



N3-0643

NNCP Project Number

Liberty School District – Distribution Center – PALLET RACKING

Project Name

00 01 10

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DIVISION 01

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001116: INVITATION TO BID

Issued: January 3, 2024

Newkirk Novak Construction Partners, LLC. is requesting bid proposals for the **Liberty School District – Distribution Center – Pallet Racking**. Please review the following list that highlights information associated with the project that may be helpful in your bidding process. Bidders should review the Bidding Documents in their entirety for a complete discussion of the items highlighted below.

PROJECT:	<i>Liberty School District – Distribution Center – Pallet Racking</i>
PROJECT ADDRESSES:	<i>Distribution Center 1142 Southview Drive Liberty MO 64068</i>
PROJECT INFORMATION:	<i>This bid package is to provide Pallet Racking at the Liberty School District’s new Distribution Center.</i>
BID DOCUMENTS:	Bidding Documents are available by contacting Newkirk Novak Construction Partners. Please direct requests to Matt St.Louis Matt.St.Louis@NewkirkNovak.com
PRE-BID CONFERENCE/ WALKTHROUGH:	Pre-Bid walks will be held on Wednesday January 17, 2024 at 2:00pm. There will not be a job walkthrough.
BID PROPOSAL	Please see the form located in section 004123. All bids shall be submitted on the bid form provided without modification, alteration, or conditioning. Attach the Scope of Work to the bid form. Bids not in this form will be rejected as nonresponsive. If submitting a combo bid, bidders must also submit a bid for each scope of work separately.
BID DUE DATE:	<u>Sealed Bids with Bid Bonds Bids</u> will be received January 24th at 2:00pm. Bids will be received on behalf of the Owner by Construction manager at Support Services Center (801 Kent St., Liberty, MO 64068). Please direct all bids to Matt St.Louis. Bids will be opened publicly and read aloud. Only sealed bids with bid security will be accepted. Note – Online submission through Building Connected will be accepted and is encouraged. Link to Teams bid reading will be provided at a later date.
VALIDITY OF BID:	All Bids shall be valid for a period of [Forty-Five (45)] calendar days after submission of the Bid(s).
INTERPRETATION AND ADDENDA`	Requests for interpretations, clarifications, corrections or changes of the Bidding Documents must be made in writing at least [four (4) calendar days] prior to the date for receipt of Bids. No Addenda will be issued later than [two (2) business days] prior to the date for receipt of Bids except for the limited situations set forth in the Instructions to Bidders.

CM Agency

BOND REQUIREMENTS	Bid bonds are required on this project per Section 00 21 13 Instructions to bidders' section 10. Performance and Payment bonds are required for this project.
INSURANCE REQUIREMENTS	Insurance requirements are included in the Prime Contract. Contractors will not be allowed on site until they have fully complied with the insurance requirements.
PREVAILING WAGES	Prevailing wages are required on this Project. Please reference section 007343 for further information.
MBE/WBE GOALS	MBE/WBE goals are not required on this Project. However, it is requested that Bidders actively solicit minority contractors, suppliers and their organizations.
TAXES/EXEMPTIONS	Bidders are advised this Project is tax exempt. A copy of the tax exemption will be furnished to each successful Contractor.
PUBLIC BIDDING	This Project is a public project governed by competitive bidding requirements. Any modification, clarification or deviation from the Bid Form or Scope of Work Bid Package could cause the Bid to be rejected as nonresponsive.
QUESTIONS	All questions should be directed to Matt St.Louis matt.st.louis@newkirknovak.com

Please refer to the Instructions to Bidders for further information. All Bids are to be in strict accordance with the Bidding Documents and all related Bidding Requirements and Contract Documents.

SECTION 00 21 13 INSTRUCTIONS TO BIDDERS

<u>Title</u>	<u>Section</u>	<u>Title</u>	<u>Section</u>
General	1	Qualification of Bidders	11
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1. GENERAL

1.1. The Project is being constructed under a Construction Management-Agency delivery method with the work being performed by multiple-prime contractors contracting directly with the Owner. The Construction Manager has been engaged for this Project to serve as an advisor to the Owner and to aid in administering the Contract for Construction between the Owner and each Contractor, according to a separate contract between the Owner and Construction Manager.

1.2. The Owner is accepting Bids for the Scope(s) of Work identified in the Invitation to Bid on a Lump Sum basis.

1.3. Bidders are required to study carefully and conform to these instructions in order that their Bid(s) be complete, responsive and acceptable.

2. DEFINITIONS

2.1. Addenda are written or graphic instruments issued by the Architect prior to the execution of the Prime Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections.

2.2. The Agreement or Prime Contract is the form of agreement between Owner and Contractor included in the Contract Documents

2.3. An Alternate Bid or Alternate is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents and the Specifications, is accepted by the Owner.

2.4. The Architect is the architectural firm identified herein which has entered into a contractual agreement with the Owner to provide certain design services for the Project. The term Architect shall also refer to its subconsultants.

2.5. The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which Work may be added or deleted for sums stated in Alternate Bids and Unit Prices.

2.6. A Bid is the offer of a Bidder submitted on a complete and properly executed Bid Form stating the sum(s) for performing the Scope(s) of Work set forth in the Bid Form submitted in accordance with the Bidding Documents.

2.7. A Bidder is a person or entity who submits a Bid for the Scope(s) of Work set forth in the Bid Form.

2.8. Bidding Documents include the Bidding Requirements, Contract Documents and other

documents included in the Project Manual which govern the bidding process.

2.9. The Bidding Requirements consist of the Invitation to Bid, Instructions to Bidders, the Bid Form, and other sample bidding and contract forms contained in the Project Manual and all Addenda.

2.10. As further discussed herein, the Bid Security shall be the submission of an approved Bid Bond, Cashier's Check or Certified Check furnished by the Bidder and made payable to the Owner for the amount stipulated in the Instructions to Bidders.

2.11. The Contract Documents consist of the form of Agreement or Prime Contract, Conditions of the Contract (General, Supplementary and other conditions), Drawings, Specifications, all Addenda issued prior to execution of the Contract and all other documents identified in the Agreement.

2.12. The Contractor or Trade Contractor or Prime Contractor shall refer to the entity that will enter into an agreement directly with the Owner to provide labor and material for a particular Scope of Work.

2.13. The Scope of Work is the Work described and identified for a specific aspect of the Project.

2.14. A Sub-bidder is a person or entity who submits a bid to a Bidder for materials or labor for a portion of the Scope(s) of Work.

2.15. The Successful Bidder is the responsible Bidder who submits the lowest and best Bid responsive to the Bidding Requirements and to whom the Owner, on the basis of the Owner's evaluation, will make an award.

2.16. A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment or labor as described in the Bidding Documents.

2.17. The Work means the construction and services required by the Contract Documents including all labor, material, equipment and other services provided or to be provided by the

Contractor to fulfill the Contractor's obligation under the Contract Documents.

2.18. The word furnish when used means furnish completely, including all work and associated costs for: materials, shop drawings, transportation, insurance, field measurements, expediting, shipping, handling, packaging, storage, touch up materials, owner's manuals, training, and any other accessories required for a complete installation. Shipping methods and delivery dates for furnished items shall be coordinated with the receiver/ installer and shall include all reasonable provisions required for unloading. (Proper container, lift gate if required.)

2.19. The word install when used means install completely, including all work and associated costs for: receiving, unloading, unpacking, verification of quantity and condition, inventorying, hoisting, rigging, equipment, lifts, storage, hangars, supports, sleeves, coordination, layout, shop drawings, review of shop drawings by others, field measurements, excavation, backfill, dewatering, installation, cutting and patching, firestopping, daily clean up, inspections, documentation, protection of own work and work of others, rough-in, testing, as-built drawings, and all other accessories, services and facilities required for a complete installation. Repair or replace items damaged, misplaced, stolen, or otherwise deemed unfit for installation as determined by the Architect after proper inventorying of materials and/or equipment supplied by others.

2.20. The word provide when used means furnish and install completely, including all work and associated costs for: furnishing, installing, materials, labor, equipment, layout, tools, and any other temporary or permanent facilities required to complete the work.

2.21. Terms of art and other words not specifically defined herein have the same meaning as those used and/or defined in the Contract Documents.

3. THE BIDDING DOCUMENTS

3.1. Bidding Documents will be made available or distributed by the Construction Manager as provided in the Invitation to Bid.

3.2. Bidders shall use complete sets of Bidding Documents in preparing its Bid(s). Neither the Owner, the Construction Manager nor the Architect assumes any responsibility for errors, mistakes, misinterpretations or incomplete Bids resulting from the use of incomplete sets of Bidding Documents.

3.3. In making copies of the Bidding Documents available on the above terms, the Owner does so only for the purpose of obtaining Bids on the Scopes of Work and does not confer a license or grant permission to use for any other reason.

4. EXAMINATION OF BIDDING DOCUMENTS AND SITE

4.1. It is the responsibility of each Bidder, before submitting a Bid, to

4.1.1. carefully study and compare the Bidding Documents with each other, and with other work being bid concurrently or presently under construction to the extent that it relates to the Scope of Work for which the Bid will be submitted.

4.1.2. visit and examine the Project site to become familiar with local conditions that may affect cost, progress, performance or furnishing of the services or work.

4.1.3. consider federal, state and local laws and regulations that may affect cost, progress, performance or furnishing of the services or work; and

4.1.4. Notify the Construction Manager immediately of all conflicts, errors, inconsistencies or ambiguities discovered in the Bidding Documents.

4.2. SITE INFORMATION

4.2.1. Within the Bidding Documents, there **may** be reports of explorations and tests of subsurface conditions at or contiguous to the site of the Work ("Geotech Reports"). If the

Geotech Reports are not included in the Bidding Documents, they will be made available to Bidders upon request. It is strongly recommended that those who are bidding on a Scope of Work which may be impacted by subsurface conditions should obtain and review the Geotech Reports.

4.2.2. The Bidding Documents **may** identify reports and/or drawings relating to Asbestos, PCB, Petroleum, Hazardous Waste or Radioactive Material ("Hazardous Materials"). Copies of these reports and drawings will be made available to Bidders upon request. Provisions relating to responsibilities for such conditions are set forth in the Contract Documents.

4.2.3. These reports, drawings and other documents referenced in this section are not part of the Contract Documents. Bidders are responsible for any interpretation or conclusion they draws from any technical data or any other data, interpretations, opinions or information contained in such reports or drawings or shown or indicated in other documents related to subsurface conditions or Hazardous Materials.

4.3. Upon reasonable notice, Owner will provide Bidders access to the site to conduct such examinations, inspections and studies as each Bidder deems necessary for the submission of a Bid.

5. INTERPRETATIONS AND ADDENDA

5.1. All questions regarding the meaning or intent of the Bidding Documents are to be directed to the Construction Manager.

5.2. Bidders and Sub-bidders shall promptly notify the Construction Manager of any ambiguity, inconsistency or error which they discover upon examination of the Bidding Documents, the Project site and the local conditions.

5.3. Bidders and Sub-bidders requiring interpretation, clarification, correction or change of the Bidding Documents shall make a written

request which must reach the Construction Manager within the time set forth in the Invitation to Bid.

5.4. Written requests received after the time set forth in the Invitation to Bid may not be answered.

5.5. Interpretations, clarifications, corrections and changes to the Bidding Documents considered necessary by the Architect or Construction Manager in response to such questions or otherwise will be made by Addenda.

5.6. No Addenda will be issued later than the time set forth in the Invitation to Bid except for an Addendum withdrawing the request for Bids or postponing the date for receipt of Bids.

5.7. Notification of Addenda will be faxed or delivered to all who are known to have received a complete set of Bidding Documents.

5.8. Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

5.9. It is the responsibility of each Bidder to ascertain and confirm, prior to submitting a Bid, that the Bidder has received all Addenda issued. The Bidder shall also acknowledge its receipt of all Addenda on the Bid Form.

5.10. Only interpretations, clarifications, corrections and changes made by formal written Addenda will be binding. Interpretations, clarifications, corrections and changes to the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon them.

5.11. In the case of an ambiguity, inconsistency or error in the Bidding Documents that is not clarified by Addendum, the higher quality, more expensive option and greater quantity of Work shall be provided in accordance with the Construction Manager's and Owner's interpretation.

5.12. Failure of a Bidder to notify the Construction Manager of a known ambiguity, inconsistency or error in the Bidding Documents

shall waive the Bidder's right to seek additional time or compensation for such ambiguity, inconsistency or error.

6. SUBSTITUTIONS

6.1. Unless otherwise specifically required, reference in the Specifications to any product, material, equipment, type or form of construction shall establish a minimum standard of quality and shall not be construed as limiting competition.

6.2. The products, materials and equipment described in the Bidding Documents establish a standard of required design, spare parts availability, strength, durability, usefulness, serviceability, operating cost, convenience, and for the purpose intended to be met by any proposed substitution.

6.3. Reference to standard specifications for basic materials shall not be modified for any substitutions proposed.

6.4. No request for substitution will be considered prior to receipt of Bids unless a written request for approval has been received by the Construction Manager within the time set forth in the Invitation to Bid. **Requests for substitution will not be considered when proposed with a Bid.**

6.5. Requests for substitutions will only be considered under the following procedures:

6.5.1. The request is made under the "*or approved equal*" or the "*or approved substitute*" provisions of the Contract Documents.

6.5.2. The request is received within the time period set forth in the Invitation to Bid.

6.5.3. The request includes the name of the material, product, equipment or system for which it is to be substituted, correlated to specification section and page; all basic data and characteristics of the proposed substitute so that a direct comparison may readily be made.

6.5.4. The request fully complies with all other requirements set forth in Division 01.

6.6. It is the sole responsibility of the Bidder making the request to submit complete descriptive and technical information necessary for the Architect to evaluate the substitution.

6.7. The burden of proof of the merit of the proposed substitution is upon the Bidder making the request. **The Architect's decision of approval or disapproval of a proposed substitution shall be final.**

6.8. If the Architect approves a proposed substitution prior to receipt of Bids, such approval will be set forth by written Addendum. An approval of a request for substitution made in any other manner will not be binding, and Bidders shall not rely upon an approval made in any other manner.

6.9. No substitutions will be allowed subsequent to the Contract award unless specifically provided for in the Contract Documents.

7. **PRE-BID CONFERENCE**

7.1. A pre-bid conference will be held at the date, time and location stated in the Invitation to Bid.

7.2. Representatives of Owner, Architect and Construction Manager will be present to discuss the Project and answer questions regarding the Bidding Documents and bidding procedures. All Bidders are encouraged to attend and participate in the conference.

8. **TIME AND PLACE TO RECEIVE BIDS**

8.1. Sealed Bids will be received until the times on the date set forth in the Invitation to Bid. Bids received after these times will not be accepted and returned unopened.

8.2. Deliver sealed bids to the location stated in the Invitation to Bid. Bids delivered to the wrong location will not be considered or accepted. Bids submitted by telephone, fax, email or other methods will NOT be accepted.

9. **THE BID**

9.1. Lump Sum Bids will be received from Bidders for the Scopes of Work identified in the Bidding Documents. A Bid shall include all Work defined within the Scope of Work, including but not limited to the relevant Specification Section(s) and Bidding Documents.

9.2. Bids are to include all labor, applicable taxes, insurance, licenses, permits, tools, equipment, materials, services, supervision, profit, overhead and incidentals necessary or required for the construction of the Scope(s) of Work identified in the Bidding Documents. Bids shall include the cost of complying with the safety requirements contained herein. [OR and in the Construction Management Safety Manual]

9.3. Bids shall include the following documents and attachments:

9.3.1. Bid on the Bid Forms provided in the Bidding Documents

9.3.2. Bid Bond

9.3.3. Bidder's Scope of Work

9.3.4. *[List other required documentation here.]*

9.4. **FORM AND STYLE OF BIDS**

9.4.1. Bids shall be submitted on the Bid Form provided **without modification, alteration, condition or reservation** and with each space properly filled in by typewriter or manually in ink and include all required attachments. **Bids not in this form or submitted as a proposal or in a different form may be rejected as nonresponsive.**

9.4.2. Bids shall be delivered to the Construction Manager in an opaque, sealed envelope, bearing the title of the Work (Bid Package No. and Scope of Work), the name of the Bidder, and shall be addressed as follows:

[Name of the Owner]
c/o *[NNCP*
Name]
[Address]
[City, State Zip]

Attention: [*Project Manager Name*]

Bids sent by mail shall be enclosed in a separate mailing envelope with the notation "Sealed Bid Enclosed" on the face thereof.

9.4.3. The Bid shall state the total lump sum price to do all Work described in the Bidding Documents under a single bid package, or at the Bidders option, any combination of bid packages. Dollar amounts shall be stated in both words and figures and, in the case of a discrepancy between the two, the amount written in words shall govern. If the Bidder intends to submit a Combination Bid, it must do so using the Combination Bid form included in the Bidding Documents.

9.4.4. Each Bidder shall bid all Alternates and Unit Prices that pertain to its Scope of Work requested in the Bid Form. The Bid for Alternates and Unit Prices described in the Bidding Documents, shall include all overhead, profit and the cost of all changes required from Base Bid conditions in order to incorporate such Work described.

9.4.5. Each Bid shall be executed and signed (with the name and title typed or clearly printed below the signature) by and in the name of the Bidder.

9.4.5.1. Bids from a partnership shall be signed in the partnership's name by at least one partner, or in the partnership's name by an attorney-in-fact. If signed by an attorney-in-fact, there shall be attached to the Bid a Power of Attorney evidencing authority to sign the Bid, dated and executed by all partners of the firm.

9.4.5.2. Bids from a corporation shall have the correct corporate name thereon and the signature of an authorized officer of the corporation manually written below corporate name followed by the words "By _____." The title of the office held by the person signing for the corporation shall appear below the signature of the officer.

9.4.5.3. Bids from joint ventures shall be signed by each participant in the joint venture or by an authorized agent of each participant.

9.4.5.4. Bids from an individual doing business under a firm name shall be signed in the name of the individual doing business under the proper firm name.

10. BID SECURITY

10.1. A Bid Bond, Cashier's Check or Certified Check for Bid Security made payable to the Owner in an amount equal to 5% of the Bid amount must be submitted with the Bid, pledging that the Bidder will:

10.1.1. enter into a Prime Contract with the Owner under the terms stated in the Bidding Documents AND

10.1.2. furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder.

10.2. Should the Bidder refuse to enter into such Prime Contract, withdraw its Bid(s) during the acceptance period or fail to furnish such bonds, the amount of the bid security shall be paid to the Owner immediately as liquidated damages, not as a penalty.

10.3. The Bid Bond shall be written on an AIA Document A310, Bid Bond (1970), and the attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney. A copy of the A310 is included in Section 00 43 13.

10.4. The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until either:

10.4.1. the Prime Contract has been executed and bonds have been furnished;

10.4.2. the specified time has elapsed so that Bids may be withdrawn; OR

10.4.3. all Bids have been rejected.

11. QUALIFICATION OF BIDDERS

11.1. The Bidder must be qualified to perform the Work. The Bidder must demonstrate its ability, experience, efficiency, integrity, reputation, capacity of personnel and financial resources to properly and timely perform the Work described in the Bidding Documents to be considered a responsible Bidder.

12. BIDDER REPRESENTATIONS

12.1. Each Bidder, by submitting its Bid, represents that:

12.1.1. The Bidder has examined, carefully studied and understands the Bidding Documents, including all Addenda and other related information, and its Bid is made in accordance therewith.

12.1.2. The Bidder has visited the site, has familiarized itself with the local conditions under which the Work is to be performed and has correlated its observations with the requirements of the proposed Contract Documents.

12.1.3. The Bidder is familiar with all federal, state and local Laws and Regulations that may affect cost, progress or performance of the Work.

12.1.4. The Bid is based upon the materials, systems and equipment required by the Bidding Documents without exception unless otherwise approved.

12.1.5. The Bid(s) have been derived at independently without consultation, communication or agreement as to any matter relating to the Bid(s) with any other Bidder or with any competitor.

12.1.6. The Bidder will not later request, and will not later expect to receive, additional payment for work related to conditions which could be determined by examination of the site and the Bidding Documents.

12.1.7. The Bidder will agree to contract under the Contract Documents as provided including project-specific modifications, if any, made at a later time, without clarification or modification.

12.2. By submitting a Bid, the Bidder agrees that any protest, controversy, dispute or claim arising from the Invitation to Bidders, the Bidder's submission of the Bid, the Owner's or Construction Manager's rejection of any Bid and/or the award of a Prime Contract shall be subject to the same dispute resolution requirements as are set forth in the Contract Documents, which are incorporated herein by this reference.

13. MODIFICATION OR WITHDRAWAL OF BID

13.1. Bids may not be withdrawn, modified or canceled for the period of time set forth in the Invitation to Bid following the time and date for the receipt of Bids. If a Bidder withdraws, modifies or cancels its bid during that time period, the amount of the bid security shall be paid to the Owner immediately as liquidated damages, not as a penalty, and the Bidder waives any and all defenses it or its Surety may have to the payment of the bid security.

13.2. Prior to the time and date for the receipt of Bids, any Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder and shall be in accordance with the following provisions.

13.2.1. Facsimile, email or other forms of written notice to modify or withdraw a Bid must be received prior to the date and time for receipt of Bids.

13.2.2. Once the notice to withdraw a Bid is received, the Bid will be removed from the other submitted Bids and returned to the Bidder unopened.

13.2.3. Notices to modify a Bid must be followed by a modified Bid submitted in the form and style set forth herein prior to the date and time for receipt of Bids.

14. REJECTION OF BIDS

14.1. The Owner reserves the right to reject any or all Bids, including, without limitation, the right to reject Bids that are incomplete, irregular, nonconforming, nonresponsive, unbalanced or conditional.

15. ACCEPTANCE OF BIDS (AWARD)

15.1. Bids will not be accepted after the actual time and date established for receipt of Bids.

15.2. In awarding the Prime Contract, the Owner may take into consideration the Bidder's skill, facilities, capacity, experience, responsibility, previous work record and financial standing. The inability of any Bidder to meet the requirements mentioned above may be cause for rejection of the Bid.

15.3. The Owner shall give written notice of the award of the Prime Contract to the Successful Bidder ("Notice of Award").

15.4. Bidder to whom award of Contract is made shall execute the Prime Contract with the Owner and provide all necessary documents within **seven (7)** calendar days after the Notice of Award.

15.5. The Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided for in the Bidding Documents, and to determine the low Bidder on the basis of the sum of the Base Bid and the Alternates accepted.

15.6. It is the intent of the Owner to award a Prime Contract to the lowest, responsible Bidder, provided the Bid has been submitted in accordance with the requirements of the Bidding

Documents and does not exceed the funds available.

15.7. The Owner shall have the right to waive informalities or irregularities in any Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interest.

15.8. The Construction Manager and Owner may interview the apparent low Bidder before a Prime Contract is awarded. The interview will enable the Construction Manager and Owner to ask the Bidder questions about materials, labor, duration, Scope of Work, the Contract Documents or the Bidder's Qualifications.

15.9. The Prime Contract may be terminated by the Owner, in its sole discretion, at any time it determines there are insufficient funds on hand in the treasury of said Owner for the lawful purpose of payment obligations of said Owner, due or to become due, under the terms of the Prime Contract.

15.10. The Owner will prepare and forward three (3) original drafts of the Prime Contract with the Notice of Award to the Successful Bidder. Bidder shall return properly executed drafts of these Documents, together with required evidence of insurance and bonds to the Owner within **seven (7) calendar days** of receipt of the Notice of Award.

15.11. SUBMITTALS

15.11.1. Successful Bidders shall, within seven (7) calendar days of the Notice of Award, submit the following information to the Construction Manager in electronically in .pdf format]:

15.11.1.1. A designation of the Work to be performed by the Bidder with its own forces.

15.11.1.2. The proprietary names and suppliers of principal items or systems of materials and equipment proposed for the Work.

15.11.1.3. A list of names of the subcontractors or other persons or entities (including those who are to furnish materials

or equipment fabricated to a special design) proposed for the principal portions of the Work.

15.11.2. Successful Bidders will be required to establish, to the satisfaction of the Construction Manager and Owner, the reliability and responsibility of the subcontractors and suppliers proposed to furnish and perform the Work described in the Bidding Documents.

15.11.2.1. Prior to the Notice to Proceed, the Construction Manager will notify the Bidder in writing if either the Owner or Construction Manager, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Construction Manager has reasonable objections to a proposed person or entity, the Bidder may submit an acceptable substitute person or entity with an adjustment in the Base Bid or Alternate Bid to cover the difference in cost occasioned by such substitution.

The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, the Bid Security will not be forfeited.

15.11.3. Persons and entities proposed by the Successful Bidder to whom the Owner and Construction Manager have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and Construction Manager.

16. BOND REQUIREMENTS

16.1. The Successful Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder ("Payment and Performance Bonds"). Payment and Performance Bonds may be secured through the Bidder's usual sources.

16.2. The cost for furnishing such Payment and Performance Bonds shall be included in the Bid.

16.3. Payment and Performance Bonds shall be written on a form and by a surety acceptable to the Construction Manager and Owner. The surety must be rated "A-" or better with a treasury rating less than or equal to the face value of the bond.

16.4. Each Successful Bidder will be required to submit two (2) copies of the Performance and Payment Bonds to the Construction Manager, within seven (7) calendar days of the Notice of Award and, prior to moving on site or beginning Work.

16.5. If the Work is to be commenced prior thereto in response to a letter of intent or limited authorization to proceed, the Bidder shall, prior to commencement of the Work, provide insurance and submit evidence satisfactory to the Owner that such Payment and Performance Bonds will be furnished and delivered in accordance with the Bidding Documents.

16.6. Unless otherwise provided, the bonds shall be written on AIA Document A311/CM, Performance Bond and Payment Bond written in the full amount of the Contract Sum naming the Owner as the obligee. The Payment and Performance Bond forms are included in the Bidding Documents in Section 00 61 13.

16.7. The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

17. FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

17.1. Unless otherwise provided, the Agreement for the Work will be written on the AIA Document A101/CMa, Standard Form of Agreement Between Owner and Contractor, where the basis of payment is a Stipulated Sum, as amended and modified, included in Section 00 52 00.

18. TAX EXEMPTION

18.1. Supplies, materials and equipment incorporated into the Project are exempt from

payment of State sales and use tax. Accordingly, all bids shall be made without sales and use tax.

18.2. See Section 00 62 90 for more information regarding tax exemption.

19. PREVAILING WAGE (if applicable per state statute)

19.1. Bids shall be based on payment at wage rates not less than the prevailing hourly wage for each craft or classification of workmen engaged on the Work as determined by the wage order included.

19.2. See Section 00 73 43 for more information regarding prevailing wage requirements.

SECTION 00 24 13
BID PACKAGES

INDEX TO SCOPES OF WORK

Bid Scopes of Work:

Pallet Racking

MASTER SCOPE OF WORK

Specific scope of work to be performed:

Scope of work includes, but is not limited to, the following:

1. This Trade Partners shall field verify existing conditions for deficiencies, unsatisfactory conditions, unacceptable dimensional tolerances, and notify Newkirk Novak Construction Partners, Inc. of such prior to installing work. Repairs due to unsatisfactory substrates, after acceptance shall be performed at the sole expense of this Trade Partners.
2. All layout, surveying, layout maintenance, field measurements, and field verification as needed to complete the required scope of work. Newkirk Novak Construction Partners, Inc., will provide benchmarks only.
3. This Trade Partners shall include all hosting, lifting, scaffolding, and equipment required to complete this scope of work.
4. This Trade Partners to have on-site staff for all deliveries and offloading.
5. This Trade Partners shall provide a person qualified, with authority to make decisions in attendance at any meeting that is requested by Newkirk Novak Construction Partners, Inc..
6. This Trade Partners is responsible for all required mobilizations, phasing, manpower, equipment, overtime, phasing, submittals, procurement etc. as required to meet the project schedule.
7. This Trade Partners is responsible for temporary protection of their own work or adjacent work as required to complete their scope of work. Protect existing improvements, the work of other trades, trees and vegetation scheduled to remain.
8. This Trade Partners to include required coring, cutting sleeving, sealants, and patching to complete their scope of work.
9. Each Trade Partners is responsible for their own power/generators. Temporary construction power will not be provided.
10. Provide water as needed for designated scope of work.
11. All roof penetrations to be coordinated with the roofing Trade Partners within 1 month of notice to proceed.
12. Exterior penetrations prior to installation of thermal and air barrier system.
13. This Trade Partners is required to coordinate all required inspections with Newkirk Novak Construction Partners, Inc. and appropriate testing agencies. Trade Partners are required to ensure all items are completed prior to inspection.
14. Coordinate all utility locates as required to complete scope of work.
15. Maintain a clean and safe workplace at all times. All debris related to the scope of this agreement shall be removed from the building and grounds to a Newkirk Novak Construction Partners, Inc. provided dumpster on a daily basis.
16. Newkirk Novak will provide the General Building Permit. Trade Partners are responsible for all permits, fees, etc required to complete their scope of work with AHJ's.
17. Trade Partners shall prevent surface and ground water from entering excavations, ponding on subgrades, and flooding project site or surrounding areas. Include dewatering required to satisfactorily construct all work all work to maintain specified to maintain project schedule.

PROJECT: N3-0643
COST CODE: 10-5629**Liberty Public Schools-Distribution Center
10-5629 – Pallet Storage Racking Scope of Work****Specific scope of work to be performed:**

Provide all required labor, material, equipment, permits, freight, labor, and applicable taxes necessary for the **Pallet Storage Racking** Scope of Work complete as set forth in the drawings and specifications by Hollis + Miller Architects dated December 1, 2023 and all other applicable sections of the project manual and all other subcontract documents identified. Addendums 1 thru 5 shall be included.

Scope of work includes, but is not limited to, the following specification sections:

- Division 00
- Division 01
- Division 02
- 105629 Pallet Storage Racking

JOB SPECIFIC SCOPE INCLUDES (but is not limited to):

1. All items per Master Scope of Work.
2. Design and provide a pallet racking system complete as indicated in the Contract Documents.
3. This Contractor shall provide all design services required to completely design a fully code compliant and coordinated racking system in accordance with the Construction Documents and all federal, state and local requirements.
4. This Contractor shall hire a 3rd party inspector for required special inspections to ensure structural integrity of system and design criteria have been met.
5. This Contractor shall be responsible for securing all necessary permits required for pallet rack installation.

The following work is excluded:

- 1.

SECTION 00 30 00

INFORMATION AVAILABLE TO BIDDERS

1. USE OF INFORMATION

1.1. Any information included in this section will not be part of the Contract Documents. This information is made available to the Contractor for informational purposes only. The Owner will not be responsible for interpretations or conclusions drawn from this data by Bidder.

2. SUBSURFACE AND OTHER ENVIRONMENTAL REPORTS OR INVESTIGATIONS

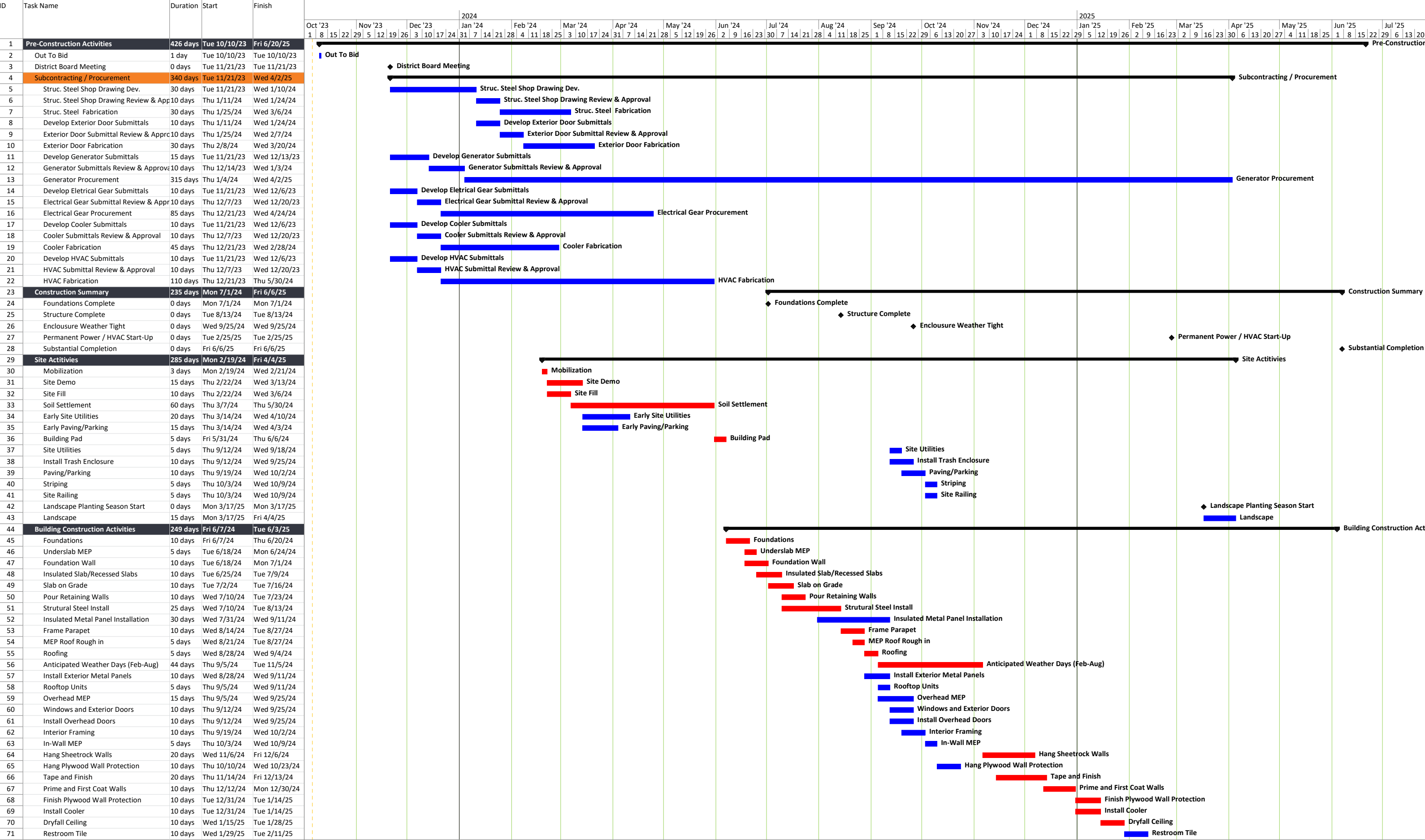
2.1. A subsurface soil investigation(s) has been made on the project site by [N/A], who can be reached at [N/A]. A copy of the subsurface exploration report is available for viewing at [N/A]'s office/plan room or attached herewith.

2.2. Reports and drawings related to asbestos, PCB, petroleum, hazardous waste, radioactive material or other hazardous material may also be included or referenced in the Project manual. Copies of any of these reports and/or drawings identified will be made available to any Bidder upon written request **and are included in Building Connected.**

2.3. These reports and other documents identified in the Bid Package are made available for the general reference of the Bidders only. These reports and other documents are not part of the Contract Documents, and Contractor assumes no responsibility for the validity of the existing conditions described in the geotechnical investigation or other reports. The Bidder is responsible for any interpretation or conclusion the Bidder draws from any technical data or any other data, interpretation, opinions or information contained in such reports or shown or indicated in other documents related to subsurface or existing conditions. Bidders are expected to examine the site and the record of investigations and then decide for themselves the character of environment to be encountered.

SECTION 00 31 13
MILESTONE SCHEDULE OF CONSTRUCTION

The Bidder recognizes that revisions in the planned schedule are inherent in the nature of construction. This may result in revisions to the schedule of construction for the Project and the Bidder's Work during the progress of construction. Bidder acknowledges that Owner or Construction Manager cannot guarantee Bidder, if selected, will be able to start the Work on any particular date or continue without interruption once started.

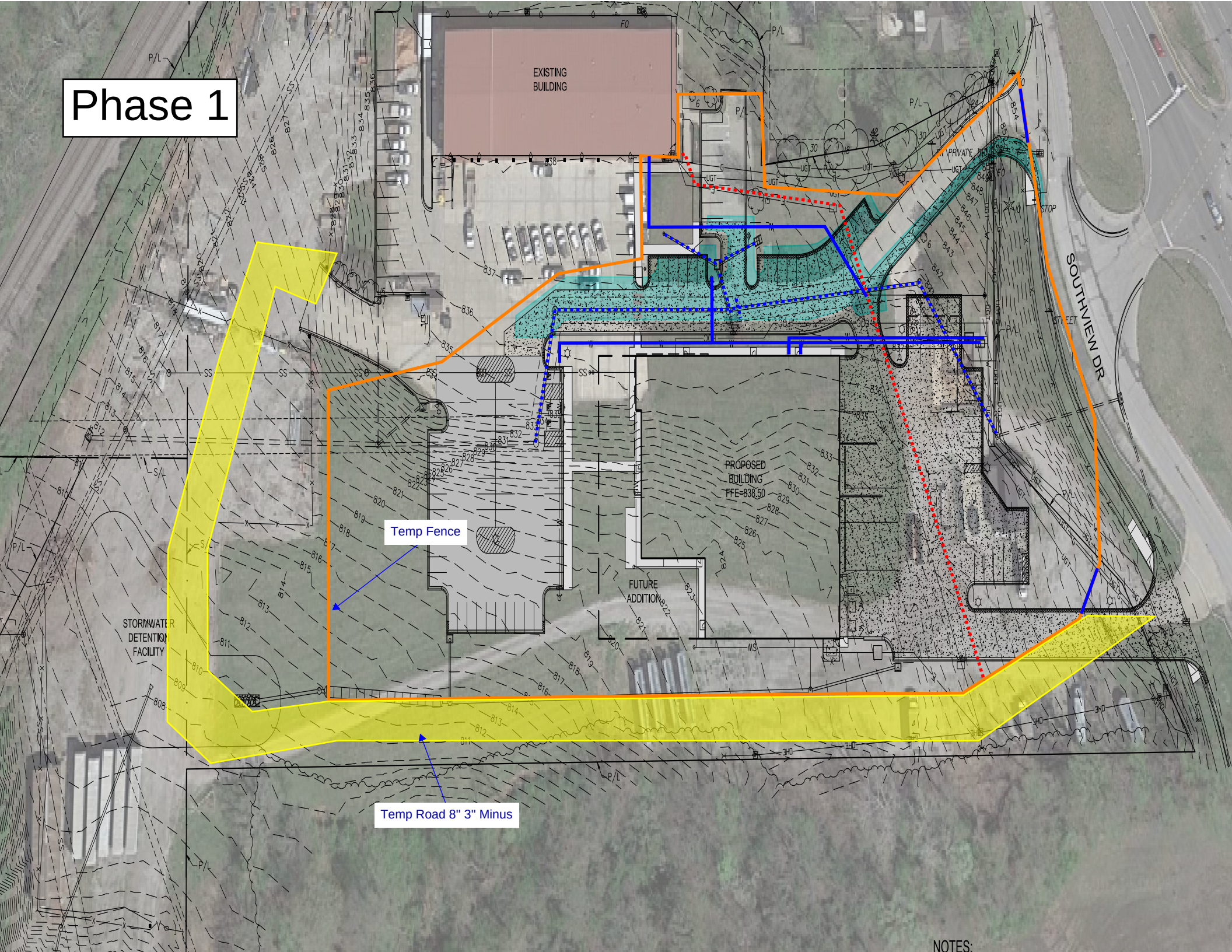


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Legend Task  Split  Milestone  Summary  Critical Task  Manual Progress 

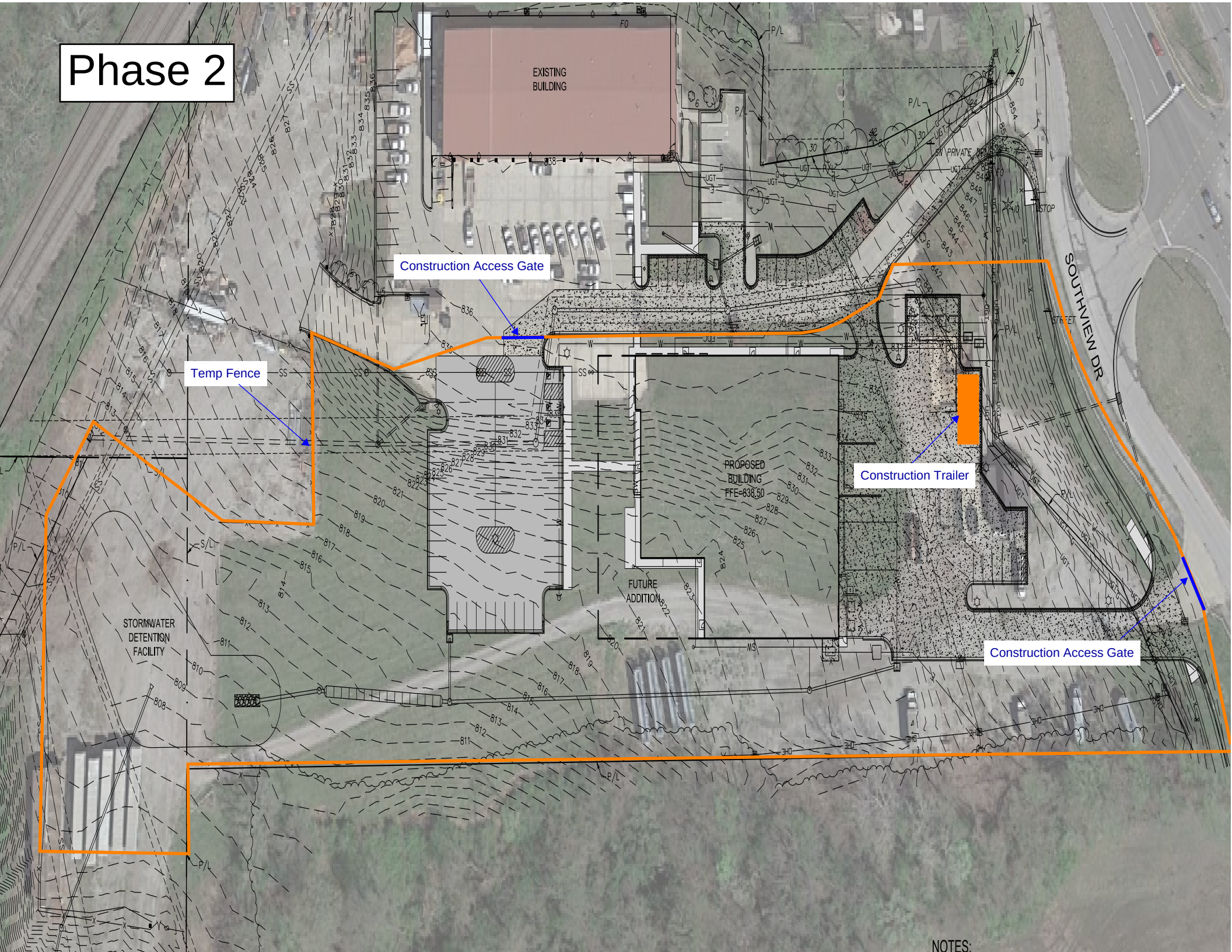
SECTION 00 3114:
SITE LOGISTICS PLAN

Phase 1



NOTES:

Phase 2



NOTES:

Bid Form

**SECTION 00 41 23
BID FORM**

**PLEASE NOTE: THIS PROJECT IS A
PUBLIC PROJECT GOVERNED BY
COMPETITIVE BIDDING REQUIREMENTS.
ANY MODIFICATION, CLARIFICATION
OR DEVIATION FROM THIS BID FORM
COULD CAUSE THE BID TO BE REJECTED
AS NONRESPONSIVE.**

Owner: Liberty School District

Project: Distribution Center – Pallet Racking

Construction Manager: Newkirk Novak Construction Partners **Attn:** Matt St. Louis

Name of Bidder: _____

Bid Package No.: _____ **Bid Package Title:** _____

Address of Bidder: _____ **Phone of Bidder:** _____

Contractor Bidder Contact: _____ **E-mail Address of Bidder:** _____

Bid Proposal Amounts:

The undersigned, having examined the Bidding Documents and the site of the proposed Work and being familiar with all the conditions affecting the construction of the proposed Project, hereby proposes and agrees to provide and furnish all labor, material, equipment, supervision and other items necessary to perform and complete, in a workmanlike manner, all Work required by the Contract Documents for the Bid Package Scope(s) of Work identified, at the prices stated below. Stated sums include all profit, overhead, fees, insurance, payroll taxes, payment and performance bonds, and all other charges applicable to materials, equipment, labor and all charges that may be levied. This Bid excludes sales tax.

In the following proposals, the amounts shall be shown in both words and figures. In the case of discrepancy between the words and the figures, the words shall govern.

Addenda:

The Bidder hereby acknowledges receipt and inclusion in the Bid Proposal the following addendum (number and date):

Addendum No. _____ Dated _____ Addendum No. _____ Dated _____

Addendum No. _____ Dated _____ Addendum No. _____ Dated _____

Addendum No. _____ Dated _____ Addendum No. _____ Dated _____

Base Bid:

_____ (\$_____).

Unit Price:

_____	\$_____ Add/Deduct
_____	\$_____ Add/Deduct
_____	\$_____ Add/Deduct

Alternates:

_____	\$_____ Add/Deduct
_____	\$_____ Add/Deduct
_____	\$_____ Add/Deduct
_____	\$_____ Add/Deduct
_____	\$_____ Add/Deduct
_____	\$_____ Add/Deduct

Changes in the Work:

Changes in the Work shall be as established in accordance with the Contract Documents. The fee limits stated in the Contract Documents shall be used for lump sum pricing and actual cost pricing of additions and deletions to that Work included in the Bid.

Time of Commencement, Completion and Damages:

1. The Bidder agrees that if awarded the Contract, it will have its Work ready for either the follow-on Contractor's work or the Final Inspection and Owner's acceptance in accordance with the schedule developed by the

Construction Manager. The Bidder agrees to commence work under the Contract **within seven (7) calendar days** after the date of a "Notice to Proceed", unless otherwise stipulated in that notice.

2. Time is expressly declared to be of the essence in completion of the Work covered by this Bid and the Bidder shall be liable for actual damages for delays in completion of Work.

General Agreements:

1. The Bidder agrees that it has had an opportunity to examine the site of the Work and has examined the Contract Documents, and that it has carefully prepared its proposal upon the basis thereof and that it has carefully examined and checked this Bid and the materials, equipment and labor required thereunder, the cost thereof, and its figures therefore, and hereby states that the amount or amounts set forth in this Bid is, or are, correct and that no mistake or error has occurred in this Bid or in the Bidder's computations upon which this Bid is based and the Bidder agrees that it will make no claim for reformation, modification, rescission, or correction of this Bid after the scheduled closing time for receipt of the Bid.
2. The Bidder acknowledges that the Owner reserves the right to waive informalities and to reject any or all bids.
3. The Bidder agrees that this Bid shall not be withdrawn or altered for a period of **Forty-Five (45)** calendar days after the last date scheduled for the submission of bids.
4. By signing this Bid, each Bidder certifies that this Bid has been arrived at independently, without consultation, collusion, communication or agreement as to any matter relating to this Bid with any other Bidder or with any competitor.

The undersigned Bidder agrees that, when these requirements have been completed, it will execute an agreement with the Owner on the **Standard Form of Agreement Between Owner & Contractor, AIA Document A101/CMA, 1992 Edition, as modified** and exhibited in the Project Manual without modification.

PLEASE NOTE: THIS PROJECT IS A PUBLIC PROJECT GOVERNED BY COMPETITIVE BIDDING REQUIREMENTS. THIS BID FORM CANNOT BE MODIFIED, QUALIFIED OR DEVIDATED FROM. TO DO SO COULD RESULT IN YOUR BID BEING REJECTED AS NONRESPONSIVE.

DATED THIS _____ DAY OF _____, 20____.

Signature of Authorized Officer

Name of Firm: _____

Address: _____

City, State: _____

Notary Public: _____

State of: _____

County of: _____

My Commission expires: _____

**Attachments: *Bidders Bid Package Scope(s) of Work
*Bid Security**

SECTION 00 43 13
BID BOND FORM

AIA Document A310

Document A310™ – 2010

Bid Bond

CONTRACTOR:

(Name, legal status and address)

SURETY:

(Name, legal status and principal place of business)

OWNER:

(Name, legal status and address)

BOND AMOUNT: \$**PROJECT:**

(Name, location or address, and Project number, if any)

-

ADDITIONS AND DELETIONS:

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

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Init.

Signed and sealed this day of ,

(Contractor as Principal)

(Seal)

(Witness)

(Title)

(Surety)

(Seal)

(Witness)

(Title)

Init.

/

SECTION 00 52 00
CONTRACT BETWEEN OWNER AND CONTRACTOR
[AIA A101/CM]

Subcontract Document Checklist

Newkirk Novak Construction Partners, Inc. Project Number:	
	Make sure the Newkirk Novak Construction Partners, Inc. project number is referenced on all correspondence
Return all documents below to:	Rachel Bowman
	rachel.bowman@newkirknovak.com

All items checked below are due within five (5) days of receipt unless otherwise noted.

☒	Subcontract Agreement - Execute one copy of the attached subcontract and return <u>all pages</u> via email. A fully executed copy will be returned via email your records.	
☒	W-9 – Execute the attached W-9 form	<i>W-9</i>
☒	Certificate of Insurance - your insurance carrier must provide a Certificate of Insurance reflecting the minimum required limits per the attached Subcontract Agreement.	<i>Exhibit D – Contractor Insurance Requirements</i>
☒	Application for Payment – A signed and notarized copy of the pay application forms AIA G732 and G703. Pay application forms must be submitted to Newkirk Novak Construction Partners, Inc. each month by the 20 th . Any applications for payments received after the 20 th of the month will be included in the following month.	<i>Exhibit E – AIA G732 & G703</i> <i>Submit by e-mail to:</i> rachel.bowman@newkirknovak.com brandon.stanley@newkirknovak.com
☒	Certificate Release of Lien – Conditional partial lien waiver	<i>Exhibit F – Lien Waiver - Remit with each pay application</i>
☒	Sub – Tier List – List all material vendors and subcontractors being used on the project totaling more than \$2,500.00.	<i>Exhibit G – Remit with each pay application</i>
☒	Certified Payroll Reports - Submit certified payroll reports by the 10 th of the month for the prior month. Submit to rachel.bowman@newkirknovak.com	<i>See Wage Order in bid documents</i>
☒	Performance and Payment Bond Forms	<i>Exhibit H – Contract Agreement</i>
☒	Project Tax Exemption Certificate	<i>Exhibit I – Contract Agreement</i>
☒	E-Verify Program Affidavit and Addendum Form	<i>Exhibit K – Contract Agreement</i>
☒	Felony Conviction Notification Form	<i>Exhibit L – Contract Agreement</i>

PROJECT TEAM: Please list the project team and their contact information below and return with executed subcontract agreement.

ROLE	NAME	CELL PHONE	EMAIL ADDRESS
Project Manager			
Superintendent/Foreman			
Accounting			
Certified Payroll			

AIA[®] Document A132[™] – 2019

Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition

AGREEMENT made as of the th day of Month in the year 2023
(In words, indicate day, month, and year.)

BETWEEN the Owner:

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

Liberty Public School District #53
8 Victory Lane
Liberty, Missouri 64068

and the Contractor:

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

Subcontractor

NNCP Subcontract No.: N333-XXXXXX

for the following Project:

(Name, location, and detailed description)

Liberty School District

Liberty, MO 64068

The Construction Manager:

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

Newkirk Novak Construction Partners, Inc.
11200 W. 79th Street
Lenexa, KS 66214

The Architect:

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

Hollis + Miller Architects
1828 Walnut St., Suite 922
Kansas City, MO 64108

The Owner and Contractor agree as follows.

TABLE OF ARTICLES

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Documents A232[™]-2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition; B132[™]-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132[™]-2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser. AIA Document A232[™]-2019 is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ELECTRONIC COPYING of any portion of this AIA[®] Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
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4	CONTRACT SUM
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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, including all labor, materials, equipment, services, supervision, and all other items required to complete such Work:

See Exhibit A

ARTICLE 3 DATE OF COMMENCEMENT AND DATES OF SUBSTANTIAL COMPLETION

§ 3.1 Work shall begin upon receipt by Contractor of a Notice to Proceed and Contractor's Work shall proceed and be substantially and finally complete in accordance with the Project construction schedule. Time is of the essence.

§ 3.2 The Contract Time shall be measured from the date of commencement, which shall be the date Contractor receives a Notice to Proceed from the Owner.

§ 3.3 If the Contractor delays the work of other contractors or delays the completion of the Project, Contractor shall be liable to the Owner and the other contractors for damages caused by the delay, including, but not limited to, costs of disruption, acceleration, or extension of work, additional Construction Management, Architectural, and Engineering fees, the cost of temporary facilities, and Owner's reasonable attorneys' fees.

§ 3.3 Substantial Completion of the Project or Portions Thereof

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the date of Substantial Completion of the Work of all of the Contractors for the Project will be:

(Insert the date of Substantial Completion of the Work of all Contractors for the Project.)

« »

§ 3.4.3 If the Contractor fails to substantially complete the Work of this Contract, or portions thereof, as provided in this Section 3.4, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

☒ [X] Stipulated Sum, in accordance with Section 4.2 below

☐ [] Cost of the Work plus the Contractor's Fee, in accordance with Section 4.3 below

☐ [] Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 4.4 below

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

§ 4.2 Stipulated Sum

§ 4.2.1 The Stipulated Sum shall be set forth in Exhibit A, subject to additions and deletions as provided in the Contract Documents.

§ 4.2.2.1 Alternates, if any, included in the Stipulated Sum are listed in Exhibit A:

--	--

§ 4.2.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ 4.2.3 Allowances included in the Stipulated Sum, if any, are listed in Exhibit A:
(Identify each allowance.)

Item	Price

§ 4.2.4 Unit prices, if any, are listed in Exhibit A:
(Identify the item and state the unit price, and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

« »

§ 5.1.3 Provided that an Application for Payment is received by the Construction Manager not later than the **twentieth** day of a month, the Owner shall make payment of the certified amount in the Application for Payment to the Contractor

not later than the « last » day of the « following » month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment shall be made by the Owner in the next payment cycle.
(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Progress Payments Where the Contract Sum is Based on a Stipulated Sum

§ 5.1.4.1 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form, and supported by such data to substantiate its accuracy, as the Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Each application for payment shall be submitted on AIA forms G732 (Application and Certificate for Payment, CMAA Edition) and G703 (Continuation Sheet).

§ 5.1.4.2 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.4.3 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows.

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.9 of the General Conditions;

§ 5.1.4.3.2 The amount of each progress payment shall then be reduced by:

- .1 Subtract the aggregate of previous payments made by the Owner, and
- .2 (Not used)
- .3 (Not used)
- .4 Subtract amounts, if any, for which the Construction Manager or Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General

§ 5.1.4.4 The progress payment amount determined in accordance with Section 5.1.4.3 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to one hundred percent (100 %) of the Contract Sum, less one hundred fifty percent (150%) of the value of incomplete Work and unsettled claims; and
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of the General Conditions.

§ 5.1.5 (Not used)

5.1.6 (Not used)

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

§ 5.2 Final Payment

§ 5.2.1 Final Payment Where the Contract Sum is Based on a Stipulated Sum

§ 5.2.1.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2 of AIA Document A232-2019, and to satisfy other requirements, if any, which extend beyond final payment
- .2 a final Certificate for Payment or Project Certificate for Payment has been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the final Certificate for Payment or Project Certificate for Payment, or as follows:.

§ 5.2.2 (Not used)

§ 5.3 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

« » % « »

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A232–2019, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

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

Kevin E. Nelson
Hollis + Miller Architects
1828 Walnut St., Suite 922
Kansas City, MO 64108
816-442-7700

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A232–2019, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[☐] Arbitration pursuant to Article 15 of AIA Document A232–2019.

[☒] Litigation in a court of competent jurisdiction.

[☐] Other: *(Specify)*

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

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 Where the Contract Sum is a Stipulated Sum

§ 7.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A232–2019.

§ 7.1.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A232–2019.

§ 7.2 (not used)

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A232–2019 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

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

Jason Briet
Liberty Public School District 53
801 Kent Street
Liberty, MO 64068 »816-736-5358
Jason.briet@lps53.org

§ 8.3 The Contractor's representative:
(Name, address, email address, and other information)

Contact Name
Subcontractor
Address
City, State, Zip
Phone
email

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.6 Other provisions:

§ 8.6.1 Contractor agrees that in the event of any strike, picket, sympathy strike, work stoppage, or other form of labor dispute (collectively "Labor Dispute") in connection with the work of the other contractors, subcontractors, Owner or any party other than Contractor, the Contractor will continue to perform the Work without interruption or delay, contingent upon Owner providing a picket free entrance. In the case of a Labor Dispute directed at Contractor, Contractor shall determine its own course of action to ensure continued performance of the Work. In the event Contractor delays or interrupts performance of the Work because of a Labor Dispute, Owner may terminate this Contract after giving forty-eight (48) hours written notice of an intent to do so, or Owner may invoke any of the rights set forth elsewhere in the Contract Documents.

§ 8.6.2 The Contractor shall insure that each worker on the site of the Work is paid the then current prevailing wage, as determined by the State in which the Project is located, if applicable.

§ 8.6.3 The Contractor agrees to abide by all applicable government requirements, including Equal Employment Opportunity, the Clean Air Act, the Federal Water Pollution Control Act, and such other federal, state, or local laws applicable to this Project and to furnish any certification required by any federal, state or local governmental agency.

§ 8.6.4 The Contractor shall provide insurance for its tools and equipment at its own cost in accordance with Exhibit D and shall waive all rights against Owner, Construction Manager, Architect and other contractors for damages or losses to such tools and equipment, however caused.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, Exhibit D, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A132™–2019, Exhibit H, and elsewhere in the Contract Documents.

§ 8.8 Other provisions:

« »

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are listed in Exhibit B.

- .1 AIA Document A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition, as modified
- .2 AIA Document A232™–2019, General Conditions of the Contract for Construction, Construction Manager as Adviser Edition, as modified and attached as Exhibit C
- .3 The Supplementary and other Conditions of the Contract: See Exhibit B.
- .4 Drawings
See Exhibit B

- .5 Specifications
See Exhibit B
- .6 Addenda, if any:
See Exhibit B

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

- .7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A232–2019 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

« See Exhibit B »

List of Exhibits:

Exhibit A – Master/Trade Scope & Contract Sum
Exhibit B - Contract Documents
Exhibit C - AIA Document A232 General Conditions of the Contract for Construction, 2009 edition, as modified
Exhibit D - Contractor Insurance Requirements
Exhibit E - AIA G732 & G703
Exhibit F – Lien Waiver
Exhibit G – Sub-tier List
Exhibit H - Performance & Payment Bond Forms
Exhibit I - Project Tax Exempt Certificate
Exhibit J - Schedules
Exhibit K – E-Verify Program Affidavit and Addendum Form
Exhibit L – Felony Conviction Notification Form

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

LIBERTY PUBLIC SCHOOL DISTRICT #53

SUBCONTRACTOR

OWNER (Signature)

(Printed name and title)

CONTRACTOR (Signature)

(Printed name and title)

Exhibit A
MASTER SCOPE OF WORK

Specific scope of work to be performed:

Scope of work includes, but is not limited to, the following:

1. This Trade Partners shall field verify existing conditions for deficiencies, unsatisfactory conditions, unacceptable dimensional tolerances, and notify Newkirk Novak Construction Partners, Inc. of such prior to installing work. Repairs due to unsatisfactory substrates, after acceptance shall be performed at the sole expense of this Trade Partners.
2. All layout, surveying, layout maintenance, field measurements, and field verification as needed to complete the required scope of work. Newkirk Novak Construction Partners, Inc., will provide benchmarks only.
3. This Trade Partners shall include all hosting, lifting, scaffolding, and equipment required to complete this scope of work.
4. This Trade Partners to have on-site staff for all deliveries and offloading.
5. This Trade Partners shall provide a person qualified, with authority to make decisions in attendance at any meeting that is requested by Newkirk Novak Construction Partners, Inc..
6. This Trade Partners is responsible for all required mobilizations, phasing, manpower, equipment, overtime, phasing, submittals, procurement etc. as required to meet the project schedule.
7. This Trade Partners is responsible for temporary protection of their own work or adjacent work as required to complete their scope of work. Protect existing improvements, the work of other trades, trees and vegetation scheduled to remain.
8. This Trade Partners to include required coring, cutting sleeving, sealants, and patching to complete their scope of work.
9. Each Trade Partners is responsible for their own power/generators. Temporary construction power will not be provided.
10. Provide water as needed for designated scope of work.
11. All roof penetrations to be coordinated with the roofing Trade Partners within 1 month of notice to proceed.
12. Exterior penetrations prior to installation of thermal and air barrier system.
13. This Trade Partners is required to coordinate all required inspections with Newkirk Novak Construction Partners, Inc. and appropriate testing agencies. Trade Partners are required to ensure all items are completed prior to inspection.
14. Coordinate all utility locates as required to complete scope of work.
15. Maintain a clean and safe workplace at all times. All debris related to the scope of this agreement shall be removed from the building and grounds to a Newkirk Novak Construction Partners, Inc. provided dumpster on a daily basis.
16. Newkirk Novak will provide the General Building Permit. Trade Partners are responsible for all permits, fees, etc required to complete their scope of work with AHJ's.
17. Trade Partners shall prevent surface and ground water from entering excavations, ponding on subgrades, and flooding project site or surrounding areas. Include dewatering required to satisfactorily construct all work all work to maintain specified to maintain project schedule.

EXHIBIT B
CONTRACT DOCUMENTS
Liberty Public School – Ball Fields
Newkirk Novak Project No. N3-0633

1. The Contract between Owner and Contractor and all exhibits attached to this Contract.
2. Project Manual including specification sections dated
3. Drawings prepared by Hollis + Miller Architects as follows:
4. Addenda, as follows:
 - a.
 - b.
 - c.

<u>Sheet No.</u>	<u>Title</u>	<u>Date</u>



AIA[®] Document A232[™] – 2019

General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

for the following PROJECT:

(Name, and location or address)

Liberty Public School District #53
8 Victory Lane
Liberty, MO 64068

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

Newkirk Novak Construction Partners, Inc.
11200 W. 79th Street
Lenexa, KS 66214

THE OWNER:

(Name, legal status, and address)

Liberty School District
2022 Bond Issue
8 Victory Lane
Liberty, MO 64068

THE ARCHITECT:

(Name, legal status, and address)

Hollis + Miller Architects
1828 Walnut Street
Kansas City, MO 64108

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Documents A132[™]–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132[™]–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132[™]–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

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

§ 1.1.2 The Contract. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

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

§ 1.1.4 The Project. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Contractors and by the Owner's own forces, including persons or entities under and separate contracts not administered by the Construction Manager.

§ 1.1.5 Contractors. Contractors are persons or entities, other than the Contractor or Separate Contractors, who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

§ 1.1.6 Separate Contractors. Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

§ 1.1.7 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.

§ 1.1.8 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.

§ 1.1.9 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.

§ 1.1.10 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.

§ 1.2 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.

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

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory, and other reserved rights, including copyrights. 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 the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

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

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

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

(Paragraph deleted)

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work, and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due.

(Paragraphs deleted)

§ 2.3 Information and Services Required of the Owner

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

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

§ 2.3.3 The Owner shall retain a construction manager adviser lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.4 If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

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

§ 2.3.6 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.

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

§ 2.3.8 The Owner shall forward all communications to the Contractor through the Construction Manager. Other communication shall be made as set forth in Section 4.2.6.

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a 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, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Architect's and their respective consultants' 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, after consultation with the Construction Manager. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.5, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and 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 Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and 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 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.

§ 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. If the Contract Documents give specific instruction 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 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, the Construction Manager, and the Architect, and shall not proceed with that portion of the Work without further written instructions from the Architect, through the Construction Manager. 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. dures.

§ 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 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 the Project already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

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

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

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

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner, Construction Manager, 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 shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof 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 Owner, through the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

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

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

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect, in consultation with the Construction Manager, 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, Construction Manager, and Contractor in writing, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either 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, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor 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;
- .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 Superintendent

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, through the Construction Manager, of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor, stating whether the Owner, the Construction Manager, or the Architect (1) has reasonable objection to the proposed superintendent or (2) require additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner, Construction Manager, or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Construction Manager's and Architect's approval. The Architect and Construction Manager's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Construction Manager and Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall participate with other Contractors, the Construction Manager, and the Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data, and Samples

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect and Construction Manager is subject to the limitations of Sections 4.2.10 through 4.2.12.

Informational submittals upon which the Construction Manager and Architect are 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 Construction Manager or Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors.

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner, the Architect, and the Construction Manager shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

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

§ 3.13 Use of Site

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

§ 3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Construction Manager, and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner, Architect, or Construction Manager. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect through the Construction Manager.

§ 3.18 Indemnification

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

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

ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement.

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

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

§ 4.2 Administration of the Contract

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents and defects and deficiencies observed in the Work.

§ 4.2.3 The Construction Manager shall provide one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner and Architect reasonably informed of the progress of the Work, and will promptly report to the Owner and Architect known deviations from the Contract Documents and the most recent Project schedule, and defects and deficiencies observed in the Work.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project schedule.

§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and 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, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 4.2.6 Communications. The Owner shall communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.

§ 4.2.9 Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

§ 4.2.10 The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data, and Samples. Where there are other Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from the Contractor and other Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§ 4.2.11 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.12 Review of the Contractor's submittals by the Construction Manager and Architect 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 Construction Manager and 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 Construction Manager and Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.13 The Construction Manager will prepare Change Orders and Construction Change Directives.

§ 4.2.14 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7, and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.15 Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples, and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

§ 4.2.16 The Construction Manager will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 4.2.17 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Construction Manager of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.18 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.19 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 so rendered in good faith.

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

§ 4.2.21 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing, through the Construction Manager, to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request 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 other Contractors or Separate Contractors or the subcontractors of other Contractors or Separate Contractors.

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Construction Manager may notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. Failure of the Construction Manager to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager 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, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager 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 for one previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor

so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other 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 with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.

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

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner's own forces, Separate Contractors, Construction Manager and other 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's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially

completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, 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 delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces, Separate Contractors, or other Contractors.

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

§ 6.2.5 The Owner, Separate Contractors, and other Contractors 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, other 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 Construction Manager, with notice to 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, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

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

§ 7.2 Change Orders

A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, 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.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager 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 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

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

§ 7.3.4 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 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager 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.

§ 7.3.7 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.

§ 7.3.8 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 Construction Manager and 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 request payment for Work completed under the Construction Change Directive in Applications for Payment. The Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 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, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

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

§ 8.3 Delays and Extensions of Time

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

§ 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.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Construction Manager, before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

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

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

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

§ 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Certificate for Payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

§ 9.4.2 Where there is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.2.1 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

§ 9.4.3 The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

§ 9.4.4 The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

§ 9.4.5 The representations made pursuant to Sections 9.4.3 and 9.4.4 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 Construction Manager or Architect.

§ 9.4.6 The issuance of a Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or 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 or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

- .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 suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor or other Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

§ 9.5.4 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager, and both 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 or Project 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 Construction Manager and 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 Construction Manager 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 Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

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

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

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

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

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

§ 9.7 Failure of Payment

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner, Construction Manager 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 shutdown, 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 the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly 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 list, the Architect, assisted by the Construction Manager, 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 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, assisted by the Construction Manager, to determine Substantial Completion.

§ 9.8.4 When the Architect, assisted by the Construction Manager, determines that the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance,

heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly 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 after consultation with the Construction Manager.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager, 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 completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

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

§ 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 Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager 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; or
 - .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- .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; and
- .4 construction or operations by the Owner, Separate Contractors, or other Contractors.

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

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 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, 10.2.1.3 and 10.2.1.4. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any 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, Construction Manager and Architect.

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

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

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

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

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

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for 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 reimburse 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.

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

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Construction Manager and Construction Manager's consultants, and the Architect and Architect's consultants, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

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

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

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

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform both the Contractor and the Construction Manager, separately and in writing, prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice directly to the Contractor, and

separately to the Construction Manager, of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

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

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

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

§ 11.5 Adjustment and Settlement of Insured Loss

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

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising

out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, Construction Manager or Architect, the Owner may correct it in accordance with Section 2.5.

§ 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 of the Owner, Separate Contractors, or other Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be

sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

§ 13.4.2 If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and 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 Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Construction Manager has not certified or 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, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

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

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

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees, or any other persons performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner, Construction Manager and 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;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, after consultation with the Construction Manager, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, 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 the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

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

§ 14.4 Termination by the Owner for Convenience

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

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

§ 15.1.3 Notice of Claims

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

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

§ 15.1.4 Continuing Contract Performance

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

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

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

§ 15.1.6 Claims for Additional Time

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

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

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

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

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

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

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

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

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

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

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

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

§ 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 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry

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

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

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

§ 15.4 Arbitration

§ 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. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

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

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

§ 15.4.4 Consolidation or Joinder

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

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

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

EXHIBIT D

Contractor Insurance Requirements

1. **Minimum Coverages and Limits.** Unless higher limits are required in the Contract Documents, Contractor must procure, carry and maintain policies of insurance meeting the requirements and minimum limits listed below. Where appropriate, the required insurance limits may be provided through a combination of primary and excess/umbrella policies.

- A. **Worker's Compensation and Employer's Liability Insurance.** Contractor must obtain and maintain Worker's Compensation Insurance to cover the statutory limits and requirements of the Worker's Compensation laws of the state or states in which Contractor's Work is performed. Contractor, and all subcontractors of every tier, must carry this insurance regardless of eligibility for waiver or exemption of coverage under a state law. Contractor must also obtain and maintain Employer's Liability insurance, including Occupational Disease coverage, meeting the requirements and written for the following policy limits:

\$1,000,000	Bodily Injury Each Accident
\$1,000,000	Each Employee
\$1,000,000	Aggregate – Policy Limit

Such insurance must include "other states" insurance, so as to include all states not named on the declarations page of the insurance policy, except for the monopolistic states.

Contractor shall either provide worker's compensation coverage, or require proof of worker's compensation coverage from, every person with whom it has a direct contract to perform construction work on the Project. The substance of this clause shall be included in all contracts Contractor enters in to with lower tier subcontractors.

- B. **Commercial General Liability Insurance.** Contractor must obtain and maintain Commercial General Liability Insurance for the hazards of (i) construction operation, (ii) independent contractors, (iii) products/completed operations, (iv) explosion, collapse and underground (XCU), (v) broad form property damage, (vi) personal injury, (vii) premises operations, and (viii) broad form contractual liability and must be written for the following policy limits:

\$1,000,000	Per Occurrence, Combined Single Limit for Bodily Injury and Property Damage
\$1,000,000	Personal & Advertising Injury
\$2,000,000	General Aggregate (Per Project)
\$2,000,000	Products/Completed Operations Aggregate

General Liability, including products/completed operations, must be carried for a minimum of **the statute of repose for the state in which the project is located** from completion of Contractor's Work on-site, or as required by the Contract Documents, whichever is longer.

- C. **Commercial Automobile Liability Insurance.** Contractor must obtain and maintain comprehensive automobile insurance covering all owned, non-owned and hired automobiles used in connection with the Contractor's Work written for the following policy limits:

\$1,000,000	Combined Single Limit for Bodily Injury and Property Damage per Accident
--------------------	---

- D. **Excess/Umbrella Liability.** Contractor must obtain and maintain Excess Liability coverage on an umbrella form following primary policy form (General Liability, Automobile Liability and Employer's Liability) written for the following policy limits:

\$5,000,000	Per Occurrence
\$5,000,000	Aggregate Limit

EXHIBIT D

- E. **Design Liability.** If any design responsibility is included in the Contract, Contractor, or its designer, must purchase, and maintain or renew annually for a period of **the statute of repose for the state in which the project is located** after the date of Final Completion, insurance covering claims arising out of the performance or furnishing of Design Professional Services and for claims arising out of allegations of errors, omissions or negligent acts in connection with the Contract. The policy must be written for the following policy limits:

\$1,000,000	Per Claim,
\$1,000,000	Annual Aggregate Limit

- F. **Commercial Watercraft and/or Aircraft Liability (if applicable).** If watercraft or aircraft are used in connection with the Contractor's Work, Contractor must obtain and maintain Commercial Watercraft and/or Aircraft Liability insurance covering the use of all owned, non-owned, and hired watercraft and/or aircraft written with a combined bodily injury or property damage limit of **\$50,000,000**.
- G. **Equipment Policy.** Contractor must provide property coverage for Contractor's equipment and tools brought onto the Project site.
- H. **Hazardous Material Liability (if applicable).** Contractor must furnish insurance providing coverage for Hazardous Material Liability in an amount not less than **\$2,000,000 per occurrence / \$2,000,000 Annual Aggregate**, complying with the requirements of the Contract Documents.

2. Conditions

- A. **Insurance Primary.** All policies of insurance, including General Liability and Excess/Umbrella Liability, provided by Contractor must be primary, not contributing with and not in excess of the coverage of the indemnitee's and/or Additional Insured's insurance or other insurance available to the indemnitee and/or Additional Insured.
- B. **Severability of Interest.** General Liability, Excess/Umbrella Liability and Pollution Liability, if any, must be written to provide that, inasmuch as this policy is written to cover more than one insured, all terms, conditions, insuring agreements and endorsements, with the exception of limits of liability, must operate in the same manner as if there were a separate policy covering each insured.
- C. **Waiver of Subrogation.** All policies of insurance, as allowed by law and excluding Professional Liability insurance, that are in any way related to the Work or services of the Project, including those that are secured and maintained by consultants and lower-tier subcontractors, must include a provision providing that each party and its insurance carrier waive all rights of recovery under subrogation or otherwise against the entities identified as Additional Insureds in the Contract Documents.
- D. **Additional Insureds.** Contractor furnished insurance (except Worker's Compensation Insurance, Professional Liability, and Equipment Policy, if applicable) must include Liberty Public School District (Owner), Newkirk Novak Construction Partners, Inc. (Construction Manager), Hollis + Miller Architects, (Architect), and any other person or entity required by the Contract Documents, and all their assigns, subsidiaries and affiliates as additional insureds as their respective interest may appear ("Additional Insureds"). Additional Insured status must be provided for ongoing operations and completed operations. The additional insured endorsement shall be on a form acceptable to Owner and Construction Manager in their sole discretion.
- E. **Cancellation Notice.** All insurance certificates and policies will state that all coverages are in effect and will not be canceled without thirty (30) days prior written notice to Certificate Holder.
- F. **Certificate Holder and Other Information.** All insurance certificates will include in the Certificate Holder box the following verbiage: **Liberty Public School District, 8 Victory Lane, Liberty, MO 64015**. In addition to the other information required, all insurance certificates will include the Job Name: **Liberty School District - Ball Fields** in the description box.

EXHIBIT D

3. **Lower-Tier Subcontractors' Insurance.** Contractor must require all lower-tier subcontractors providing equipment, materials or services directly to Contractor in connection with the Contractor's Work to obtain, maintain and keep in force coverages in accordance with these insurance requirements. Contractor must obtain certificates of insurance evidencing such coverage and provide Construction Manager or Owner with such certificates upon request. Contractor must not be excused from its obligations to cause such lower-tier subcontractor to meet the insurance coverage requirements set forth under this section unless Contractor must have obtained in writing from Construction Manager and Owner a waiver, which must be effective only as to such requirements and for such lower-tier subcontractors specifically identified therein.

Contractor shall verify that its lower tier subcontractors have met the Worker's Compensation insurance requirements, as required by law, including but not limited to collecting all required certificates of insurance.

4. **General Requirements**

- A. Insurance certificates and endorsements complying with these requirements must be received by Construction Manager prior to commencement of Contractor's Work on the Project and will be a condition to any payment.
- B. All insurance is to be issued by companies acceptable to Construction Manager and Owner but must be provided by companies having at least an A.M. Best rating of A-VII or better.
- C. Construction Manager and Owner reserve the right to require that Contractor provide certified copies of any and all insurance policies and endorsements to which this Contract is applicable.
- D. Certificates of Insurance are subject to the approval of Construction Manager and Owner. However, any acceptance of a certificate by Construction Manager or Owner does not limit or relieve Contractor of its obligations under the Contract or waive Contractor's obligation to maintain such insurance.
- E. Construction Manager or Owner may take such steps as necessary to assure Contractor's compliance with the insurance requirements. In the event Contractor fails to obtain and maintain the policies of insurance meeting the requirements and minimum limits identified above, Construction Manager or Owner may obtain and maintain such coverage and recover the cost from Contractor.
- F. The policies of insurance required above must contain no exclusion for work expressly within Contractor's scope of work (e.g., EIFS, asbestos, etc.) unless Contractor has a separate policy providing such coverage and provides evidence of such coverage with limits of liability comparable with above stated limits.
- G. The required coverages and limits referred to and set forth herein do not affect or limit Contractor's liability with respect to this Contract and its performance or the coverage as an Additional Insured.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/1/2021

5/11/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000	CONTACT NAME:	FAX (A/C, No):	
	PHONE (A/C, No, Ext):	E-MAIL ADDRESS:	
INSURED 1492890 LIBERTY PUBLIC SCHOOL DISTRICT 8 VICTORY LANE LIBERTY MO 64068	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Midwest Public Risk		
	INSURER B: Missouri Employers Mutual Insurance Company		10191
	INSURER C:		
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES**CERTIFICATE NUMBER:** 17563590**REVISION NUMBER:** XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC OTHER:	Y	Y	RM - 20 01	4/1/2020	7/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ Excluded PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY	Y	Y	RM - 20 01	4/1/2020	7/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED \$ RETENTION \$	Y	Y	RM - 20 01	4/1/2020	7/1/2021	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$ XXXXXXXX
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ N	Y N/A	MEM 1025809-11	4/1/2020	7/1/2021	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

LIBERTY PUBLIC SCHOOL DISTRICT IS ADDITIONAL INSURED ON GENERAL LIABILITY, AUTO AND UMBRELLA COVERAGE, ON A PRIMARY, NON-CONTRIBUTORY BASIS, AS REQUIRED BY WRITTEN CONTRACT. WAIVER OF SUBROGATION IN FAVOR OF THE ADDITIONAL INSURED APPLIES ON GENERAL LIABILITY, AUTO, UMBRELLA, WORKMENS COMPENSATIONS COVERAGE, AS REQUIRED BY WRITTEN CONTRACT AND WHERE ALLOWED BY LAW. COVERAGE IS SUBJECT TO THE TERMS AND CONDITIONS OF THE POLICY.

CERTIFICATE HOLDER**17563590**
LIBERTY PUBLIC SCHOOL DISTRICT**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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EXHIBIT E

SECTION 006276: APPLICATION AND CERTIFICATE FOR PAYMENT

AIA® Document G732™ – 2009

Application and Certificate for Payment, Construction Manager as Adviser Edition

TO OWNER:	PROJECT:	APPLICATION NO:	DISTRIBUTION TO:
			OWNER ☐
		PERIOD TO:	CONSTRUCTION MANAGER ☐
			ARCHITECT ☐
FROM	VIA CONSTRUCTION	CONTRACT DATE:	CONTRACTOR ☐
CONTRACTOR:	MANAGER:		FIELD ☐
	VIA ARCHITECT:	PROJECT NOS:	

CONTRACT FOR

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
AIA Document G703™, Continuation Sheet, is attached.

1. ORIGINAL CONTRACT SUM.....	
2. NET CHANGES IN THE WORK.....	
3. CONTRACT SUM TO DATE (Line 1 ± 2)	\$0.00
4. TOTAL COMPLETED AND STORED TO DATE (Column G on G703).....	
5. RETAINAGE:	
a. 5 % of Completed Work	
(Column D + E on G703: \$0.00)=	
b. 0 % of Stored Material	
(Column F on G703: \$0.00)=	\$0.00
Total Retainage (Lines 5a + 5b, or Total in Column I on G703).....	
6. TOTAL EARNED LESS RETAINAGE.....	
(Line 4 minus Line 5 Total)	
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT.....	\$0.00
(Line 6 from prior Certificate)	
8. CURRENT PAYMENT DUE.....	
9. BALANCE TO FINISH, INCLUDING RETAINAGE	
(Line 3 minus Line 6)	

SUMMARY OF CHANGES IN THE WORK	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		\$0.00
Total approved this month including Construction Change Directives	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
NET CHANGES IN THE WORK		\$0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: Date:
State of:
County of:
Subscribed and sworn to before
me this day of
Notary Public:
My Commission expires:

CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on evaluations of the Work and the data comprising this application, the Construction Manager and Architect certify to the Owner that to the best of their knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED..... \$0.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

CONSTRUCTION MANAGER:

By: Date:

ARCHITECT: (NOTE: If Multiple Prime Contractors are responsible for performing portions of the Project, the Architect's Certification is not required.)

By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.



Continuation Sheet

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.

In tabulations below, amounts are in US dollars.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 001

APPLICATION DATE:**PERIOD TO:**

ARCHITECT'S PROJECT NO:

[illegible]

EXHIBIT F

CERTIFICATE & RELEASE WAIVER & RELEASE OF LIEN

PROJECT: Liberty School District – Ball Fields

OWNER: Liberty School District
801 Kent Street
Liberty, MO 64068

Contract or Reference No. N333-_____

WHEREAS THE UNDERSIGNED [] Contractor, [X] Subcontractor, [] Supplier, [] Architect or Engineer, or [] _____ has provided labor, services, materials or equipment, for the above project, under an agreement with:

Liberty School District – Ball Fields

In its capacity as [X] Owner or Owner's agent, [] Contractor, [] Subcontractor, [] Architect or Engineer.

Section A: (check and initial ONLY ONE of the following)

X **PARTIAL WAIVER AND RELEASE: IN CONSIDERATION OF PARTIAL PAYMENT** for labor, services, check initial materials or equipment provided in the amount dollars & 00/100 (\$00.00) covering the following Partial Payment Request(s) or Invoice(s): (attach additional pages if necessary)

DATE:

PAY REQUEST or INVOICE NUMBER

AMOUNT:

together with any previous payment(s) already received, but excluding any retainage or any labor, services, materials or equipment provided after the date of: _____, 20__.

check initial **FINAL WAIVER AND RELEASE: IN CONSIDERATION OF FINAL PAYMENT** for all labor, services, materials or equipment provided in the amount of: _____ Dollars (\$ _____)

THE UNDERSIGNED DOES HEREBY WAIVE AND RELEASE all bond claims, liens, or claims or right of lien, statutory or otherwise, against the property, project, Owner and any sureties, for labor, services, materials or equipment, as provided by the Undersigned, but only to the extent of payment received, as indicated above as limited below:

Section B: (check and initial ONLY ONE of the following)

X **CONDITIONAL RELEASE: THIS WAIVER AND RELEASE IS CONTINGENT UPON RECEIPT OF PAYMENT** and final bank check initial clearance of said remittance in the above amount. The remittance identified as payment and endorsed by the Undersigned marked "paid" or otherwise cancelled by the bank against which said remittance was drawn, shall constitute conclusive proof that said invoice or pay request was paid and that payment thereof was received by the Undersigned, and thereupon, this waiver and release shall become effective automatically without the requirement of any further act, acknowledgement or receipt on the part of the Undersigned.

ADDITIONALLY, THE UNDERSIGNED ACKNOWLEDGES RECEIPT of the total amount of \$ _____ in previous payment and does hereby grant unconditionally release of all above described claims for that amount.

OR

check initial **UNCONDITIONAL RELEASE: THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF PAYMENT** in the above amount for labor, services, materials or equipment as described herein, and does hereby grant this release unconditionally.

THE PERSON SIGNING below does hereby certify that he or she is fully authorized and empowered to execute this instrument and to bind the Undersigned hereto, and does in fact so execute this instrument.

COMPANY NAME: _____

ADDRESS: _____

SIGNED: _____

TITLE: _____

State of: _____)

County of: _____) SS

Subscribed and sworn before me this

_____ day of _____, 20__.

NOTARY PUBLIC:

SIGNED: _____

My Commission Expires:

EXHIBIT G

SUB-TIER LIST

Subcontractor / Supplier	
Project:	
Subcontract Number:	
Contract Amount to Date	-
Invoice Number:	
Pay Application Through Date	

It is Newkirk Novak Construction Partners, Inc.'s policy to collect from the above Subcontractor/Supplier a copy of waivers of lien for each of Subcontractor's suppliers and subcontractors used for the above Project for services, materials, and/or equipment through the Last Date, prior to each subsequent payment application that above Subcontractor submits to Newkirk Novak Construction Partners, Inc.

The following listed persons or entities are the names of all parties who have furnished, or will furnish, labor, services, materials and/or equipment for the above Project at the request of the Subcontractor/Supplier. Subcontractor has paid in full, except for any retainage, all of its subcontractors and suppliers except for any retainage, all of its subcontractors and suppliers for labor, services, materials, and/or equipment they supplied to or for the benefit of the Project through the period covered by all prior payments.

Company Name (Of your Material Suppliers and/or Subcontractors)	Labor / Services / Materials / Equipment Supplied	Contract Amount	Amount Paid to Date (Cumulative)	Amount Billed This Period (Through Date Listed Above)	Remaining Balance Left on Contract
		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$
TOTALS		\$	\$	\$	\$

	Write "None" here if No sub-subcontractors, equipment providers, materialmen or suppliers were used on this Project.
--	--

Signature

Date

Printed Name / Title

EXHIBIT H

006113: PERFORMANCE & PAYMENT BOND FORM

THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A311/CM

CONSTRUCTION MANAGEMENT EDITION

Performance Bond

KNOW ALL MEN BY THESE PRESENTS: that

(Here insert full name and address or legal title of Contractor)

as Principal, hereinafter called Contractor, and,

(Here insert full name and address or legal title of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto

(Here insert full name and address or legal title of Owner)

as Obligee, hereinafter called Owner, in the amount of

Dollars (\$ _____),

for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Contractor has by written agreement dated _____

(Here insert full name, address and description of project)

, 19____, entered into a contract with Owner for

in accordance with Drawings and Specifications prepared by _____

(Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

PERFORMANCE BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

1) Complete the Contract in accordance with its terms and conditions, or

2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph)

sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due or before the expiration of one (1) year from the Date of Substantial Completion of the Project, whichever is later.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

Signed and sealed this

day of

, 19

(Witness)

(Principal)

(Seal)

(Title)

(Witness)

(Surety)

(Seal)

(Title)

THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A311/CM

CONSTRUCTION MANAGEMENT EDITION

Labor and Material Payment Bond

THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

KNOW ALL MEN BY THESE PRESENTS: that

(Here insert full name and address or legal title of Contractor)

as Principal, hereinafter called Principal, and,

(Here insert full name and address or legal title of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto

(Here insert full name and address or legal title of Owner)

as Obligee, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the

amount of

(Here insert a sum equal to at least one-half of the contract price)

Dollars (\$),

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Principal has by written agreement dated

(Here insert full name, address and description of project)

, 19 , entered into a contract with Owner for

in accordance with Drawings and Specifications prepared by

(Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

LABOR AND MATERIAL PAYMENT BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Owner or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials

were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

b) After the expiration of one (1) year following the date on which Principal ceased Work on said Contract or after the expiration of one (1) year following the Date of Substantial Completion of the Project, whichever is later, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this

day of

, 19

(Witness)

(Principal)

(Seal)

(Title)

(Witness)

(Surety)

(Seal)

(Title)

EXHIBIT K

FEDERAL WORK AUTHORIZATION PROGRAM AFFIDAVIT

I, _____, being of legal age and having been duly sworn upon my oath, state the following facts are true:

1. I am more than twenty-one years of age; and have first-hand knowledge of the matters set forth herein.
2. I am employed by _____ (hereinafter "Company") and have authority to issue this affidavit on its behalf.
3. Company is enrolled in and participating in the United States E-Verify (formerly known as "Basic Pilot") federal work authorization program with respect to Company's employees working in connection with the services Company is providing to, or will provide to, the District, to the extent allowed by E-Verify.
4. Company does not knowingly employ any person who is an unauthorized alien in connection with the services the Company is providing to, or will provide to, the District.

FURTHER AFFIANT SAYETH NOT.

By: _____ (individual signature)

For _____ (company name)

Title: _____

Subscribed and sworn to before me on this ____ day of _____, 200__.

NOTARY PUBLIC

My commission expires:

EXHIBIT K

FEDERAL WORK AUTHORIZATION PROGRAM (“E-VERIFY”) ADDENDUM

Pursuant to Missouri Revised Statute 285.530, all business entities awarded any contract in excess of five thousand dollars (\$5,000) with a Missouri public school district must, as a condition to the award of any such contract, be enrolled and participate in a federal work authorization program with respect to the employees working in connection with the contracted services being provided, or to be provided, to the District (to the extent allowed by E-Verify). In addition, the business entity must affirm the same through sworn affidavit and provision of documentation. In addition, the business entity must sign an affidavit that it does not knowingly employ any person who is an unauthorized alien in connection with the services being provided, or to be provided, to the District.

Accordingly, your company:

- a) agrees to have an authorized person execute the attached “Federal Work Authorization Program Affidavit” attached hereto as Exhibit A and deliver the same to the District prior to or contemporaneously with the execution of its contract with the District;
- b) affirms it is enrolled in the “E-Verify” (formerly known as “Basic Pilot”) work authorization program of the United States, and are participating in E-Verify with respect to your employees working in connection with the services being provided (to the extent allowed by E-Verify), or to be provided, by your company to the District;
- c) affirms that it is not knowingly employing any person who is an unauthorized alien in connection with the services being provided, or to be provided, by your company to the District;
- d) affirms you will notify the District if you cease participation in E-Verify, or if there is any action, claim or complaint made against you alleging any violation of Missouri Revised Statute 285.530, or any regulations issued thereto;
- e) agrees to provide documentation of your participation in E-Verify to the District prior to or contemporaneously with the execution of its contract with the District (or at any time thereafter upon request by the District), by providing to the District an E-Verify screen print-out (or equivalent documentation) confirming your participation in E-Verify;
- f) agrees to comply with any state or federal regulations or rules that may be issued subsequent to this addendum that relate to Missouri Revised Statute 285.530; and
- g) agrees that any failure by your company to abide by the requirements a) through f) above will be considered a material breach of your contract with the District.

By: _____ (signature)

Printed Name and Title: _____

For and on behalf of: _____ (company name)

EXHIBIT L

FELONY CONVICTION NOTIFICATION FORM

The person or business entity that enters into an agreement with this school district must give advance notice to the District if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.

The district may terminate this agreement with a person or business entity if the District determines that the person or business entity failed to give notice by the next preceding subsection, or misrepresented the conduct resulting in the conviction. The District will compensate the person or business entity for services performed before the termination of the agreement”.

By submitting this offer and signing this certificate, this bidder:

- Certifies that the owner/operator has not been convicted of a felony, except as indicated on a separate attachment to this offer, and
- Certifies that no employee who will enter school buildings or potentially have contact with school children has been convicted of any felony or a misdemeanor involving violence or sexual contact or sexual abuse. It shall be the duty of the vendor to conduct the appropriate background checks on its employees and vendor agrees to share this information with the District upon request.

Vendor Name: _____

Vendor Address: _____

Vendor E-mail Address: _____

Vendor Telephone: Fax Number: _____

Authorized Company Official's Name: _____ (Printed)

Signature of Company Official: _____

Date: _____

SECTION 00 62 90 TAX EXEMPTION

In order that the Owner may take advantage of its tax exemption, the Contractor will be issued a Tax Exemption Letter and/or Exemption Certificate issued by the [Missouri] Department of Revenue which will be attached to its Prime Contract. The Contractor shall make copies of these documents and provide them to each vendor or supplier from whom the Contractor purchases tangible personal and labor services property tax exempt. The sales or compensating tax exemption number must be available to the vendor at the time the invoice is rendered or the exemption for sales or compensating tax cannot be claimed.

Upon completion of the Project, the Contractor shall furnish to the Owner a sworn statement, on a form to be provided by the director of taxation, that all purchases so made were entitled to exemption. All invoices shall be held by the Contractor for a period of five years and shall be subject to audit by the director of taxation.

The Contractor shall fully comply with all federal, state and local laws governing the use of such tax exemption. Failure to use the tax exemption properly can result in civil and criminal penalties. The Contractor shall assume full responsibility for proper use of the tax exemption and shall pay all costs of any legally assessed penalties for improper use of the same. The Contractor hereby agrees to defend and indemnify Construction Manager and Owner for any loss, damage, cost or penalty assessed against them arising from Contractor's improper implementation or use of the tax exemption granted to this Project.

SECTION 00 73 19
CONSTRUCTION MANAGEMENT SAFETY POLICY

Via Separate Cover

SECTION 00 73 36

EQUAL OPPORTUNITY

1. During the performance of the Contract, the Contractor agrees as follows:
 - (a) The Contractor will not discriminate against any employee because of race, religion, color, sex or national origin and will abide by the provisions of the Age Discrimination in Employment Act of 1967, as amended. The Contractor will take affirmative action to ensure that applicants are employed and that applicants are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment advertisement; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices of these non- discrimination provisions.
 - (b) The Contractor will in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, or national origin.
 - (c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract of understanding, a notice advising the labor union or workers' representative of the Contractor's equal employment opportunity commitments, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 - (d) In the event of the Contractor's non-compliance with the Equal Employment Opportunity conditions of this Contract or with any of such rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended, in whole or in part, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246, or by rule, regulation, or order of the Secretary of Labor or otherwise provided by law.
 - (e) The Contractor will include all clauses (a) through (d) inclusive in every subcontract or purchase order, so that such provisions will be binding upon each subcontractor or vendor.
 - (f) Exemptions to the above Equal Employment Opportunity conditions are contracts and subcontracts not exceeding Ten Thousand Dollars (\$10,000).
2. Contractor may be required under Section 60-1.40, Title 41, C.F.R. to develop a written Affirmative Action Compliance Program if Contractor has fifty (50) or more employees. If

Contractor is so required, it agrees to do so no later than one hundred twenty (120) days after the effective date of the Contract and to maintain such program until such time as it is no longer required by law or regulations.

3. Contractor shall be bound by and agrees to the provisions of the Vietnam Era Veteran's Readjustment Act of 1974 and all regulations, rules, and orders promulgated thereunder.
4. Contractor shall be bound by and agrees to the provisions of Section 503 of the Rehabilitation Act of 1973 and all regulations, rules and orders promulgated thereunder.

SECTION 00 73 43

WAGE RATE REQUIREMENTS

Contractors shall pay their workmen not less than the prevailing hourly wage for workmen required to perform the Work of their Contract as established by the Division of Labor Standards, State of [*Missouri*], applicable to the location and Work to be performed on the Project. Contractors shall maintain payroll records substantiating compliance with the payment of the applicable prevailing wage including, but not limited to, certified payrolls and, if requested, provide copies to the Construction Manager or Owner of such records.

Missouri

Division of Labor Standards

WAGE AND HOUR SECTION



MICHAEL L. PARSON, Governor

Annual Wage Order No. 30

Section 024
CLAY COUNTY

In accordance with Section 290.262 RSMo 2000, within thirty (30) days after a certified copy of this Annual Wage Order has been filed with the Secretary of State as indicated below, any person who may be affected by this Annual Wage Order may object by filing an objection in triplicate with the Labor and Industrial Relations Commission, P.O. Box 599, Jefferson City, MO 65102-0599. Such objections must set forth in writing the specific grounds of objection. Each objection shall certify that a copy has been furnished to the Division of Labor Standards, P.O. Box 449, Jefferson City, MO 65102-0449 pursuant to 8 CSR 20-5.010(1). A certified copy of the Annual Wage Order has been filed with the Secretary of State of Missouri.

Original Signed by

Todd Smith, Director
Division of Labor Standards

Filed With Secretary of State: March 10, 2023

Last Date Objections May Be Filed: April 10, 2023

Prepared by Missouri Department of Labor and Industrial Relations

OCCUPATIONAL TITLE	**Prevailing Hourly Rate
Asbestos Worker	\$65.71
Boilermaker	\$33.49*
Bricklayer	\$59.97
Carpenter	\$61.87
Lather	
Linoleum Layer	
Millwright	
Pile Driver	
Cement Mason	\$55.31
Plasterer	
Communications Technician	\$63.17
Electrician (Inside Wireman)	\$69.27
Electrician Outside Lineman	\$62.80
Lineman Operator	
Lineman - Tree Trimmer	
Groundman	
Groundman - Tree Trimmer	
Elevator Constructor	\$33.49*
Glazier	\$33.49*
Ironworker	\$67.92
Laborer	\$49.75
General Laborer	
First Semi-Skilled	
Second Semi-Skilled	
Mason	\$54.81
Marble Mason	
Marble Finisher	
Terrazzo Worker	
Terrazzo Finisher	
Tile Setter	
Tile Finisher	
Operating Engineer	\$61.84
Group I	
Group II	
Group III	
Group III-A	
Group IV	
Group V	
Painter	\$51.95
Plumber	\$75.62
Pipe Fitter	
Roofer	\$58.52
Sheet Metal Worker	\$70.65
Sprinkler Fitter	\$64.91
Truck Driver	\$33.49*
Truck Control Service Driver	
Group I	
Group II	
Group III	
Group IV	

*The Division of Labor Standards received fewer than 1,000 reportable hours for this occupational title. The public works contracting minimum wage is established for this occupational title using data provided by Missouri Economic Research and Information Center.

**The Prevailing Hourly Rate includes any applicable fringe benefit amounts for each occupational title as defined in RSMO Section 290.210.

Heavy Construction Rates for
CLAY County

Section 024

OCCUPATIONAL TITLE	**Prevailing Hourly Rate
Carpenter	\$61.71
Millwright	
Pile Driver	
Electrician (Outside Lineman)	\$62.80
Lineman Operator	
Lineman - Tree Trimmer	
Groundman	
Groundman - Tree Trimmer	
Laborer	\$50.36
General Laborer	
Skilled Laborer	
Operating Engineer	\$56.41
Group I	
Group II	
Group III	
Group IV	
Truck Driver	\$50.25
Truck Control Service Driver	
Group I	
Group II	
Group III	
Group IV	

Use Heavy Construction Rates on Highway and Heavy construction in accordance with the classifications of construction work established in 8 CSR 30-3.040(3).

Use Building Construction Rates on Building construction in accordance with the classifications of construction work established in 8 CSR 30-3.040(2).

If a worker is performing work on a heavy construction project within an occupational title that is not listed on the Heavy Construction Rate Sheet, use the rate for that occupational title as shown on the Building Construction Rate Sheet.

*The Division of Labor Standards received fewer than 1,000 reportable hours for this occupational title. Public works contracting minimum wage is established for this occupational title using data provided by Missouri Economic Research and Information Center.

**The Prevailing Hourly Rate includes any applicable fringe benefit amounts for each occupational title.

OVERTIME and HOLIDAYS

OVERTIME

For all work performed on a Sunday or a holiday, not less than twice (2x) the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed or the public works contracting minimum wage, whichever is applicable, shall be paid to all workers employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work.

For all overtime work performed, not less than one and one-half (1½) the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed or the public works contracting minimum wage, whichever is applicable, shall be paid to all workers employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work or contractual obligation. For purposes of this subdivision, "**overtime work**" shall include work that exceeds ten hours in one day and work in excess of forty hours in one calendar week; and

A thirty-minute lunch period on each calendar day shall be allowed for each worker on a public works project, provided that such time shall not be considered as time worked.

HOLIDAYS

January first;
The last Monday in May;
July fourth;
The first Monday in September;
November eleventh;
The fourth Thursday in November; and
December twenty-fifth;

If any holiday falls on a Sunday, the following Monday shall be considered a holiday.

SECTION 01 26 00

CONTRACT MODIFICATION PROCEDURES

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section includes administrative and procedural requirements for handling and processing Contract modifications.
- B. Related Sections:
 - 1. Division 01 Section “Product Requirements” for administrative procedures for handling requests for substitutions made after Contract award.
 - 2. Division 01 Section “Project Management and Coordination” for administrative procedures for processing Requests for Information.

1.3 MINOR CHANGES AND/OR CLARIFICATIONS IN THE WORK

- A. Architect’s Supplemental Instructions (ASI)
 - 1. Architect will issue through Construction Manager supplemental instructions authorizing minor changes in the Work, not involving adjustment to the Contract Sum or the Contract Time, on AIA Document G710, “Architect’s Supplemental Instructions” or other form as decided by the Architect or Owner.
- B. Request for Information (RFI)
 - 1. If during the construction of the project, clarification of the Construction Documents is required, it shall be brought to the attention of the Construction Manager. Reference Division 01 Section “Project Management and Coordination” for procedures regarding RFIs.
 - 2. Responses to RFIs are not authorization to proceed with work requiring additional compensation. If additional compensation is required, the Contractor shall immediately advise the Construction Manager who will review the item with the Architect and Owner to determine if a Proposal Request will be issued.

1.4 PROPOSAL REQUESTS

- A. Owner-Initiated Proposal Requests: Architect will issue, through the Construction Manager, a detailed description of proposed changes in the Work that may require adjustment to the Contract Sum or the Contract Time. If necessary, the description will include supplemental or revised Drawings and Specifications.
 - 1. Proposal Requests issued by Architect and/or Construction Manager are not instructions either to stop work in progress or to execute the proposed change.
 - 2. Within the time specified in the Proposal Request, submit a quotation estimating the cost adjustments to the Contract Sum and the Contract Time necessary to execute the change.
 - 3. Comply with the requirements defined in this section for submission of proposals for a Change Order.
- B. Contractor-Initiated Proposals: If latent or changed conditions require modifications to the Contract, Contractor may initiate a claim by submitting a request for a change to the Construction Manager.

1. Include a statement outlining reasons for the change and the effect of the change on the Work. Provide a complete description of the proposed change. Indicate the effect of the proposed change on the Contract Sum and the Contract Time.
2. Comply with the requirements defined in this section for submission of proposals for a Change Order.
3. Comply with requirements in Division 01 Section “Substitution Procedures” if the proposed change requires substitution of one product or system for product or system specified.

1.5 CONSTRUCTION CHANGE DIRECTIVES (CCDs)

- A. Construction Change Directive: The Architect or Construction Manager may issue a Construction Change Directive (CCD). A Construction Change Directive instructs the Contractor to proceed with a change in the Work, for subsequent inclusion in a Change Order.
 1. Construction Change Directives contain a complete description of change in the Work. It also designates the method to be followed to determine change in the Contract Sum or Contract Time.
- B. Documentation: Maintain detailed records on a time and material basis of work required by Construction Change Directive. Work tickets shall be signed and verified by on site supervision of Construction Manager daily.
 1. After completion of the change, submit an itemized account and supporting data necessary to substantiate cost and time adjustments to the Contract. All guidelines for allocation of overhead and profit as defined in this section shall apply.

1.6 ADMINISTRATIVE CHANGE ORDERS

- A. Allowance Adjustment: Refer to Division 01 Section “Allowances” for administrative procedures for preparation of Change Order Proposal for adjusting the Contract Sum to reflect actual costs of allowances.
- B. Unit Price Adjustment: Refer to Division 01 Section “Unit Prices” for administrative procedures for preparation of Change Order Proposal for adjusting the Contract Sum to reflect measured scope of unit price work.

1.7 SUBMISSION OF PROPOSALS FOR CHANGE ORDER

- A. Labor Rate Breakdown:
 1. Base Rate Calculation: All Contractors will be required to substantiate all labor rates (for all skill levels and tradesmen) as actual cost plus allowable overhead and profit, prior to submitting change order pricing. Breakdowns shall include: base labor rate, fringes, union dues, payroll taxes and insurance. Any item not falling into one of these categories will be considered overhead and shall be included in the fee limits listed below.
 2. Premium on Overtime Rate Calculation: In the event overtime work is requested by the Construction Manager (not required by the Contract Documents or due to the fault of the Contractor), the premium on the overtime rate will be required to be substantiated as actual cost plus allowable overhead and profit. Breakdowns shall include: half of base labor rate, only the overtime premium portion of any applicable union fringes, and payroll taxes and insurance (excluding workers compensation insurance which is not paid on the premium portion of overtime). Any item not falling into one of these categories will be considered overhead and shall be included in the fee limits listed below.
- B. Method of Proposal:
 1. Comply with the requirements of this section and all other contract requirements.

2. Include a direct reference to the change document in the proposal description. If the request is not linked to a change document, a full and thorough description of the work and the reason for the change order request is required. Change requests not in this format will not be reviewed.
3. Include a list of quantities of products required or eliminated and unit costs, with total amount of purchases and credits to be made. If requested, furnish survey data to substantiate quantities.
4. Indicate applicable taxes, delivery charges, equipment rental (rates and hours), and amounts of trade discounts.
5. Include costs of labor and supervision (as allowed by contract provisions) directly attributable to the change. Provide crew information including, labor rate for each skill level and trade, number of man-hours including estimating program back-up substantiating those hours.
6. Provide proposal detail and estimate which defines the type or area of work (i.e. Concrete: concrete walls, grade beams, piers, sidewalks, etc., Drywall: metal studs, rock, finishing, etc.).
7. Include substantiating back-up from Subcontractors and Material Suppliers equal to the requirements of the Prime Contractor proposal as described in this section.
8. Include all fee itemized separate from the detail described herein and in the limits described in this section.
9. Include an updated Contractor's construction schedule that indicates the effect of the change, including, but not limited to, changes in activity duration, start and finish times, and activity relationship. Use available total float before requesting an extension of the Contract Time.
10. Review and approval of a Contractors proposal for change order does not alleviate Contractors responsibility to provide accurate estimating, i.e. acceptance of pricing does not constitute acceptance of quantities, unit prices, man-hours, etc.

C. Fee Limits:

1. Fee includes all general requirements, all supervision (including project management and general on site supervision), overhead and profit.
2. The following fee percentages shall be used for lump sum pricing and actual cost pricing of additions and deletions to the work:

<u>Description of Condition</u>	<u>Not to Exceed</u>
To Prime Contractor for work performed by own forces	10%
To Prime Contractor for work performed by other than own forces	5%
To Prime's Subcontractor/Material Supplier for work performed by Subcontractor's own forces	10%
To Prime's Subcontractor for work performed by other than Subcontractor's own forces	5%
<u>Total aggregate fee limit including both prime and subcontractor shall not exceed 15% in any case.</u>	

- D. Pricing Validation: If the Work associated with a Contractor requested change order is performed, and in the opinion of the Owner, Architect, or Construction Manager, the Work does not adequately reflect the breakdown provided during pricing of the change, the Contractor may be asked and shall be required to substantiate man-hours, equipment, quantity, etc, to validate the change order pricing.

1.8 CHANGE ORDER PROCEDURES

- A. On Owner's approval of a Proposal Request, the Construction Manager will issue a Change Order for signatures of Architect, Owner, Contractor and Construction Manager.

END OF SECTION 01 26 00

SECTION 01 29 00 PAYMENT PROCEDURES

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. This Section specifies administrative and procedural requirements necessary to prepare and process Applications for Payment.
- B. Related Sections:

1. Division 01 Section "Allowances" for procedural requirements governing the handling and processing of allowances.
2. Division 01 Section "Unit Prices" for administrative requirements governing the use of unit prices.
3. Division 01 Section "Contract Modification Procedures" for administrative procedures for handling changes to the Contract.
4. Division 01 Section "Submittal Procedures" for administrative requirements governing the preparation and submittal of the submittal schedule.

1.3 DEFINITIONS

- A. Schedule of Values: A statement furnished by Contractor allocating portions of the Contract Sum to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.

1.4 SCHEDULE OF VALUES

- A. Coordination: Coordinate preparation of the schedule of values with preparation of Contractor's construction schedule.
 1. Correlate line items in the schedule of values with other required administrative forms and schedules, including the following:
 - a. Application for Payment forms with continuation sheets.
 - b. Submittal schedule.
 - c. Items required to be indicated as separate activities in Contractor's construction schedule.
 2. Submit the schedule of values to Construction Manager within ten (10) business days of the Notice to Proceed. No payments will be processed prior to receipt of an approved Schedule of Values.
 3. Sub-schedules for Phased Work: Where the Work is separated into phases requiring separately phased payments, provide sub-schedules showing values correlated with each phase of payment.
 4. Sub-schedules for Separate Elements of Work: Where the Contractor's construction schedule defines separate elements of the Work, provide sub-schedules showing values correlated with each element.
- B. Format and Content: Use the Project Manual table of contents as a guide to establish line items for the schedule of values. Provide at least one line item for each Specification Section.
 1. Identification: Include the following Project identification on the schedule of values:

- a. Project name and location.
 - b. Name of Architect.
 - c. Architect's project number.
 - d. Contractor's name and address.
 - e. Date of submittal.
2. Arrange schedule of values consistent with the format of the AIA Document G703.
 3. Provide a breakdown of the Contract Sum in enough detail to facilitate continued evaluation of Applications for Payment and progress reports. Coordinate with the Project Manual table of contents. Provide multiple line items for principal subcontract amounts in excess of five percent of Contract Sum.
 4. Round amounts to nearest whole dollar; total shall equal the Contract Sum.
 5. Provide a separate line item in the schedule of values for each part of the Work where Applications for Payment may include materials or equipment purchased or fabricated and stored, but not yet installed.
 - a. Differentiate between items stored on-site and items stored off-site. If required, include evidence of insurance.
 6. Provide separate line items in the schedule of values for initial cost of materials, for each subsequent stage of completion, and for total installed value of that part of the Work.
 7. Allowances: Provide a separate line item in the schedule of values for each allowance.
 8. Each item in the schedule of values and Applications for Payment shall be complete. Include total cost of labor, material, equipment and proportionate share of general overhead and profit for each item. As a sub breakdown, each item is to be separated into an estimated labor and materials line item.
 - a. Temporary facilities and other major cost items that are not direct cost of actual work-in-place shall be shown as separate line items.
 9. Schedule Updating: Include each Change Order as a new line item. Update and resubmit the schedule of values before the next Applications for Payment when Change Orders or Construction Change Directives result in a change in the Contract Sum. If requested by the Construction Manager, breakdown change order totals in the same detail as the original Schedule of Values.

1.5 APPLICATIONS FOR PAYMENT

- A. Each Application for Payment shall be consistent with previous applications and payments as certified by Architect and Construction Manager and paid for by Owner.
 1. Initial Application for Payment, Application for Payment at time of Substantial Completion, and final Application for Payment involve additional requirements.
- B. Payment Application Times: The date for each progress payment is indicated in the Agreement between Owner and Contractor and/or the General Conditions. The period of construction work covered by each Application for Payment is the period indicated in the Agreement and/or the General Conditions.
- C. Application for Payment Forms: Use AIA Document G702CMa and AIA Document G703 as the form for Applications for Payment. A copy of the AIA Documents G702CMa and G703 are included as an exhibit to this Section.

- D. Application Preparation: Complete every entry on the form. Notarize and execute by a person authorized to sign legal documents on behalf of the Contractor. Construction Manager will return incomplete applications without action.
1. Entries shall match data on the schedule of values and Contractor's construction schedule. Use updated schedules if revisions were made.
 2. Include amounts for work completed following the previous Application for Payment, whether or not payment has been received. Include only amounts for work completed at the time of Application for Payment.
 3. Include amounts of Change Orders and Construction Change Directives issued before the last day of construction period covered by application.
 4. Indicate separate amounts for work being carried out under Owner-requested project acceleration.
- E. Stored Materials: Include in Application for Payment amounts applied for materials or equipment purchased or fabricated and stored, but not yet installed, as indicated in the Agreement between Owner and Contractor and/or the General Conditions. Differentiate between items stored on-site and items stored off-site.
1. Provide certificate of insurance, evidence of transfer of title to Owner, and consent of surety to payment, for stored materials.
 2. Provide supporting documentation that verifies amount requested, such as paid invoices. Match amount requested with amounts indicated on documentation; do not include overhead and profit on stored materials.
 3. Provide summary documentation for stored materials indicating the following:
 - a. Materials previously stored and included in previous Applications for Payment.
 - b. Work completed for this Application utilizing previously stored materials.
 - c. Additional materials stored with this Application.
 - d. Total materials remaining stored, including materials with this Application.
 4. Provide Non-Negotiable Bailment Receipt, a copy of which is attached as an exhibit to this Section.
- F. Transmittal: Submit three (3) signed and notarized original copies of each Application for Payment to the Construction Manager by a method ensuring receipt. One copy shall include waivers of lien and similar attachments, if required.
1. Transmit each copy with a transmittal form listing attachments and recording appropriate information about application.
- G. Waivers of Mechanic's Lien: With each Application for Payment, submit waivers of mechanic's liens and affidavits from subcontractors, sub-subcontractors, and suppliers for the construction period covered by the previous application.
1. Submit partial waivers on each item for amount requested in previous application, after deduction for retainage, on each item.
 2. When an application shows completion of an item, submit conditional final or full waivers.
 3. Owner reserves the right to designate which entities involved in the Work must submit waivers.
 4. Submit Final Application for Payment with or preceded by conditional final waivers from every entity involved with performance of the Work covered by the application who is lawfully entitled to a lien.

5. Waiver Forms: Submit waivers of lien on the forms attached as an exhibit to this Section or as indicated in the Agreement between Owner and Contractor and/or the General Conditions.
- H. Initial Application for Payment: Administrative actions and submittals that must precede or coincide with submittal of first Application for Payment include the following:
1. List of subcontractors and suppliers.
 2. Schedule of values.
 3. Contractor's construction schedule (preliminary, if not final).
 4. Copies of authorizations and licenses from authorities having jurisdiction for performance of the Work.
 5. Certificates of insurance and insurance policies.
 6. Performance and payment bonds.
- I. Final Payment Application: Submit final Application for Payment with releases and supporting documentation not previously submitted and accepted, including, but not limited, to the following:
1. Evidence of completion of Project closeout requirements. Before submitting the final Application for Payment, forward to the Construction Manager for submittal to the Owner and Architect, the written warranties and guarantees, Record and Information Manuals and other documents required by the Contract Documents, and place properly in approved storage at the site the extra stock and spare parts specified. Contractor shall obtain the signature of the Construction Manager verifying receipt of the extra stock and spare parts.
 2. Updated final statement, accounting for final changes to the Contract Sum.
 3. Contractors Final Waiver and Affidavit.
 4. AIA Document G707, "Consent of Surety to Final Payment."
 5. Evidence that claims have been settled.
 6. Other close-out documentation required by the Contract Documents.

PART 2 - PRODUCTS (Not Used)

PART 3 - EXECUTION (Not Used)

END OF SECTION 01 29 00

**SECTION 01 29 00
PAYMENT PROCEDURES - EXHIBIT A
NON-NEGOTIABLE BAILMENT RECEIPT**

BAILOR: Owner

BAILEE: Contractor/Supplier

LOCATION OF STORAGE: _____

The goods and materials described below are held and stored at the above referenced location pursuant to the Agreement by and between Contractor/Supplier, as Bailee, and Owner, as Bailor, for Work to be performed at the [Project Name] located at [Project Address or Location]. In consideration of payment made to the undersigned Bailee, the receipt and sufficiency of which are admitted, the Bailee agrees:

1. to keep said goods and materials at the above mentioned address, separate and apart from all other goods and identified as subject to this bailment;
2. to keep said goods and materials fully insured against all risk of physical loss or damage;
3. to keep said goods protected from the weather, commingling, vandalism, and/or diversion from said Project; and
4. to deliver said goods and materials to the Project site in conjunction with the performance of Bailee's Agreement referenced above or upon the direction of Bailor or its Contractor and no other.

<u>QUANTITY</u>	<u>DESCRIPTION OF ITEM</u>

The Bailee acknowledges that it has no ownership rights or title in, nor shall claim any lien upon, said goods and materials.

Agreed and Acknowledged:

Contractor/Supplier, Bailee

Dated: _____

By: _____
Authorized Signature

**SECTION 01 29 00
PAYMENT PROCEDURES - EXHIBIT B
CONTRACTOR PARTIAL WAIVER AND AFFIDAVIT**

Contractor: _____

Project: [Project Name] **Project No.:** _____

Property (physical address of Project): [Project Address or Location]

Payment Application No.: _____ **Payment Amount:** _____

Total Amount Paid: _____ **Contract Amount:** _____

Last date of work covered by the Payment Application: _____

Owner: [Owner Name] **Construction Manager:** NNCP

Beneficiaries: Owner, Construction Manager and other parties, if any, having any interest in the Property

In consideration of the payment to be made by Owner to the undersigned Contractor in the Payment Amount set forth above for work, labor and services and/or materials furnished for the construction of the Project, the undersigned Contractor, effective upon remittance of the Payment Amount and contingent upon final clearance and payment of valuable consideration of the Payment Amount and being familiar with the penalties for false certification, represents and certifies to the Beneficiaries that:

1. Contractor a) irrevocably and unconditionally waives and releases the Property, Project and Beneficiaries from; and b) shall defend, indemnify and hold harmless the Property, Project, Beneficiaries, their sureties, guarantors and respective successors and assigns against

- any and all liens, statutory or otherwise, or rights thereof;
- any and all obligations under any bond or guaranty for payment furnished to or by the Beneficiaries, whether pursuant to an agreement or required by law; and
- any other claims of any kind whatsoever, statutory or otherwise, except as specifically claimed in accordance with the contract documents

for any and all work, labor, material or equipment furnished by or through said Contractor, its subcontractors, suppliers, equipment providers and laborers and anything else in connection with the agreement between Owner and Contractor ("Contract"), through the last date of work covered by the Payment Application except as it pertains to unpaid retainage, if any.

2. The following listed persons or entities are the Contractor's only subcontractors, equipment providers, materialmen or suppliers for the Project. This partial waiver, or one similar, will be required for all subcontractors, equipment providers, materialmen and suppliers for each payment application. Future payments may be delayed if all documents are not submitted properly.

COMPANY NAME (of your material suppliers and/or subcontractors)	CONTRACT AMOUNT (if unknown, list N/A)	AMOUNT PAID TO DATE (cumulative amount)	AMOUNT PAID THIS PERIOD (thru date listed above)	REMAING BALANCE LEFT ON CONTRACT

Write "none" here if no subcontractors, equipment providers, materialmen or suppliers were used on this Project.

3. Payment in full, less retainage, if any, has been made by the Contractor through the period covered by all prior payments (a) to all of the Contractor's subcontractors, equipment providers, materialmen, suppliers and laborers, and (b) for all materials and labor used or furnished by the Contractor in connection with the performance of the Contract, except as noted below:

COMPANY NAME (of your material suppliers and/or subcontractors not paid)	AMOUNT NOT PAID	REASON WHY AMOUNT WAS NOT PAID

4. Contractor has complied with Federal, State and Local tax laws, including, without limitation, Income Tax Withholding, Sales Tax, Social Security, Unemployment Compensation and Worker's Compensation laws, insofar as applicable to the performance of the Contract. Contractor has paid, or out of the proceeds of this payment will promptly pay, all sales or use tax due and owing.

5. The undersigned is fully authorized and empowered to execute this instrument for and on behalf of said Contractor and to bind it hereto and does in fact so execute this Partial Waiver and Affidavit. The undersigned acknowledges and agrees that the Beneficiaries or anyone on their behalf may and will act and rely upon this instrument in releasing any funds due or owing.

6. The remittance of the Payment Amount negotiated and/or endorsed by Contractor and marked "paid" or otherwise accepted by the bank against which said remittance was drawn shall constitute conclusive proof that said Payment Application was paid and that the Payment Amount thereof was received by Contractor and this Partial Waiver and Affidavit shall become effective automatically and without requirement of any further act, acknowledgment or receipt on the part of the Contractor.

Contractor: _____
 By: _____
 Title: _____
 Date: _____

State of _____)
 County of _____)

On this _____ day of _____, 20____, before me personally
 appeared _____,
 _____ of _____, known to me
 to be the person who executed this document and acknowledged to me that he/she executed the same for the purposes therein
 stated.

 Notary Public in and for said County and State

 Commission Expires

**SECTION 01 29 00
PAYMENT PROCEDURES – EXHIBIT C
CONTRACTOR FINAL WAIVER AND AFFIDAVIT**

Contractor: _____

Project: [Project Name] **Project No.:** _____

Property (physical address of Project): [Project Address or Location]

Payment Application No.: _____ **Final Payment Amount:** _____

Total Amount Paid: _____ **Contract Amount:** _____

Last date of work covered by the Payment Application: _____

Owner: [Owner Name] **Construction Manager:** NNCP

Beneficiaries: Owner, Construction Manager, and other parties, if any, having any interest in the Property

In consideration of the previous payments made and the final payment to be made by Owner to the undersigned Contractor for work, labor and services and/or materials furnished for the construction of the Project, the undersigned Contractor, effective upon remittance of the Final Payment Amount and contingent upon final clearance and payment of valuable consideration of the Final Payment Amount and being familiar with the penalties for false certification, represents and certifies to the Beneficiaries that:

1. Contractor a) irrevocably and unconditionally waives and releases the Property, Project and Beneficiaries from; and b) shall defend, indemnify and hold harmless the Property, Project, Beneficiaries, their sureties, guarantors and respective successors and assigns against:

- any and all liens, statutory or otherwise, or rights thereof;
- any and all obligations under any bond or guaranty for payment furnished to or by the Beneficiaries, whether pursuant to an agreement or required by law; and
- any other claims of any kind whatsoever, statutory or otherwise, except as specifically claimed in accordance with the contract documents.

for any and all work, labor, material or equipment furnished by or through said Contractor, its subcontractors, suppliers, equipment providers and laborers and anything else in connection with the agreement between Owner and Contractor (“Contract”), Property and Project.

2. The following listed persons or entities are the Contractor’s only subcontractors, equipment providers, materialmen or suppliers for the Project. This final waiver, or one similar, will be required for all subcontractors, equipment providers, materialmen and suppliers. Final payment may be delayed if all documents are not submitted properly.

COMPANY NAME (of your material suppliers and/or subcontractors)	CONTRACT AMOUNT (if unknown list N/A)	AMOUNT PAID TO DATE (cumulative amount)	AMOUNT PAID THIS PERIOD (thru date listed above)	REMAING BALANCE LEFT ON CONTRACT

Write “none” here if no subcontractors, equipment providers, materialmen or suppliers were used on this Project.

3. The previous amounts paid and the Final Payment Amount requested for the work and labor performed and material and equipment supplied on the Project represents the actual value of work and material provided under the terms of the Contract and all authorized changes thereto concerning work to be performed on the Property.

4. Payment in full has been made by the Contractor through the periods covered by all prior payment applications(a) to all of the Contractor's subcontractors, equipment providers, materialmen, suppliers and laborers, and (b) for all materials and labor used or furnished by the Contractor in connection with the performance of the Contract, except as noted below:

COMPANY NAME (of your material suppliers and/or subcontractors not paid)	AMOUNT NOT PAID	REASON WHY AMOUNT WAS NOT PAID

5. Contractor has complied with Federal, State and Local tax laws, including, without limitation, Income Tax Withholding, Sales Tax, Social Security, Unemployment Compensation and Worker's Compensation laws, insofar as applicable to the performance of the Contract. The Contractor has paid, or out of the proceeds of this payment will promptly pay, all sales or use tax due and owing.

6. The undersigned is fully authorized and empowered to execute this instrument for and on behalf of said Contractor and to bind it hereto and does in fact so execute this Final Waiver & Affidavit. The undersigned acknowledges and agrees that the Beneficiaries, or anyone on their behalf, may and will act and rely upon this instrument in releasing any funds due or owing.

7. The remittance of the Final Payment Amount negotiated and/or endorsed by Contractor and marked "paid" or otherwise accepted by the bank against which said Final Payment Amount was drawn shall constitute conclusive proof that said Final Payment Application was paid and that the Final Payment Amount thereof was received by Contractor and this Final Waiver & Affidavit shall become effective automatically and without requirement of any further act, acknowledgment or receipt on the part of the Contractor.

Contractor: _____

By: _____

Title: _____

Date: _____

State of _____)

County of _____)

On this _____ day of _____, 20____, before me personally appeared _____, known to me to be the person who executed this document and acknowledged to me that he/she executed the same for the purposes therein stated.

Notary Public in and for said County and State

Commission Expire

SECTION 01 73 00 EXECUTION

PART 1 - GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 01 Specification Sections, apply to this Section.

1.2 SUMMARY

- A. Section includes general administrative and procedural requirements governing execution of the Work including, but not limited to, the following:
 - 1. Construction layout.
 - 2. Field engineering and surveying.
 - 3. Installation of the Work.
 - 4. Cutting and patching.
 - 5. Coordination of Owner-installed products.
 - 6. Progress cleaning.
 - 7. Starting and adjusting.
 - 8. Protection of installed construction.
 - 9. Correction of the Work.

1.3 DEFINITIONS

- A. Cutting: Removal of in-place construction necessary to permit installation or performance of other work.
- B. Patching: Fitting and repair work required to restore construction to original conditions after installation of other work.

1.4 QUALITY ASSURANCE

- A. Cutting and Patching: Comply with requirements for and limitations on cutting and patching of construction elements.
 - 1. Structural Elements: When cutting and patching structural elements, notify Architect of locations and details of cutting and await directions from the Architect before proceeding. Shore, brace, and support structural element during cutting and patching. Do not cut and patch structural elements in a manner that could change their load-carrying capacity or increase deflection.
 - 2. Other Construction Elements: Do not cut and patch other construction elements or components in a manner that could change their load-carrying capacity, that results in reducing their capacity to perform as intended, or that results in increased maintenance or decreased operational life or safety.

3. Visual Elements: Do not cut and patch construction in a manner that results in visual evidence of cutting and patching. Do not cut and patch exposed construction in a manner that would, in Architect's opinion, reduce the building's aesthetic qualities. Remove and replace construction that has been cut and patched in a visually unsatisfactory manner.

1.5 WARRANTY

- A. Existing Warranties: Remove, replace, patch, and repair materials and surfaces cut or damaged during installation or cutting and patching operations, by methods and with materials so as not to void existing warranties.

PART 2 - PRODUCTS

2.1 MATERIALS

- A. In-Place Materials: Use materials for patching identical to in-place materials. For exposed surfaces, use materials that visually match in-place adjacent surfaces to the fullest extent possible.
 1. If identical materials are unavailable or cannot be used, use materials that, when installed, will provide a match acceptable to the Architect for the visual and functional performance of in-place materials.

PART 3 - EXECUTION

3.1 EXAMINATION

- A. Existing Conditions: The existence and location of underground and other utilities and construction indicated as existing are not guaranteed. Before beginning sitework, investigate and verify the existence and location of underground utilities, and other construction affecting the Work.
- B. Examination and Acceptance of Conditions: Before proceeding with each component of the Work, examine substrates, areas, and conditions, with Installer or Applicator present where indicated, for compliance with requirements for installation tolerances and other conditions affecting performance. Record observations.

3.2 PREPARATION

- A. Field Measurements: Take field measurements as required to fit the Work properly. Recheck measurements before installing each product. Where portions of the Work are indicated to fit to other construction, verify dimensions of other construction by field measurements before fabrication. Coordinate fabrication schedule with construction progress to avoid delaying the Work.
- B. Space Requirements: Verify space requirements and dimensions of items shown diagrammatically on Drawings.
- C. Review of Contract Documents and Field Conditions: Immediately on discovery of the need for clarification of the Contract Documents caused by differing field conditions outside the control of the Contractor, submit a request for information to Architect according to requirements in Division 01 Section "Project Management and Coordination."

3.3 FIELD ENGINEERING

- A. Identification: Owner or Construction manager will identify one benchmark. All other control points, property corners, and similar reference points shall be the responsibility of the individual Contractors.
- B. Reference Points: Locate existing permanent benchmarks, control points, before beginning the Work. Preserve and protect permanent benchmarks and control points during construction operations.
 1. Do not change or relocate existing benchmarks or control points without prior written approval of Architect or Construction Manager. Report lost or destroyed permanent benchmarks or control

- points promptly. Report the need to relocate permanent benchmarks or control points to Architect and Construction Manager before proceeding.
2. Replace lost or destroyed permanent benchmarks and control points promptly with a licensed land surveyor (satisfactory to the Architect and Construction Manager) at the Contractors cost.

3.4 INSTALLATION

- A. General: Locate the Work and components of the Work accurately, in correct alignment and elevation, as indicated.
 1. Make vertical work plumb and make horizontal work level.
 2. Where space is limited, install components to maximize space available for maintenance and ease of removal for replacement.
 3. Conceal pipes, ducts, and wiring in finished areas, unless otherwise indicated.
- B. Comply with manufacturer's written instructions and recommendations for installing products in applications indicated. Work includes all surface preparation required for product installation.
- C. Install products at the time and under conditions that will ensure the best possible results. Maintain conditions required for product performance until Substantial Completion.
- D. Conduct construction operations so no part of the Work is subjected to damaging operations or loading in excess of that expected during normal conditions of occupancy.
- E. Tools and Equipment: Do not use tools or equipment that produce harmful noise levels.
- F. Templates: Obtain and distribute to the parties involved templates for work specified to be factory prepared and field installed. Check Shop Drawings of other work to confirm that adequate provisions are made for locating and installing products to comply with indicated requirements.
- G. Attachment: Provide blocking and attachment plates and anchors and fasteners of adequate size and number to securely anchor each component in place, accurately located and aligned with other portions of the Work. Where size and type of attachments are not indicated, verify size and type required for load conditions.
 1. Mounting Heights: Where mounting heights are not indicated, mount components at heights directed by Architect.
 2. Allow for building movement, including thermal expansion and contraction.
 3. Coordinate installation of anchorages. Furnish setting drawings, templates, and directions for installing anchorages, including sleeves, concrete inserts, anchor bolts, and items with integral anchors, that are to be embedded in concrete or masonry. Deliver such items to Project site in time for installation.
- H. Joints: Make joints of uniform width. Where joint locations in exposed work are not indicated, arrange joints for the best visual effect. Fit exposed connections together to form hairline joints.
- I. Hazardous Materials: Use products, cleaners, and installation materials that are not considered hazardous.

3.5 CUTTING AND PATCHING

- A. Cutting and Patching, General: Employ skilled workers to perform cutting and patching. Proceed with cutting and patching at the earliest feasible time, and complete without delay.
 1. Cut in-place construction to provide for installation of other components or performance of other construction, and subsequently patch as required to restore surfaces to their original condition.

- B. Temporary Support: Provide temporary support of work to be cut.
- C. Protection: Protect in-place construction during cutting and patching to prevent damage. Provide protection from adverse weather conditions for portions of Project that might be exposed during cutting and patching operations.
- D. Adjacent Occupied Areas: Where interference with use of adjoining areas or interruption of free passage to adjoining areas is unavoidable, coordinate cutting and patching in accordance with requirements of Division 01 Section "Summary."
- E. Existing Utility Services and Mechanical/Electrical Systems: Where existing services/systems are required to be removed, relocated, or abandoned, bypass such services/systems before cutting to **prevent** interruption to occupied areas.
- F. Cutting: Cut in-place construction by sawing, drilling, breaking, chipping, grinding, and similar operations, including excavation, using methods least likely to damage elements retained or adjoining construction. If possible, review proposed procedures with original Installer; comply with original Installer's written recommendations.
 - 1. In general, use hand or small power tools designed for sawing and grinding, not hammering and chopping. Cut holes and slots neatly to minimum size required, and with minimum disturbance of adjacent surfaces. Temporarily cover openings when not in use.
 - 2. Finished Surfaces: Cut or drill from the exposed or finished side into concealed surfaces.
 - 3. Concrete and Masonry: Cut using a cutting machine, such as an abrasive saw or a diamond-core drill.
 - 4. Excavating and Backfilling: Comply with requirements in applicable Division 31 Sections where required by cutting and patching operations.
 - 5. Mechanical and Electrical Services: Cut off pipe or conduit in walls or partitions to be removed. Cap, valve, or plug and seal remaining portion of pipe or conduit to prevent entrance of moisture or other foreign matter after cutting.
 - 6. Proceed with patching after construction operations requiring cutting are complete.
- G. Patching: Patch construction by filling, repairing, refinishing, closing up, and similar operations following performance of other work. Patch with durable seams that are as invisible as practicable. Provide materials and comply with installation requirements specified in other Sections, where applicable.
 - 1. Inspection: Where feasible, test and inspect patched areas after completion to demonstrate physical integrity of installation.
 - 2. Exposed Finishes: Restore exposed finishes of patched areas and extend finish restoration into retained adjoining construction in a manner that will minimize evidence of patching and refinishing.
 - a. Clean piping, conduit, and similar features before applying paint or other finishing materials.
 - b. Restore damaged pipe covering to its original condition.
 - c.
 - 3. Floors and Walls: Where walls or partitions that are removed extend one finished area into another, patch and repair floor and wall surfaces in the new space. Provide an even surface of uniform finish, color, texture, and appearance. Remove in-place floor and wall coverings and replace with new materials, if necessary, to achieve uniform color and appearance.

- a. Where patching occurs in a painted surface, prepare substrate and apply primer and intermediate paint coats appropriate for substrate over the patch, and apply final paint coat over entire unbroken surface containing the patch. Provide additional coats until patch blends with adjacent surfaces.
- 4. Ceilings: Patch, repair, or rehang in-place ceilings as necessary to provide an even-plane surface of uniform appearance.
- 5. Exterior Building Enclosure: Patch components in a manner that restores enclosure to a weathertight condition.
- H. Cleaning: Clean areas and spaces where cutting and patching are performed. Remove paint, mortar, oils, putty, and similar materials from adjacent finished surfaces.

3.6 PROGRESS CLEANING

- A. General: Clean Project site and work areas daily, including common areas. Enforce requirements strictly. Dispose of materials lawfully.
 - 1. Containerize hazardous and unsanitary waste materials separately from other waste. Mark containers appropriately and dispose of legally, according to regulations. Utilize containers intended for holding waste materials of type to be stored.
 - 2. Coordinate progress cleaning for joint-use areas where more than one installer has worked.
 - 3. Contractor will clean up and remove to designated points at the site, daily and as directed by the Construction Manager, all rubbish and debris resulting from the Contractor's work and shall clean up its work to the satisfaction of the Construction Manager. Contractor shall maintain one (1) laborer for clean-up purposes for every ten (10) workers on site (including subcontractors), or ratio thereof. In the event the Contractor fails to clean up in accordance with the directions, the Construction Manager, after twenty-four (24) hours written notice to the Contractor, reserves the right to arrange otherwise for the clean up to be done and charge the Contractor the cost.
 - 4. All contractors shall ensure that all boxes, cartons, etc., are crushed to the minimum volume prior to placing in the trash containers or trash collection areas. No paint cloths will be allowed in trash containers. Construction Manager will provide dumpsters for use by the Contractor.
 - 5. The disposal of any material, waste, effluents, trash, garbage, or oil, grease, chemicals, etc., resulting from either demolition or new work, shall be disposed of in accordance with all applicable laws and shall be subject to the approval of the Construction Manager. Any materials disposed of in an unauthorized place or manner shall be removed and the area restored to its original undisturbed condition at the expense of the Contractor.
 - 6. An area will be designated for lunch and breaks. All food or drink, other than water, consumed on site must be in this pre-approved area and all waste disposed of in trash receptacles furnished by the Construction Manager. All food and drink, other than water, is prohibited in any other work area.
- B. Site: Maintain Project site free of waste materials and debris.
- C. Work Areas: Clean areas where work is in progress to the level of cleanliness necessary for proper execution of the Work.
 - 1. Remove liquid spills promptly.
 - 2. Where dust would impair proper execution of the Work, broom-clean or vacuum the entire work area, as appropriate.
- D. Installed Work: Keep installed work clean. Clean installed surfaces according to written instructions of manufacturer or fabricator of product installed, using only cleaning materials specifically recommended.

If specific cleaning materials are not recommended, use cleaning materials that are not hazardous to health or property and that will not damage exposed surfaces.

- E. Concealed Spaces: Remove debris from concealed spaces before enclosing the space.
- F. Exposed Surfaces in Finished Areas: Clean exposed surfaces and protect as necessary to ensure freedom from damage and deterioration at time of Substantial Completion.
- G. Waste Disposal: Do not bury or burn waste materials on-site. Do not wash waste materials down sewers or into waterways. Comply with waste disposal requirements in Division 01 Section “Temporary Facilities and Controls” and Division 01 Section “Construction Waste Management and Disposal.”

3.7 STARTING AND ADJUSTING

- A. Start equipment and operating components to confirm proper operation. Remove malfunctioning units, replace with new units, and retest.
- B. Adjust equipment for proper operation. Adjust operating components for proper operation without binding.
- C. Test each piece of equipment to verify proper operation. Test and adjust controls and safeties. Replace damaged and malfunctioning controls and equipment.
- D. Manufacturer’s Field Service: Comply with qualification requirements in Division 01 Section “Quality Requirements.”

3.8 PROTECTION OF INSTALLED CONSTRUCTION

- A. Provide final protection and maintain conditions that ensure installed Work is without damage or deterioration at time of Substantial Completion.
- B. Comply with manufacturer’s written instructions for temperature and relative humidity.

3.9 CORRECTION OF THE WORK

- A. Repair or remove and replace defective construction. Restore damaged substrates and finishes.
 - 1. Repairing includes replacing defective parts, refinishing damaged surfaces, touching up with matching materials, and properly adjusting operating equipment.
- B. Restore permanent facilities used during construction to their specified condition.
- C. Remove and replace damaged surfaces that are exposed to view if surfaces cannot be repaired without visible evidence of repair.
- D. Repair components that do not operate properly. Remove and replace operating components that cannot be repaired.
- E. Remove and replace chipped, scratched, and broken glass or reflective surfaces.

END OF SECTION 01 73 00