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General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

UNLV School of Medicine (SOM) Medical Education Building (MEB) project
(RFP-679-BC)Contract # _____

THE OWNER:

(Name and address)

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

THE ARCHITECT:

(Name, address, FTIN and other information)

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

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ADDITIONS AND DELETIONS:

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

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

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. Owner and Contractor each represent and warrant to each other that each respectively has the authority to execute and deliver the Contract Documents and perform their respective obligations thereunder and that the execution delivery and performance of the Contract Documents have been duly authorized by all necessary action by each respective party.

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.1.9 EXCULPATION

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

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The AIA Document B101-2007 as modified, Standard Form of Agreement Between Owner and Architect, grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project. Such license shall extend to those parties retained by the Owner for such purposes, including other design professionals. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative authorized (the Owner's Project Manager) to whom all matters requiring the Owner's approval or authorization shall be submitted. This representative shall convey such matters to Owner's officers and/or governing bodies, as appropriate. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 [Intentionally omitted.]

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 [Intentionally omitted.]

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

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

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

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents, which may be in hard copy form or in data form appropriate for reproduction, for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, or is in default of its material obligations under the Contract Documents then in addition to all other rights and remedies available to owner under the Contract Documents, at law or equity, Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, then, in addition to all other rights and remedies available to Owner under the Contract Documents, at law or equity, Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the

Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner immediately upon Owner's written demand.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

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

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

§ 3.1.4 The Contractor or any affiliated person or entity which performs a portion of the Work shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement. The Owner and its designated representatives shall be afforded access to, and shall be permitted to audit and copy, the Contractor's project files (including but not limited to records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to this Agreement), and the Contractor shall preserve these for a period of six years after final payment, or for such longer period as may be required by law.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report, in writing, to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

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

and regulations, and lawful orders of public authorities unless for any reason Contractor was aware, or through the exercise of reasonable diligence would have been aware, of such errors, inconsistencies or omissions.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

§ 3.3.4 The Contractor shall provide written reports to the Owner on a weekly basis on the progress of the work in a format agreed to by the Owner and the Contractor.

§ 3.3.5 The Contractor's superintendent and project manager shall meet with Owner's representative and other personnel of Owner on no less than a weekly basis and at such other times as reasonably required by Owner, unless otherwise approved in writing by Owner.

§ 3.4 LABOR AND MATERIALS

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

All work necessary to be performed after regular working hours, on weekends or legal holidays, shall be performed without additional cost or expense to the Owner, including but not limited to work performed during this period to limit or avoid disruptions to the Owner.

Unless otherwise specifically required, all materials and equipment incorporated in the work shall be new, free of faults and defects, and shall conform to the Contract Documents. If required, the Contractor shall furnish satisfactory evidence as to the type and quality of materials and equipment.

All materials and equipment used in the work shall be subject to inspection and testing in accordance with accepted standards to ensure conformity with the requirements of the Contract Documents, laws, ordinances, rules and regulations, or orders of any public authority having jurisdiction. Where specific certificates concerning materials and/or equipment are required, securing payment for the prompt delivery of such certificates shall be the responsibility of the Contractor. Such certificates shall be executed by qualified firms acceptable to the Architect and the Owner, shall include all information required by the Specifications, and shall clearly refer specifically to materials to be used in the Project.

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

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall act promptly to remove any such employees or persons causing disruption or disorder.

§ 3.4.4

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 wage requirements that are applicable to the Nevada System of Higher Education.**

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

§ 3.5 WARRANTY

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

The warranty provided in this Section 3.5 (i) shall be in addition to and not in limitation of any other warranty or remedy required or provided by law or by the Contract Documents and (ii) notwithstanding anything to the contrary contained in the Contract Documents, this warranty shall commence on the date of Substantial Completion for the entire facility, or, where Substantial Completion is issued in phases (i.e. partial Substantial Completion based on partial occupancy of the building) the warranty shall commence based on the occupancy of the phases, for the facility items subject to the partial occupancy. Contractor shall promptly repair and replace, at Contractor's sole

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cost and expense, any materials, equipment or Work covered by this warranty which is in violation of this warranty. All warranty work shall be coordinated with Owner in order to limit the disruption of operation of the completed Project. All such warranty work shall be completed in compliance with the terms and conditions of the Contract Documents.

§ 3.6 TAXES

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

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. If Contractor's bid includes fees that Owner has paid or is required to pay directly, Contractor shall deduct fees from Contract sum as a deductive change order.

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

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, notwithstanding that such Work is part of the Contract Documents, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction, including any costs or penalties paid by Owner as a result thereof.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site which the contractor was not aware at the time the Contract Documents were entered into by Contractor and that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

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

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 PROJECT EXECUTIVE, SUPERINTENDENT, PROJECT MANAGER AND SAFETY DIRECTOR.

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Agreement, shall furnish in writing to the Owner through the Architect the names and qualifications of the proposed project executive, safety director, superintendent and project manager. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent, project executive, safety director and/or project manager, or (2) that the Owner or the Architect requires additional time to review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor 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 Contractor 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 Contractor 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, Contractor will pay to Owner liquidated damages. Owner also reserves the right to withhold reasonable payment from the Contractor in the instance of a change in these Contractor's staff without Owner consent. In the event of an unforeseen instance, generally termination, resignation, death or serious illness precluding the ability to carry out duties, requiring a change in Contractor's representatives, the Contractor shall contact the Owner immediately to determine any adjustments in the Contractor's representatives.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, within 14 days of being issued a Purchase Order and Notice to Proceed by the Owner, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall show all elements and sub-elements of the work in a manner and format reasonable to guide, assess and promote the timely and quality completion of work and shall be in a format and with content acceptable to the Owner and the Architect. The schedule must be a CPM method schedule with no durations listed over 10 days. Work with durations over 10 days must be broken down into specific work activities less than 10 days in duration.

§ 3.10.2 The Contractor shall prepare a submittal schedule, within 14 days of issued a Purchase Order and Notice to Proceed by the Owner, and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the

Owner and Architect reasonable time to review submittals, to not be less than 14 days per submittal unless otherwise agreed to by the Owner and the Architect. If the Contractor fails to submit a submittal schedule or submits an incomplete or otherwise incorrect submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum, extension of Contract Time or waiver of Liquidated Damages based on the time required for review of submittals.

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

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

Documents. The accuracy of all such information is the responsibility of the Contractor. In approving Shop Drawings, Product Data, Samples, and similar submittals, the Owner and Architect shall be entitled to rely upon the Contractor's representation that such information is accurate and in compliance with the Contract Documents.

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

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

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, approval by the Owner and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall notify the Owner and Architect of all activities that will impact Owner's use, access and operations of any facilities in operation at the site of or related to any part of the work. This shall include but not be limited to items such as disruptions to utilities/related services, vehicle, pedestrian and service access, noise, fumes and other items. Notification shall be provided to the Owner and Architect not less than 7 days in advance of any disruptions.

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

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

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

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located and shall provide Owner and/or Architect with such access to Contractor's employees, safety equipment or other measures to assure their safety.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect. The provisions of this §3.17 shall survive the completion of the Work or earlier termination of the Agreement.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's and Owner's respective consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees and other costs of litigation, arising directly or indirectly out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18. Contractor shall provide Owner with written notification as to any circumstances to which this § 3.18.1 may rise to an Owner indemnification promptly after Contractor becomes aware of such circumstances. The provisions of this § 3.18.1 shall survive the completion of the Work or earlier termination of the Agreement.

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

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

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

§ 4.2.2 The Architect with appropriate subconsultants relative to the nature of the work, will visit the site at intervals appropriate to the stage of construction, weekly minimum, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications are determined by the Owner to be the most effective means of communication between the Owner and the Contractor, the Owner and Contractor shall endeavor to keep the Architect informed about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner or as authorized by the Owner.

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

§ 4.2.6 The Architect has authority to recommend rejection of Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness not to exceed 14 days, to allow sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4 with notification to the Owner. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. All changes to the Work or schedule require the Owner's prior consent.

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness, not to exceed 14 days.

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract

Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

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

§5.2.1.1 Pursuant to NRS 338.010(17)(b), the Project shall constitute a "public work." Pursuant to NRS 338.141, for each bid submitted in connection with a public work the estimated cost of which exceeds \$100,000.00, Contractor shall provide the following:

§5.2.1.1.1 If Owner provides a list of the labor or portions of the public work which are estimated by Owner to exceed 3 percent of the estimated cost of the public work, the name of each first tier subcontractor who will provide such labor or portion of the work on the public work which is estimated to exceed 3 percent of the estimated cost of the public work; or

§5.2.1.1.2 If Owner does not provide a list of the labor or portions of the public work which are estimated by Owner to exceed 3 percent of the estimated cost of the public work, the name of each first tier subcontractor who will provide labor or a portion of the work on the public work to the prime contractor for which the first tier subcontractor will be paid an amount exceeding 5 percent of the prime contractor's total bid. If the bid is submitted pursuant to this paragraph, within 2 hours after the completion of the opening of the bids, the contractors who submitted the three lowest bids must submit a list containing (1) the name of each first tier subcontractor who will provide labor or a portion of the work on the public work to the prime contractor for which the first tier subcontractor will be paid an amount exceeding \$250,000.00 and (2) if any one of the contractors who submitted one of the three lowest bids will employ a first tier subcontractor who will provide labor or a portion of the work on the public work to the prime contractor for which the first tier subcontractor will not be paid an amount exceeding \$250,000, the name of each first tier subcontractor who will provide labor or a portion of the work on the public work to the prime contractor for which the first tier subcontractor will be paid 1 percent of the prime contractor's total bid or \$50,000, whichever is greater, and the number of the license issued to the first tier subcontractor pursuant to chapter 624 of NRS.

§5.2.1.2 The lists required by subsections 5.2.1.1.1 and 5.2.1.1.2 must include a description of the labor or portion of the work which each "first tier subcontractor" (as defined below) named in the list will provide to the Contractor. The Contractor shall include its name on the lists required subsections 5.2.1.1.1 and 5.2.1.1.2. If Contractor will perform any work which is more than 1 percent of the prime contractor's total bid and which is not being performed by a subcontractor listed pursuant to subsections 5.2.1.1.1 and 5.2.1.1.2, the prime contractor shall also include on the list:

- (a) A description of the labor or portion of the work that the prime contractor will perform; or
- (b) A statement that the prime contractor will perform all work other than that being performed by a subcontractor listed pursuant to paragraph (a) or (b) of subsection 1.

§5.2.1.3 Except as otherwise provided in this subsection, if the Contractor (i) fails to submit the lists required by subsections 5.2.1.1.1 and 5.2.1.1.2 within the required time; or (ii) submits a list that includes the name of a subcontractor who, at the time of the submission of the list, is on disqualified status with the State Public Works Board pursuant to NRS 338.1376, the Contractor's bid shall be deemed not responsive. The Contractor's bid shall not be deemed not responsive on the grounds that the Contractor submitted a list that includes the name of a subcontractor who, at the time of the submission of the list, is on disqualified status with the State Public Works Board pursuant to NRS 338.1376 if the Contractor, before the award of the contract, provides an acceptable replacement subcontractor in the manner set forth in subsection 1 or 2 of NRS 338.13895.

§5.2.1.4 The Contractor whose bid is accepted shall not substitute a subcontractor for any subcontractor who is named in the bid, unless: (i) Owner objects to the subcontractor, requests in writing a change in the subcontractor and pays any increase in costs resulting from the change; or (ii) the substitution is approved by Owner.

§5.2.1.5 If the Contractor indicates pursuant to subsections 5.2.1.1.1 and 5.2.1.1.2 that it will perform a portion of work on the public work and thereafter requests to substitute a subcontractor to perform such work, the Contractor shall pay the amounts required by NRS 338.141.

§5.2.1.6 As used in this subsection, (i) "first tier subcontractor" means a subcontractor who contracts directly with the Contractor to provide labor, materials or services for the Project; and (ii) "general terms" means the terms and conditions of a contract that set the basic requirements for a public work and apply without regard to the particular trade or specialty of a subcontractor, but does not include any provision that controls or relates to the specific portion of the public work that will be completed by a subcontractor, including, without limitation, the materials to be used by the subcontractor or other details of the work to be performed by the subcontractor.

§5.2.1.7 In addition to all other reporting requirements contained in this Agreement, and pursuant to NRS 338.013, Contractor shall report to Owner and the Nevada Labor Commissioner the name and address of each subcontractor whom Contractor engages for work on the project within 10 days after the subcontractor commences work on the contract. Such notice shall reference any identifying number for any public work.

§5.2.1.8 If the Contractor is selected as a construction manager at risk (CMAR), Contractor shall comply with the provisions of NRS Chapter 338.1685-338.16995.

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

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if (i) the Owner or Architect makes reasonable objection to such substitution or (ii) the Contractor has not complied with the applicable requirements of the NRS regarding substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract relating only to the period after the effective date of such assignment.

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

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

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

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.2 CHANGE ORDERS

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

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;

- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

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

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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

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

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

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

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority, with notification to the Owner, to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time in compliance with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect with prior notification to the Owner and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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

§ 8.2 PROGRESS AND COMPLETION

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

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

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect with no fault on the part of Contractor, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by "Unavoidable Delay", or by delay authorized by the Owner pending mediation and any binding dispute resolution; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine and only if such delay will prevent Contractor from achieving Substantial Completion by the required date for Substantial Completion.

"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 of 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.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

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

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

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

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

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

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

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

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

Delays resulting from correction of work rejected as defective or as failing to conform to the Contract Documents.

§ 8.3.5 No additional compensation will be allowed to the Contractor for delays to an early completion schedule.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Schedule of values, in addition to Cost of the Work and fee items, shall include line items for project photographs and as-built drawings.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Unless otherwise expressly provided in an Application for Payment, each Application for Payment shall constitute Contractor's certification to Owner that Contractor is unaware of any facts or circumstances giving rise to Claims or extensions of Contract Time by Contractor as of the date of such Application of Payment.

Contractor shall provide Applications for Payment, releases and other related documents in a format acceptable to the Owner.

§ 9.3.1.1 [Intentionally omitted.]

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site in a licensed and bonded facility at a location agreed upon in writing. Payment for materials and equipment stored on (or off the site in a licensed and bonded facility) shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. If verification is necessary or required by Owner and/or Architect by a site visit outside of a local site visit for materials and equipment suitably stored off the site in a licensed and bonded facility and to consider payment for these items, Contractor shall pay all costs associated with site visits/review outside of local site visits by Owner and/or Architect.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Unless otherwise stated in the Agreement, all sums payable by Owner shall be subject to retainage of not less than five percent (5.0%).

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION AND PAYMENT

§ 9.5.1 The issuance of a Certificate of Payment will constitute a recommendation only by the Architect and not a legal, binding obligation on Owner. The Architect or the Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's or Owner's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole

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or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of but not limited to:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents or unsatisfactory execution of the Work;
- .8 failure of Contractor to comply with applicable Codes, Laws or Regulations;
- .9 failure to update as-built drawings or provide construction photographs with the Application for Payment. If these documents/items are not provided for actual work performed for a period of work covered by an Application for Payment and cannot be accurately provided due to passage of time, Owner may deduct a reasonable amount from the Agreement sum to reflect work not performed that cannot be recovered due to progress of work;
- .10 failure to update the CPM schedule concurrent with the request for payment; or
- .11 Any other reasonable basis to withhold certification.

Except as required by law, Owner shall have no liability whatsoever for interest or other charges resulting from withholding of payment for any reason stated in Article 9.

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

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

§ 9.6 PROGRESS PAYMENTS

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

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

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

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

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

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

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's accurate, correct and complete Application for Payment, or if the Owner does not pay the Contractor within thirty days after the date established in the Contract Documents the amount certified on a complete and approved Application for Payment certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents

§ 9.8 SUBSTANTIAL COMPLETION

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

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

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

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete and receives all inspections and regulatory approvals to permit occupancy, the

Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete and receives all regulatory approvals to permit occupancy, the Architect will prepare a Certificate of Substantial Completion when approved by Owner as set forth below that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion is subject to Owner's approval and approval shall not be unreasonably withheld or delayed.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

notices of retention release and notices/certificates of completion and related processes. Final Completion and Payment also cannot be issued unless:

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

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

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

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

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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

§ 9.10.6 When the work and provisions of the Contract Documents are fully and satisfactorily completed, the Owner may record a Notice of Completion, issue all Notifications/Advertisements of Release of Retention and response periods subsequent to this notice/advertisement, and will pay to the Contractor a final payment consisting of the remaining unpaid balance of the contract sum due the Contractor upon completion of these items. The acceptance of the final payment by the Contractor, subject to valid legal claims as otherwise specified herein, shall continue the application of the terms and conditions of the Guarantees and Warranties.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. Explosion, collapse and underground insurance coverage shall be included in insurance provided by the Contractor per the insurance provisions of this Agreement.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect. This person shall coordinate all safety planning and activities with the Safety Director specified by the Contractor per Section 3.9.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 5 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents and all applicable laws, rules and regulations regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos

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or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Contractor shall also install only those materials that are asbestos free. A certification statement shall incorporate into the submittal process and shall accompany each submittal. The certification statement must be signed by the Contractor to ensure that the review process has been accomplished. Any materials brought to the job that have not been certified must be removed until certified. This certification is not required for steel, aluminum, brass, masonry, concrete and glass unless materials have been treated with any coatings or finishes.

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

§ 10.3.3 [Intentionally omitted.]

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. Through the submittal and shop drawing process and as a function of the Contractor's means and methods to accomplish the Work, the Contractor shall be responsible to verify any Contract Document requirements of any such materials or substances to accomplish the Work, and to recommend any alternate materials or substances to accomplish the Work that would not require the use of such hazardous materials or substances. Contractor shall be responsible to be knowledgeable about the proper handling and use requirements/practices for any such materials and substances and shall administer the use and handling of such substances accordingly. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Contractor shall provide Owner with notice of all hazardous substances as regulated by the Comprehensive Environmental and Liability Act as amended and/or regulated under any other applicable law which Contractor brings on to the site.

§ 10.3.6 [Intentionally omitted.]

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall take reasonable measures to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7. Contractor shall notify the Owner and UNLV Police as soon as an emergency affecting safety of persons or property is discovered.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 Contractor as primary insured shall, at Contractor's sole expense procure, maintain and keep in force for the duration of the Agreement the following insurance conforming to the minimum requirements specified below. Unless specifically noted herein or otherwise agreed to by the Owner the required insurance shall be submitted to the Owner and accepted prior to the issuance of a Purchase Order and Notice to Proceed, and shall be in effect by

the Contractor on or prior to the issuance of a Purchase Order and Notice to Proceed. Such insurances must remain in force and effect until the later of:

(Paragraphs deleted)

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

§ 11.1.1.1 COMMERCIAL GENERAL LIABILITY AND UMBRELLA/EXCESS INSURANCE:

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

.2 Umbrella/excess liability insurance in the amounts as follows:
\$5,000,000 Each Occurrence/Aggregate and must be project specific/dedicated limit for construction contracts between \$1,000,001 and \$5,000,000 or:
\$10,000,000 Each Occurrence/Aggregate and must be project specific/dedicated limit for construction contracts over \$5,000,000.
May be used to achieve the above minimum liability limits.
Shall be endorsed to state it is as broad as primary policies.

§ 11.1.1.2 [Intentionally Deleted]

§ 11.1.1.3 AUTOMOBILE LIABILITY INSURANCE:

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

§ 11.1.1.4 WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

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

§ 11.1.1.5 POLLUTION LIABILITY:

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

§ 11.1.2 [Intentionally Deleted]

§ 11.1.2.1 Contractor Shall:

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

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

§ 11.1.3 Each insurance policy shall be:

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

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

§ 11.1.5 Evidence of Insurance: Prior to the start of any work the contractor must provide the following documents to the Owner:

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

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

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

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

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

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

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE/BUILDERS RISK

§ 11.3.1 Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

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

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

§ 11.3.1.2 [Intentionally omitted.]

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

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

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

§ 11.3.2 BOILER AND MACHINERY INSURANCE or INSTALLATION FLOATER

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

§ 11.3.3 LOSS OF USE INSURANCE

The Contractor shall purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

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

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§ 11.3.5 [Intentionally omitted.]

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

§ 11.3.7 WAIVERS OF SUBROGATION

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

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 [Intentionally Omitted]

§ 11.3.10 [Intentionally Omitted]

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

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

- A. Performance Bond in the amount of 100% of the total Agreement Sum.
- B. Payment Bond (Labor & Material) in the amount of 100% of the total Agreement Sum.

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

If at any time the Owner, for justifiable cause, shall be or become dissatisfied with any Surety as providers of the required Performance Bond or the Payment Bond, the Contractor shall within five calendar days after being notified by the Owner, substitute an acceptable bond in the form and sum and signed by such other Surety as may be satisfactory to the Owner. The premiums on such Bonds shall be paid by the Contractor. No further progress payments to the Contractor shall be deemed due or payable until acceptable bonds are furnished. The new bond amount shall be for the remaining balance of the Agreement. In the event that the Contractor is unable to obtain a new bond, the Owner may obtain the bond and charge the Contractor for the cost required to obtain said bond. Owner shall have the right to demand reimbursement for any cost of automatically deduct the cost of the bond from the cost of the work without a Change Order. The new bond amount shall be for the remaining balance of the contract. If the Performance and Payment Bond is not furnished within the time specified in the contract documents after the Agreement is awarded, any bonds may be forfeited and the Contract may be awarded to an alternate proposal.

The Owner will require the Contractor to increase the Performance and Payment Bond to accommodate Change Orders.

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

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect with the Owner's consent or by the Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time or Contract Sum.

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect with Owner's consent, or rejected by the Owner, or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

The Contractor shall promptly correct all work rejected as defective or as failing to conform to the Contract Documents, whether observed before the Notice of Completion or discovered after the Notice of Completion, and whether or not fabricated, installed, or completed. The Contractor shall bear all costs of correcting such rejected work, including the cost for additional services by the Owner.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, the Contractor shall, at Contractor's expense, correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. This provision or any other provision in Section 12.2.2 does not relieve the Contractor in any way of conforming to the requirements of the Contract Documents or correcting items not compliant with the Contract Documents per applicable laws, statutes or any regulations, whether they are observable, concealed or in any other condition or status.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

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

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the laws of the State of Nevada without regard to conflict of law principles that would result in the application of any law other than the law of the State of Nevada. 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 and/or NAC Chapter 338, it is hereby deemed modified to the extent necessary to comply with the provisions of NRS Chapter 338 and/or NAC Chapter 338. To the extent a provision is required to be inserted into this Contract by NRS Chapter 338 and/or NAC Chapter 338, it is deemed inserted.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole, or in part, without written consent of the other. If either party attempts to make such an assignment without such consent, such assignment shall not be effective and shall constitute a default under the Contract. Any party assigning its interest pursuant to properly granted consent of the other party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 WRITTEN NOTICE

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

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

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

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

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

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

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

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents and after 30 days after Owner's receipt of a complete and approved Certificate for Payment.. Interest on any amounts due from Owner to Contractor, or from Contractor to

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

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7. Any applicable statutes of limitation or repose, and any time limits imposed by this Section 13.7, shall be tolled from the time notice of any claim is given, until 30 days after mediation is concluded or waived in writing.

§ 13.8 COUNTERPARTS

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

§ 13.9 BUSINESS DAY

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

§ 13.10 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 illegible, invalid or otherwise unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision (or part thereof) of the Contract Documents.

§ 13.11 INDEPENDENT CONTRACTOR

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents.
- .4 [Intentionally omitted.]

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

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

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

§ 14.2.2 When any of the above reasons exist, the Owner, upon (i) certification by the Initial Decision Maker that sufficient cause exists to justify such action, or (ii) Owner's reasonable determination that such reasons exist, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages, costs or expenses of Owner, including, without limitation, costs of Owner's consultants and attorneys, incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

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

§ 14.4.1 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.

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination including reasonable overhead and profit on Work executed.

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

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

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

(Paragraphs deleted)

[Intentionally Omitted]

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

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

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

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

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

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

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

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

§ 15.4 [Intentionally Omitted]

§ 15.4.1 [Intentionally Omitted]

§ 15.4.1.1 [Intentionally Omitted]

§ 15.4.2 [Intentionally Omitted]

§ 15.4.3 [Intentionally Omitted]

§ 15.4.4 [Intentionally Omitted]

§ 15.4.4.1 [Intentionally Omitted]

§ 15.4.4.2 [Intentionally Omitted]

§ 15.4.4.3 [Intentionally Omitted]

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UNLV School of Medicine (SOM) Medical Education Building (MEB) project (RFP-679-BC)Contract # _____

...

(Name, legal status)(Name and address)

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

...

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

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

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

...

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. Owner and Contractor each represent and warrant to each other that each respectively has the authority to execute and deliver the Contract Documents and perform their respective obligations thereunder and that the execution delivery and performance of the Contract Documents have been duly authorized by all necessary action by each respective party.

...

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

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§ 1.1.9 EXCULPATION

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

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In general, the Specifications may describe types and quantities of materials, equipment, and other items of the Work and methods of installation which cannot be easily shown on the Drawings. It is not intended that the Specifications will mention every item of Work that can be adequately shown on the Drawings nor is it intended that the Drawings will show all items of Work adequately described or required by the Specifications, even

if it is the case that such Work could have been shown thereon. The Contract Documents are complimentary, and what is required by, or reasonably inferable, by one shall be as binding as if required by all. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities: 1) the Agreement, 2) the General Conditions, 3) the Specifications and 4) the Drawings.

...

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The AIA Document B101-2007 as modified, Standard Form of Agreement Between Owner and Architect, grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project. Such license shall extend to those parties retained by the Owner for such purposes, including other design professionals. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

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§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative ~~who shall have express authority to bind the Owner with respect to~~ authorized (the Owner's Project Manager) to whom all matters requiring the Owner's approval or authorization shall be submitted. This representative shall convey such matters to Owner's officers and/or governing bodies, as appropriate. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

...

§ 2.2.1 ~~Prior to commencement of the Work, the Contractor 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 Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor 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 Contractor.~~ [Intentionally omitted.]

...

§ 2.2.5 ~~Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents.~~ Documents, which may be in hard copy form or in data form appropriate for reproduction, for purposes of making reproductions pursuant to Section 1.5.2.

...

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, or is in default of its material obligations under the Contract Documents then in addition to all other rights and remedies available to owner under the Contract Documents, at law or equity, Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the

right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, then, in addition to all other rights and remedies available to Owner under the Contract Documents, at law or equity, Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the ~~Owner.~~Owner immediately upon Owner's written demand.

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

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

...

§ 3.1.4 The Contractor or any affiliated person or entity which performs a portion of the Work shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement. The Owner and its designated representatives shall be afforded access to, and shall be permitted to audit and copy, the Contractor's project files (including but not limited to records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to this Agreement), and the Contractor shall preserve these for a period of six years after final payment, or for such longer period as may be required by law.

...

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly ~~report~~ report, in writing, to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

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

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§ 3.3.4 The Contractor shall provide written reports to the Owner on a weekly basis on the progress of the work in a format agreed to by the Owner and the Contractor.

§ 3.3.5 The Contractor's superintendent and project manager shall meet with Owner's representative and other personnel of Owner on no less than a weekly basis and at such other times as reasonably required by Owner, unless otherwise approved in writing by Owner.

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

All work necessary to be performed after regular working hours, on weekends or legal holidays, shall be performed without additional cost or expense to the Owner, including but not limited to work performed during this period to limit or avoid disruptions to the Owner.

Unless otherwise specifically required, all materials and equipment incorporated in the work shall be new, free of faults and defects, and shall conform to the Contract Documents. If required, the Contractor shall furnish satisfactory evidence as to the type and quality of materials and equipment.

All materials and equipment used in the work shall be subject to inspection and testing in accordance with accepted standards to ensure conformity with the requirements of the Contract Documents, laws, ordinances, rules and regulations, or orders of any public authority having jurisdiction. Where specific certificates concerning materials and/or equipment are required, securing payment for the prompt delivery of such certificates shall be the responsibility of the Contractor. Such certificates shall be executed by qualified firms acceptable to the Architect and the Owner, shall include all information required by the Specifications, and shall clearly refer specifically to materials to be used in the Project.

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§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall act promptly to remove any such employees or persons causing disruption or disorder.

§ 3.4.4

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 wage requirements that are applicable to the Nevada System of Higher Education.**

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

...

The warranty provided in this Section 3.5 (i) shall be in addition to and not in limitation of any other warranty or remedy required or provided by law or by the Contract Documents and (ii) notwithstanding anything to the contrary contained in the Contract Documents, this warranty shall commence on the date of Substantial Completion for the entire facility, or, where Substantial Completion is issued in phases (i.e. partial Substantial Completion based on partial occupancy of the building) the warranty shall commence based on the occupancy of the phases, for the facility items subject to the partial occupancy. Contractor shall promptly repair and replace, at Contractor's sole cost and expense, any materials, equipment or Work covered by this warranty which is in violation of this warranty. All warranty work shall be coordinated with Owner in order to limit the disruption of operation of the completed Project. All such warranty work shall be completed in compliance with the terms and conditions of the Contract Documents.

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§ 3.7

PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. If Contractor's bid includes fees that Owner has paid or is required to pay directly, Contractor shall deduct fees from Contract sum as a deductive change order.

...

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, notwithstanding that such Work is part of the Contract Documents, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction, including any costs or penalties paid by Owner as a result thereof..

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site which the contractor was not aware at the time the Contract Documents were entered into by Contractor and that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

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

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.1 ~~Allowances~~ allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade ~~discounts;~~ discounts, as well as fees or any other costs for which allowances are established;

...

.3 ~~Whenever~~ whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

...

§ 3.9 ~~SUPERINTENDENT~~ PROJECT EXECUTIVE, SUPERINTENDENT, PROJECT MANAGER AND SAFETY DIRECTOR.

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

§ 3.9.2 The Contractor, as soon as practicable after award of the ~~Contract Agreement,~~ shall furnish in writing to the Owner through the Architect the ~~name and qualifications of a proposed superintendent.~~ names and qualifications of the proposed project executive, safety director, superintendent and project manager. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed ~~superintendent or~~ superintendent or (2) that the 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.

§ 3.9.3 The Contractor shall not employ a ~~proposed superintendent~~ project executive, safety director, superintendent or project manager to whom the Owner or Architect has made reasonable and timely objection. The Contractor 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 Contractor 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, Contractor will pay to Owner liquidated damages. Owner also reserves the right to withhold reasonable payment from the Contractor in the instance of a change in these Contractor's staff without Owner consent. In the event of an unforeseen instance, generally termination, resignation, death or serious illness precluding the ability to carry out duties, requiring a change in Contractor's representatives, the Contractor shall contact the Owner immediately to determine any adjustments in the Contractor's representatives.

...

§ 3.10.1 The Contractor, ~~promptly after being awarded the Contract,~~ within 14 days of being issued a Purchase Order and Notice to Proceed by the Owner, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall show all elements and sub-elements of the work in a manner and format reasonable to guide, assess and promote the timely and quality completion of work and shall be in a format and with content acceptable to the Owner and the Architect. The schedule must be a CPM method schedule with no durations listed over 10 days. Work with durations over 10 days must be broken down into specific work activities less than 10 days in duration.

§ 3.10.2 The Contractor shall prepare a submittal schedule, ~~promptly after being awarded the Contract within 14~~ days of issued a Purchase Order and Notice to Proceed by the Owner, and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the ~~Architect reasonable time to review submittals.~~ Owner and Architect reasonable time to review submittals, to not be less than 14 days per submittal unless otherwise agreed to by the Owner and the Architect. If the Contractor fails to submit a submittal schedule or submits an incomplete or otherwise incorrect submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time Sum, extension of Contract Time or waiver of Liquidated Damages based on the time required for review of submittals.

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

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§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified

materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The accuracy of all such information is the responsibility of the Contractor. In approving Shop Drawings, Product Data, Samples, and similar submittals, the Owner and Architect shall be entitled to rely upon the Contractor's representation that such information is accurate and in compliance with the Contract Documents.

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

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public ~~authorities~~ approval by the Owner and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall notify the Owner and Architect of all activities that will impact Owner's use, access and operations of any facilities in operation at the site of or related to any part of the work. This shall include but not be limited to items such as disruptions to utilities/related services, vehicle, pedestrian and service access, noise, fumes and other items. Notification shall be provided to the Owner and Architect not less than 7 days in advance of any disruptions.

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the ~~Contractor~~ Contractor immediately upon Owner's written demand.

...

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever ~~located~~ located and shall provide Owner and/or Architect with such access to Contractor's employees, safety equipment or other measures to assure their safety.

...

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect. The provisions of this §3.17 shall survive the completion of the Work or earlier termination of the Agreement.

...

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's and Owner's respective consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' ~~fees, arising~~ fees and other costs of litigation, arising directly or indirectly out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or

omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity ~~that which~~ would otherwise exist as to a party or person described in this Section 3.18. Contractor shall provide Owner with written notification as to any circumstances to which this § 3.18.1 may rise to an Owner indemnification promptly after Contractor becomes aware of such circumstances. The provisions of this § 3.18.1 shall survive the completion of the Work of earlier termination of the Agreement.

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

§ 4.2.2 The Architect with appropriate subconsultants relative to the nature of the work, will visit the site at intervals appropriate to the stage of construction, weekly minimum, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

...

Except as otherwise provided in the Contract Documents or when direct communications ~~have been specially authorized,~~ are determined by the Owner to be the most effective means of communication between the Owner and the Contractor, the Owner and Contractor shall endeavor to ~~communicate with each other through the Architect~~ keep the Architect informed about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner or as authorized by the Owner.

...

§ 4.2.6 The Architect has authority to ~~reject~~ recommend rejection of Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness ~~while allowing not to exceed 14 days,~~ to allow sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of

any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section ~~7.4-7.4~~ with notification to the Owner. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. All changes to the Work or schedule require the Owner's prior consent.

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§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable ~~promptness~~ promptness, not to exceed 14 days.

...

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

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§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the ~~14 day~~ 14 day period shall constitute notice of no reasonable objection.

§5.2.1.1 Pursuant to NRS 338.010(17)(b), the Project shall constitute a "public work." Pursuant to NRS 338.141, for each bid submitted in connection with a public work the estimated cost of which exceeds \$100,000.00, Contractor shall provide the following:

§5.2.1.1.1 If Owner provides a list of the labor or portions of the public work which are estimated by Owner to exceed 3 percent of the estimated cost of the public work, the name of each first tier subcontractor who will provide such labor or portion of the work on the public work which is estimated to exceed 3 percent of the estimated cost of the public work; or

§5.2.1.1.2 If Owner does not provide a list of the labor or portions of the public work which are estimated by Owner to exceed 3 percent of the estimated cost of the public work, the name of each first tier subcontractor who will provide labor or a portion of the work on the public work to the prime contractor for which the first tier subcontractor will be paid an amount exceeding 5 percent of the prime contractor's total bid. If the bid is submitted pursuant to this paragraph, within 2 hours after the completion of the opening of the bids, the contractors who submitted the three lowest bids must submit a list containing (1) the name of each first tier subcontractor who will provide labor or a portion of the work on the public work to the prime contractor for which the first tier subcontractor will be paid an amount exceeding \$250,000.00 and (2) if any one of the contractors who submitted one of the three lowest bids will employ a first tier subcontractor who will provide labor or a portion of the work on the public work to the prime contractor for which the first tier subcontractor will not be paid an amount exceeding \$250,000, the name of each first tier subcontractor who will provide labor or a portion of the work on the public work to the prime contractor for which the first tier subcontractor will be paid 1 percent of the prime contractor's total bid or \$50,000, whichever is greater, and the number of the license issued to the first tier subcontractor pursuant to chapter 624 of NRS.

§5.2.1.2 The lists required by subsections 5.2.1.1.1 and 5.2.1.1.2 must include a description of the labor or portion of the work which each "first tier subcontractor" (as defined below) named in the list will provide to the Contractor. The Contractor shall include its name on the lists required subsections 5.2.1.1.1 and 5.2.1.1.2. If Contractor will

perform any work which is more than 1 percent of the prime contractor's total bid and which is not being performed by a subcontractor listed pursuant to subsections 5.2.1.1.1 and 5.2.1.1.2, the prime contractor shall also include on the list:

(a) A description of the labor or portion of the work that the prime contractor will perform; or

(b) A statement that the prime contractor will perform all work other than that being performed by a subcontractor listed pursuant to paragraph (a) or (b) of subsection 1.

§5.2.1.3 Except as otherwise provided in this subsection, if the Contractor (i) fails to submit the lists required by subsections 5.2.1.1.1 and 5.2.1.1.2 within the required time; or (ii) submits a list that includes the name of a subcontractor who, at the time of the submission of the list, is on disqualified status with the State Public Works Board pursuant to NRS 338.1376, the Contractor's bid shall be deemed not responsive. The Contractor's bid shall not be deemed not responsive on the grounds that the Contractor submitted a list that includes the name of a subcontractor who, at the time of the submission of the list, is on disqualified status with the State Public Works Board pursuant to NRS 338.1376 if the Contractor, before the award of the contract, provides an acceptable replacement subcontractor in the manner set forth in subsection 1 or 2 of NRS 338.13895.

§5.2.1.4 The Contractor whose bid is accepted shall not substitute a subcontractor for any subcontractor who is named in the bid, unless: (i) Owner objects to the subcontractor, requests in writing a change in the subcontractor and pays any increase in costs resulting from the change; or (ii) the substitution is approved by Owner.

§5.2.1.5 If the Contractor indicates pursuant to subsections 5.2.1.1.1 and 5.2.1.1.2 that it will perform a portion of work on the public work and thereafter requests to substitute a subcontractor to perform such work, the Contractor shall pay the amounts required by NRS 338.141.

§5.2.1.6 As used in this subsection, (i) "first tier subcontractor" means a subcontractor who contracts directly with the Contractor to provide labor, materials or services for the Project; and (ii) "general terms" means the terms and conditions of a contract that set the basic requirements for a public work and apply without regard to the particular trade or specialty of a subcontractor, but does not include any provision that controls or relates to the specific portion of the public work that will be completed by a subcontractor, including, without limitation, the materials to be used by the subcontractor or other details of the work to be performed by the subcontractor.

§5.2.1.7 In addition to all other reporting requirements contained in this Agreement, and pursuant to NRS 338.013, Contractor shall report to Owner and the Nevada Labor Commissioner the name and address of each subcontractor whom Contractor engages for work on the project within 10 days after the subcontractor commences work on the contract. Such notice shall reference any identifying number for any public work.

§5.2.1.8 If the Contractor is selected as a construction manager at risk (CMAR), Contractor shall comply with the provisions of NRS Chapter 338.1685-338.16995.

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§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if (i) the Owner or Architect makes reasonable objection to such substitution or (ii) the Contractor has not complied with the applicable requirements of the NRS regarding substitution.

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When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the ~~subcontract~~ subcontract relating only to the period after the effective date of such assignment.

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

...

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

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§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may not request payment for Work completed under the Construction Change Directive in Applications for Payment. ~~The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.~~ Contractor may request payment when a Change Order is fully executed by the Owner.

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

...

The Architect has ~~authority~~ authority, with notification to the Owner, to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time ~~and not inconsistent in compliance with~~ the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect with prior notification to the Owner and shall be binding on the Owner and Contractor.

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or ~~Architect, Architect~~ Architect with no fault on the part of Contractor, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by ~~labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control;~~ "Unavoidable Delay", or by delay authorized by the Owner pending mediation and ~~arbitration;~~ any binding dispute resolution; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may ~~determine.~~ determine and only if such delay will prevent Contractor from achieving Substantial Completion by the required date for Substantial Completion.

"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 of 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.

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

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

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

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

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

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

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

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

Delays resulting from correction of work rejected as defective or as failing to conform to the Contract Documents.

§ 8.3.5 No additional compensation will be allowed to the Contractor for delays to an early completion schedule.

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

...

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Schedule of values, in addition to Cost of the Work and fee items, shall include line items for project photographs and as-built drawings.

...

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported

by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Unless otherwise expressly provided in an Application for Payment, each Application for Payment shall constitute Contractor's certification to Owner that Contractor is unaware of any facts or circumstances giving rise to Claims or extensions of Contract Time by Contractor as of the date of such Application of Payment. Contractor shall provide Applications for Payment, releases and other related documents in a format acceptable to the Owner.

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

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§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site in a licensed and bonded facility at a location agreed upon in writing. Payment for materials and equipment stored on ~~or off the site~~ (or off the site in a licensed and bonded facility) shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. If verification is necessary or required by Owner and/or Architect by a site visit outside of a local site visit for materials and equipment suitably stored off the site in a licensed and bonded facility and to consider payment for these items, Contractor shall pay all costs associated with site visits/review outside of local site visits by Owner and/or Architect.

...

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Unless otherwise stated in the Agreement, all sums payable by Owner shall be subject to retainage of not less than five percent (5.0%).

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION AND PAYMENT

§ 9.5.1 The issuance of a Certificate of Payment will constitute a recommendation only by the Architect and not a legal, binding obligation on Owner. The Architect or the Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's or Owner's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of but not limited to:

- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 ~~repeated failure to carry out the Work in accordance with the Contract Documents.~~ Documents or unsatisfactory execution of the Work;
- .8 failure of Contractor to comply with applicable Codes, Laws or Regulations;
- .9 failure to update as-built drawings or provide construction photographs with the Application for Payment. If these documents/items are not provided for actual work performed for a period of work covered by an Application for Payment and cannot be accurately provided due to passage of time, Owner may deduct a reasonable amount from the Agreement sum to reflect work not performed that cannot be recovered due to progress of work;
- .10 failure to update the CPM schedule concurrent with the request for payment; or
- .11 Any other reasonable basis to withhold certification.

Except as required by law, Owner shall have no liability whatsoever for interest or other charges resulting from withholding of payment for any reason stated in Article 9.

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's accurate, correct and complete Application for Payment, or if the Owner does not pay the Contractor within ~~seven~~ thirty days after the date established in the Contract Documents the amount certified on a complete and approved Application for Payment certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract ~~Documents.~~ Documents

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. ~~Work, in it's entirety for its intended use.~~

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

- .1 Excessive punch list work remains to be completed that would prevent or interfere with the occupancy and intended use of the facility in Owner's reasonable judgment.
- .2 Incomplete or defective work remains which would prevent or interfere with the occupancy and intended use of the facility.
- .3 The building mechanical systems have not been tested, balanced, and accepted as being fully complete.
- .4 The building electrical and life safety systems have not been tested and accepted as being fully complete.
- .5 The building commissioning process is not complete.
- .6 Final clean-up is not complete to support the occupancy and intended use of the facility, outside of clean-up associated with punchlist items to be completed (outside of cleaning as an item).
- .7 Final Inspections, Approvals and Temporary or Full Certificates of Occupancy by regulatory officials are not received and complete.

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

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

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

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

§ 9.8.4 When the Work or designated portion thereof is substantially ~~complete~~, complete and receives all regulatory approvals to permit occupancy, the Architect will prepare a Certificate of Substantial Completion when approved by Owner as set forth below that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion is subject to Owner's approval and approval shall not be unreasonably withheld or delayed.

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§ 9.10 ~~FINAL COMPLETION AND FINAL PAYMENT~~ FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Final Completion and Final Payment are subject to completion of all notices of retention release and notices/certificates of completion and related processes. Final Completion and Payment also cannot be issued unless:

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

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

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§ 9.10.6 When the work and provisions of the Contract Documents are fully and satisfactorily completed, the Owner may record a Notice of Completion, issue all Notifications/Advertisements of Release of Retention and response periods subsequent to this notice/advertisement, and will pay to the Contractor a final payment consisting of the remaining unpaid balance of the contract sum due the Contractor upon completion of these items. The acceptance of the final payment by the Contractor, subject to valid legal claims as otherwise specified herein, shall continue the application of the terms and conditions of the Guarantees and Warranties.

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§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. Explosion, collapse and underground insurance coverage shall be included in insurance provided by the Contractor per the insurance provisions of this Agreement.

...

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect. This person shall coordinate all safety planning and activities with the Safety Director specified by the Contractor per Section 3.9.

...

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 24-5 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

...

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

Contractor to ensure that the review process has been accomplished. Any materials brought to the job that have not been certified must be removed until certified. This certification is not required for steel, aluminum, brass, masonry, concrete and glass unless materials have been treated with any coatings or finishes.

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

~~§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. Through the submittal and shop drawing process and as a function of the Contractor's means and methods to accomplish the Work, the Contractor shall be responsible to verify any Contract Document requirements of any such materials or substances to accomplish the Work, and to recommend any alternate materials or substances to accomplish the Work that would not require the use of such hazardous materials or substances. Contractor shall be responsible to be knowledgeable about the proper handling and use requirements/practices for any such materials and substances and shall administer the use and handling of such substances accordingly. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.~~

~~§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. Contractor shall provide Owner with notice of all hazardous substances as regulated by the Comprehensive Environmental and Liability Act as amended and/or regulated under any other applicable law which Contractor brings on to the site.~~

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

...

~~In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, take reasonable measures to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7. Contractor shall notify the Owner and UNLV Police as soon as an emergency affecting safety of persons or property is discovered.~~

...

~~§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:~~

~~1. Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed; Contractor as primary insured shall, at Contractor's sole expense procure, maintain and keep in force for the duration of the Agreement the following insurance conforming to the minimum~~

requirements specified below. Unless specifically noted herein or otherwise agreed to by the Owner the required insurance shall be submitted to the Owner and accepted prior to the issuance of a Purchase Order and Notice to Proceed, and shall be in effect by the Contractor on or prior to the issuance of a Purchase Order and Notice to Proceed. Such insurances must remain in force and effect until the later of:

~~.2~~ Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

~~.3~~ Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

~~.4~~ Claims for damages insured by usual personal injury liability coverage;

~~.5~~ Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

~~.6~~ Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

~~.7~~ Claims for bodily injury or property damage arising out of completed operations; and

~~.8~~ Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.a. Final acceptance by the Owner of the completion of the work in this Agreement; or b. Such time as the insurance is no longer required the Owner.

§ 11.1.1.1 COMMERCIAL GENERAL LIABILITY AND UMBRELLA/EXCESS INSURANCE:

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

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

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

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

~~May be used to achieve the above minimum liability limits.~~

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

§ 11.1.1.2 [Intentionally Deleted]

§ 11.1.1.3 AUTOMOBILE LIABILITY INSURANCE:

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

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

§ 11.1.1.4 WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:

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

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

§ 11.1.1.5 POLLUTION LIABILITY:

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

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment,

and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. [Intentionally Deleted]

§ 11.1.2.1 Contractor Shall:

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

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

~~§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. Each insurance policy shall be:~~

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

~~§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants-Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.operations.~~

~~§ 11.1.5 Evidence of Insurance: Prior to the start of any work the contractor must provide the following documents to the Owner:~~

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

~~§ 11.1.6 The insurance required by Article 11 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an~~

occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

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

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

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

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

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

§ 11.3 ~~PROPERTY INSURANCE~~ PROPERTY INSURANCE/BUILDERS RISK

§ 11.3.1 Unless otherwise provided, the ~~Owner-Contractor~~ shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

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

...

§ 11.3.1.2 ~~If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.~~ [Intentionally omitted.]

~~§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles. Insurance maintained by contractors shall apply on a first dollar basis without application of a deductible or self-insured retention, which shall not exceed \$5,000.00 per occurrence unless otherwise specifically agreed to by Owner. Such approval shall not relieve contractors from the obligation to pay any deductible or self-insured retention.~~

...

§ 11.3.2 BOILER AND MACHINERY INSURANCE or INSTALLATION FLOATER

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

...

~~The Owner, at the Owner's option, may Contractor shall purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards-however caused.~~

~~§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, possible and agreeable to the Owner, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.~~

~~§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise. [Intentionally omitted.]~~

~~§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. The Contractor shall make available to the Owner, upon request by the Owner, at Contractor's expense a copy of each policy and/or loss history related to insurance coverage required by Article 11. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.~~

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~~The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable~~

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

...

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7. **[Intentionally Omitted]**

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators. **[Intentionally Omitted]**

...

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

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

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

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

If at any time the Owner, for justifiable cause, shall be or become dissatisfied with any Surety as providers of the required Performance Bond or the Payment Bond, the Contractor shall within five calendar days after being notified by the Owner, substitute an acceptable bond in the form and sum and signed by such other Surety as may be satisfactory to the Owner. The premiums on such Bonds shall be paid by the Contractor. No further progress payments to the Contractor shall be deemed due or payable until acceptable bonds are furnished. The new bond amount shall be for the remaining balance of the Agreement. In the event that the Contractor is unable to obtain a new bond, the Owner may obtain the bond and charge the Contractor for the cost required to obtain said bond. Owner shall have the right to demand reimbursement for any cost of automatically deduct the cost of the bond from the cost of the work without a Change Order. The new bond amount shall be for the remaining balance of the contract. If the Performance and Payment Bond is not furnished within the time specified in the contract documents after the Agreement is awarded, any bonds may be forfeited and the Contract may be awarded to an alternate proposal.

The Owner will require the Contractor to increase the Performance and Payment Bond to accommodate Change Orders.

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

.1 The Contractor shall deliver the required original bonds to the Owner at the time the Agreement is entered into.

.2 The Contractor shall require the attorney-in-fact who executes the required bond on behalf of the surety to affix thereto a certified and current copy of the Power of Attorney.

.3 The bonds shall be payable to UNLV and NSHE.

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§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by ~~the Architect, the Architect with the Owner's consent~~ or by the Owner, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the ~~Contract Time~~ Contract Time or Contract Sum.

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

...

The Contractor shall promptly correct Work rejected by the Architect with Owner's consent, or rejected by the Owner, or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

The Contractor shall promptly correct all work rejected as defective or as failing to conform to the Contract Documents, whether observed before the Notice of Completion or discovered after the Notice of Completion, and whether or not fabricated, installed, or completed. The Contractor shall bear all costs of correcting such rejected work, including the cost for additional services by the Owner.

...

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, the Contractor ~~shall~~ shall, at Contractor's expense, correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. This provision or any other provision in Section 12.2.2 does not relieve the Contractor in any way of conforming to the requirements of the Contract Documents or correcting items not compliant with the Contract Documents per applicable laws, statutes or any regulations, whether they are observable, concealed or in any other condition or status.

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The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4, laws of the State of Nevada without regard to conflict of law principles that would result in the application of

any law other than the law of the State of Nevada. 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 and/or NAC Chapter 338, it is hereby deemed modified to the extent necessary to comply with the provisions of NRS Chapter 338 and/or NAC Chapter 338. To the extent a provision is required to be inserted into this Contract by NRS Chapter 338 and/or NAC Chapter 338, it is deemed inserted.

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a ~~whole~~ whole, or in part, without written consent of the other. If either party attempts to make such an assignment without such consent, ~~that such assignment shall not be effective and shall constitute a default under the Contract.~~ Any party assigning its interest pursuant to properly granted consent of the other party shall nevertheless remain legally responsible for all obligations under the Contract.

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

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

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

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

Payments due and unpaid under the Contract Documents and after 30 days after Owner's receipt of a complete and approved Certificate for Payment.. Interest on any amounts due from Owner to Contractor, or from Contractor to Owner, as the case may be, shall bear interest from the date ~~payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ due until paid at a rate equal to the lesser of (i) six percent (6%) per annum, (ii) that fluctuating rate of interest announced from time to time by the Bank of America National Trust and Savings Association as its prime or reference commercial lending rate of interest (or in the event such bank is no longer announcing such rate, by such

other federally regulated banking institution of comparable stature as Owner shall determine) or (iii) the maximum interest rate permitted by law. Under no circumstances, however, shall Contractor be entitled to interest on retainage except as required by law.

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The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7. Any applicable statutes of limitation or repose, and any time limits imposed by this Section 13.7, shall be tolled from the time notice of any claim is given, until 30 days after mediation is concluded or waived in writing.

§ 13.8 COUNTERPARTS

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

§ 13.9 BUSINESS DAY

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

§ 13.10 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 illegible, invalid or otherwise unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision (or part thereof) of the Contract Documents.

§ 13.11 INDEPENDENT CONTRACTOR

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

...

- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the ~~Contract Documents;~~ Documents.
- .4 ~~The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.~~ [Intentionally omitted.]

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- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper ~~materials;~~ materials or equipment to complete the Work in a diligent, efficient, timely, workmanlike, skillful and careful manner;
- ...
- .4 otherwise is guilty of substantial or material breach of a provision of the Contract Documents.
- .5 If Contractor makes a general assignment or general arrangement for the benefit of creditors; (ii) if a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Contractor and is not dismissed within thirty (30) days; (iii) if a trustee or receiver is appointed to take possession of substantially all of Contractor's assets or of Contractor's interest in this Agreement and possession is not restored to Contractor within thirty (30) days; or (iv) if substantially all of

Contractor's assets or of Contractor's interest in this Agreement is subjected to attachment, execution or other judicial seizure which is not discharged within thirty (30) days.

§ 14.2.2 When any of the above reasons exist, the Owner, upon ~~certification~~ (i) certification by the Initial Decision Maker that sufficient cause exists to justify such action, or (ii) Owner's reasonable determination that such reasons exist, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

...

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other ~~damages~~ damages, costs or expenses of Owner, including, without limitation, costs of Owner's consultants and attorneys, incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

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

§ 14.4.1 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.

...

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such ~~termination, along with reasonable overhead and profit on the Work not executed,~~ termination including reasonable overhead and profit on Work executed.

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

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§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

~~The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

- ~~.1 — damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~
- ~~.2 — damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.[Intentionally Omitted]~~

...

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

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§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

...

§ 15.4 ARBITRATION[Intentionally Omitted]

~~§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~[Intentionally Omitted]

~~§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~[Intentionally Omitted]

~~§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~[Intentionally Omitted]

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

§ 15.4.4 CONSOLIDATION OR JOINDER[Intentionally Omitted]

~~§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~[Intentionally Omitted]

~~§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~[Intentionally Omitted]

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.~~[Intentionally Omitted]



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 15:46:03 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 A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)