourly and daily wage rates. The rate for each class shall not be less than the NSHE prevailing wage rate for such class.

§ 4.6 Prior to receiving or accepting any payment, each Subcontractor must have a valid Nevada business license.

§ 4.7 Contractor shall comply with all of the provisions of NRS §§338.020-338.090, inclusive.

#### ARTICLE 5 INSURANCE AND BONDS

§ 5.1 The Contractor shall provide Contractor's general liability and other insurance and bonds as follows:  
(Insert specific insurance requirements and limits.)  
(Table deleted)

##### § 5.1.1 CONTRACTOR'S LIABILITY AND OTHER INSURANCE

Contractor as primary insured 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 insurances must remain in 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 the Owner.

**§ 5.1.1.1 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.

**§ 5.1.1.2 [Intentionally Omitted]**

**§ 5.1.1.3 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.

**§ 5.1.1.4 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.

**§ 5.1.1.5 POLLUTION LIABILITY:**

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

**§ 5.1.2 CONTRACTOR SHALL:**

- a. Have each of their insurance policies endorsed to provide ten (10) days 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. Contractor 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 within three (3) business days upon their receipt.

**§ 5.1.2.1** Until such time as the insurance is no longer required by the Owner, Contractor 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 Contractor has knowledge of any such failure Contractor shall immediately notify Owner and immediately replace such insurance or bond with insurance or bond meeting the contract's requirements.

**§ 5.1.3** 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.

**§ 5.1.4** The Contractor shall cause the commercial liability coverage required by the Contract Documents to include the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations.

**§ 5.1.5** Evidence of Insurance: Prior to the start of any work the contractor 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 Owner 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.

**§ 5.1.6** The insurance required by Article 5 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.

**§ 5.1.7** The Board of Regents of the Nevada System of Higher Education on behalf of the University of Nevada, Las Vegas 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.

**§ 5.1.8** 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.

**§ 5.1.9** Loss Payee: The Board of Regents of the Nevada System of Higher Education on behalf of the University of Nevada, Las Vegas 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 the University of Nevada, Las Vegas.

**§ 5.1.10** 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 The Board of Regents of the Nevada System of Higher Education on behalf of the University of Nevada, Las Vegas, 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.

#### **§ 5.2.1 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 Owner shall be in excess of and non-contributing with any insurance required.

#### **§ 5.2.2 PROPERTY INSURANCE/BUILDERS RISK**

**§ 5.2.2.1** Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless

otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 12.6 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 5.1.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

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

**§ 5.2.2.1.1** 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 Architect's and Contractor's services and expenses required as a result of such insured loss.

**§ 5.2.2.1.2** 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.

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

**§ 5.2.2.1.4** Partial occupancy or use in accordance with Section 12.5 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

#### **§ 5.2.3 BOILER AND MACHINERY INSURANCE or INSTALLATION FLOATER**

The Contractor shall purchase and maintain boiler and machinery and/or inland 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, Contractor, Subcontractors and Sub-subcontractors in the Work and be at least in the amount of the actual cash value of the property being installed.

#### **§ 5.2.4 LOSS OF USE INSURANCE**

The Contractor 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.

**§ 5.2.5** If the Contractor 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 Contractor by appropriate Change Order.

**§ 5.2.6** The Contractor shall make available to the Owner, upon request by the Owner, at Contractor'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.

#### **§ 5.2.7 WAIVERS OF SUBROGATION**

Subrogation must be waived against the Board of Regents of the Nevada System of Higher Education on behalf of the University of Nevada, Las Vegas.

**§ 5.2.8** A loss insured under the 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 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 5.3 The Owner shall provide property insurance to cover the value of the Owner's property, outside of any Work provided under this Contract, which shall be insured by the Contractor per this Contract.

§ 5.4 [Intentionally Omitted]

§ 5.5 [Intentionally Omitted]

§ 5.6 [Intentionally Omitted]

**§ 5.7 PERFORMANCE BOND AND PAYMENT BOND FOR PROJECTS EXCEEDING \$100,000:**

The contractor shall execute Performance and Payment Bonds on a form acceptable to the Owner covering the faithful performance and completion of the Agreement and the payment of all obligations arising there under.

1. Performance Bond in the amount of 100% of the total Agreement Sum.
2. Payment Bond (Labor and Material) in the amount of 100% of the total Agreement 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 Contractor shall within five (5) 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 Contractor. No further progress payments to the Contractor shall be deemed due or payable until acceptable bonds are furnished. The new bond amount shall be for the remaining balance of the Agreement. In the event that the Contractor is unable to obtain a new bond, the Owner may obtain the bond and charge the Contractor 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.

Contractor must provide evidence of Bonds prior to the beginning of work. If the Performance and Payment Bonds are not furnished within thirty (30) days of Notice of Award, Contractor Bid Bond may be forfeited and the Contract may be awarded to an alternate contractor.

The Owner will require the Contractor to increase the Performance and Payment Bonds to accommodate Change Orders where the cumulative Change order amount exceeds ten percent (10%) of the original contract price.

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 Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

**ARTICLE 6 GENERAL PROVISIONS**

**§ 6.1 THE CONTRACT**

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification in accordance with Article 10. Owner and Contractor each represent and warrant to each other that each respectively has the authority to execute and deliver the Contract Documents and perform their respective obligations thereunder and that the execution delivery and performance of the Contract Documents have been duly authorized by all necessary action by each respective party.

**§ 6.2 THE WORK**

The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligations.



### § 6.3 INTENT

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. In general, the Specifications may describe types and quantities of materials, equipment, and other items of the Work and methods of installation which cannot be easily shown on the Drawings. It is not intended that the Specifications will mention every item of Work that can be adequately shown on the Drawings nor is it intended that the Drawings will show all items of Work adequately described or required by the Specifications, even if it is the case that such Work could have been shown thereon. The Contract Documents are complimentary, and what is required by, or reasonably inferable, by one shall be as binding as if required by all. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities: 1) the Agreement, 2) the General Conditions, 3) the Specifications and 4) the Drawings.

### § 6.4 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

Documents prepared by the Architect are instruments of the Architect's service for use solely with respect to this Project. The Architect shall retain all common law, statutory and other reserved rights, including the copyright. The AIA Document B105-2007 as modified, Standard Form of Agreement Between Owner and Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project. Such license shall extend to those parties retained by the Owner for such purposes, including other design professionals. The Contractor, subcontractors, sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may not be used for other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Architect.

## ARTICLE 7 OWNER

### § 7.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 7.1.1 If requested by the Contractor, the Owner shall furnish all necessary surveys and a legal description of the site.

§ 7.1.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, the Owner shall obtain and pay for other necessary approvals, easements, assessments and charges. If Contractor's bid includes fees that Owner has paid or is required to pay directly, Contractor shall, at the Owner's option, either pay these fees as a part of their bid or deduct fees from Contract sum as a deductive change order.

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. Changes of the Owner's Project Manager may be made by written notice.

Name of Owner's Project Manager: Todd Calvin  
Telephone Number of Owner's Project Manager: 702-895-4795  
Email Address of Owner's Project Manager: todd.calvin@unlv.edu

### § 7.2 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the Contract Documents or is in default of its material obligations under the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

### § 7.3 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Contract Sum shall be adjusted to deduct the cost of correction from payments due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner immediately upon Owner's written demand.

### § 7.4 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 7.4.1 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.

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§ 7.4.2 The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

§ 7.4.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

## **ARTICLE 8 CONTRACTOR**

### **§ 8.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

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

§ 8.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report in writing errors, inconsistencies or omissions discovered to the Architect and Owner.

### **§ 8.2 CONTRACTOR'S CONSTRUCTION SCHEDULE**

The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's approval a Contractor's construction schedule for the Work.

### **§ 8.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

§ 8.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.

§ 8.3.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner or Architect have made a timely and reasonable objection.

§ 8.3.2.1 Contractor shall not substitute any person for itself or a Subcontractor who is named on the lists required by the Invitation For Bid without the prior written approval of Owner.

8.3.2.2 If a Contractor substitutes a Subcontractor for any Subcontractor who is named in the Bid without complying with the provisions herein; the Contractor shall forfeit, as a penalty to the Owner, an amount equal to one percent (1%) of the total amount of the contract.

§ 8.3.2.3 If a Contractor indicated that he or she would perform a portion of work on the public work and, after the submission of the Bid, substitutes a Subcontractor to perform such work; the Contractor shall forfeit as a penalty to the Owner, the lesser of, and excluding any amount of the contract attributable to change orders the following:

- (1) An amount equal to 2.5 percent of the total amount of the contract; or
- (2) An amount equal to 35 percent of the estimate by the engineer of the cost of the work the contractor indicated that he or she would perform on the public work.

### **SUPERINTENDENT, PROJECT MANAGER AND SAFETY DIRECTOR**

§ 8.3.3 The Contractor 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 Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor shall further employ a project manager who shall represent the Contractor 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 Contractor shall also designate a safety director who will be a primary contact for the Owner regarding project safety.

§ 8.3.4 The Contractor, as soon as practicable after award of the Agreement, shall furnish in writing to the Owner through the Architect the names and qualifications of the proposed safety director, superintendent and project

manager. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent, project executive, safety director and/or project manager, or (2) that the Owner or the Architect requires additional time to review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

**§ 8.3.5** The Contractor shall not employ a safety director, superintendent or project manager to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the safety director, superintendent or project manager without the Owner's consent, which shall not unreasonably be withheld or delayed. The parties recognize that in the event Contractor changes the safety director, superintendent and/or 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, Contractor will pay to Owner liquidated damages. Owner also reserves the right to withhold reasonable payment from the Contractor in the instance of a change in these Contractor'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 Contractor's representatives, the Contractor shall contact the Owner immediately to determine any adjustments in the Contractor's representatives.

**§ 8.3.6** The Contractor shall perform the Work in accordance with the Contract Documents and the approved schedule. This shall include compliance with all project planning, design, sustainability, operations and procedures standards of the Owner that are integrated into or referenced by the Contract Documents. The Contractor will not deviate from these standards unless agreed upon in writing.

Superintendent:  
Project Manager:  
Safety Director:

Approved changes to contractor key staff will be by written notice to the Owner.

Liquidated damages the sum of five hundred dollars (\$500,00) for unauthorized changes to Contractor's Authorized Representatives.

#### **§ 8.4 LABOR AND MATERIALS**

**§ 8.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work. Except for Liens resulting from Architect's or Owner's wrongful refusal to issue a Certificate for Payment or Owner's failure to pay any amounts actually due to Contractor under the Contract Documents, Contractor agrees to keep the Project free and clear from all mechanic's liens, materialmen liens and other liens. The contractor shall discharge any such lien immediately but in no event more than thirty (30) days after filing of such a lien. 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 payment from the Contractor. In the event of any such deduction, the Contract Sum due under the Contract 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.

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

*(Paragraphs deleted)*

**§ 8.4.3** Pursuant to NRS, any contract for construction work for which the estimated cost exceeds \$250,000 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.

§8.4.3.1. In accordance with NRS, Contractor agrees that the Project is subject to the prevailing wage requirements under Nevada Law. Please note that if a change order causes a contract to exceed \$250,000, the Owner will audit the entire contract period. Contractor agrees to comply with the Prevailing Wage Act and all other provisions of NRS that are applicable to the Project. Contractor shall obtain a State of Nevada Public Works Number as required by the State

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Labor Commissioner. Contractor shall use the State Labor Commissioner's prevailing rate of per diem wages established for the Nevada System of Higher Education which is 90% of the rate for 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, Contractor agrees not to pay less than the specified prevailing rate of wages to the contractor and its employees selected to construct the improvements. Contractor 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. Contractor will monitor compliance to the payment of prevailing wages pursuant to Nevada Administrative Code §338. Contractor shall keep accurate records showing the name, occupation; actual per diem wages paid to each employee used in connection with construction of the improvements and other information as required by 338.070. Such records shall be open to inspection and reproduction by the Owner during normal business hours. Contractor will send one (1) copy of each wage report to UNLV's Project Coordinator no later than 15 days after the end of each calendar month. This Section 8 shall be deemed to incorporate any future modifications to the NRS or NAC with respect prevailing wage requirements that are applicable to the Nevada System of Higher Education. The Public Works Number for this Project is PWP# (INSERT NUMBER). Prevailing Wages Rates for Clark County must be used. See PWP Website at [www.laborcommissioner.com](http://www.laborcommissioner.com). Click on Public Works/Prevailing Wages by County, and then click on Clark to view or print the Prevailing Wage rates for this project. Contractor shall report to the Labor Commissioner and the Owner the name and address of each subcontractor performing work on the project within 10 days after the subcontractor commences work on the project and the identifying (PWP) number for the public work.

§8.4.3.2. Contractor shall forfeit as a penalty to the Owner, amounts specified in NRS 338.060, for each calendar day or portion thereof that each worker employed on the Owner's project is paid less than the designated rate for any work done under the contract by the Contractor or any Subcontractor under it.

§8.4.3.3. Contractor shall forfeit as a penalty to the Owner, amounts specified in NRS 338.060, for each calendar day or portion thereof for each worker employed on the Owner's project for which the Contractor or Subcontractor willfully included inaccurate or incomplete information in the monthly record required to be submitted to the public body pursuant to subsection 6 of NRS 338.070.

§8.4.3.4. Contractor shall forfeit as a penalty to the Owner, amounts specified in NRS 338.060, for each calendar day or portion thereof that each worker employed on the Owner's project is not reported to the public body awarding the contract by the contractor or any subcontractor engaged on the public work as required pursuant to subsection 6 of NRS 338.070.

§8.4.3.5. Contractor shall comply with the requirements of NRS 338.20 and post in a generally visible place to the workers, the Nevada Prevailing Wage Rates and all addenda established for the Nevada System of Higher Education which is 90% of the prevailing wage rate for the locality in which the improvements are to be constructed. § 8.5

#### WARRANTY

The Contractor warrants to the Owner and Architect that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents. The warranty provided in this Section 8.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents and notwithstanding anything to the contrary contained in the Contract Documents shall commence on Final Completion. 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 Contract Documents.

#### § 8.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes that are legally required when the Contract is executed.

#### § 8.7 PERMITS, FEES AND NOTICES

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

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at the time bids are received or negotiations concluded. If Contractor's bid includes fees that Owner has paid or is required to pay directly, Contractor shall, at the Owner's option, either pay these fees as a part of their bid or deduct fees from Contract sum as a deductive change order.

§ 8.7.2 The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs including any costs or penalties paid by Owner as a result thereof. The Contractor shall promptly notify the Architect in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules and regulations.

### § 8.7.3 SMALL AND LOCAL BUSINESS CONCERNS REPORTING REQUIREMENTS

1. The Nevada System of Higher Education (NSHE) 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.

#### **§ 8.8 SUBMITTALS**

The Contractor shall promptly review, approve in writing and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

#### **§ 8.9 USE OF SITE**

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the Owner.

#### **§ 8.10 CUTTING AND PATCHING**

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

#### **§ 8.11 CLEANING UP**

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work to the reasonable satisfaction of Owner. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery and surplus material; and shall properly dispose of waste materials.

#### **§ 8.12 INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's and Owner's respective 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 out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 8.12. Contractor shall provide Owner with written notification as to any circumstances to which this Section 8.12 may give rise to an Owner indemnification promptly after Contractor becomes aware of such circumstances. The provisions of this Section 8.12 shall survive the completion of the Work or earlier termination of the Agreement.

### **ARTICLE 9 ARCHITECT**

**§ 9.1** The Architect will provide administration of the Contract as described in the Contract Documents. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 9.2 The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work.

§ 9.3 The Architect will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

§ 9.4 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor.

§ 9.5 The Architect, with notification to the Owner, has authority to reject Work that does not conform to the Contract Documents.

§ 9.6 The Architect will promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 9.7 The Architect will promptly interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request from either the Owner or Contractor.

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

§ 9.9 The Architect's duties, responsibilities and limits of authority as described in the Contract Documents shall not be changed without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

## ARTICLE 10 CHANGES IN THE WORK

### § 10.1 GENERAL

§ 10.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 10 and elsewhere in the Contract Documents.

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

§ 10.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change of 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.

§ 10.2 The Architect with the Owner's consent will have authority to order minor changes in the Work not involving changes in the Contract Sum or the Contract Time and not inconsistent with the intent of the Contract Documents. Such orders shall be in writing and shall be binding on the Owner and Contractor. The contractor shall carry out such orders promptly.

§ 10.3 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, of which the Contractor was not aware, the Contract Sum and Contract Time shall be subject to equitable adjustment.

§ 10.4 [Intentionally Omitted]

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

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

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

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

§ 10.5.3 If unit prices are stated in the Contract 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 Contractor, the applicable unit prices shall be equitably adjusted.

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

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

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

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

§ 10.5.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.



§ 10.5.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may not request payment for Work completed under the Construction Change Directive in Applications for Payment. The Contractor may request payment when a Change Order is fully executed by the Owner.

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

#### § 10.6 LIMITATIONS ON OVERHEAD AND PROFIT FOR INCREASES IN THE COST OF THE WORK RESULTING FROM CHANGE ORDERS:

Change Order fees, including overhead and profit, bonds, insurance, and general conditions are limited to no more than ten percent (10%) of the Change Order Amount for changes up to \$10,000 and no more than seven percent (7%) of the change order amount for changes over \$10,000 cumulatively between the Contractor and any subcontractors.

#### ARTICLE 11 TIME

§ 11.1 Time limits stated in the Contract Documents are of the essence of the Contract.

§ 11.2 If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, the Contract Time shall be subject to equitable adjustment.

#### ARTICLE 12 PAYMENTS AND COMPLETION

##### § 12.1 CONTRACT SUM

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

##### § 12.2 APPLICATIONS FOR PAYMENT

§ 12.2.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for Work completed in accordance with the values stated in the Agreement. Such Application shall be supported by data substantiating the Contractor's right to payment as the Owner or Architect may reasonably require. Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site and in a bonded and insured facility, at a location agreed upon in writing. If verification is necessary or required by Owner and/or Architect 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 and/or Architect. Contractor shall provide Applications for Payment, releases and other related documents in a format acceptable to the Owner.

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

##### § 12.3 CERTIFICATES FOR PAYMENT

The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part. The issuance of a Certificate of Payment will constitute a recommendation only by the Architect and not a legal, binding obligation on Owner.

##### § 12.4 PROGRESS PAYMENTS

§ 12.4.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment based on a complete and approved Application for Payment in the manner provided in the Contract Documents.

§ 12.4.2 The Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

§ 12.4.3 Neither the Owner nor the Architect shall have responsibility for payments to a Subcontractor or supplier.

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

§ 12.4.5 Interest on any amounts due from Owner to Contractor, or from Contractor 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.

#### § 12.4.6 DECISIONS TO WITHHOLD CERTIFICATION

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents or unsatisfactory execution of the Work;
- .8 failure of Contractor to comply with applicable Codes, Laws or Regulations;
- .9 failure to update as-built drawings or provide construction photographs with the Application for Payment as required by the Contract Documents. 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 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 12.

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

§ 12.4.6.3 If the Architect withholds certification for payment under Section 12.4.6, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

## § 12.5 SUBSTANTIAL COMPLETION

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

§ 12.5.2 When the Work or designated portion thereof is substantially complete, the Architect will make an inspection to determine whether the Work is substantially complete. When the Architect determines that the Work is substantially complete the Architect shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish the responsibilities of the Owner and Contractor, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

- .1 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.
- .2 Incomplete or defective work remains which would prevent or interfere with the occupancy and intended use of the facility.
- .3 The building mechanical systems have not been tested, balanced, and accepted as being fully complete.
- .4 The building electrical and life safety systems have not been tested and accepted as being fully complete.
- .5 The building commissioning process is not complete.
- .6 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).
- .7 Final Inspections, Approvals and Temporary or Full Certificates of Occupancy by regulatory officials are not received and complete.
- .8 Successful/compliant testing of all data cabling (copper, fiber or other) and labeling of all data ports is incomplete and not fully correct.
- .9 Any other basis for Architect's or Owner's reasonable determination that Substantial Completion has not been achieved.

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

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

§ 12.5.5 When the Work or designated portion thereof is substantially complete and receives all regulatory approvals to permit occupancy, the Architect will prepare a Certificate of Substantial Completion that, when approved by the Owner, shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the

Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion is subject to Owner's approval which will not be unreasonably withheld or delayed.

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

#### § 12.6 FINAL COMPLETION AND FINAL PAYMENT

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

- .1 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;
- .2 All operating and maintenance instructions, documents and training have been completed and submitted to the Architect and Owner and have been approved as complete by the Architect and Owner;
- .3 All guarantees, warranties and surety releases required by the Contract Documents have been provided;
- .4 As-Built in digital and hard copy format have been submitted to Architect and Owner and are accepted as complete and;
- .5 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.

§ 12.6.2 Final payment shall not become due until the Contractor submits to the Architect releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract. Final Completion and Final Payment are subject to completion of all notices of retention release and notices/certificates of completion and related processes.

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

*(Paragraphs deleted)*

#### ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY; HAZARDOUS MATERIALS

§ 13.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take necessary precautions to prevent damage, injury or loss to employees on the Work, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

§ 13.2 The Contractor is responsible for compliance with any requirements included in the Contract Documents and all applicable laws, rules and regulations regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Contractor shall also install only those materials that are asbestos free. A certification

statement shall incorporate into the submittal process and shall accompany each submittal. The certification statement must be signed by the Contractor 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. Contractor 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 Contractor brings on to the site.

#### **ARTICLE 14 CORRECTION OF WORK**

**§ 14.1** The Contractor shall promptly correct Work rejected by the Architect as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement and additional testing.

**§ 14.2** In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents. This provision does not relieve the Contractor 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.

**§ 14.3** If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3.

#### **ARTICLE 15 MISCELLANEOUS PROVISIONS**

##### **§ 15.1 ASSIGNMENT OF CONTRACT; STATUS OF PARTIES**

Neither party to the Contract shall assign the Contract as a whole without written consent of the other. The parties agree that the contractual relationship of Contractor to Owner is one solely of an independent contractor in all respects and that the Contract Documents do not in any way create a partnership, joint venture or any other relationship between Owner and Contractor other than the contractual relationship as specified in this Agreement.

##### **§ 15.2 TESTS AND INSPECTIONS**

**§ 15.2.1** At the appropriate times, the Contractor shall arrange and bear cost of tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

**§ 15.2.2** If the Architect requires additional testing with the Owner's consent, the Contractor shall perform those tests.

**§ 15.2.3** The Owner shall bear cost of tests, inspections or approvals that do not become requirements until after the Contract is executed.

##### **§ 15.3 GOVERNING LAW**

The Contract shall be governed by the laws 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.

**§15.4** In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant because of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation, apprenticeship.

The contractor further agrees to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

**15.5** Each contractor, subcontractor and other person who provides labor, equipment, materials, supplies or services for the public work shall comply with the requirements of all applicable state and local laws, including, without limitation, any applicable licensing requirements and requirements for the payment of sales and use taxes on equipment, materials and supplies provided for the public work.

**15.6 PREFERENTIAL EMPLOYMENT.** All contractors shall comply with the preferential employment provisions of NRS 338.130 for public works contracts. This law requires that, when the qualifications of applicants are equal, that preference be given: First, to honorably discharged soldiers, sailors, and marines of the United States who

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are citizens of the State of Nevada; second, to other citizens of the State of Nevada. If the provisions of NRS 338.130 are not complied with by the Contractor, this contract is void, and any failure or refusal to comply with any of the provisions of NRS 338.130 renders the contract void.

15.7 **PREFERENCE.** If applicable, the provisions of the Affidavit Pertaining to Preference Eligibility executed by Contractor (the "Affidavit") are deemed incorporated into the Contract and any failure to comply with the provisions of the Affidavit entitles UNLV to a penalty in accordance with NRS 338.0117. The following provisions apply if Contractor received a preference:

15.7.1 If a party to the contract causes the contractor, applicant or design build team to fail to comply with a requirement of paragraphs (a)-(d), inclusive, of subsection 1 of NRS 338.0117, the party is liable to the Owner for a penalty in the amount of 1 percent of the cost of the largest contract to which he or she is a party;

15.7.2 The right to recover the amount determined pursuant to §2.1.9.4.1 by Owner pursuant to subsection 5 of NRS 338.0117 may be enforced by Owner directly against the party that caused the failure to comply with a requirement of paragraphs (a)-(d), inclusive, of subsection 1 of NRS 338.0117;

15.7.3 No other party to the contract is liable to Owner for a penalty; and

15.7.4 Contractor shall include this provision in all subcontracts and require it to be included in all lower tier subcontracts.

15.8 Contractor and each Subcontractor must comply with the applicable requirements of Nevada Revised Statutes ("NRS") Chapter 338 and Nevada Administrative Code ("NAC") Chapter 338. To the extent a provision of this Contract is prohibited by NRS Chapter 338 or NAC Chapter 338, it is hereby deemed modified to the extent necessary to comply with the provisions of NRS Chapter 338 or NAC Chapter 338, as applicable. To the extent a provision is required to be inserted into this Contract by NRS Chapter 338 or NAC Chapter 338, it is deemed inserted.

## **ARTICLE 16 TERMINATION OF THE CONTRACT**

### **§ 16.1 TERMINATION BY THE CONTRACTOR**

If the Architect fails to certify payment as provided in Section 12.3 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment based on a complete and approved Certificate for Payment as provided in Section 12.4.1 for a period of 30 days, the Contractor may, upon seven additional days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, and costs incurred by reason of such termination.

### **§ 16.2 TERMINATION BY THE OWNER FOR CAUSE**

§ 16.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 is otherwise guilty of substantial breach of a provision of the Contract Documents or;
- .5 If Contractor 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 Contractor and is not dismissed within thirty (30) days; (iii) if a trustee or receiver is appointed to take possession of substantially all of Contractor's assets or of Contractor's interest in this Agreement and possession is not restored to Contractor within thirty (30) days; or (iv) if substantially all of Contractor's assets or of Contractor's interest in this Agreement is subjected to attachment, execution or other judicial seizure which is not discharged within thirty (30) days.

§ 16.2.2 When any of the above reasons exist, the Owner, after consultation with the Architect, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may

- .1 take possession of the site and of all materials thereon owned by the Contractor, and

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.2 finish the Work by whatever reasonable method the Owner may deem expedient.

§ 16.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 16.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

§ 16.2.5 Except for those items that naturally survive, this Contract shall terminate after Owner has accepted completion of all work.

**§ 16.3 TERMINATION BY THE OWNER FOR CONVENIENCE OR NON-APPROPRIATION OF FUNDS**

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. In such case, the Owner will provide the Contractor seven (7) days written notice of intent to terminate. Upon receipt of such notice, the contractor shall take immediate action to mitigate any damage or additional expense. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, including reasonable overhead and profit on Work executed.

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

**ARTICLE 17 OTHER TERMS AND CONDITIONS**

*(Insert any other terms or conditions below.)*

**§ 17.1 WRITTEN NOTICE**

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

Owner	Contractor
David S. Frommer, AIA Executive Director, Planning and Construction University Nevada, Las Vegas Box 451027, 4505 Maryland Pkwy. Las Vegas, NV 89154-1027	Name of Responsible Contractor Official: Title: Company Name: Address: City, State, and Zip: Telephone/Fax Number: Email Address:
AND Sharrie Mayden, C.P.M. Director of Purchasing and Contracts University of Nevada, Las Vegas Box 451033, 4505 Maryland Pkwy. Las Vegas, NV 89154-1033	

§ 17.2 No Waiver; Rights and Remedies: No action or failure to act by the Owner or Contractor shall constitute a waiver of any right or duty afforded under the Contract Documents, nor shall any such action or failure to act constitute any approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law or equity

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§ 17.3 Counterparts: The Contract Documents may be executed in any number of counterparts, all of which taken together shall constitute one and the same Agreement.

§ 17.4 Invalidity: If any one or more of the provisions (or any part thereof) contained in this Contract 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 this Contract.

§ 17.5 Facsimile Signatures: Any signature of or pursuant to the Contract Documents shall be considered for all purposes an original signature and of the same legal effect as an original, provided that at the request of a party any signature sent by facsimile shall subsequently be confirmed by an original re-execution.

§ 17.6 No Limitation: Unless expressly stated otherwise herein, the duties and obligations imposed upon the parties under this Contract, and the rights and remedies available hereunder shall be in addition to and not a limitation of, any duties imposed or available at law or in equity.

§ 17.7 Time Limits: Time limits set out in or under this Contract are solely for the protection and benefit of the Owner and Contractor and create no third-party beneficiary rights in any other party.

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

#### § 17.9 CLAIMS AND DISPUTES § BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation per this agreement, the method of binding dispute resolution shall be as follows:

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

Arbitration pursuant to this agreement, as modified

Litigation in a court of competent jurisdiction

Other (Specify)

#### § 17.9.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### § 17.9.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party 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.

#### § 17.9.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.



#### § 17.9.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a 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 Article 13.

#### § 17.9.5 CLAIMS FOR ADDITIONAL TIME

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

§ 17.9.5.2 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.

#### § 17.10 INITIAL DECISION

§ 17.10.1 Claims, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. An initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

§ 17.10.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 17.10.6.1.

§ 17.10.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate.

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

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

#### § 17.11 MEDIATION

§ 17.11.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 17.11.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Contract. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 17.11.3 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.

#### § 17.12 LICENSES

§ 17.12.1 Contractor shall maintain current all contractor's licenses necessary to perform the work. Failure to maintain such licenses will be considered a material breach.

§ 17.12.2 Contractor is required to maintain a current Nevada business license pursuant to NRS 76.100(1) unless the entity is either a non-profit corporation or meets the requirements for an exemption and has filed the appropriate notice of exemption with the Nevada Secretary of State. The Contractor certifies that it has a current Nevada business license or it is exempt, and agrees to provide immediate notice to Owner in the event the license or exemption is no longer valid. Failure to maintain a valid Nevada Business License or exemption will be considered a material breach.

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

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)*

Jean M. Vock

Vice President Finance and Business/CFO

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