

**AIA®**

Document A133™ – 2009

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

AGREEMENT (Contract # _____) made as of the _____ day of _____ in the year _____
(In words, indicate day, month and year.)

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

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

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

To Be Selected pursuant to RFP-679-BC

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

UNLV School of Medicine (SOM) Medical Education Building (MEB)
project

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

Tate Snyder Kimsey Architects, Ltd.
709 Valle Verde Court
Henderson, NV 89014

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

Lisa Schock, Project Manager
Board of Regents of the Nevada System of Higher Education on behalf of the University
of Nevada, Las Vegas, Planning and Construction
4505 South Maryland Parkway
Campus Services Building Room 131D
Las Vegas, Nevada 89154

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

TBD

The Architect's Designated Representative:

ADDITIONS AND DELETIONS:

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

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

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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| (Name, address, and other information)

Michael Purtill, AIA, LEED AP
Principal
Tate Snyder Kimsey Architects, Ltd.
709 Valle Verde Court
Henderson, NV 89014

The Owner and Construction Manager agree as follows.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, AIA 201 -207 General Conditions of the Contract for Construction, as modified, (General, Supplementary and other Conditions), the Solicitation identified in §12.2 (e.g. RFP, RFQ, or IFB), the Proposal, Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The parties agree that the contractual relationship of Construction Manager to Owner is one solely of an independent contractor in all respects and that this Agreement and/or any other contract documents do not in any way create a partnership, joint venture or any other relationship between Owner and Construction Manager other than the contractual relationship as specified in this Agreement.

§ 1.3 General Conditions

For the Preconstruction Phase, all terms and items of the AIA Document A201™–2007, as modified, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth per all of the terms and items of in the

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A201–2007, as modified, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 as modified shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities to the extent required during the Construction Phase are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. Contractor shall comply with the duties and powers of CMAR in accordance with Nevada Revised Statutes ("NRS") Chapter 338 and Nevada Administrative Code ("NAC") Chapter 338, including NRS §338.16985. Contractor shall make all submissions required by NRS Chapter 338 and NAC Chapter 338.

Pursuant to NRS §338.16985, a construction manager at risk who enters into a contract for the construction of a public work pursuant to NRS 338.1696:

1. Is responsible for contracting for the services of any necessary subcontractor, supplier or independent contractor necessary for the construction of the public work and for the performance of and payment to any such subcontractors, suppliers or independent contractors.
2. If the public work involves predominantly horizontal construction, shall perform construction work equal in value to at least 25 percent of the estimated cost of construction himself or herself, or using his or her own employees.
3. If the public work involves predominantly vertical construction, may perform himself or herself or using his or her own employees as much of the construction of the building or structure that the construction manager at risk is able to demonstrate that the construction manager at risk or his or her own employees have performed on similar projects.

PROJECT EXECUTIVE, SUPERINTENDENT, PROJECT MANAGER AND SAFETY DIRECTOR:

The Construction Manager 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 Construction Manager, and communications given to the superintendent shall be as binding as if given to the Construction Manager. The Construction Manager shall further employ a project manager who shall represent the Construction Manager 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 Construction Manager shall also designate a project executive who will serve as an Executive Construction Manager representative for the project and a safety director who will be a primary contact for the Owner regarding project safety.

The Construction Manager, as soon as practicable after award of the Agreement, shall furnish in writing to the Owner and the Architect the names and qualifications of the proposed project executive, safety director, superintendent and project manager. The Owner and Architect may reply within 14 days to the Construction Manager 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.

The Construction Manager shall not employ a project executive, safety director, superintendent or project manager to whom the Owner or Architect has made reasonable and timely objection. The Construction Manager shall not change the project executive, 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 Construction Manager changes the project executive, 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, Construction Manager will pay to Owner liquidated damages. Owner also reserves the right to withhold reasonable payment from the Construction Manager in the instance of a change in these Construction Manager'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 Construction Manager's representatives, the Construction Manager shall contact the Owner immediately to determine any adjustments in the Construction Manager's representatives. The Construction Manager's Representative for all services is:
(Insert name, address and other information.)

Project Executive:
Project Manager:
Superintendent:
Safety Director:

Liquidated damages the sum of _____ thousand dollars (\$_____,000) for changes to Construction Manager's Authorized Representatives. Owner and Contractor agree and acknowledge that (i) Owner's actual damages for as a result of Contractor's unauthorized changes to Contractor's Representatives 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 as a result of Contractor's unauthorized changes to Contractor's Representatives.

For all services and phases of services, Construction Manager shall comply with all project planning, design, sustainability, operations and procedures standards of the Owner, and will not deviate from the standards unless agreed upon in writing by the Executive Director of Planning and Construction.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall have provided under the Preconstruction Contract a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

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

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

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

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

provide cost evaluations of those alternative materials and systems. All preliminary cost estimates shall reflect local market and relevant cost data and projections for all project elements and cost backup for major project and systems elements. The cost estimate shall have a direct link to and basis in local market costs and local market expertise and provision for labor, materials and other construction elements. All preliminary cost estimates shall also, based on the project scope intent, include allowance for all items to deliver the project scope intent, with allowances provided in the cost estimate to deliver a fully functional, constructible and code compliant facility.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, (but generally not less than at the completion of Schematic Design, Design Development and 50% Construction Documents, unless otherwise agreed to in writing by the Owner), estimates of the Cost of the Work of increasing detail and refinement in the Construction Specifications Institute (CSI) 16 Division format, with sufficient backup detail, and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action. All detailed cost estimates shall reflect local market and relevant cost data and projections for all project elements and cost backup for major project and systems elements. The cost estimate shall have a direct link to and basis in local market costs and local market expertise and provision for labor, materials and other construction elements. Detailed cost estimates shall have detailed cost backup information for all cost estimate items. All detailed cost estimates shall also, based on the project scope intent, include allowance for all items to deliver the project scope intent, with allowances provided in the cost estimate to deliver a fully functional, constructible and code compliant facility.

§ 2.1.5.3 All cost estimates shall comply with Section 6.2.6 below relating to the payment of prevailing wages. In addition, all cost estimates shall comply with the requirements of Section 5.2 of AIA Document A201-2007, General Conditions of the Contract for Construction, as modified, relating to the Project constituting a "public work" under NRS 338.010(16)(b).

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project. The Construction Manager shall also consult with the Owner and the Architect in determining the most qualified bidders for the Work, to ensure a minimum of three qualified bidders submit proposal for each bid package for the Project.

Contractor shall submit a list of all first tier Subcontractors who will provide labor or a portion of the Work to the Contractor for which such Subcontractor will be paid an amount equal to 1% or more of the GMP or \$50,000.00, whichever is greater. Such list shall set forth the name of the Subcontractor, a description of the portion of Work to be performed, the number of the license issued by the Nevada State Contractor's Board to the Subcontractor. The Contractor shall also list any portion of the work which is 1% or more of the GMP or \$50,000.00, whichever is greater, that the contractor intends to self-perform.

In accordance with NRS §338.020, 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.

Prior to receiving or accepting any payment, each Subcontractor must have a valid Nevada business license, pursuant to NRS 338.072.

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

Within ten (10) days of opening the subcontractor proposals, Contractor shall provide UNLV with a list of the selected Subcontractors. Contractor shall not substitute any person for itself or a Subcontractor who is named on the required list(s) except as provided pursuant to NRS §338.16995.

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

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price but shall use its best commercially reasonable efforts to provide accurate and correct estimates and schedules.. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall apply reasonable skill and effort consistent with industry standards and practices to ensure the schedules and estimates incorporate all requirements of applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, and promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect and Owner may require. The Construction Manager shall provide reasonable time/cost allowances and/or contingencies in its estimates and schedules to account for changes in market conditions, plan check/permit and other regulatory processes and all reasonably foreseeable provisions for allowances and/or contingencies. The Construction Manager shall assume overall responsibility for ensuring that the construction of the public work is completed in a satisfactory manner.

§ 2.1.9 Notices and Compliance with Laws

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

2.1.9.1 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.

2.1.9.2 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.

2.1.9.3 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 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 this contract void.

2.1.9.4 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:

2.1.9.4.1 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 pf the cost of the largest contract to which he or she is a party;

2.1.9.4.2 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;

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

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

2.1.9.5 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.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee. The Construction Manager shall include in the Guaranteed Maximum Price proposal the preparation and submittal, for Owner's approval, the schedule for completion of the design and CPM construction schedule for the Work, including the date for Substantial and Final Completion of the Work.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. This provision in the Guaranteed Maximum Price shall include the Construction Manager's and all subcontractor's cost of the work to accomplish the scope, systems, kinds and quality of materials, finishes or equipment and other items defined in the Drawings and Specifications, but that may not be fully technically represented in terms of final Drawings and Specifications, to deliver a fully functional, constructible and code compliant facility. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment (or reasonable representation of all of these items that cannot be understood or inferred in some manner through the careful and comprehensive review of the Drawings and Specifications), all of which, if required, shall be incorporated by Change Order.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price, in a 16 Division Construction

Specifications Institute (CSI) format. Attached to this statement must be a proposed Schedule of Values;

- .6 A date by which the Owner must accept the Guaranteed Maximum Price, generally not less than 120 days from the date of the proposal;
- .7 A list of the labor or portions of the work which are estimated by the construction manager at risk to exceed 1 percent of the estimated cost of the public work; and
- .8 A list of each Subcontractor who is to provide labor or a portion of the work which is estimated by the Construction Manager to exceed 1 percent of the estimated cost of the public work.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. Any unused contingency funds from this contingency shall be allocated 30% to the Construction Manager and 70% to the Owner, with Construction Manager's allocation to be paid at Final Completion.

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

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

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

§ 2.2.8 The Owner shall authorize the Architect, at the Owner's discretion, to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications. These revised Drawings and Specifications shall be named the "Conformed Set".

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

§ 2.3 Construction Phase

§ 2.3.1 General

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

§ 2.3.1.2 The Construction Phase shall commence on the date of the issuance of a Purchase Order and Notice to Proceed by the Owner for the Construction Phase of Work, as defined in this Agreement and the Guaranteed Maximum Price Amendment amending this Agreement. The Purchase Order constitutes the Notice to Proceed.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. Contractor shall advertise and select, in accordance with the applicable provisions of NRS Chapter 338 and NAC Chapter 338, the subcontractors required to complete the construction of the Project. CMAR acknowledges all of the requirements of NRS §338.16991 and NRS §338.1695 as well as the requirements of the NAC. CMAR acknowledges all of the requirements of NRS §338.16991 and NRS §338.1695 as well as the requirements of the NAC. The Owner may designate specific persons from whom, or entities to which, the Construction Manager shall send notification of the advertisement required pursuant to NRS §338.16991. The Construction Manager shall confer with the Owner to ensure that applying Subcontractors are qualified pursuant to NRS 338.16991. The Construction Manager shall advise the Owner of all pre-bid, bid and solicitations planning, terms, conditions, contract forms, schedules and other items for Owner review and comment on these items to ensure (1) determination of qualifications is made subject to the provisions of NRS §338.16991 and (2) evaluation of proposals and selection of subcontractors are done pursuant to the provisions of NRS §338.16995 and the regulations adopted by the State Public Works Board. Contractor shall confer with UNLV to establish potential bidder lists to be included in the advertised solicitation. The Construction Manager shall solicit bids from the qualified Subcontractors and from suppliers of materials or equipment fabricated especially for the Work in accordance with NRS §338.16995. All bids shall be received by the Construction Manager in sealed envelopes and shall be opened privately with the Owner and Architect present. If a subcontractor elects not to provide a bid, the Construction Manager shall either receive a statement of no bid from the subcontractor, or shall document the process by which the Construction Manager solicited the bid and none was received, including invitations to bid and all follow-up communications and reasonable efforts to receive a bid. Bids shall be reviewed for cost/price, quality of bid related to scope of work to be performed and other factors to determine the best and most responsive bid with the best cost/price. Construction Manager shall select the Subcontractor(s) who Construction Manager determined to have submitted the best proposal in accordance with NRS §338.16995. Subject to the requirements of NRS Chapter 338, the Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Owner objects to the selection of a Subcontractor in writing, the Construction Manager shall change the Subcontractor provided that the Owner pays for any increase in cost resulting from the change..

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

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

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

§ 2.3.2.6 As a part of the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a CPM construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007 as modified. The Construction Manager shall update the CPM construction schedule on a monthly basis and in accordance with A201-2007 as modified.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis minimum, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

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

§ 2.3.2.9 The Construction Manager shall construct the Work in strict accordance with the Construction Documents in a good and workmanlike manner. Except as otherwise provided in the Construction Documents, Construction Manager shall provide all labor, services and efforts necessary to complete the Work within the agreed Contract Time.

§ 2.4 Professional Services

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

§ 2.5 Hazardous Materials

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

2.6 Liquidated Damages. In the event completion of the Preconstruction Services is not achieved by the date specified above except as result only of delays for which the Owner is chargeable under the Contract Documents (e.g., section 8.3 of AIA Document A201-2007, General Conditions of the Contract for Construction, as modified.) 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 thousand dollars (\$5,000.00) for each day that completion of the Preconstruction Services is actually delayed, provided, however that (i) Owner may commence to make such deductions prior to the scheduled date of completion of the Preconstruction Services in the event Owner reasonably projects that the Project will not be completed on the scheduled date of completion of the Preconstruction Services 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 hereunder is less than the amounts Owner has the right to deduct. Owner and Contractor agree and acknowledge that (i) Owner's actual damages for the failure of completion of the Preconstruction Services 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 completion of the Preconstruction Services.

"Unavoidable Delay" 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 means a delay (unless resulting from a wrongful act Contractor.) In no event shall the application to Contractor of any applicable law, regulation, rule or other governmental requirement constitute an Unavoidable Delay. Contractor shall use reasonable good faith efforts to notify Owner not less 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 the period of the Unavoidable Delay, which period shall commence to run from the time of the commencement to the cause of the Unavoidable Delay.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

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

§ 3.1.2 [Intentionally omitted.]

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect,

in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Construction Manager shall commission reports or other related services to this section, to verify any conditions where the Construction Manager believes verification is beneficial to the Pre-Construction and Construction services for the Project.

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

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

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

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

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative in writing (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. Except as otherwise provided in Section 4.2.1 of A201-2007 as modified, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. This shall not include any legal, insurance and accounting services, including auditing services, for the Construction Manager to perform their work or maintain project files, meet auditing/accounting standards or other business and related practices for the Construction Manager to provide and manage the Work or the Project.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B101™-2007 as modified or B105-2007 as modified, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager, with the approval of the Owner, that are necessary for the Preconstruction and Construction Phase services under the applicable agreement. The Owner shall provide the Construction Manager, at the Owner's determination, a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement, from which compensation provisions may be deleted. Where the Owner is not required by law to secure the services of an Architect to perform services relative the Work or the Project, or where the Owner is able to provide these services itself per applicable laws and

regulations, the Owner reserves the right to serve as the Architect per this section without the execution of any Architectural Agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

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

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

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

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

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

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's approved invoice. Amounts unpaid thirty (30) days after the approved invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager or as otherwise required by NRS Chapter 338.
(Insert rate of monthly or annual interest agreed upon.)

Interest on any amounts due from Owner to Construction Manager, or from Construction Manager 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 Bank of America National Trust and Savings Association as its prime or reference commercial lending rate of interest (or in the event such bank is no longer announcing such rate, by such other federally regulated banking institution of comparable stature as Owner shall determine) or (iii) the maximum interest rate permitted by law. Under no circumstances, however, shall Construction Manager be entitled to interest on retainage.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

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

§ 5.1.1 The Construction Manager's Fee:

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

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

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

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

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed one hundred percent (100 %) of the standard rate paid at the place of the Project. Construction Manager-owned equipment shall be used when this equipment offers a rate no greater, and generally less, than the standard market rate paid at the place of the Project

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item

Units and Limitations

Price per Unit (\$0.00)

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time only in the case of Owner approved Change Orders. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

In the event the final actual Cost of Work is less than as specified in the Guaranteed Maximum Price, Construction Manager shall be entitled to be paid thirty percent (30%) of the difference between the Guaranteed Maximum Price, less any contingency funds, the Construction Manager's Fee and the final actual Cost of Work, and Owner shall be entitled to seventy percent (70%). In the event there are unused contingency funds at the conclusion of the Contract from the Construction Manager contingency, Construction Manager shall be entitled to thirty percent (30%) of such amount and Owner shall be entitled to seventy percent (70%) of such amount. Any amounts due the Construction Manager under this paragraph shall be paid at Final Completion.

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

§ 5.3 Changes in the Work

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

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

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 as modified and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 as modified shall have the meanings assigned to them in AIA Document A201–2007 as modified and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 as modified shall mean the Cost of the Work as defined

in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

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

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner or as otherwise required by the Contract Documents.. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7. All costs in Article 6 or other Costs of the Work shall be part of the Guaranteed Maximum Price and subject to all conditions of Section 2.2 and Section 5.2.

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

§ 6.2 Labor Costs

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

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

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

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

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 [Intentionally omitted.]

§ 6.2.6 PREVAILING WAGE

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. In accordance with NRS, Contractor agrees that the Project is subject to the prevailing wage requirements under Nevada Law. 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 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 and actual per diem wages paid to each employee used in connection with construction of the improvements. Such records shall be open to inspection and reproduction by the Owner during normal business hours. Contractor will send one (1) copy of each wage report to Owner's Project Manager. **This Section 6.2.6 shall be deemed to incorporate any future modifications to the NRS or NAC with respect prevailing age requirements that are applicable to the Nevada System of Higher Education.**

§ 6.3 Subcontract Costs

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

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

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

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

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

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

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

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

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls (or phone line fixed monthly service charges where this provide a fixed monthly cost for these services), postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

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

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

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

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

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay. If Construction Manager's Guaranteed Maximum Price includes fees that Owner has paid or is required to pay directly, Construction Manager shall deduct fees from Guaranteed Maximum Price as a deductive change order.

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

§ 6.6.5 Construction Manager shall be responsible to include in their Guaranteed Maximum Price any royalties and license fees required to be paid for the use of a particular design, process or product required by the Contract Documents. These royalties and license fees shall be verified and accounted for by the Construction Manager as a part of the Guaranteed Maximum Price proposal. If a royalty or license fee is not paid by the Construction Manager, for the use of a particular design, process or product required by the Contract Documents, the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements shall be the responsibility of the Construction Manager. The provisions of this §6.6.5 shall survive the completion of the Work or earlier termination of the Agreement.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work and outside of electronic equipment and software with which usual and customary duties are conducted, with the Owner's prior approval.

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

§ 6.6.8 [Intentionally omitted.]

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

§ 6.7 Other Costs and Emergencies

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

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

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

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 as modified or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

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

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

- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.
- .9 Any deductibles arising under any insurance required to be provided by Construction Manager pursuant to A201-2007, as modified.
- .10 Any uninsured losses which result from a failure of Construction Manager to maintain insurance required by the Construction Documents or the denial of coverage under such insurance or the failure of an insurer to otherwise pay claims under such insurance.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue and shall be applied to the Construction Manager's contingency and shall be subject to savings provisions as defined in Section 5.2 as applicable. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

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

§ 6.10 Related Party Transactions

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

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

§ 6.11 Accounting Records

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

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

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

The final Application of Payment shall include Construction Manager's application for payment of any amounts due to Construction Manager relating to sharing in savings in the Cost of Work and unused contingency as provided in this Agreement.

§ 7.1.3 Provided that a complete and approved Application for Payment is received by the Owner and the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 25th day of the next month. If an Application for Payment is received by the Owner and/or the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect and Owner receives the complete and approved Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)*

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

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

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

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007 as modified;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, with the agreement of the Owner, stored at a bonded and licensed facility where the Owner can reasonably visually verify or receive other acceptable verification of the storage of materials. If verification is necessary or required by Owner 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, Construction Manager shall pay all costs associated with site visits/review outside of local site visits by Owner and/or Architect.
- .3 Add the Construction Manager's Fee, less retainage of five percent (5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager self-performs;

- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007 as modified.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. Subcontractor retainage shall not be less than 5% unless mutually agreed upon in writing by the Construction Manager and the Owner, with input from the Architect.

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

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

§ 7.1.11 Retainage will be reduced to the extent required by NRS Chapter 338.

§ 7.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007 as modified, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect; and
- .4 all notices of retention release and notices/certificates of completion and related processes are complete;

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final and approved Certificate for Payment and completion of all items as specified in this section, or as required by NRS Chapter 338, or as follows:

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

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

as modified. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

ARTICLE 8 INSURANCE AND BONDS

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

Type of Insurance or Bond

Refer to AIA Document A201-2007 as modified

Limit of Liability or Bond Amount (\$0.00)

Refer to AIA Document A201-2007 as modified

ARTICLE 9 DISPUTE RESOLUTION

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

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

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

☐ Arbitration pursuant to Section 15.4 of AIA Document A201-2007

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

§ 9.3 Initial Decision Maker

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

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

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

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

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

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

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

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

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

In all instances termination shall include payments from the Owner to the Construction Manager only for work performed and reasonable overhead and profit on such work, and shall not include any payments for work not performed or any overhead, costs and profit on work not performed.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

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

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

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

In all instances termination shall include payments from the Owner to the Construction Manager only for work performed and reasonable overhead and profit on such work, and shall not include any payments for work not performed or any overhead, costs and profit on work not performed.

§ 10.3 Suspension

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

§ 10.4 OWNER TERMINATION FOR CAUSE

Notwithstanding anything to the contrary contained in this Article 10, any termination by the Owner pursuant to Section 14.2 of A201–2007, as modified, shall be governed in all respects by Section 14.2 of A201–2007, as modified.

ARTICLE 11 MISCELLANEOUS PROVISIONS

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

§ 11.2 Ownership and Use of Documents

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

§ 11.3 Governing Law

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

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other. Except as provided in Section 13.2.2 of A201–2007 as modified, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 11.5.1 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 performed, along with reasonable overhead and profit on the work performed, and additional costs incurred by reason of such termination.

§ 11.5.2 Upon receipt of written notice from the Owner of such termination for the Owner’s convenience, the Construction Manager shall:

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

§ 11.5.3 In the event of termination for the Owner's convenience prior to commencement of construction, the Construction Manager shall be entitled to receive payment for Pre-Construction services performed, and costs incurred by reason of such termination including reasonable overhead and profit on Work executed.

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

§ 11.6 COUNTERPARTS

This Agreement entered into as of the date last signed below by any authorized signatory and may be executed in any number of counterparts, all of which taken together shall constitute one and the same Agreement.

§ 11.7 BUSINESS DAY

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

§ 11.8 INVALIDITY

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

§ 11.9 AUTHORITY

Owner and Construction Manager each represent and warrant to each other that each respectively has the authority to execute and deliver this Agreement and perform their respective obligations thereunder and that the execution, delivery and performance of this Agreement have been duly authorized by all necessary action by each respective party.

§ 11.10 SMALL AND LOCAL BUSINESS CONCERNS REPORTING REQUIREMENTS

1. The Nevada System of Higher Education supports equal opportunity for minority owned, women-owned, and other small disadvantaged business concerns (*MWDBE*) to compete for contracts awarded by NSHE. NSHE also supports efforts to encourage local businesses to compete for NSHE contracts. In some situations, *MWDBE* and local business concerns may not have the depth or full capability to meet all the requirements of large contracts. Nevertheless, NSHE supports finding opportunities for such *MWDBE* and local business concerns to participate as subcontractors or Tier 2 suppliers in large contracts.
2. For purchase of goods or services that exceed \$1,000,000 the Contractor must provide, at a minimum, annual reports listing expenditures with *MWDBE* business concerns and local subcontractors. These reports pertain only to expenditures that are directly attributable to the NSHE prime contract. The report should contain the following information:
 - a. The name, address, phone number, and type of each local, women-owned, minority and/or disadvantaged subcontractor (Tier 2 supplier or local subcontractor). If a business concern meets more than one definition (e.g. local and women-owned, or minority and women owned), that should be identified;
 - b. A description of the goods or services purchased; and
 - c. The amount of expenditures with the subcontractor attributed to the prime contract for the 12 month period.
3. Definitions:

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

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

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

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

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

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

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009 as modified, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007 as modified, General Conditions of the Contract for Construction
- .3 [RFP 679-BC]
- .4 Exhibit C from Preconstruction Contract: Mechanics and Workers Rates
- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

Init.

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



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

(1) CONTRACTOR

DATE APPROVED: _____

(Signature)

(Printed name and title)

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

DATE RECOMMENDED: _____

(Signature)

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

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

DATE RECOMMENDED: _____

(Signature)

Gerry J. Bomotti
Senior Vice President of Finance and Business

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

DATE RECOMMENDED: _____

(Signature)

Len Jessup, President

(5) APPROVED AS TO LEGAL FORM:
DATE:

BY: _____

(Signature)

Elda Luna Sidhu, General Counsel

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

DATE APPROVED: _____

(Signature)

John V. White
Chancellor, Nevada System of Higher Education



Init.

/

Additions and Deletions Report for AIA[®] Document A133[™] – 2009

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:44:55 on 09/09/2016.

PAGE 1

AGREEMENT (Contract # _____) made as of the _____ day of _____ in the year _____

...

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

...

(Name, legal ~~status~~ status, FTIN _____ and address)

To Be Selected pursuant to RFP-679-BC

...

UNLV School of Medicine (SOM) Medical Education Building (MEB) project

...

(Name, legal ~~status~~ status, and address)

Tate Snyder Kimsey Architects, Ltd.
709 Valle Verde Court
Henderson, NV 89014

...

Lisa Schock, Project Manager
Board of Regents of the Nevada System of Higher Education on behalf of the University of Nevada, Las Vegas,
Planning and Construction
4505 South Maryland Parkway
Campus Services Building Room 131D
Las Vegas, Nevada 89154

...

(Name, ~~address~~ address, and other information)

TBD

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(Name, ~~address~~ address, and other information)

Michael Purtill, AIA, Leed AP
Principal
Tate Snyder Kimsey Architects, Ltd.
709 Valle Verde Court
Henderson, NV 89014

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TABLE OF ARTICLES

...

12 SCOPE OF THE AGREEMENT

EXHIBIT A – GUARANTEED MAXIMUM PRICE AMENDMENT

...

The Contract Documents consist of this Agreement, AIA 201 -207 General Conditions of the Contract for Construction, as modified, (General, Supplementary and other Conditions), the Solicitation identified in §12.2 (e.g. RFP, RFQ, or IFB), the Proposal, Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

...

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The parties agree that the contractual relationship of Construction Manager to Owner is one solely of an independent contractor in all respects and that this Agreement and/or any other contract documents do not in any way create a partnership, joint venture or any other relationship between Owner and Construction Manager other than the contractual relationship as specified in this Agreement.

...

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

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The Construction Manager's Preconstruction Phase responsibilities to the extent required during the Construction Phase are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project. Contractor shall comply with the duties and powers of CMAR in accordance with Nevada Revised Statutes ("NRS") Chapter 338 and Nevada Administrative Code ("NAC") Chapter 338, including NRS §338.16985. Contractor shall make all submissions required by NRS Chapter 338 and NAC Chapter 338.

Pursuant to NRS §338.16985, a construction manager at risk who enters into a contract for the construction of a public work pursuant to NRS 338.1696:

1. Is responsible for contracting for the services of any necessary subcontractor, supplier or independent contractor necessary for the construction of the public work and for the performance of and payment to any such subcontractors, suppliers or independent contractors.

2. If the public work involves predominantly horizontal construction, shall perform construction work equal in value to at least 25 percent of the estimated cost of construction himself or herself, or using his or her own employees.

3. If the public work involves predominantly vertical construction, may perform himself or herself or using his or her own employees as much of the construction of the building or structure that the construction manager at risk is able to demonstrate that the construction manager at risk or his or her own employees have performed on similar projects.

PROJECT EXECUTIVE, SUPERINTENDENT, PROJECT MANAGER AND SAFETY DIRECTOR:

The Construction Manager 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 Construction Manager, and communications given to the superintendent shall be as binding as if given to the Construction Manager. The Construction Manager shall further employ a project manager who shall represent the Construction Manager 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 Construction Manager shall also designate a project executive who will serve as an Executive Construction Manager representative for the project and a safety director who will be a primary contact for the Owner regarding project safety.

The Construction Manager, as soon as practicable after award of the Agreement, shall furnish in writing to the Owner and the Architect the names and qualifications of the proposed project executive, safety director, superintendent and project manager. The Owner and Architect may reply within 14 days to the Construction Manager 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.

The Construction Manager shall not employ a project executive, safety director, superintendent or project manager to whom the Owner or Architect has made reasonable and timely objection. The Construction Manager shall not change the project executive, 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 Construction Manager changes the project executive, 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, Construction Manager will pay to Owner liquidated damages. Owner also reserves the right to withhold reasonable payment from the Construction Manager in the instance of a change in these Construction Manager'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 Construction Manager's representatives, the Construction Manager shall contact the Owner immediately to determine any adjustments in the Construction Manager's representatives. The Construction Manager's Representative for all services is: *(Insert name, address and other information.)*

Project Executive:

Project Manager:

Superintendent:

Safety Director:

Liquidated damages the sum of _____ thousand dollars (\$ _____,000) for changes to Construction Manager's Authorized Representatives. Owner and Contractor agree and acknowledge that (i) Owner's actual damages for as a result of Contractor's unauthorized changes to Contractor's Representatives 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 as a result of Contractor's unauthorized changes to Contractor's Representatives.

For all services and phases of services, Construction Manager shall comply with all project planning, design, sustainability, operations and procedures standards of the Owner, and will not deviate from the standards unless agreed upon in writing by the Executive Director of Planning and Construction.

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§ 2.1.1 The Construction Manager shall ~~provide~~have provided under the Preconstruction Contract a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

...

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

...

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

...

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall ~~prepare~~have prepared preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager ~~suggests~~suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems. All preliminary cost estimates shall reflect local market and relevant cost data and projections for all project elements and cost backup for major project and systems elements. The cost estimate shall have a direct link to and basis in local market costs and local market expertise and provision for labor, materials and other construction elements. All preliminary cost estimates shall also, based on the project scope intent, include allowance for all items to deliver the project scope intent, with allowances provided in the cost estimate to deliver a fully functional, constructible and code compliant facility.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, (but generally not less than at the completion of Schematic Design, Design Development and 50% Construction Documents, unless otherwise agreed to in writing by the Owner), estimates of the Cost of the Work of increasing detail and refinement in the Construction Specifications Institute (CSI) 16 Division format, with sufficient backup detail, and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action. All detailed cost estimates shall reflect local market and relevant cost data and projections for all project elements and cost backup for major project and systems elements. The cost estimate shall have a direct link to and basis in local market costs and local market expertise and provision for labor,

materials and other construction elements. Detailed cost estimates shall have detailed cost backup information for all cost estimate items. All detailed cost estimates shall also, based on the project scope intent, include allowance for all items to deliver the project scope intent, with allowances provided in the cost estimate to deliver a fully functional, constructible and code compliant facility.

§ 2.1.5.3 All cost estimates shall comply with Section 6.2.6 below relating to the payment of prevailing wages. In addition, all cost estimates shall comply with the requirements of Section 5.2 of AIA Document A201-2007, General Conditions of the Contract for Construction, as modified, relating to the Project constituting a "public work" under NRS 338.010(16)(b).

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The Construction Manager shall develop bidders' interest in the Project. The Construction Manager shall also consult with the Owner and the Architect in determining the most qualified bidders for the Work, to ensure a minimum of three qualified bidders submit proposal for each bid package for the Project.

Contractor shall submit a list of all first tier Subcontractors who will provide labor or a portion of the Work to the Contractor for which such Subcontractor will be paid an amount equal to 1% or more of the GMP or \$50,000.00, whichever is greater. Such list shall set forth the name of the Subcontractor, a description of the portion of Work to be performed, the number of the license issued by the Nevada State Contractor's Board to the Subcontractor. The Contractor shall also list any portion of the work which is 1% or more of the GMP or \$50,000.00, whichever is greater, that the contractor intends to self-perform.

In accordance with NRS §338.020, 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.

Prior to receiving or accepting any payment, each Subcontractor must have a valid Nevada business license, pursuant to NRS 338.072.

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

Within ten (10) days of opening the subcontractor proposals, Contractor shall provide UNLV with a list of the selected Subcontractors. Contractor shall not substitute any person for itself or a Subcontractor who is named on the required list(s) except as provided pursuant to NRS §338.16995.

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The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum ~~Price~~-Price but shall use its best commercially reasonable efforts to provide accurate and correct estimates and schedules.. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall apply reasonable skill and effort consistent with industry standards and practices to ensure the schedules and estimates incorporate all requirements of applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, and promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect and Owner may require. The Construction Manager shall provide reasonable time/cost allowances and/or contingencies in its estimates and schedules to account for changes in market conditions, plan check/permit and other regulatory processes and all reasonably foreseeable provisions for allowances and/or contingencies. The Construction Manager shall assume overall responsibility for ensuring that the construction of the public work is completed in a satisfactory manner.

...

2.1.9.1 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.

2.1.9.2 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.

2.1.9.3 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 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 this contract void.

2.1.9.4 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:

2.1.9.4.1 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 pf the cost of the largest contract to which he or she is a party;

2.1.9.4.2 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;

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

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

2.1.9.5 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.

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee. The Construction Manager shall include in the Guaranteed Maximum Price proposal the preparation and submittal, for Owner's approval, the schedule for completion of the design and CPM construction schedule for the Work, including the date for Substantial and Final Completion of the Work.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. This provision in the Guaranteed Maximum Price shall include the Construction Manager's and all subcontractor's cost of the work to accomplish the scope, systems, kinds and quality of materials, finishes or equipment and other items defined in the Drawings and Specifications, but that may not be fully technically represented in terms of final Drawings and Specifications, to deliver a fully functional, constructible and code compliant facility. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes ~~or equipment, or equipment~~ (or reasonable representation of all of these items that cannot be understood or inferred in some manner through the careful and comprehensive review of the Drawings and Specifications), all of which, if required, shall be incorporated by Change Order.

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- .5 A statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price, in a 16 Division Construction Specifications Institute (CSI) format. Attached to this statement must be a proposed Schedule of Values;
- .6 A date by which the Owner must accept the Guaranteed Maximum Price. ~~Price, generally not less than 120 days from the date of the proposal;~~
- .7 A list of the labor or portions of the work which are estimated by the construction manager at risk to exceed 1 percent of the estimated cost of the public work; and
- .8 A list of each Subcontractor who is to provide labor or a portion of the work which is estimated by the Construction Manager to exceed 1 percent of the estimated cost of the public work.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. Any unused contingency funds from this contingency shall be allocated 30% to the Construction Manager and 70% to the Owner, with Construction Manager's allocation to be paid at Final Completion.

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

...

§ 2.2.8 The Owner shall authorize the ~~Architect~~ Architect, at the Owner's discretion, to provide the revisions to the Drawings and Specifications to incorporate the ~~agreed-upon~~-agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications. These revised Drawings and Specifications shall be named the "Conformed Set".

...

§ 2.3.1.1 For purposes of Section 8.1.2 of ~~A201-2007~~-A201-2007 as modified, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier, on the date of the issuance of a Purchase Order and Notice to Proceed by the Owner for the Construction Phase of Work, as defined in this Agreement and the Guaranteed Maximum Price Amendment amending this Agreement. The Purchase Order constitutes the Notice to Proceed.

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§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. Contractor shall advertise and select, in accordance with the applicable provisions of NRS Chapter 338 and NAC Chapter 338, the subcontractors required to complete the construction of the Project. CMAR acknowledges all of the requirements of NRS §338.16991 and NRS §338.1695 as well as the requirements of the NAC. CMAR acknowledges all of the requirements of NRS §338.16991 and NRS §338.1695 as well as the requirements of the NAC. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from to which, the Construction Manager shall send notification of the advertisement required pursuant to NRS §338.16991. The Construction Manager shall confer with the Owner to ensure that applying Subcontractors are qualified pursuant to NRS 338.16991. The Construction Manager shall advise the Owner of all pre-bid, bid and solicitations planning, terms, conditions, contract forms, schedules and other items for Owner review and comment on these items to ensure (1) determination of qualifications is made subject to the provisions of NRS §338.16991 and (2) evaluation of proposals and selection of subcontractors are done pursuant to the provisions of NRS §338.16995 and the regulations adopted by the State Public Works Board. Contractor shall confer with UNLV to establish potential bidder lists to be included in the advertised solicitation. The Construction Manager shall solicit bids from the qualified Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The in accordance with NRS §338.16995. All bids shall be received by the Construction Manager in sealed envelopes and shall be opened privately with the Owner and Architect present. If a subcontractor elects not to provide a bid, the Construction Manager shall either receive a statement of no bid from the subcontractor, or shall document the process by which the Construction Manager solicited the bid and none was received, including invitations to bid and all follow-up communications and reasonable efforts to receive a bid. Bids shall be reviewed for cost/price, quality of bid related to scope of work to be performed and other factors to determine the best and most responsive bid with the best cost/price. Construction Manager shall select the Subcontractor(s) who Construction Manager determined to have submitted the best proposal in accordance with NRS §338.16995. Subject to the requirements of NRS Chapter 338, the Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

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

...

§ 2.3.2.6 ~~Upon~~ As a part of the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a CPM construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007-A201-2007 as modified. The Construction Manager shall update the CPM construction schedule on a monthly basis and in accordance with A201-2007 as modified.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly ~~basis~~, basis minimum, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

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§ 2.3.2.9 The Construction Manager shall construct the Work in strict accordance with the Construction Documents in a good and workmanlike manner. Except as otherwise provided in the Construction Documents, Construction Manager shall provide all labor, services and efforts necessary to complete the Work within the agreed Contract Time.

Section 3.12.10 of A201-2007 as modified shall apply to both the Preconstruction and Construction Phases.

...

Section 10.3 of A201-2007 as modified shall apply to both the Preconstruction and Construction Phases.

2.6 Liquidated Damages. In the event completion of the Preconstruction Services is not achieved by the date specified above except as result only of delays for which the Owner is chargeable under the Contract Documents (e.g., section 8.3 of AIA Document A201-2007, General Conditions of the Contract for Construction, as modified.) 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 thousand dollars (\$5,000.00) for each day that completion of the Preconstruction Services is actually delayed, provided, however that (i) Owner may commence to make such deductions prior to the scheduled date of completion of the Preconstruction Services in the event Owner reasonably projects that the Project will not be completed on the scheduled date of completion of the Preconstruction Services 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 hereunder is less than the amounts Owner has the right to deduct. Owner and Contractor agree and acknowledge that (i) Owner's actual damages for the failure of completion of the Preconstruction Services 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 completion of the Preconstruction Services.

"Unavoidable Delay" 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 means a delay (unless resulting from a wrongful act Contractor.) In no event shall the application to Contractor of any applicable law, regulation, rule or other governmental requirement constitute an Unavoidable Delay. Contractor shall use reasonable good faith efforts to notify Owner not less 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 the period of the Unavoidable Delay, which period shall commence to run from the time of the commencement to the cause of the Unavoidable Delay.

...

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

~~§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect. [Intentionally omitted.]~~

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§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Construction Manager shall commission reports or other related services to this section, to verify any conditions where Construction Manager believes verification is beneficial to the Pre-Construction and Construction services for the Project.

...

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

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. This shall not include any legal, insurance and accounting services, including auditing services, for the Construction Manager to perform their work or maintain project files, meet auditing/accounting standards or other business and related practices for the Construction Manager to provide and manage the Work or the Project.

...

The Owner shall retain an Architect to provide services, ~~duties, duties~~ and responsibilities as described in AIA Document ~~B133™ 2014, B101™ 2007 as modified or B105-2007 as modified~~, Standard Form of Agreement Between Owner and Architect, ~~Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager, with the approval of the Owner, that are necessary for the Preconstruction and Construction Phase services under the applicable agreement.~~ The Owner shall provide the Construction ~~Manager-Manager, at the Owner's determination,~~ a copy of the executed agreement between the Owner and the Architect, and any further modifications to ~~the agreement-the agreement, from which compensation provisions may be deleted.~~ Where the Owner is not required by law to secure the services of an Architect to perform services relative the Work or the Project, or where the Owner is able to provide these services itself per applicable laws and regulations, the Owner reserves the right to serve as the Architect per this section without the execution of any Architectural Agreement.

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§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's approved invoice. Amounts unpaid thirty (30) days after the approved invoice date shall bear interest at the rate entered below, or in the

absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager or as otherwise required by NRS Chapter 338.

...

%—Interest on any amounts due from Owner to Construction Manager, or from Construction Manager 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 Bank of America National Trust and Savings Association as its prime or reference commercial lending rate of interest (or in the event such bank is no longer announcing such rate, by such other federally regulated banking institution of comparable stature as Owner shall determine) or (iii) the maximum interest rate permitted by law. Under no circumstances, however, shall Construction Manager be entitled to interest on retainage.

...

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

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

...

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed ~~percent~~ (—one hundred percent (100 %) of the standard rate paid at the place of the Project. Construction Manager-owned equipment shall be used when this equipment offers a rate no greater, and generally less, than the standard market rate paid at the place of the Project

...

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to ~~time~~—time only in the case of Owner approved Change Orders. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

...

In the event the final actual Cost of Work is less than as specified in the Guaranteed Maximum Price, Construction Manager shall be entitled to be paid thirty percent (30%) of the difference between the Guaranteed Maximum Price, less any contingency funds, the Construction Manager's Fee and the final actual Cost of Work, and Owner shall be entitled to seventy percent (70%). In the event there are unused contingency funds at the conclusion of the Contract from the Construction Manager contingency, Construction Manager shall be entitled to thirty percent (30%) of such amount and Owner shall be entitled to seventy percent (70%) of such amount. Any amounts due the Construction Manager under this paragraph shall be paid at Final Completion.

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

...

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

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

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 as modified and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 as modified shall have the meanings assigned to them in AIA Document A201–2007 as modified and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

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

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§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the ~~Owner~~Owner or as otherwise required by the Contract Documents. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7. All costs in Article 6 or other Costs of the Work shall be part of the Guaranteed Maximum Price and subject to all conditions of Section 2.2 and Section 5.2.

...

§ 6.2.5 ~~Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.~~
[Intentionally omitted.]

§ 6.2.6 PREVAILING WAGE

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. In accordance with NRS, Contractor agrees that the Project is subject to the prevailing wage requirements under Nevada Law. 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 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 and actual per diem wages paid to each employee used in connection with construction of the improvements. Such records shall be open to inspection and reproduction by the Owner during normal business hours. Contractor will send one (1) copy of each wage report to Owner's Project Manager. **This Section 6.2.6**

shall be deemed to incorporate any future modifications to the NRS or NAC with respect prevailing age requirements that are applicable to the Nevada System of Higher Education.

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§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone ~~calls, calls (or phone line fixed monthly service charges where this provide a fixed monthly cost for these services),~~ postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

...

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay. If Construction Manager's Guaranteed Maximum Price includes fees that Owner has paid or is required to pay directly, Construction Manager shall deduct fees from Guaranteed Maximum Price as a deductive change order.

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

~~§ 6.6.5 Royalties and license fees paid~~ Construction Manager shall be responsible to include in their Guaranteed Maximum Price any royalties and license fees required to be paid for the use of a particular design, process or product required by the Contract Documents. These royalties and license fees shall be verified and accounted for by the Construction Manager as a part of the Guaranteed Maximum Price proposal. If a royalty or license fee is not paid by the Construction Manager, for the use of a particular design, process or product required by the Contract Documents; Documents, the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements ~~made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work,~~ shall be the responsibility of the Construction Manager. The provisions of this §6.6.5 shall survive the completion of the Work or earlier termination of the Agreement.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work and outside of electronic equipment and software with which usual and customary duties are conducted, with the Owner's prior approval.

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

...

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

...

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 as modified or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

- .9 Any deductibles arising under any insurance required to be provided by Construction Manager pursuant to A201-2007, as modified.
- .10 Any uninsured losses which result from a failure of Construction Manager to maintain insurance required by the Construction Documents or the denial of coverage under such insurance or the failure of an insurer to otherwise pay claims under such insurance.

...

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager, and shall be applied to the Construction Manager's contingency and shall be subject to savings provisions as defined in Section 5.2 as applicable. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

...

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

The final Application of Payment shall include Construction Manager's application for payment of any amounts due to Construction Manager relating to sharing in savings in the Cost of Work and unused contingency as provided in this Agreement.

...

§ 7.1.3 Provided that ~~an~~ a complete and approved Application for Payment is received by the Owner and the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 25th day of the next month. If an Application for Payment is received by the Owner and/or the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect and Owner receives the complete and approved Application for Payment.

...

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

...

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document ~~A201-2007~~; A201-2007 as modified;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, ~~or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing, with the agreement of the Owner, stored at a bonded and licensed facility where the Owner can reasonably visually verify or receive other acceptable verification of the storage of materials. If verification is necessary or required by Owner 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, Construction Manager shall pay all costs associated with site visits/review outside of local site visits by Owner and/or Architect.~~
- .3 Add the Construction Manager's Fee, less retainage of five percent (5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager self-performs;

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

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. Subcontractor retainage shall not be less than 5% unless mutually agreed upon in writing by the Construction Manager and the Owner, with input from the Architect.

...

§7.1.11 Retainage will be reduced to the extent required by NRS Chapter 338.

...

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

...

- .3 a final Certificate for Payment has been issued by the ~~Architect~~; Architect; and
- .4 all notices of retention release and notices/certificates of completion and related processes are complete;

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final ~~Certificate for Payment, or as follows:~~ and approved Certificate for Payment and completion of all items as specified in this section, or as required by NRS Chapter 338, or as follows:

...

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

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of ~~A201-2007~~, A201-2007 as modified. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document ~~A201-2007~~, A201-2007 as modified.

...

Refer to AIA Document A201-2007 as modified

Refer to AIA Document A201-2007 as modified

...

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

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

...

☒ Litigation in a court of competent jurisdiction

...

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

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

...

In all instances termination shall include payments from the Owner to the Construction Manager only for work performed and reasonable overhead and profit on such work, and shall not include any payments for work not performed or any overhead, costs and profit on work not performed.

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

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

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

In all instances termination shall include payments from the Owner to the Construction Manager only for work performed and reasonable overhead and profit on such work, and shall not include any payments for work not performed or any overhead, costs and profit on work not performed.

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

§ 10.4 OWNER TERMINATION FOR CAUSE

Notwithstanding anything to the contrary contained in this Article 10, any termination by the Owner pursuant to Section 14.2 of A201-2007, as modified, shall be governed in all respects by Section 14.2 of A201-2007, as modified.

...

§ 11.1 Terms in this Agreement shall have the same meaning as those in ~~A201-2007~~ A201-2007 as modified.

...

Section 1.5 of ~~A201-2007~~ as modified shall apply to both the Preconstruction and Construction Phases.

...

Section 13.1 of ~~A201-2007~~ as modified shall apply to both the Preconstruction and Construction Phases.

...

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

§ 11.5 ~~Other provisions:~~ TERMINATION BY THE OWNER FOR CONVENIENCE OR NON-APPROPRIATION OF FUNDS

§ 11.5.1 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 performed, along with reasonable overhead and profit on the work performed, and additional costs incurred by reason of such termination.

§ 11.5.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Construction Manager shall:

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

§ 11.5.3 In the event of termination for the Owner's convenience prior to commencement of construction, the Construction Manager shall be entitled to receive payment for Pre-Construction services performed, and costs incurred by reason of such termination including reasonable overhead and profit on Work executed.

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

§ 11.6 COUNTERPARTS

This Agreement entered into as of the date last signed below by any authorized signatory and may be executed in any number of counterparts, all of which taken together shall constitute one and the same Agreement.

§ 11.7 BUSINESS DAY

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

§ 11.8 INVALIDITY

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

§ 11.9 AUTHORITY

Owner and Construction Manager each represent and warrant to each other that each respectively has the authority to execute and deliver this Agreement and perform their respective obligations thereunder and that the execution, delivery and performance of this Agreement have been duly authorized by all necessary action by each respective party.

§ 11.10 SMALL AND LOCAL BUSINESS CONCERNS REPORTING REQUIREMENTS

1. The Nevada System of Higher Education supports equal opportunity for minority owned, women-owned, and other small disadvantaged business concerns (MWDBE) to compete for contracts awarded by NSHE. NSHE also supports efforts to encourage local businesses to compete for NSHE contracts. In some situations, MWDBE and local business concerns may not have the depth or full capability to meet all the requirements of large contracts. Nevertheless, NSHE supports finding opportunities for such MWDBE and local business concerns to participate as subcontractors or Tier 2 suppliers in large contracts.
2. For purchase of goods or services that exceed \$1,000,000 the Contractor must provide, at a minimum, annual reports listing expenditures with MWDBE business concerns and local subcontractors. These reports pertain only to expenditures that are directly attributable to the NSHE prime contract. The report should contain the following information:
 - a. The name, address, phone number, and type of each local, women-owned, minority and/or disadvantaged subcontractor (Tier 2 supplier or local subcontractor). If a business concern meets more than one definition (e.g. local and women-owned, or minority and women owned), that should be identified;
 - b. A description of the goods or services purchased; and
 - c. The amount of expenditures with the subcontractor attributed to the prime contract for the 12 month period.
3. Definitions:

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

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

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

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

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

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

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- .1 AIA Document ~~A133–2009~~, A133–2009 as modified, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document ~~A201–2007~~, A201–2007 as modified, General Conditions of the Contract for Construction
- .3 ~~AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following: [RFP 679-BC]~~

...

- ~~.4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following: 4Exhibit C from Preconstruction Contract: Mechanics and Workers Rates~~

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UNLV Design, Construction and Sustainability Standards

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

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

OWNER *(Signature)*

(Printed name and title)

(1) CONTRACTOR

DATE APPROVED: _____

(Signature)

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)

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

DATE RECOMMENDED: _____

(Signature)

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

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

DATE RECOMMENDED: _____

(Signature)

Gerry J. Bomotti

Senior Vice President of Finance and Business

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

DATE RECOMMENDED:

(Signature)

Len Jessup, President

(5) APPROVED AS TO LEGAL FORM:

DATE:

BY:

(Signature)

Elda Luna Sidhu, General Counsel

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

DATE APPROVED:

(Signature)

John V. White

Chancellor, Nevada System of Higher Education

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:44:55 on 09/09/2016 under Order No. 3144220853_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)