TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 35, SERIES 2018

A RESOLUTION APPROVING A STANDARD FORM OF AGREEMENT BETWEEN
THE TOWN OF TIMNATH AND BRINKMAN CONSTRUCTION, INC. AND
APPROVAL OF TOWN COUNCIL AUTHORIZATION FOR EXPENDITURES

WHEREAS, the Town Council of the Town of Timnath ("Town") pursuant to C.R.S. § 31-15-103, has the power to pass resolutions; and

WHEREAS, the Town desires to engage construction professionals for the construction of the Town Center Building and authorize and approve the expenditures relating to the Town Center Building; and

WHEREAS, attached hereto as Exhibit A is AIA Document A102 “Standard Form of Agreement Between Owner and Contractor” and AIA Document A201 “General Conditions of the Contract for Construction” between the Town and Brinkman Construction, Inc. (together, the “Brinkman Agreement”); and

WHEREAS, attached hereto as Exhibit B is an agreement between Jensen LaPlante Development (“JLD”) and the Town to allow JLD’s project management services in connection with the Town Center Building (the “JLD Agreement”);

WHEREAS, the Town Council is familiar with the Brinkman Agreement and the JLD Agreement and finds it to be in the best interest of the Town, its residents, and the general public.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO AS FOLLOW:

Section 1. Approval of Agreements
The Brinkman Agreement and the JLD Agreement are hereby approved in substantially the form as attached hereto, subject to such modifications and additions as the Town Manager, in consultation with Legal Counsel, determines to be necessary and appropriate to protect the interests of the Town or effectuate the purposes set forth herein and not otherwise inconsistent with this Resolution.

Section 2. Approval of Expenditure
That the Council hereby approves and authorizes the expenditure and payment in the sum of Seven Million Eight-Hundred Seventy-Seven Thousand Eight-Hundred Ninety Dollars ($7,877,890). The Director of Finance, in consultation with Town Staff, is hereby authorized and
directed to make such book and record such entries and to do such other things as may be necessary to accomplish the purposes of this Resolution.


TOWN OF TIMNATH, COLORADO

[Signature]
Jill Grossman-Belisle, Mayor

ATTEST:

[Signature]
Milissa Peters, CMC
Town Clerk
EXHIBIT A

BRINKMAN AGREEMENT
<table>
<thead>
<tr>
<th>Drawing No.</th>
<th>Drawing Title</th>
<th>Revision No.</th>
<th>Drawing Date</th>
<th>Received Date</th>
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## Timnath Administration Building
### IGMP Budget

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<th>Division</th>
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### Estimate Totals

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<th>Amount</th>
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<td>City Use Tax</td>
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<td>Fire Dept. Review (lbs)</td>
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Init. /
## Estimate Totals

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<tr>
<th>Description</th>
<th>Cost</th>
<th>Percentage</th>
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386,403 / GSF
The following clarifications are being submitted in conjunction with the proposed budget to better define the scope of work included and shall take precedence to the design documents. The budget is based on the following documents:

- ALM2S drawings dated 2-19-2018
- EEC Geotechnical Engineering Report # 1172006 dated 03-07-2017
- Historical costs were used to establish this budget.

**Preconstruction Services**

- Preconstruction services amount is based on work completed to date plus anticipated cost to complete preconstruction services from now to finalized drawings based on a 4 month design duration.
- Includes detailed construction estimates at design development and construction documents milestones.
- Anticipates bi-monthly design meetings and web meetings or conference calls as needed throughout the design phase.
- Value engineering and alternative costing between design milestones.

**Division 1: General Conditions**

- Includes full time, on site supervision for duration of the project.
  - Project Management and Administrative Staff as necessary to support the project.
  - Temporary office facilities.
- Attendance of coordination meetings on a regular basis.
- Work hours are proposed to be between 7 am and 4 pm, Monday through Friday.
- BIM coordination assistance is included.
- Procore or CMIC management software.

**Exclusions**

- Electronic CAD and BIM as-buils.
- Project management software usage other than Procore or CMIC.

**Division 2: Sitework**

- Site specific requirements
  - Temporary power and water services during construction.
  - Temporary site utilities for duration of construction.
  - Maintenance of a comprehensive quality control program.
  - Maintenance of a comprehensive safety program.
    - Safety supplies and management of comprehensive safety program.
    - Jobsite safety signage.
  - Site security fencing with screening along street frontages.
  - Dumpsters.
  - Temporary toilets.
  - Weekly cleanup labor.
  - Final cleaning.
  - Web based camera.
- Professional construction surveying and layout.
- Erosion control and management of best management practices (BMPs) throughout the project.
- Earthwork and Utilities
  - Grading
    - Fine grading for building, asphalt paving, sidewalks, and landscaping.
  - Excavation and Backfill
    - Excavation and backfill of footings and foundations.
    - Foundation excavation to sand and gravel depth per soils report.
    - Imported fill as necessary to achieve desired grades (assumes 7000 cubic yards)
    - Final grading of topsoil stockpile to landscaped areas.
Utilities
- It is assumed all utilities are of adequate size and capacity to support the needs of the building. Upgrading utilities offsite is not included.
- Sanitary Sewer extension to building from stub from location shown.
- Water domestic and fire installed as shown including mill and overlay of signal tree drive.
- Storm Sewer included as shown on plan. Except utilities under Timnath Trail.
- All utility work includes necessary traffic control, asphalt repairs, and testing required for a complete installation.

Site Concrete
- 4' Unreinforced private sidewalks and handicap ramps.
- 6' Unreinforced public sidewalks.
- 8' Concrete drain / drive pans.
- 18' Private curb and gutter.
- 24' Public curb and gutter.
- 6' Trash enclosure pad.
- (6) Light pole bases.

Paving
- 4'/6' Composite paving at all drives lanes including scarify, moisture condition, and recompaqction.
- 3.5'/5' Composite paving at all parking stalls including scarify, moisture condition, and recompaqction.
- Striping for parking.

Landscaping and Irrigation
- Soil preparation and fine grading.
  - An allowance of $5/sqft of landscape area has been included for landscaping and irrigation.
  - An budget of $7,500 has been included for site landscape boulders.
  - Native seed and temporary irrigation included for detention pond.

Site Furnishing
- An budget of $1,200 ea. has been included for (12) Benches.
- An budget of $600 ea has been included for (2) Bike Racks.
- An budget of $2,400 ea has been included for (8) Picnic Tables.

Exclusions
- Timnath Trial asphalt, curb and gutter, storm and water utilities buried under Timnath Trail are not included.
- Perimeter drains are not included.
- Dewatering and filtration systems.
- Seat walls
- Decorative or colored concrete
- Fly Ash is not included.
- Topographical surveys or PLAT

Division 3: Concrete
- Structural Concrete
  - Pad footings and spread footings per preliminary foundation design.
  - Shallow pad and strip footings at interior bearing conditions.
  - 8" & 12" shallow foundation walls at building perimeter.
  - 5' Deep elevator pit with 8" walls with xypex admixture for waterproofing.
- Flatwork
  - 5" Slab on grade with reinforcement over 15 mil vapor barrier and 4" of underslab gravel.
  - Stair pans and landings.
- Gypcrete
  - 1.5" Thick gypcrete with .25" acoustic mat at level 2
  - Isolation strip adjacent to partitions.

Exclusions
- Special finishes.
- Concrete accelerators.
- Concrete hardeners.
Division 4: Masonry

- CMU
  - 8" Splitface CMU at trash enclosure including reinforcement.
  - 8" Standard gray CMU at elevator shafts including reinforcement.
- Stone Veneer
  - Manufactured stone veneer as shown with manufactured stone sills on elevations
  - Manufactured stone veneer at interior feature walls and entry way columns.
- Standard mortar, grout, flexible membrane flashings, mortar net, weeps, wall anchors, lath, wire wall reinforcement, and cleaning.

Exclusions
- Colored mortars.
- Integral water repellents.
- Masonry sealers.
- Graffiti guard.

Division 5: Steel

- Structural Steel
  - Steel columns and beams.
  - Steel columns and beams for trellis at patio.
  - Steel erection.
  - AISC certification for fabrication and erection
- Miscellaneous Steel
  - Lobby stair with decorative rail (budget of $300/lf for decorative railing)
  - Back of house stair with plate steel stringers and vertical picket (not decorative) rail.
  - Roof Access ladder
  - Elevator pit ladder and hoist beam
  - Roof access ladder
  - A budget of $125/ft is included for 100 lf of site rails.

Exclusions
- Architecturally Exposed Structural Steel (AESS) standards.
- Architectural steel channel top and bottom of windows.
- Steel Tarif impacts are not included.

Division 6: Wood Carpentry

- Rough Carpentry
  - Dimensional and engineered lumber for exterior walls, floors and roof.
    - Timber framing architectural trusses for decoration as shown.
  - Sheathing at exterior/bearing walls, floor, and roof.
  - Engineered trusses and I joists.
  - Hold downs and miscellaneous hardware.
  - Commercial building wrap.
  - Installation of nail fin windows.
  - Backing and blocking for accessories and casework.
  - 2x6 cedar planks at patio trellis
- Finish Carpentry - Commercial
  - Plastic laminate casework and cabinets including standard hinges, guides, and pulls.
  - Fireplace surrounds.
  - An budget of $100/ sqft has been included for all counter tops throughout.
Wood grab rail at main stair.
Barn wood wainscot in chambers room only.

**Exclusions**
- FSC certified lumber.
- Standing and running trim
- Solid surface window sills.
- Decorative wood ceilings.
- Wood Chair rail.

**Division 7: Thermal & Moisture**
- Waterproofing and Dampproofing
  - 2" Rigid foundation insulation and emulsified dampproofing for exterior face of foundation walls.
- Air and Weather Barrier
  - Tyvek type air and moisture barrier.
- Building Insulation
  - R13 kraft faced batt insulation in floor.
  - R20 FSK faced batt insulation at exterior walls.
  - R13 Sound insulation at interior walls, as noted.
- Siding and Trim
  - Cement board and batten siding.
  - Barn wood rain screen siding Roofing
  - Trim around windows assumed to be wood.
- Roofing
  - 60 mil White TPO mechanically attached roof, 1/4" cover board and R30 rigid insulation and associated flashings.
  - 200 feet of adhered walkway pavers
  - 15 year roofing warranty.
  - Asphalt shingles with (1) layer of 15# underlayment, and ice/water shield at valleys.
  - 30 year roofing warranty.
  - 24 gauge gutter and downspouts.
  - 24 gauge cap flashing.
- Siding
  - Corrugated metal exposed fastener panels Berridge S Deck or similar.
  - Parapets have been extended by 2' to account for mechanical equipment screening
  - An allowance of $17,160 has been included for equipment screening reference OIL.
  - Miscellaneous flashings for siding system.
- Stucco
  - ½" 2 coat stucco included as shown on elevations with aluminum "V" groove reveals.
  - Trim around windows assumed to be stucco banding.
- Caulking and Sealants
  - Joint sealants at dissimilar building materials and joints between building and exterior concrete.

**Exclusions**
- Frey regret reveals at stucco or siding.
- Wind speed warranties on roofing system above code minimum.
- Metal Roofing
- Heat trace in downspouts.
- Continuous insulation
- Fire proofing of any steel
- Drainage board on face of damp proofing.

**Division 8: Doors & Windows**
- Commercial Doors
  - 7'-0" High primed hollow metal doors with primed welded metal frames.
  - 7'-0" High prefinished solid core wood doors with primed welded metal frames.
  - An budget of $400/door leaf has been included for door hardware.
- Overhead and Coiling Doors
  - Steel coiling counter shutter doors at all service counters and servery.
  - Manually operated sectional glazed doors at multipurpose room.
- Commercial Windows
  - Storefront window systems Tubelite thermally broken frames.
  - Glazing to be ⅜” insulated panes solarban 60 LowE.
  - Interior storefront at all type A interior openings with ¾” glass.
  - ⅛” Tempered glazing in interior door and window lites.
  - Medium stile storefront doors with manufactures standard door hardware. Standard clear anodized or dark bronze finish.
  - ADA Door operators at 2 door leafs at main entrance.
- Manufactured windows
  - Fiberglass windows for all Type A & B exterior openings

Exclusions:
- Skylights
- Specialty finish on storefront windows
- Fire rated glass
- Specialty doors and openings other than listed above.
- Fire rated shutter doors.
- Electrified door hardware systems

Division 9: Finishes
- Drywall
  - Interior stud walls including the following:
    - Light gage stud framing for interior partitions.
    - 5/8” Drywall, type X as required by code.
    - DenShield at wet wall of restrooms.
  - 5/8” drywall on exterior walls
  - Level 4 smooth finish or light orange peel/knockdown finish.
  - Square corner beads.
  - Drop ceilings and soffits at ceiling transitions.
  - Rated partitions.
- Ceilings
  - 2’x2’ tegular edge tiles in 9/16” grid
  - 4’x4’ tegular edge tiles in 15/16” grid.
  - An allowance of $13,100 is included for decorative ceiling in chamber room reference OIL.
  - An allowance of $9,950 is included for acoustical wall panels reference OIL.
- Flooring
  - Reference floor quantity take off exhibit.
  - Tile
    - Tile Flooring budgeted at $15/sqft installed.
    - Wall tile included at wet walls in restrooms at $14/sqft with accent tile band at $20/ if
    - Tile stair treads with nosing included at main stair.
    - Includes Schluter expansion and caps where noted.
    - Standard grout is included at all locations.
  - Resilient
    - Rubber base as noted.
    - Rubber treads and landings included at back of house stair.
  - Carpet
    - Carpet tiles included at $40/ sqyd installed.
    - Carpet base in corridors.
  - Polished concrete in multipurpose room
  - Concrete sealer at Storage, Electrical, Maintenance, Data, Mechanical, and Sprinkler Rooms.
- Painting
Prime and paint all drywall walls and ceilings.
- Paint board and batten siding.
- Paint exterior trash/transformer enclosure gates.
- Paint all hollow metal doors/frames.

Exclusions
- Moisture mitigation is not included but highly recommended for warranty purposes for some flooring products.
- Epoxy grout
- Wallcoverings
- Sealing of grout joints

Division 10: Specialties
- Misc Specialties
  - An budget of $500 is included for a time capsule.
- Toilet Accessories
  - Common Restroom Accessories as shown.
  - Powder coated steel toilet partitions and urinal screens.
- Flag poles
  - Three 30' tapered flag poles.
- Signage
  - Interior code signage is included.
- Fire Protection Specialties
  - (1) Knox box.
  - 10-pound ABC fire extinguishers with non-rated steel semi-recessed cabinets.
- Wall protection
  - An allowance of $5,000 is included for ballistic resistance panels at the chambers Di-Wall. OIL
- Fireplaces
  - An budget of $4,500 is included for a fireplaces.
- Operable folding partitions
  - (3) 9' tall operable folding partition with manufactures standard finishes and STC ratings.
- Sun Shades
  - Steel sunshades with 3' projection from building

Exclusions
- Corner guards or wall protection
- Building and monument signage.
- Operational and room signage is not included.

Division 11: Equipment
- An allowance of $45,000 is included for entry way water feature reference OIL.
- Food Service/Kitchen equipment.
  - Stainless steel Frigidaire appliances
    - 23 cubic foot side by side refrigerator.
    - 30" under counter dishwasher
    - 30" countertop microwave.
    - Undercounted refrigerator.

Exclusions
- Audio visual equipment Ref allowance in division 16

Division 12: Furnishings
- Window Coverings
  - Manual roller shades at exterior windows with 7% openness factor.

Exclusions
- Building Furniture
- Artwork
- Seating in chambers room
Division 13: Special Constructions
- No work included.

Division 14: Conveying Systems
- TKE Endura 2100 lb holeless hydraulic elevator with stainless steel cab ceiling, doors, and entrance frames.
- Battery powered lowering option included

Division 15: Mechanical
- Fire Suppression System
  - Design build of wet sprinkler system in all conditioned spaces and a dry sprinkler system in non-conditioned spaces to meet NFPA and local Authority Having Jurisdiction (AHJ).
  - Semi-recessed heads in center of tile or room as required.
  - Double-check backflow preventer, wall mount fire department connection, flow and tamper switches.
  - Dry systems figured in sloped truss roof areas.
  - Fire pump is not included.
  - Preaction system is not included.
- Plumbing System
  - Commercial grade Plumbing fixtures.
  - Reduced pressure backflow preventer.
  - Type L copper domestic water lines 2" and larger.
  - PEX domestic water line smaller than 2".
  - Solid wall schedule 40 PVC for all drain, waste, vent, and storm.
  - Black steel schedule 40 gas lines.
- HVAC System
  - Budget based on gas fired packaged roof top units with VVT controls.
  - Duct work distribution throughout space
  - Grilles, registers, and diffusers.
  - Electric unit heaters in vestibules, mechanical rooms, and electrical rooms.
  - Assumed 29 zones with electric reheat.
  - (1) mini split system for server room.
  - Air balancing of each system.
- Excluded
  - Cast iron storm piping
  - Decorative plumbing fixtures

Division 16: Electrical
- Service
  - Primary service from utility transformer within 50’ of electrical room.
  - Secondary to all service panels.
- Site Lighting
  - 6 dual head light poles for parking lot lighting
  - Site lighting to be operated by a time clock and photocell.
- Building lighting.
  - An budget of $224,000 has been included for building lighting and lighting controls.
- General power and branch circuitry
  - All wiring to be MC cable.
- Connection of mechanical equipment.
- Fire alarm system to be design build to meet Authority Having Jurisdiction (AHJ).
- CAT6 and RG6 wiring only for phone, cable, and wireless access points. Termination and system by others.
- An allowance of 100,000 has been included for CCTV system, Access control, and security systems
- An allowance of $100,000 has been included for AV systems.
- Exclusions
• Utility fees and transformers are not included.
• Smoke control, area of rescue, radio amplification, voice evacuation fire alarm system are not included.
• Testing and commissioning is not included.
• Wireless emergency call system and associated wiring is not included.

General Allowances
• Allowances are included as noted below and include all labor, materials, equipment, applicable insurances and taxes to complete the work as noted. Costs of the work against the allowances will be tracked on a monthly basis and reconciled with the Owner at the end of the project. Any money not used from that allowance will be returned to the Owner. Any overages will be charged against the contract as additional work.
• An allowance of $60,000 is included for weather conditions and shall be used for, but not limited to, tenting, heating, fuel/power use, rentals, soils mitigation, admixtures, haul off and import of soils, dewatering, blanketing, delays and extended general conditions, etc as a direct result from working in inclement weather.

Supplemental Conditions
Warranty
• One year warranty
Insurance
• The budget amount includes General and Excess Liability.
• The budget amount includes Builder’s Risk insurance.
Taxes
• Assumes project is tax exempt.
Payment and Performance Bond
• A payment and performance bond has been included.
Contractor’s contingency
• It is assumed there will be a shared savings clause for unused contingency.
• Fee has been established based on a Contingency Split at the end of the project 30% retained by the contractor / 70% returned to the owner.
• Contingency for sole use of the GC.
Contract
• Pricing is predicated on the execution of an AIA Cost of Work Plus a Fee with Guaranteed Maximum Price Agreement between the Owner and Contractor as provided by AIA document A102 or A133 with General Conditions of the Contract provided by AIA document A201. Extensive modifications or revisions to these documents may necessitate reassessing the terms of the proposal. A Waiver of Consequential Damages as provided for in the A102 or A133 will be required and is non-negotiable.
Cost Escalations
• A 2.5% cost material and market cost escalation factor has been included.

Exclusions
• Liquidated damages.
• Consequential Damages.
• City and county use tax.
• General Contractor’s Payment and Performance Bond.
• Subcontractor bonding.
• Davis Bacon or Prevailing Wages.
• Owner contingency.
• Material testing costs.
• Off hours’ work.
• Building permit and plan check fees.
• Development, impact, parkland, entitlement, utility, municipal, etc. fees.
• Site ALTA survey, Traffic, Environmental Survey and Soils Engineering Reports.
• Materials testing, blower door testing, and 3rd party inspection fees.
• Building commissioning costs.
- Building enclosure commissioning.
- Costs associated with LEED certification and management.
<table>
<thead>
<tr>
<th>ID</th>
<th>Description</th>
<th>Original Duration</th>
<th>Start</th>
<th>Finish</th>
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</thead>
<tbody>
<tr>
<td>6</td>
<td>Second Round Comments Addressed</td>
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<td>04/10/18</td>
<td>04/17/18</td>
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<td>34</td>
<td>Respond to City Comments</td>
<td>4</td>
<td>04/11/18</td>
<td>04/16/18</td>
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<td>35</td>
<td>City Final Comments Issued</td>
<td>2</td>
<td>04/17/18</td>
<td>04/18/18</td>
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<td>8</td>
<td>Mylars Signed (All)</td>
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<td>04/18/18</td>
<td>04/24/18</td>
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<td>37</td>
<td>Submit for Full Building Permit</td>
<td>1</td>
<td>05/10/18</td>
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<td>38</td>
<td>Full Permit Review by City</td>
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<td>05/11/18</td>
<td>06/08/18</td>
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<td>39</td>
<td>City Issue Review Comments</td>
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<td>40</td>
<td>Address/Submit Response to City Comments</td>
<td>8</td>
<td>06/12/18</td>
<td>06/21/18</td>
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**Construction**

**Set Up**
- 43: Mobilize
  - Start: 04/27/18
  - Finish: 04/27/18

**Excavation**
- 63: Clear and Grub Site
  - Start: 04/30/18
  - Finish: 05/02/18
- 61: Overlot Grading
  - Start: 05/03/18
  - Finish: 05/31/18

**Site Utilities**
- 56: Site Utilities
  - Start: 05/01/18
  - Finish: 09/21/18

**Hardscapes**
- 71: Hardscapes
  - Start: 06/22/18
  - Finish: 07/06/18
- 81: Asphalt Paving
  - Start: 07/09/18
  - Finish: 07/13/18

**Landscape**
- 49: Landscape and Irrigation
  - Start: 11/06/18
  - Finish: 12/05/18

**Foundations**
- 45: Building Underground
  - Start: 06/01/18
  - Finish: 07/06/18
- 46: Foundations/SOG
  - Start: 07/09/18
  - Finish: 08/03/18

**Wood Structure Systems**
- 53: Structure Framing
  - Start: 06/08/18
  - Finish: 09/24/18
- 54: Roof Framing
  - Start: 09/25/18
  - Finish: 10/08/18

**Roof**
- 59: Dry-in
  - Start: 10/09/18
  - Finish: 10/15/18
- 52: Roofing
  - Start: 10/16/18
  - Finish: 10/29/18

**Cladding**
- 58: Exterior Veneer and Skin
  - Start: 09/25/18
  - Finish: 11/05/18

**Rough Ins**
- 57: MEP rough in
  - Start: 10/16/18
  - Finish: 11/12/18
- 60: Hang Drywall
  - Start: 11/13/18
  - Finish: 12/05/18

**Finishes**
- 66: Tape and Finish
  - Start: 12/06/18
  - Finish: 01/04/19
- 48: Tenant Improvement Work
  - Start: 01/07/19
  - Finish: 03/06/19
**SECTION 1 - CONTRACT TO DATE**

<table>
<thead>
<tr>
<th>Description</th>
<th>Preliminary Cost</th>
<th>Confirmed Cost</th>
<th>Status</th>
<th>Date Finalized</th>
<th>Comments</th>
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<td>Total GMP Budget</td>
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<td>GMP Dated</td>
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<td>Approved Change Items (CI)</td>
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<td>$0</td>
<td></td>
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<tr>
<td>Current Approved Project Budget</td>
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<td>$6,205,250</td>
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**SECTION 2 - ACTIVE CHANGE ITEMS**

- CI-1
- CI-2
- CI-3

Subtotal Pending Change Costs: $0
Total Pending Change Costs: $0

**SECTION 3 - ACCEPTED CHANGE ITEMS**

Subtotals: $0
Total Approved Change Costs: $0

**SECTION 4 - ALLOWANCES**

<table>
<thead>
<tr>
<th>Allowance</th>
<th>GMP Allocation</th>
<th>Amount Allocated</th>
<th>Difference</th>
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<tbody>
<tr>
<td>Landscaping</td>
<td>$138,166</td>
<td>$0</td>
<td>$138,166</td>
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<tr>
<td>RTU Equipment Screening</td>
<td>$17,160</td>
<td>$0</td>
<td>$17,160</td>
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<tr>
<td>Decorative ceiling chambers room</td>
<td>$13,100</td>
<td>$0</td>
<td>$13,100</td>
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<tr>
<td>Acoustical wall treatments</td>
<td>$9,950</td>
<td>$0</td>
<td>$9,950</td>
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<tr>
<td>Ballistic resistance panels</td>
<td>$5,000</td>
<td>$0</td>
<td>$5,000</td>
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<tr>
<td>Water feature</td>
<td>$45,000</td>
<td>$0</td>
<td>$45,000</td>
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<tr>
<td>Audio Visual systems</td>
<td>$100,000</td>
<td>$0</td>
<td>$100,000</td>
</tr>
<tr>
<td>CCTV / Security / Card Access</td>
<td>$100,000</td>
<td>$0</td>
<td>$100,000</td>
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<tr>
<td>Weather Conditions</td>
<td>$60,000</td>
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Subtotals: $319,860
Total Remaining Allowance: $319,860

**SECTION 5 - CONTINGENCY**

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<thead>
<tr>
<th>Description</th>
<th>Amount Allocation</th>
<th>Amount Allocated</th>
<th>Difference</th>
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<tbody>
<tr>
<td>Contractors Contingency</td>
<td>$136,228</td>
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<tr>
<td>Design / Cost Escalation Contingency</td>
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Subtotals: $303,456

Init. /
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<tr>
<th>Total Remaining Contingency:</th>
<th>$303,456</th>
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<tr>
<td><strong>SECTION 6 - INACTIVE CHANGE ITEMS</strong></td>
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<tr>
<td>Personnel - Description</td>
<td>Hourly Rate</td>
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<tr>
<td>---------------------------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Project Executive</td>
<td>$110.00</td>
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<tr>
<td>Operations/Construction Manager</td>
<td>$100.00</td>
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<tr>
<td>Senior Project Manager</td>
<td>$90.00</td>
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<tr>
<td>Project Manager</td>
<td>$80.00</td>
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<tr>
<td>Assistant Project Manager</td>
<td>$70.00</td>
</tr>
<tr>
<td>Project Engineer</td>
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</tr>
<tr>
<td>Project Intern</td>
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</tr>
<tr>
<td>General Superintendent</td>
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<tr>
<td>Senior Superintendent</td>
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</tr>
<tr>
<td>Superintendent</td>
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</tr>
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<td>Assistant Superintendent</td>
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<tr>
<td>Field Engineer</td>
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<tr>
<td>Carpenter Foreman</td>
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<td>Carpenter</td>
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<td>Site Labor</td>
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<td>Project Accountant</td>
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<td>Project Coordinator</td>
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<td>Risk Manager</td>
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<td>Quality Assurance Manager</td>
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<td>Safety Manager</td>
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<tr>
<td>Preconstruction Director</td>
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<td>Senior Preconstruction Manager</td>
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<td>Preconstruction Manager</td>
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<tr>
<td>Assistant Preconstruction Manager</td>
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## Exhibit G

### Tool & Equipment Rental Rates

<table>
<thead>
<tr>
<th>Description</th>
<th>Unit Cost</th>
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<tbody>
<tr>
<td><strong>DESCRIPTION</strong></td>
<td><strong>Day</strong></td>
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<tr>
<td>Storage Trailers</td>
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<td>Semi - 10x40</td>
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<tr>
<td>Tow Behind - 6x12</td>
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<tr>
<td><strong>Weather Protection</strong></td>
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<tr>
<td>Concrete Blanket</td>
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<tr>
<td>150,000 BTU Salamander Heater</td>
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<tr>
<td>300,000 BTU Direct Fire Heater</td>
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<tr>
<td>Mushroom Heater</td>
<td>$15.00</td>
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<tr>
<td><strong>Air Circulation</strong></td>
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<tr>
<td>20&quot; Fan</td>
<td>$18.00</td>
</tr>
<tr>
<td>30&quot; Fan</td>
<td>$8.00</td>
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<tr>
<td>36&quot; Fan</td>
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<tr>
<td>Air Mower (squirrel cage fan)</td>
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<tr>
<td><strong>Layout</strong></td>
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<tr>
<td>Laser Level</td>
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<tr>
<td>Builder's Level</td>
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<td>Theodolite</td>
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<td><strong>Dollies</strong></td>
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<tr>
<td>Drywall Cart</td>
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<tr>
<td>Pallet Jack</td>
<td>$36.00</td>
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<tr>
<td><strong>Power &amp; Small Tools</strong></td>
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<tr>
<td>Field Staff Job Box</td>
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<tr>
<td>Ramset</td>
<td>$20.00</td>
</tr>
<tr>
<td>Worm Drive Circular Saw</td>
<td>$17.00</td>
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<tr>
<td>Angle Grinder</td>
<td>$20.00</td>
</tr>
<tr>
<td>Hammer Drill - Bulldog Style</td>
<td>$36.00</td>
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<tr>
<td>Corded Sawzall</td>
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<tr>
<td>Cordless Kit</td>
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<td>Electric Portaband Saw</td>
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<td>Framing Nailer</td>
<td>$33.00</td>
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<td>Air Compressor - Pancake Style</td>
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<td><strong>Other Power &amp; Small Tools</strong></td>
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<tr>
<td>3/4&quot; Impact Wrench</td>
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<tr>
<td>Sliding Compound Miter Saw w/ Stand</td>
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<tr>
<td>Table Saw</td>
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<tr>
<td>Trim Nailer</td>
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<td><strong>Power Resources</strong></td>
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<td>700 Watt Generator</td>
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<td><strong>Dumpster / Debris Removal</strong></td>
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<td>2 cu yd Steel Dumpster on Casters</td>
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<tr>
<td>1 cu yd Trash Buggy on Casters</td>
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<tr>
<td><strong>Miscellaneous</strong></td>
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<td>Post Tension Metal Detector</td>
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<tr>
<td>Personal Air Monitor</td>
<td>$120.00</td>
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<tr>
<td>iPhone Infrared Camera</td>
<td>$65.00</td>
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<tr>
<td>Inspection Camera</td>
<td>$65.00</td>
</tr>
<tr>
<td>Oxygen / Acetylene Torch Set</td>
<td>$78.00</td>
</tr>
<tr>
<td>Pressure Washer</td>
<td>$75.00</td>
</tr>
<tr>
<td>Baker Scaffold w/ Safety Rail (per section)</td>
<td>$55.00</td>
</tr>
</tbody>
</table>
AGREEMENT made as of the 13th day of April in the year 2018
(In words, indicate day, month and year.)

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

Town of Timnath
4800 Goodman Rd.
Timnath, CO 80547

and the Contractor:
(Name, legal status, address and other information)

Brinkman Construction, Inc., a Colorado Corporation
3528 Precision Drive, Suite 100
Fort Collins, CO 80528

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

Timnath Administration Building
4750 Signal Tree Drive
Timnath, CO 80547

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

alm2s
712 Whalers Way, Bldg. B, Suite 100
Fort Collins, CO 80525

The Owner and Contractor agree as follows.

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

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

This document is not intended for use in competitive bidding.

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

1. THE CONTRACT DOCUMENTS  
2. THE WORK OF THIS CONTRACT  
3. RELATIONSHIP OF THE PARTIES  
4. DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION  
5. CONTRACT SUM  
6. CHANGES IN THE WORK  
7. COSTS TO BE REIMBURSED  
8. COSTS NOT TO BE REIMBURSED  
9. DISCOUNTS, REBATES AND REFUNDS  
10. SUBCONTRACTS AND OTHER AGREEMENTS  
11. ACCOUNTING RECORDS  
12. PAYMENTS  
13. DISPUTE RESOLUTION  
14. TERMINATION OR SUSPENSION  
15. MISCELLANEOUS PROVISIONS  
16. ENUMERATION OF CONTRACT DOCUMENTS  
17. INSURANCE AND BONDS

## ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 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. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

1. Modifications to this agreement signed by both parties.  
2. The Agreement between Owner and Contractor.  
3. Addenda, with those of later date having precedence over those of earlier date.  
4. The Supplementary Conditions or Other Conditions of the Contract.  
5. The General Conditions of the Contract for Construction, AIA A201-2007, as amended and initialed by the parties.  
6. The Assumptions and Clarifications.  
7. Drawings and Specifications.
8. Other documents specifically enumerated in the Agreement as part of the Contract Documents.

ARTICLE 2 THE WORK OF THIS CONTRACT
The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

(Paragraph Deleted)

§3.1 The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

§3.2 The Owner acknowledges that the Contractor is in no way providing professional services, which constitute the practice of architecture or engineering, and the responsibility and liability in connection with these services are the responsibility of the Owner and the Design Consultants. The Architect and Owner shall be responsible for determining the suitability of any modifications suggested or proposed by the Contractor with regards to value engineering, voluntary alternates or substitutions to the Contract Documents.

§3.3 The Contractor has exclusively relied upon the Geotechnical Engineering Report provided by the Owner as a warranty of existing and subgrade conditions. Contractor's examination of site conditions was limited to visual observations to become generally familiar with local conditions under which the work is to be performed. Any conditions encountered that differ materially from the Geotechnical Report shall be grounds for additional cost and/or duration per Article 7, 8 and 15 of A201- 2007."

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
§ 4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

§ 4.2.1 The date of commencement of the Work shall be five (5) calendar days after the date the Contractor receives (1) the notice to proceed issued by the Owner, (2) authorization to proceed from the authority having jurisdiction on critical path work, (3) the fully executed Agreement Between Owner and Contractor, and (4) Evidence of Owner's financing.

§ 4.2.2 The Owner and Contractor mutually acknowledge that to facilitate the start of Construction it is expected that an early grading permit, a Footings and Foundations permit, and potentially other partial releases of work will be provided by the Owner. Contractor and Owner will mutually endeavor to provide milestone dates in Contractor's schedule by which these activities will need to occur to maintain the completion date. Any delays in these dates will be subject to the delay process outlined in Article 4.4.

If, prior to commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

§ 4.3 The Contract time shall be measured from the date of commencement.

The Owner and Contractor have agreed on a Project Schedule, attached as Exhibit "D", which identifies the progress
of the Work, including, but not limited to all major subcontract commencements and completions, as well as milestones identified for temporary certificate of occupancy, certificate of occupancy, substantial completion, and final completion. The parties understand that the specific dates within the Project Schedule may be changed slightly to reflect the actual date of the Owner’s Notice to Proceed, but the Contract Time set forth in Section 4.4 below (333 days) is absolute and will not be changed.

It is understood that subcontract line items in the Project Schedule are not absolute and may vary. The Contract Time and times for obtaining governmental approvals, certificate of occupancy, and substantial completion are, however, absolute. The Project Schedule includes time required for all activities and events that may be expected to be encountered in the Project.

Milestones established by the Schedule shall not, except with Owner’s written consent, be exceeded by the Contractor. The Contractor acknowledges that events may arise that may impact the Schedule related to delivery of materials and/or performance of services by Owner’s contractors and lower tiers, and Contractor will make efforts to adjust the Work and sequencing to accommodate these events.

§ 4.4 The Contractor shall achieve Substantial Completion of the entire Work not later than ( ) days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

See Exhibit D - Schedule of Work

<table>
<thead>
<tr>
<th>Portion of Work</th>
<th>Substantial Completion date</th>
</tr>
</thead>
</table>

, subject to adjustments of this Contract Time as provided in the Contract Documents.

In the event a Change Orders affects the scheduled critical path, the Contractor shall be allowed to collect $1,749 per day for the General Conditions during the affected period. Subsequently, in the event a Change Order affects the scheduled critical path by reducing the overall schedule, the Contractor shall credit the Owner $1,749 per day for the General Conditions during the affected period. No reduction in General Conditions shall be considered if the overall schedule is reduced through means and methods of the Contractor, and not otherwise through scope reduction or via Owner Change Order

Changes in the Schedule must be approved in writing by Jeff Jensen on behalf of Owner to be binding. No extended general conditions shall be allowed through the change order process unless the change order work impacts the critical path of the entire Project Schedule.

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

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor’s Fee.

§ 5.1.1 The Contractor’s Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor’s Fee.)

The Contractor’s Fee shall be <four > percent (4.0%) of the sum of the Cost of the Work, Allowances, General Conditions, Contingency and insurance.
§ 5.1.2 The method of adjustment of the Contractor’s Fee for changes in the Work:

The Contractor’s Fee shall be increased or decreased, pursuant to the provisions of Article 7 of the A201-2007-General Conditions of the Contract, and as follows:
1. For additive change orders, the Fee shall be increased by <four> percent (4.0%) of the increased Cost of Work,
2. For deductive individual change orders that are less than Ten percent (10%) of the current adjusted contract amount, the Fees shall be reduced by Zero percent (0.00%).
3. For deductive individual change orders equal to or greater than Ten percent (10%) of the current adjusted contract amount, the Fee shall be reduced by <four> percent (4.0%) of the deducted Cost of Work.

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

Subcontractor’s overhead and profit for increases in the cost of its portion of the Work shall be limited to no more than the same fee (as a percentage) incorporated into the Subcontractor’s base contract amount.

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed one hundred percent (100%) of the standard rate paid at the place of the Project.

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Units and Limitations</th>
<th>Price Per Unit ($0.00)</th>
</tr>
</thead>
</table>

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed Six Million, Two Hundred Five Thousand, Two Hundred Fifty Dollars ($6,205,250.00 ), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

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

Any savings resulting from the final cost at completion being less than the GMP will be shared on a percentage basis between the Owner and the Contractor as follows <forty> percent (40%) retained by the Contractor and <sixty> percent (60%) returned to the Owner.

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

(State the numbers or other identification of accepted alternates. If bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

See Exhibit E - Open Items List

§ 5.2.3 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

<table>
<thead>
<tr>
<th>Item</th>
<th>Price</th>
</tr>
</thead>
</table>

§ 5.2.4 Assumptions, if any, on which the Guaranteed Maximum Price is based:

See Exhibit C - Assumptions & Clarifications
§ 5.2.5 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 5.2.6 The GMP includes a contractor contingency of 3.0%. This contingency is for the sole use and benefit of the Contractor. The Contractor’s Contingency is not for use by or the benefit of the Owner/Architect or consultants and shall not be used to cover errors or omissions, unknown conditions, weather delays or for those items described in § 5.2.5, unless mutually agreed to by Owner and Contractor. The use of contingency shall be tracked and reported to the Owner on a monthly, basis; however a signed Change Order shall not be required to reallocate project contingency to the division in which it is to be utilized.

§ 5.2.7 The GMP includes a cost escalation contingency in the amount of 2.5%. This contingency is intended to account for the development of the design from its current state to final Construction Drawings. When the Contractor prices the final CD drawings, any remaining funds from the cost escalation contingency line item will be credited back to the Owner in full.

ARTICLE 6   CHANGES IN THE WORK
§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction. Owner represents that no change order or other form of order or directive requiring additional compensable work to be performed, which work causes the aggregate amount payable under this Agreement to exceed the amount appropriated, will be approved or made by Owner unless the Contractor is given written assurance by the Owner that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision in this Agreement. The Owner shall provide written evidence of such appropriation prior to commencement of the Work and prior to execution of every change order that increases the Guaranteed Maximum Price.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms “cost” and “fee” as used in Section 7.3.3.3 of AIA Document A201–2007 and the term “costs” as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Contractor’s Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

§ 6.5 Contractor’s performance of any proposed Change Order work prior to the signature of a Change Request by the specific Owner Representative designated and authorized to execute Change Requests, or a Change Order signed by April D. Getchius shall be performed at the Contractor’s sole risk, including risk of nonpayment. No verbal authorizations for proposed change order work shall be enforceable against Owner.

§ 6.6 Any adjustment to the Contract Sum and/or Contract Time arising out of any proposed changes in the Work must be signed by Jeff Jensen on behalf of Owner, and no other Owner representative. If the Contractor believes a change in the Work has been directed for which such adjustment in the Contract Sum and/or Contract Time is due, and there is not a written directive for such change signed by Jeff Jensen as Owner representative, then the Contractor, as a condition precedent to preservation of any Claim pertaining to such change, give written notice to
Owner prior to proceeding with any of the work involved in the change. The written notice shall identify the scope and nature of the change in the work and the time and cost impact such change will have upon the Contract Sum and/or Contract Time. In the notice, the Contractor shall provide and identify specific cost impacts and the specific extent of additional time to perform sought for adjustment to the Contract Sum and/or Contract Time by reason of such change. The notice and given impact for time shall include a critical path schedule analysis. Contractor’s failure to give timely and properly supported written notice shall constitute a waiver of any claims for adjustment to the Contract Sum and/or Contract Time not otherwise approved in writing by Jeff Jensen it being expressly understood that such notice, timely given and properly supported, is a condition precedent to Contract’s claim.

ARTICLE 7 COSTS TO BE REIMBURSED
§ 7.1 COST OF THE WORK
§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 Where any cost is subject to the Owner’s prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement.

§ 7.2 LABOR COSTS
§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Contractor’s supervisory and administrative personnel when stationed at the site with the Owner’s prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor’s principal or other offices shall be included in the Cost of the Work, identify in Article 15, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

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

§ 7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, with the Owner’s prior approval.

§ 7.3 SUBCONTRACT COSTS
Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

§ 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION
§ 7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner’s property at the completion of the Work or, at the Owner’s option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS
§ 7.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials,
supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

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

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

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

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

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner’s prior approval. Insurance costs shall include (a) the attributable portion of premiums for the Contractor’s General Liability Insurance fixed at actual costs for this insurance without overhead and profit; and (b) if required by the Owner, the attributable portion of premiums for Contractor to furnish labor, material and performance bond shall be at actual costs for this insurance without overhead and profit, and (c) as required by the Owner, Builder’s Risk insurance shall be at actual cost for this insurance without overhead and profit.

§ 7.6.2 Section 39-26-704, C.R.S., provides for tax free purchases of materials provided an exemption is applied for and granted by the Colorado Department of Revenue, Sales Tax Division. The Owner has received such exemption and will provide Contractor and subcontractors with tax exemption number. The Owner reserves the right to require such additional information and/or documentation as may be necessary to insure that no sales taxes are paid by the Contractor and charged to the Owner. If sales tax is required to be paid to the vendor, Contractor (or it subcontractor) is responsible for applying for a refund to the Colorado Department of Revenue, Sales Tax Division. Notwithstanding the foregoing, to the extent that sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable are unavoidable, they shall be considered a reimbursable Cost of Work.

§ 7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner’s consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor’s Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner’s prior approval.

§ 7.6.7 Deposits lost for causes other than the Contractor’s negligence or failure to fulfill a specific responsibility in the Contract Documents.
§ 7.6.8 Legal, mediation and arbitration costs, including attorneys’ fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner’s prior approval, which shall not be unreasonably withheld.

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

§ 7.6.10 That portion of the reasonable expenses of the Contractor’s supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 OTHER COSTS AND EMERGENCIES
§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

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

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

§ 7.8 RELATED PARTY TRANSACTIONS
§ 7.8.1 For purposes of Section 7.8, the term “related party” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term “related party” includes any member of the immediate family of any person identified above.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction, the Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Article 10.

ARTICLE 8 COSTS NOT TO BE REIMBURSED
§ 8.1 The Cost of the Work shall not include the items listed below:

.1 Salaries and other compensation of the Contractor’s personnel stationed at the Contractor’s principal office or offices other than the site office, except as specifically provided in Section 7.2 or as may be provided in Article 15;

.2 Expenses of the Contractor’s principal office and offices other than the site office;

.3 Overhead and general expenses, except as may be expressly included in Article 7;

.4 The Contractor’s capital expenses, including interest on the Contractor’s capital employed for the Work;

.5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;

.6 Any cost not specifically and expressly described in Article 7; and

.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.
ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS
§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS
§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor’s own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.2 When a specific bidder (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11, below.

ARTICLE 11 ACCOUNTING RECORDS
The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS
§ 12.1 PROGRESS PAYMENTS
§ 12.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the 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.

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

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than twenty (20) days after the Architect receives the Application for Payment.
§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, subcontractors lien waivers, proof of payment to subcontractors for amounts submitted under previous pay applications, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor’s Fee; plus (3) payrolls for the period covered by the present Application for Payment. Contractor will also submit current month conditional lien waivers with each application for payment. The unconditional lien waivers from the previous month’s draw will be required prior to funding the current month’s draw. Contractor maintains the right to withhold payment to a Subcontractor for risk mitigation reasons and will notify Owner and Lender if Contractor chooses to do so. Upon approval from the Owner and Lender, which will not be unreasonably withheld, for withholding payment to Subcontractors, Lender and Owner will approve payment for the Current Draw and can chose to withhold payment for an amount equal to what Contractor is holding on the respective Subcontractors with outstanding lien waivers.

§ 12.1.5 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 Guaranteed Maximum Price among the various portions of the Work, except that the Contractor’s Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor’s Applications for Payment.

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

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

1. Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;

2. Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

3. Subtract retainage of <five> percent (5%) and then add the Contractor’s Fee and General Conditions. The Contractor’s Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor’s Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

4. Subtract retainage of five percent (5%) from that portion of the Work that the Contractor self-performs;

5. Subtract the aggregate of previous payments made by the Owner;

6. Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and

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

8. Retainage shall not be held on Contractor’s General Conditions, insurance, bonds or fee.
§ 12.1.8 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.9 In taking action on the Contractor’s Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner’s auditors acting in the sole interest of the Owner.

§ 12.2 FINAL PAYMENT
§ 12.2.1 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 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;

2. the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

3. a final Certificate for Payment has been issued by the Architect.

§ 12.2.2 The Owner’s auditors will review and report in writing on the Contractor’s final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner’s auditors report to be substantiated by the Contractor’s final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner’s auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect’s reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section 12.2.2 supersedes those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Contractor’s final accounting.

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

§ 12.2.4 Final payment will not be made until the time of final settlement shall be established by the Owner and shall thereafter be advertised by two (2) publications of notice, the last of which shall appear at least ten (10) days prior to the time of final settlement as required pursuant to Section 38-26-107, C.R.S. The Owner shall withhold from all payments to the Contractor sufficient funds to insure the payment of all claims filed by any person that has furnished labor, materials, sustenance, or other supplies used or consumed by the Contractor or a subcontractor in or about the performance of the Work, or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the Work whose claim therefore has not been paid by the Contractor or the subcontractor, all in accordance with the provisions of Section 38-26-107, C.R.S.

ARTICLE 13 DISPUTE RESOLUTION
§ 13.1 INITIAL DECISION MAKER
The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to the 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.)

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User Notes:
§ 13.2 BINDING DISPUTE RESOLUTION

§13.2.1 In the event of a dispute over a Claim, the parties shall each designate a high level executive, who shall meet and confer in good faith to resolve the dispute. Such meeting shall take place not later than 20 days after the Architect made a decision on the dispute.

§13.2.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[ ] Litigation in a court of competent jurisdiction

[ ] Other (Specify)

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 14.2 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2007, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201–2007 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

.2 Add the Contractor’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner.

§ 14.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term “profit” shall be understood to mean the Contractor’s Fee as described in Sections 5.1.1 and Section 6.4 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2 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.)

8.0 % Eight percent per annum

Init. / 

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User Notes: (3B9ADA1D)
§ 15.3 The Owner's representative:
(Name, address and other information)

Jensen LaPlante Development
Jeff Jensen
1603 Oakridge Dr. Suite 101
Fort Collins, CO 80525

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

James Ciesla
Brinkman Construction, Inc., a Colorado Corporation
3528 Precision Drive, Suite 100
Fort Collins, CO 80528
970-267-0954

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

§ 15.6 Other provisions:
§ 15.6.1 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site or at the Contractor's principal and/or branch offices while performing work on behalf of the Project shall be Cost of Work, with the Owner's prior approval.

§ 15.6.2 The cost for Contractor's supervisory and administrative personnel shall be per the billing rates specified in Exhibit F, attached hereto.

§ 15.6.3 The cost for Contractor's General Liability and Builder's Risk Insurance shall be Cost of the Work.

§ 15.6.4 Anywhere in this agreement where the Architect is providing a procedural function as opposed to one specifically of design can be interchanged with Owner at the Owner's discretion.

§ 15.6.5 If either party to this Agreement engages legal counsel to enforce any terms or conditions of this Agreement, the initiation of any arbitration, legal proceedings or the defense thereof including any appeals, the prevailing party shall be entitled to prompt payment and reimbursement in full for all of its attorney's fees and costs.

§ 15.6.6 The Contractor will procure and maintain and cause its subcontractors to procure and maintain the insurance described in this document.

§ 15.6.7 The Contractor shall maintain an accurate set of as-built drawings at the site. At the completion of the Work, the Contractor shall certify by signing on them that each of the as-built drawings and specifications are complete and accurate. No later than thirty (30) days after Substantial Completion of Owner's Work and prior to application for Final Payment, and as a condition to its approval by the Architect and Owner, the Contractor shall transfer the job site as-built drawings, arranged in proper order, indexed and certified as accurate to the Architect for transmittal to the Owner. The Contractor will not be responsible for transferring to the as-built documents any addenda, clarifications or changes documented by the Architect and its consultants.

§ 15.6.8 Any purchased materials remaining after completion of the subject portion of Owner's Work (such as, for example, extra paint, wall coverings or carpet) will be given by the Contractor to the Owner for use in subsequent repairs. Materials should be labeled, sealed, boxed and protected as appropriate to ensure the materials remain in good condition.

§ 15.6.9 All Work performed by Contractor, or any subcontractor or person performing work on its behalf, shall be guaranteed against defective workmanship and materials for a period of two (2) years from the date of Substantial
Completion, provided that such two-year period shall not begin with respect to any portion of the Work that is not completed on the date of Substantial Completion until such item is completed.

§ 15.6.10 If requested by the Owner, the Contractor will furnish Owner with sworn Contractor’s statements, Contractor's affidavits and partial and final waivers of lien, in such form and content as Owner may require, in order to establish that the cost of all labor, services and materials furnished in connection with Owner's Work has been paid in full and to keep the Premises free from all liens and claims.

§ 15.6.11 Contractor and Owner acknowledge that they or their employees may, in the performance of this Agreement, come into the possession of proprietary or confidential information owned by or in the possession of the other. Neither party shall use any such information for its own benefit or make such information available to any person, firm, corporation, or other organization, regardless of whether directly or indirectly affiliated with Contractor or Owner, unless (i) required by law, (ii) by order of any court or tribunal, (iii) such disclosure is necessary for the assertion of a right, or defense of an assertion of a right, by one party against the other party hereto, or (iv) such information has been acquired from other sources.

§ 15.6.12 Upon Substantial Completion and for a period of fifteen (15) calendar days thereafter the Contractor will replace burned out light bulbs at no cost to the Owner.

§ 15.6.13 The Contractor shall include with every subcontract agreement the following language: "Subcontractor binds itself to Contractor and Owner and is obligated to Contractor and Owner in the same manner and to the same extent that Contractor is bound and obligated to Owner under the Prime Contract. All Rights which Owner may exercise and enforce against Contractor may be exercised and enforced by Owner against Subcontractor. In the event of any dispute between the Owner and Contractor, Subcontractor shall be bound by all decisions, directives, and interpretations and rulings of the Owner, including Owner's termination or suspension of Contractor."

§ 15.6.14 Contractor hereby waives and releases any and all claims for consequential and/or indirect damages including but not limited to attorneys' fees for lost profits, lost opportunities, lost bonding capacity, and/or damages to reputation.

§ 15.7 Illegal Aliens:
§ 15.7.1 Pursuant to Colo. Rev. Stat. § 8-17.5-101 et seq., Owner cannot enter into or renew a public contract for services with a contractor who knowingly employs or contracts with an illegal alien to perform work under the contract or who knowingly contracts with a subcontractor who knowingly employs or contracts with an illegal alien to perform work under the contract.

§ 15.7.2 In accordance with the mandatory provisions of Colo. Rev. Stat. § 8-17.5-101 et seq., Contractor certifies that it has not knowingly employed or contracted with an illegal alien to perform work under this Agreement, and that Contractor will participate in the E-Verify Program or the Department Program [as defined in Colo. Rev. Stat. § 8-17.5-101(3.3)] in order to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement. Contractor further certifies that it will not enter into a contract with a subcontractor who fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

§ 15.7.3 Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program. Contractor shall not use the E-Verify Program or the Department Program to undertake pre-employment screening of job applicants while the Agreement is being performed.

If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall:

a. Notify the subcontractor and Owner within three days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

b. Terminate the subcontract if within three days of receiving actual notice the subcontractor does not stop employing or contracting with the illegal alien, except that Contractor shall not terminate the subcontractor
if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

§ 15.7.4 Contractor shall comply with any reasonable request by the Department of Labor and Employment (hereinafter referred to as the "Department") made in the course of an investigation that the Department is undertaking pursuant to Section 8-17.5-102, C.R.S.

§ 15.7.5 If Contractor violates the provisions of this paragraph, Owner may terminate the contract for breach and Contractor shall be liable for actual and consequential damages.

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 16.1.1 The Agreement is this executed AIA Document A102–2007, Standard Form of Agreement Between Owner and Contractor.

§ 16.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 16.1.3 The Supplementary and other Conditions of the Contract:

<table>
<thead>
<tr>
<th>Document</th>
<th>Title</th>
<th>Date</th>
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§ 16.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

See Exhibit A - Drawings & Specifications

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Date</th>
</tr>
</thead>
</table>

§ 16.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

See Exhibit A - Drawings & Specifications

<table>
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<th>Number</th>
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§ 16.1.6 The Addenda, if any:

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<tr>
<th>Number</th>
<th>Date</th>
<th>Pages</th>
</tr>
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</table>

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 16.

§ 16.1.7 Additional documents, if any, forming part of the Contract Documents:

1. AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

2. Other documents, if any, listed below:

   Exhibit A – Drawings and Specifications
   Exhibit B – Schedule of Values
   Exhibit C – Assumptions & Clarifications

Init. 16

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User Notes: (3B9ADA1D)
Exhibit D – Schedule of Work
Exhibit E – Open Items List
Exhibit F – Hourly Labor Rates
Exhibit G – Equipment Billing Rates

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor’s bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

ARTICLE 17 INSURANCE AND BONDS
The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.
(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

(Table Deleted)

§ 17.1 For all phases of the Project, the Contractor and the Owner shall purchase and maintain the insurance required by this Article and as set forth in Article 11 of AIA Document A201–2007.

§ 17.2 Contractor shall provide and maintain during the performance of this Agreement the insurance described below, which insurance shall be placed with a company or companies authorized to do business in the State of Colorado with an A.M. Best's Insurance Report rating at not less than A-/VI.

§ 17.3 Prior to commencement of Work, the Contractor shall furnish and deliver to the Owner proof that the following insurance shall be in force and effect for the duration of the Project. All Certificates of Insurance relating to Broad Form General Liability, Automobile Liability and Excess Liability, shall list Owner as additional project-specific insured. Additional Insured Endorsements will be provided to Owner by Contractor’s Insurance Company with other Certificates of Insurance.

§ 17.4 Standard Form Commercial General Liability and Property Damage insurance (as provided on an ISO CG 00 01 form) that includes coverage for (a) claims for bodily injury, including death, and property damage; and (b) contractual liability on an occurrence basis and shall include fire, explosion, collapse, underground hazard and product/completed operations coverage. Minimum limits: General Aggregate $2,000,000; Products/Completed Operations Aggregate $2,000,000; Personal and Advertising Injury $1,000,000; Each Occurrence $1,000,000.

§ 17.5 Contractor’s workers compensation insurance, at statutory limits, as required by Colorado law, covering all employees working on the site, and Employer’s Liability Insurance with the following minimum limits: Each Accident $500,000; Each Occupational Disease $500,000, Occupational Disease Aggregate $500,000.

§ 17.6 Automobile liability insurance, covering the use, operation and maintenance of any automobiles, trucks, trailers or other vehicle owned, hired, or non-owned by the Contractor providing bodily injury, including death, and property damage coverage. Minimum limits of liability provided by this coverage shall be a Combined Single Limit of $1,000,000.

§ 17.7 Excess Liability Insurance with a minimum limit of $5,000,000 for each occurrence and aggregate of $10,000,000.

§ 17.8 Standard, all risk of loss Builder’s Risk completed value insurance. In no event shall the amount of the deductible under the Builder’s Risk Policy exceed $10,000.00. The Builder’s Risk Insurance shall be carried by the Contractor at 100% of the Contract amount, totaling the Guaranteed Maximum Price.
§ 17.9 Professional Liability Insurance (Errors and Omissions), covering any design services provided under this Agreement by design/build subcontractors or suppliers, including contractual liability insurance against the liability assumed in this Agreement, as is acceptable to and approved by the Owner. Such insurance shall have minimum policy limits of $1,000,000 in the aggregate and $1,000,000 per claim and a maximum deductible/SIR of $50,000 (All deductible/SIRs to be paid by Contractor and/or design/build subcontractor).

§ 17.10 Worker's Compensation insurance as required by Colorado law during the term of its contract, covering all persons working under its Project contract.

§ 17.11 The limits outlined above may be arranged under single policies for full limits required or by a combination of underlying policies with the balance provided by an Excess Liability policy. The general aggregate on the Commercial General Liability policy shall apply on a project specific basis. The Contractor agrees to notify Owner and additional insureds of any substantial claims, paid or resolved, applied against the aggregate of any of the required insurance policies.

§ 17.12 With the exception of Professional Liability Insurance, all insurance provided by the Contractor hereunder shall be primary to any insurance policies held by the Owner and additional insureds. The Contractor waives subrogation as to the Owner and its agents, representatives, affiliates, additional insureds, and assigns on all policies (including Professional Liability) carried by the Contractor.

§ 17.13 All insurance shall include a provision prohibiting cancellation, termination or alteration (so as to affect the intent of this agreement) without thirty (30) days' prior notice to the Owner. In the event of threatened cancellation for nonpayment or nonrenewal, the Owner may pay the same on behalf of the Contractor, at the Owner's discretion, and deduct the same from any amount or payment due to the Contractor hereunder.

§ 17.14 Payments for services provided will be withheld from Contractor until acceptable Certificates of Insurance and Additional Insured Endorsements are received by Owner.

§ 17.15 No Work will be conducted on the Project site until satisfactory evidence has been submitted that the Contractor has insurance that complies with the specific insurance and indemnity requirements listed in the Contract Documents. Contractor is also responsible for verifying that any design/build subcontractors (any subcontractor providing engineered drawings for review and approval), including but not limited to joist manufacturers, fire alarm subcontractors, fire sprinkler subcontractors, security subcontractors, landscape irrigation engineers, and precast concrete subcontractors, carry the following Professional Errors and Omissions Insurance: Professional Liability Insurance (Errors and Omissions), covering the services provided under this Agreement, including contractual liability insurance against the liability assumed in this Agreement, as is acceptable to and approved by the Owner.

§ 17.16 Contractor shall maintain a performance bond and a separate labor and material payment bond, which shall (a) be executed by a corporate surety licensed to do business in the State, (b) be in customary form, (c) be in the amount payable to Contractor hereunder or to such subcontractor pursuant to its contract with the Contractor and (d) be payable to the Owner. A copy of each such bond and all modifications thereto shall be furnished to the Owner.

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

OWNER (Signature)
April D. Getchius Town Manager,
Town of Timnath
(Printed name and title)

CONTRACTOR (Signature)
James Ciesla, President & CEO
(Printed name and title)
Additions and Deletions Report for
AIA® Document A102™ – 2007

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:34:15 on 04/13/2018.

PAGE 1

AGREEMENT made as of the 13 day of April in the year 2018

...

Town of Timnath
4800 Goodman Rd.
Timnath, CO 80547

...

Brinkman Construction, Inc., a Colorado Corporation
3528 Precision Drive, Suite 100
Fort Collins, CO 80528

...

Timnath Administration Building

...

4750 Signal Tree Drive

...

Timnath, CO 80547

...

alm2s
712 Whalers Way, Bldg. B, Suite 100
Fort Collins, CO 80525

PAGE 2

§

...

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. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

... § 1.2 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

...

1. Modifications to this agreement signed by both parties.

...

2. The Agreement between Owner and Contractor.

...

3. Addenda, with those of later date having precedence over those of earlier date.

...

4. The Supplementary Conditions or Other Conditions of the Contract.

...

5. The General Conditions of the Contract for Construction, AIA A201-2007, as amended and initialed by the parties.

...

6. The Assumptions and Clarifications.

...

7. Drawings and Specifications.

PAGE 3

8. Other documents specifically enumerated in the Agreement as part of the Contract Documents.

...

The...

...

§3.1 The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor’s skill and judgment in furthering the
interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

§3.2 The Owner acknowledges that the Contractor is in no way providing professional services, which constitute the practice of architecture or engineering, and the responsibility and liability in connection with these services are the responsibility of the Owner and the Design Consultants. The Architect and Owner shall be responsible for determining the suitability of any modifications suggested or proposed by the Contractor with regards to value engineering, voluntary alternates or substitutions to the Contract Documents.

§3.3 The Contractor has exclusively relied upon the Geotechnical Engineering Report provided by the Owner as a warranty of existing and subgrade conditions. Contractor's examination of site conditions was limited to visual observations to become generally familiar with local conditions under which the work is to be performed. Any conditions encountered that differ materially from the Geotechnical Report shall be grounds for additional cost and/or duration per Article 7, 8 and 15 of A201-2007."

§ 4.2.1 The date of commencement of the Work shall be five (5) calendar days after the date the Contractor receives (1) the notice to proceed issued by the Owner, (2) authorization to proceed from the authority having jurisdiction on critical path work, (3) the fully executed Agreement Between Owner and Contractor, and (4) Evidence of Owner's financing.

§ 4.2.2 The Owner and Contractor mutually acknowledge that to facilitate the start of Construction it is expected that an early grading permit, a Footings and Foundations permit, and potentially other partial releases of work will be provided by the Owner. Contractor and Owner will mutually endeavor to provide milestone dates in Contractor's schedule by which these activities will need to occur to maintain the completion date. Any delays in these dates will be subject to the delay process outlined in Article 4.4.

If, prior to commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

§ 4.2.3 The Contract time shall be measured from the date of commencement.

The Owner and Contractor have agreed on a Project Schedule, attached as Exhibit "D", which identifies the progress of the Work including, but not limited to all major subcontract commencements and completions, as well as milestones identified for temporary certificate of occupancy, certificate of occupancy, substantial completion, and final completion. The parties understand that the specific dates within the Project Schedule may be changed slightly.
to reflect the actual date of the Owner’s Notice to Proceed, but the Contract Time set forth in Section 4.4 below...

(333 days) is absolute and will not be changed.

...

It is understood that subcontract line items in the Project Schedule are not absolute and may vary. The Contract Time and times for obtaining governmental approvals, certificate of occupancy, and substantial completion are, however, absolute. The Project Schedule includes time required for all activities and events that may be expected to be encountered in the Project.

...

Milestones established by the Schedule shall not, except with Owner’s written consent, be exceeded by the Contractor. The Contractor acknowledges that events may arise that may impact the Schedule...

...

related to delivery of materials and/or performance of services by Owner’s contractors and lower tiers, and Contractor will make efforts to adjust the Work and sequencing to accommodate these events.

...

§ 4.3.4.4 The Contractor shall achieve Substantial Completion of the entire Work not later than ( ) days from the date of commencement, or as follows:

...

See Exhibit D - Schedule of Work

...

In the event a Change Orders affects the scheduled critical path, the Contractor shall be allowed to collect $1,749 per day for the General Conditions during the affected period. Subsequently, in the event a Change Order affects the scheduled critical path by reducing the overall schedule, the Contractor shall credit the Owner $1,749 per day for the General Conditions during the affected period. No reduction in General Conditions shall be considered if the overall schedule is reduced through means and methods of the Contractor, and not otherwise through scope reduction or via Owner Change Order.

...

Changes in the Schedule must be approved in writing by Jeff Jensen on behalf of Owner to be binding. No extended general conditions shall be allowed through the change order process unless the change order work impacts the critical path of the entire Project Schedule.

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

...

The Contractor’s Fee shall be <four> percent (4.0%) of the sum of the Cost of the Work, Allowances, General Conditions, Contingency and insurance.

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The Contractor’s Fee shall be increased or decreased, pursuant to the provisions of Article 7 of the A201-2007 General Conditions of the Contract, and as follows:

...

1. For additive change orders, the Fee shall be increased by <four> percent (4.0%) of the increased Cost of Work.

...

2. For deductive individual change orders that are less than Ten percent (10%) of the current adjusted contract amount, the Fees shall be reduced by Zero percent (0.00%).

...

3. For deductive individual change orders equal to or greater than Ten percent (10%) of the current adjusted contract amount, the Fee shall be reduced by <four> percent (4.0%) of the deducted Cost of Work.

...

Subcontractor’s overhead and profit for increases in the cost of its portion of the Work shall be limited to no more than the same fee (as a percentage) incorporated into the Subcontractor’s base contract amount.

...

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed one hundred percent (100%) of the standard rate paid at the place of the Project.

...

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed Six Million, Two Hundred Fifty Dollars, ($ 6,205,250.00 ), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

...

Any savings resulting from the final cost at completion being less than the GMP will be shared on a percentage basis between the Owner and the Contractor as follows <forty> percent (40%) retained by the Contractor and <sixty> (60%) returned to the Owner.

...
§ 5.2.6 The GMP includes a contractor contingency of 3.0%. This contingency is for the sole use and benefit of the Contractor. The Contractor’s Contingency is not for use by or the benefit of the Owner/Architect or consultants and shall not be used to cover errors or omissions, unknown conditions, weather delays or for those items described in § 5.2.5, unless mutually agreed by Owner and Contractor. The use of contingency shall be tracked and reported to the Owner on a monthly basis; however, a signed Change Order shall not be required to reallocate project contingency to the division in which it is to be utilized.

§ 5.2.7 The GMP includes a cost escalation contingency in the amount of 2.5%. This contingency is intended to account for the development of the design from its current state to final Construction Drawings. When the Contractor prices the final CD drawings, any remaining funds from the cost escalation contingency line item will be credited back to the Owner in full.

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction. Owner represents that no change order or other form of order or directive requiring additional compensable work to be performed which work causes the aggregate amount payable under this Agreement to exceed the amount appropriated will be approved or made by Owner unless the Contractor is given written assurance by the Owner that lawful appropriations to cover costs of the additional work have been made or unless such work is covered under a remedy-granting provision in this Agreement. The Owner shall provide written evidence of such appropriation prior to commencement of the Work and prior to execution of every change order that increases the Guaranteed Maximum Price.

§ 6.5 Contractor’s performance of any proposed Change Order work prior to the signature of a Change Request by the specific Owner Representative designated and authorized to execute Change Requests, or a Change Order signed by April D. Getchis shall be performed at the Contractor’s sole risk, including risk of non-payment. No verbal authorizations for proposed change order work shall be enforceable against Owner.

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failure to give timely and properly supported written notice shall constitute a waiver of any claims for adjustment to the Contract Sum and/or Contract Time not otherwise approved in writing by Jeff Jensen; it being expressly understood that such notice, timely given and properly supported, is a condition precedent to Contract's claim.

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Insurance costs shall include (a) the attributable portion of premiums for the Contractor's General Liability Insurance fixed at actual costs for this insurance without overhead and profit; and (b) if required by the Owner, the attributable portion of premiums for Contractor to furnish labor, material and performance bond shall be at actual costs for this insurance without overhead and profit, and (c) as required by the Owner, Builder's Risk insurance shall be at actual cost for this insurance without overhead and profit.

§ 7.6.2 Sales. Section 39-26-704, C.R.S., provides for tax free purchases of materials, provided an exemption is applied for and granted by the Colorado Department of Revenue, Sales Tax Division. The Owner has received such exemption and will provide Contractor and subcontractors with tax exemption number. The Owner reserves the right to require such additional information and/or documentation as may be necessary to insure that no sales taxes are paid by the Contractor and charged to the Owner. If sales tax is required to be paid to the vendor, Contractor (or it subcontractor) is responsible for applying for a refund to the Colorado Department of Revenue, Sales Tax Division. Notwithstanding the foregoing, to the extent that sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Contractor is liable, are unavoidable, they shall be considered a reimbursable Cost of Work.

§ 7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

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§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than twenty (20) days after the Architect receives the Application for Payment.

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§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, subcontractors lien waivers, proof of payment to subcontractors for amounts submitted under previous pay applications, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

Contractor will also submit current month conditional lien waivers with each application for payment. The unconditional lien waivers from the previous month's draw will be required prior to funding the current month's draw. Contractor maintains the right to withhold payment to a Subcontractor for risk mitigation reasons and will notify Owner and Lender if Contractor chooses to do so. Upon approval from the Lender and Owner, which will not

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be unreasonably withheld, for withholding payment to Subcontractors. Lender and Owner will approve payment for the Current Draw and can choose to withhold payment for an amount equal to what Contractor is holding on the respective Subcontractors with outstanding lien waivers.

... Add the Contractor's Fee, less retainage of \(- \%\) of less retainage of \(< \text{five} >\) percent (\(\%\)) and then add the Contractor's Fee and General Conditions. The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

... Subtract retainage of five percent (\(\%\)) from that portion of the Work that the Contractor self-performs;

... Retainage shall not be held on Contractor's General Conditions, insurance, bonds or fee.

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§ 12.2.4 The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows: Final payment will not be made until the time of final settlement shall be established by the Owner and shall thereafter be advertised by two (2) publications of notice, the...

§ 12.2.5 If, subsequent to final payment and at the Owner’s request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor’s Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Section 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor last of which shall appear at least ten (10) days prior to the time of final settlement required pursuant to Section 38-26-107, C.R.S. The Owner shall withhold from all payments to the Contractor sufficient funds to insure the payment of all claims filed by any person that has furnished labor, materials, sustenance, or other supplies used or consumed by the Contractor or a subcontractor in or about the performance of the Work, or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the Work whose claim therefore has not been paid by the Contractor or the subcontractor, all in accordance with the provisions of Section 38-26-107, C.R.S.

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§ 13.2.1 In the event of a dispute over a Claim, the parties shall each designate a high level executive, who shall meet and confer in good faith to resolve the dispute. Such meeting shall take place not later than 20 days after the Architect made a decision on the dispute.

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

...

[ X ] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

...

8.0 % Eight percent per annum

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Jensen LaPlante Development
Jeff Jensen
1603 Oakridge Dr. Suite 101
Fort Collins, CO 80525

...

James Ciesla
Brinkman Construction, Inc., a Colorado Corporation
3528 Precision Drive, Suite 100
Fort Collins, CO 80528
970-267-0954

...

§ 15.6.1 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site or at the Contractor's principal and/or branch offices while performing work on behalf of the Project shall be Cost of Work, with the Owner's prior approval.

...

§ 15.6.2 The cost for Contractor’s supervisory and administrative personnel shall be per the billing rates specified in Exhibit F, attached hereto.

...

§ 15.6.3 The cost for Contractor’s General Liability and Builder’s Risk Insurance shall be Cost of the Work.

...

§ 15.6.4 Anywhere in this agreement where the Architect is providing a procedural function as opposed to one specifically of design can be interchanged with Owner at the Owner’s discretion.

...

§ 15.6.5 If either party to this Agreement engages legal counsel to enforce any terms or conditions of this Agreement, the initiation of any arbitration, legal proceedings or the defense thereof including any appeals, the prevailing party shall be entitled to prompt payment and reimbursement in full for all of its attorney’s fees and costs.
§ 15.6.5 The Contractor will procure and maintain and cause its subcontractors to procure and maintain the insurance described in this document.

§ 15.6.7 The Contractor shall maintain an accurate set of as-built drawings at the site. At the completion of the Work, the Contractor shall certify by signing on them that each of the as-built drawings and specifications are complete and accurate. No later than thirty (30) days after Substantial Completion of Owner’s Work and prior to application for Final Payment and as a condition to its approval by the Architect and Owner, the Contractor shall transfer the job site as-built drawings, arranged in proper order, indexed and certified as accurate to the Architect for transmittal to the Owner. The Contractor will not be responsible for transferring to the as-built documents any addenda, clarifications or changes documented by the Architect and its consultants.

§ 15.6.8 Any purchased materials remaining after completion of the subject portion of Owner’s Work (such as for example, extra paint, wall covering or carpet) will be given by the Contractor to the Owner for use in subsequent repairs. Materials should be labeled, sealed, boxed and protected as appropriate to ensure the materials remain in good condition.

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§ 15.6.9 All Work performed by Contractor, or any subcontractor or person performing work on its behalf, shall be guaranteed against defective workmanship and materials for a period of two (2) years from the date of Substantial Completion, provided that such two-year period shall not begin with respect to any portion of the Work that is not completed on the date of Substantial Completion until such item is completed.

§ 15.6.10 If requested by the Owner, the Contractor will furnish Owner with sworn Contractor’s statements, Contractor’s affidavits and partial and final waivers of lien, in such form and content as Owner may require, in order to establish that the cost of all labor, services and materials furnished in connection with Owner’s Work has been paid in full and to keep the Premises free from all liens and claims.

§ 15.6.11 Contractor and Owner acknowledge that they or their employees may, in the performance of this Agreement, come into the possession of proprietary or confidential information owned by or in the possession of the other. Neither party shall use any such information for its own benefit or make such information available to any person, firm, corporation, or other organization, regardless of whether directly or indirectly affiliated with Contractor or Owner, unless (i) required by law, (ii) by order of any court or tribunal, (iii) such disclosure is necessary for the assertion of a right, or defense of an assertion of a right, by one party against the other party hereto, or (iv) such information has been acquired from other sources.

§ 15.6.12 Upon Substantial Completion and for a period of fifteen (15) calendar days thereafter the Contractor will replace burned out light bulbs at no cost to the Owner.
§ 15.6.13 The Contractor shall include with every subcontract agreement the following language: "Subcontractor binds itself to Contractor and Owner and is obligated to Contractor and Owner in the same manner and to the same extent that Contractor is bound and obligated to Owner under the Prime Contract. All Rights which Owner may exercise and enforce against Contractor may be exercised and enforced by Owner against Subcontractor. In the event of any dispute between the Owner and Contractor, Subcontractor shall be bound by all decisions, directives, and interpretations and rulings of the Owner, including Owner's termination or suspension of Contractor."

§ 15.6.14 Contractor hereby waives and releases any and all claims for consequential and/or indirect damages including but not limited to attorneys' fees for lost profits, lost opportunities, lost bonding capacity, and/or damages to reputation.

§ 15.7 Illegal Aliens:

§ 15.7.1 Pursuant to Colo. Rev. Stat. § 8-17.5-101 et seq., Owner cannot enter into or renew a public contract for services with a contractor who knowingly employs or contracts with an illegal alien to perform work under the contract or who knowingly contracts with a subcontractor who knowingly employs or contracts with an illegal alien to perform work under the contract.

§ 15.7.2 In accordance with the mandatory provisions of Colo. Rev. Stat. § 8-17.5-101 et seq., Contractor certifies that it has not knowingly employed or contracted with an illegal alien to perform work under this Agreement, and that Contractor will participate in the E-Verify Program or the Department Program [as defined in Colo. Rev. Stat. § 8-17.5-101(3.3)] in order to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement. Contractor further certifies that it will not enter into a contract with a subcontractor who fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

§ 15.7.3 Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program. Contractor shall not use the E-Verify Program or the Department Program to undertake pre-employment screening of job applicants while the Agreement is being performed.

If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Contractor shall:
a. Notify the subcontractor and Owner within three days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

b. Terminate the subcontract if within three days of receiving actual notice the subcontractor does not stop employing or contracting with the illegal alien, except that Contractor shall not terminate the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

§ 15.7.4 Contractor shall comply with any reasonable request by the Department of Labor and Employment (hereinafter referred to as the "Department") made in the course of an investigation that the Department is undertaking pursuant to Section 8-17.5-102, C.R.S.

§ 15.7.5 If Contractor violates the provisions of this paragraph, Owner may terminate the contract for breach and Contractor shall be liable for actual and consequential damages.

See Exhibit A - Drawings & Specifications

See Exhibit A - Drawings & Specifications

Exhibit A – Drawings and Specifications
Exhibit B – Schedule of Values

Exhibit C – Assumptions & Clarifications

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Exhibit D – Schedule of Work

Exhibit E – Open Items List

Exhibit F – Hourly Labor Rates

Exhibit G – Equipment Billing Rates

Type of insurance or bond | Limit of liability or bond amount ($0.00)

§ 17.1 For all phases of the Project, the Contractor and the Owner shall purchase and maintain the insurance required by this Article and as set forth in Article 11 of AIA Document A201–2007.

§ 17.2 Contractor shall provide and maintain during the performance of this Agreement the insurance described below, which insurance shall be placed with a company or companies authorized to do business in the State of Colorado with an A.M. Best’s Insurance Report rating at not less than A-/VI.

§ 17.3 Prior to commencement of Work, the Contractor shall furnish and deliver to the Owner proof that the following insurance shall be in force and effect for the duration of the Project. All Certificates of Insurance relating to Broad Form General Liability, Automobile Liability and Excess Liability, shall list Owner as additional project-specific insured. Additional Insured Endorsements will be provided to Owner by Contractor’s Insurance Company with other Certificates of Insurance.

§ 17.4 Standard Form Commercial General Liability and Property Damage insurance (as provided on an ISO CG 00 01 form) that includes coverage for (a) claims for bodily injury, including death, and property damage; and (b)
contractual liability on an occurrence basis and shall include fire, explosion, collapse, underground hazard and product/completed operations coverages. Minimum limits: General Aggregate $2,000,000; Products/Completed Operations Aggregate $2,000,000; Personal and Advertising Injury $1,000,000; Each Occurrence $1,000,000.

§ 17.5 Contractor's workers compensation insurance, at statutory limits, as required by Colorado law, covering all employees working on the site, and Employer's Liability Insurance with the following minimum limits: Each Accident $500,000; Each Occupational Disease $500,000. Occupational Disease Aggregate $500,000.

§ 17.6 Automobile liability insurance, covering the use, operation and maintenance of any automobiles, trucks, trailers or other vehicle owned, hired, or non-owned by the Contractor providing bodily injury, including death, and property damage coverage. Minimum limits of liability provided by this coverage shall be a Combined Single Limit of $1,000,000.

§ 17.7 Excess Liability Insurance with a minimum limit of $5,000,000 for each occurrence and aggregate of $10,000,000.

§ 17.8 Standard all risk of loss Builder's Risk completed value insurance. In no event shall the amount of the deductible under the Builder's Risk Policy exceed $10,000.00. The Builder's Risk Insurance shall be carried by the Contractor at 100% of the Contract amount, totaling the Guaranteed Maximum Price.

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§ 17.9 Professional Liability Insurance (Errors and Omissions), covering any design services provided under this Agreement by design/build subcontractors or suppliers, including contractual liability insurance against the liability assumed in this Agreement, as is acceptable to and approved by the Owner. Such insurance shall have minimum policy limits of $1,000,000 in the aggregate and $1,000,000 per claim and a maximum deductible/SIR of $50,000 (All deductible/SIRs to be paid by Contractor and/or design/build subcontractor).

§ 17.10 Worker’s Compensation insurance as required by Colorado law during the term of its contract, covering all persons working under its Project contract.

§ 17.11 The limits outlined above may be arranged under single policies for full limits required or by a combination of underlying policies with the balance provided by an Excess Liability policy. The general aggregate on the Commercial General Liability policy shall apply on a project specific basis. The Contractor agrees to notify Owner and additional insureds of any substantial claims, paid or resolved, applied against the aggregate of any of the required insurance policies.
§ 17.12 With the exception of Professional Liability Insurance, all insurance provided by the Contractor hereunder shall be primary to any insurance policies held by the Owner and additional insureds. The Contractor waives subrogation as to the Owner and its agents, representatives, affiliates, additional insureds, and assigns on all policies (including Professional Liability) carried by the Contractor.

§ 17.13 All insurance shall include a provision prohibiting cancellation, termination or alteration (so as to affect the intent of this agreement) without thirty (30) days’ prior notice to the Owner. In the event of threatened cancellation for non-payment or non-renewal, the Owner may pay the same on behalf of the Contractor, at the Owner’s discretion, and deduct the same from any amount or payment due to the Contractor hereunder.

§ 17.14 Payments for services provided will be withheld from Contractor until acceptable Certificates of Insurance and Additional Insured Endorsements are received by Owner.

§ 17.15 No Work will be conducted on the Project site until satisfactory evidence has been submitted that the Contractor has insurance that complies with the specific insurance and indemnity requirements listed in the Contract Documents. Contractor is also responsible for verifying that any design/build subcontractors (any subcontractor providing engineered drawings for review and approval), including but not limited to joint manufacturers, fire alarm subcontractors, fire sprinkler subcontractors, security subcontractors, landscape irrigation engineers, and precast concrete subcontractors, carry the following Professional Errors and Omissions Insurance: Professional Liability Insurance (Errors and Omissions), covering the services provided under this Agreement, including contractual liability insurance against the liability assumed in this Agreement, as is acceptable to and approved by the Owner.

§ 17.16 Contractor shall maintain a performance bond and a separate labor and material payment bond, which shall (a) be executed by a corporate surety licensed to do business in the State. (b) be in customary form. (c) be in the amount payable to Contractor hereunder or to such subcontractor pursuant to its contract with the Contractor and (d) be payable to the Owner. A copy of each such bond and all modifications thereto shall be furnished to the Owner.

[Signatures]

Owner (Signature)
April D. Getchius, Town Manager, Town of Timnath
(Printed name and title)

Contractor (Signature)
James Ciesla, President & CEO
(Printed name and title)
Certification of Document’s Authenticity
AIA® Document D401™ – 2003

I, [Your Name], hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:34:15 on 04/13/2018 under Order No. 7986115104 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A102™ - 2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)
General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)
Timnath Administration Building
4750 Signal Tree Drive
Timnath, CO 80547

THE OWNER:
(Name, legal status and address)
Town of Timnath
4800 Goodman Rd.
Timnath, CO 80547

THE ARCHITECT:
(Name, legal status and address)
alms2
712 Whalers Way, Bldg. B, Suite 100
Fort Collins, CO 80525

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ADDITIONS AND DELETIONS:
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This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.
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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 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 a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect’s consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect’s duties. Matters not expressly included in the Contract Documents but which are reasonably necessary to produce the result of complete and workable systems shall be deemed included as part of the Work. The foregoing shall not alter the warranties and representations of Contractor set forth herein and shall only be construed to add items to the Work which are reasonably necessary to make systems complete and workable as of the date of Substantial Completion.

§ 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 the Owner and by separate contractors.

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

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

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

§ 1.1.8  INITIAL DECISION MAKER
The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.
§ 1.2 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. Matters not expressly included in the Contract Documents but which are reasonably necessary to produce the result of complete and workable systems shall be deemed included as part of the Work. The foregoing shall not alter the warranties and representations of Contractor set forth herein and shall only be construed to add items to the Work which are reasonably necessary to make systems complete and workable as of the date of Substantial Completion.

§ 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 this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect’s consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative 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 Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

(Paragraph Deleted)
§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Owner represents that prior to the execution of the Guaranteed Maximum Price Agreement, an amount of money equal to or in excess of the Guaranteed Maximum Price will be appropriated for all payments to be made to Contractor pursuant to this Agreement. Owner further represents that no change order or other form of order or directive requiring additional compensable work to be performed, which work causes the aggregate amount payable under this Agreement to exceed the amount appropriated, will be approved or made by Owner unless Contractor is given written assurance by the Owner that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedy-granting provision in this Agreement. The Owner shall provide written evidence of such appropriation prior to commencement of the Work and prior to execution of every change order that increases the Guaranteed Maximum Price.

§ 2.2.2 Except for those 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 all necessary approvals, easements, development fees, traffic impact fees, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities and for any escrowed funds for public improvements that may be required by government agencies.

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

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

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

§ 2.2.6 The Owner shall make arrangements for all third party testing and inspections services and shall bear all costs associated with these services.

§ 2.2.7 The Owner shall provide the Contractor with all tax exempt certifications as may be necessary to document the tax exempt status of the project.

§ 2.3 OWNER’S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, 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.

§ 2.4 OWNER’S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, 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 Architect’s additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner with interest as provided in the Contract Documents.
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. The terms "Construction Manager," "Construction Manager/General Contractor," or "CM/GM" shall mean Contractor.

§ 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 obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR
§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

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

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor performs those obligations, the Contractor shall not be held 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 inconsistencies 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, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques,
sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

§ 3.4 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. Contractor is responsible to assist in the application for and coordination of all utility services to the Project as required to complete the Work. Owner is responsible for all costs for application and utility services.

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

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

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

§ 3.6 TAXES
The Contractor shall consult and coordinate with the Owner to ascertain whether a sales or use tax may be collectable on purchases of building materials, supplies and equipment used for the Work by the Contractor. Whenever possible, the Contractor shall have building materials, supplies, and equipment for the project delivered to the construction site by common carrier, conveyance by the seller, or by mail to avoid city or municipal sales and use taxes for which refunds will not be made to the Owner.

The Owner is exempt from the payment of any State sales and use taxes for materials, supplies and equipment used upon the project by the Contractor and subcontractors. For the purpose of exercising such exemption, the Contractor and all subcontractors shall be responsible for the fulfillment of the following requirements:

A. The Contractor and all subcontractors shall apply for and obtain a Certificate of Exemption of State sales/use taxes for the project from the Colorado Department of Revenue. A copy of such shall be filed with the Owner. No materials shall be purchased nor shall any work be commenced hereunder until such certificate is obtained.

B. The final bill submitted by the Contractor for final payment shall show the net cost of all materials purchased by the Contractor.

C. At the time of final completion, the Contractor shall execute affidavits, in duplicate, showing the amount of local municipal sales or use taxes, if any, paid by the Contractor upon materials used on the project, which affidavits shall...
further state that all such materials have been used or consumed in the project, and where books, records, and other substantiating evidence of payment of said taxes are located and where they may be examined by appropriate governmental authorities, is such examination is required.

D. The Contractor shall maintain sufficient records to verify the amount of sales and use taxes paid to any local governmental entity. Failure to keep such records resulting in the inability of the Owner to claim a refund for sales and use taxes for such materials, if allowed, shall render the Contractor liable for the amounts of such tax refunds as determined by the Architect’s cost estimates of such materials.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

§ 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 and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor’s cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect’s determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall 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.

§ 3.7.6 The Contractor shall at all times be fully qualified and licensed under all applicable state and local licensing laws. The Contractor shall be responsible for ensuring that each of its Subcontractors are also fully qualified and licensed under all applicable state and local licensing laws.

§ 3.7.7 The requirements of subparagraphs 3.7.2, 3.7.3, and 3.7.4 shall not diminish or limit the Contractor’s responsibilities for compliance with all standards and requirements of the Contract Documents, particularly in the event that the standards of requirements of the Contract Documents exceed the requirements of such laws, ordinances, rules, regulations, lawful orders, of any authorized public entity with respect to the quality, character, methods, and craftsmanship required for the Work.
§ 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. Cost for labor to install Material Allowance items shall be included in the Contract Sum but not in the Material Allowance.

2. Material and Labor Allowances shall cover the cost of materials and equipment, delivery to the site and all required taxes, less applicable trade discounts and cost for unloading and handling at the site, and labor and installation costs;

3. Overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the contract sum but not in the allowances;

4. 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 and (2) changes in Contractor’s costs under Section 3.8.1.a.

§ 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 at ALL times 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. Important communications shall be confirmed in writing by the Contractor. Other communications shall be similarly confirmed on written request in each case.

§ 3.9.2 The Contractor, at the time of execution of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner 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 SCHEDULES
§ 3.10.1 The Contractor, as required by the Contract Documents, will provide a construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, but not less than monthly, shall be related to the entire Project as required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect’s approval. The Architect’s approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor’s construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a 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 perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.
§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE
The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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

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

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

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

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

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

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

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

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

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

§ 3.12.11 Prior to commencement of construction, Contractor will provide to Owner a submittal schedule identifying timing of submittals for the Project. At that time, Owner shall identify all Shop Drawings that the Owner would like to review and approve.

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

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

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

§ 3.15 CLEANING UP
§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. The Contractor shall ensure the premises and surrounding area are cleaned daily. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor’s tools, construction equipment, machinery and surplus materials from and about the Project.

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

§ 3.16 ACCESS TO WORK
The Contractor shall provide the Owner and Architect 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 and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the
Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION
§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Owner’s Representative 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.

§ 3.18.3 Contractor agrees to protect, defend, hold harmless and indemnify the Indemnitees (as identified 3.18.1) from and against any and all claims, actions, liabilities, damages, losses, costs and expenses (including attorneys’ fees) arising out of or resulting from Contractor’s failure to purchase all insurance required under Article 11 of AIA Document A201-2007. In any and all claims against the Indemnitees or any employee of Contractor or any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this provision will not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor under Workers’ or Workmen’s Compensation Acts, disability benefit acts, or other employee benefit acts.

§ 3.18.4 In the event that it becomes necessary for Owner, Owner’s Representative, Architect or Contractor to file a suit to enforce any agreement or provisions contained herein, the prevailing party in such suit shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys’ fees, costs and expenses including but not limited to court costs incurred in such suit.

ARTICLE 4 ARCHITECT
§ 4.1 GENERAL
§ 4.1.1 At the Owner’s sole discretion, Owner may undertake any or all administrative roles of the Architect. Upon written notification to the Contractor of such decision by the Owner, all references to “Architect” herein, as applicable, shall be read to mean Owner.

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT
§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner’s representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.
§ 4.2.2 The Architect 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. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor’s rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION
Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect’s consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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

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

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

§ 4.2.8 The Contractor will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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

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

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

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

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

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

ARTICLE 5 SUBCONTRACTORS
§ 5.1 DEFINITIONS
§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

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

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

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.
§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.2.5 A Subcontractor cannot commence work without an executed contract with the Contractor per Sections 5.1, 5.2 and 5.3. Contractor must execute all subcontracts in a timely manner so no delays in the Work are realized due to the aforementioned statement.

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

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

1. assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
§ 6.1 OWNER’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS
§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner’s own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

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

(Paragraph Deleted)

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

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

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

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

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

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

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

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

§ 7.1.4 Any adjustment to the Contract Sum or Contract Time arising out of any changes in the Work shall be signed in writing by the Owner. If the Contractor believes a change in the Work has been directed for which an adjustment in the Contract Sum or Contract Time is due, and there is not a written directive for such change signed by the Owner, then the Contractor shall, as a condition precedent to the preservation of any claim pertaining to such change, give written notice to the Owner and Architect prior to proceeding with any Work involved in the change (except for emergency conditions endangering life or property, as provided in paragraph 10.3 of the General Conditions). The written notice shall identify (i) the scope and nature of the change in the Work and (ii) the impact said change will have upon the Contract Sum and Contract Time. In the notice, the Contractor shall provide and identify specific cost and impacts, if any, and the specific extent of additional time to perform, if any, sought for
adjustment to the Contract Sum and Contract Time by reason of the change. In the alternative, Contractor shall use its best efforts to provide specific maximum estimates of the costs and additional time required as a result of the alleged change. Contractor's failure to give prior written notice shall constitute a waiver of any claims for adjustment to the Contract Sum or Contract Time not otherwise approved in writing by the Owner, it being expressly understood that such prior notice, timely given is a condition precedent to Contractor's claim.

§ 7.2 CHANGE ORDERS
§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:
   1. The change in the Work;
   2. The amount of the adjustment, if any, in the Contract Sum; and
   3. The extent of the adjustment, if any, in the Contract Time with an updated Project Schedule showing the current critical path.

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

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
   1. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
   2. Unit prices stated in the Contract Documents or subsequently agreed upon;
   3. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
   4. As provided in Section 7.3.7.

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

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:
   1. Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
.5 Additional costs of supervision and field office personnel directly attributable to the change.

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect’s professional judgment, to be reasonably justified. The Architect’s interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

§ 7.4 MINOR CHANGES IN THE WORK
The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME
§ 8.1 DEFINITIONS
§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

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

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

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

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

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

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME
§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by
changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. To establish the impact of any delay(s) on the Work, the Contactor must use the Project CPM Schedule to demonstrate such impact. The Contractor must show how the delay(s) affect the critical path and its net impact on the date of Substantial Completion. The Contract Sum shall not be increased and the Contract Time shall not be extended for any delays contributed to by the primary, concurrent or contributory negligent acts or omissions of the Contractor, its Subcontractors, sub-subcontractors and suppliers of every tier and their respective agents and representatives of every tier.

§ 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
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.

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

§ 9.3 APPLICATIONS FOR PAYMENT
§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing between the Owner and the Contractor. 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 be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor,
Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. With each Application for Payment, the Contractor shall submit fully-executed conditional releases of mechanics liens from the Contractor and all Subcontractors and suppliers on whose account payment is sought.

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

1. defective Work not remedied;
2. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
3. failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
5. damage to the Owner or a separate contractor;
6. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
7. repeated failure to carry out the Work in accordance with the Contract Documents.

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

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.
§ 9.6 PROGRESS PAYMENTS
§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

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

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

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

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

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor in trust 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.

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

§ 9.8 SUBSTANTIAL COMPLETION
§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use without unreasonable interference by Contractor. Without limiting the foregoing, delivery by Contractor of a certificate of occupancy or a temporary certificate of occupancy for the Work shall be a condition precedent to Substantial Completion unless issuance of a certificate of occupancy or a temporary certificate of occupancy is withheld for reasons outside of the Contractor's control.

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

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time to fifteen (15) calendar days within which the Contractor shall finish all items on the list accompanying the Certificate unless a part or piece of equipment is not available to the Contractor within the fifteen days outlined above. If parts or equipment are needed to complete the item the Contractor shall complete the item within ten days of the Contractors receipt of the necessary parts or equipment. 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 such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

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

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

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

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

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
  .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
  .2 failure of the Work to comply with the requirements of the Contract Documents; or
  .3 terms of special warranties required by the Contract Documents.

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

§ 9.10.6 Notwithstanding anything contained herein to the contrary, Architect will not issue the final Certificate for Payment and final payment will not be made until the time of final settlement shall be established by the Owner and shall thereafter be advertised by two (2) publications of notice, the last of which shall appear at least ten (10) days prior to the time of final settlement as required pursuant to Section 38-26-107, C.R.S.. The Owner shall withhold from all payments to Contractor sufficient funds to insure the payment of all claims filed by any person that has furnished labor, materials, sustenance, or other supplies used or consumed by Contractor or a subcontractor in or about the performance of the Work, or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the Work whose claim therefore has not been paid by Contractor or the subcontractor, all in accordance with the provisions of Section 38-26-107, C.R.S.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY
§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS
The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY
§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to
  .1 employees on the Work and other persons who may be affected thereby;
  .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor’s Subcontractors or Sub-subcontractors; and
  .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

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

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

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor’s organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor’s superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY
If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 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. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

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

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect’s consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or
expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. Nothing contained in this paragraph shall be deemed or construed to be a waiver of any rights or defenses available to Owner pursuant to the Colorado Governmental Immunity Act, the Colorado Constitution, or other applicable law.

§ 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 indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner’s fault or negligence.

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

§ 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. The Contractor must have an approved "Emergency Management Plan" with the Owner, and the Contractor must not address the media without consent from the Owner.

ARTICLE 11 INSURANCE AND BONDS
§ 11.1 CONTRACTOR’S LIABILITY INSURANCE
§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor’s operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor’s employees;
4. Claims for damages insured by usual personal injury liability coverage;
5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
7. Claims for bodily injury or property damage arising out of completed operations; and
8. Claims involving contractual liability insurance applicable to the Contractor’s obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor’s completed operations coverage, until the expiration of the period for correction
of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

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

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

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

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

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

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

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

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

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

§ 11.3.2 BOILER AND MACHINERY INSURANCE
The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE
The Owner, at the Owner’s option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner’s property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner’s property, including consequential losses due to fire or other hazards however caused.

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

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

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

§ 11.3.7 WAIVERS OF SUBROGATION

(Paragraph Deleted)

§ 11.3.8 Intentionally omitted.

§ 11.3.9 Intentionally omitted.

§ 11.3.10 Intentionally omitted.

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK
§ 12.1 UNCOVERING OF WORK
§ 12.1.1 If a portion of the Work is covered contrary to the Architect’s request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect’s 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 Architect has not specifically requested to examine prior to its being covered, the 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, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner’s expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor’s expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK
§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION
The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect’s services and expenses made necessary thereby, shall be at the Contractor’s expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION
§ 12.2.2.1 In addition to the Contractor’s obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

Contractor shall schedule and attend with the Owner and the Architect an inspection of the Project eleven (11) months after Substantial Completion. The Owner, Contractor and Architect will inspect the project to determine whether any warranty items exist, and will prepare a list of warranty items for the Contractor to correct. The Contractor shall notify the Owner and Architect upon its completion of the warranty work and the Owner and Architect shall perform a follow-up inspection to confirm such completion.

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

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

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

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

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

§ 12.2.6 The warranty on landscape is limited to one year and is only valid if the Landscape Subcontractor provides the landscape maintenance during the warranty period. Landscape maintenance is provided as an alternate and is not
included in the contract amount unless stated otherwise.

§ 12.2.7 During the warranty period, Contactor shall assign a qualified and experienced representative to work directly with Owner’s representatives to address, commence and complete work to correct, within fifteen (15) business days’ notice from either the Owner or the Architect, any and all warranty items identified from time to time by the Owner or the Architect. If Contractor does not complete the warranty item within fifteen (15) business days of notification by the Owner, the Owner, at its discretion, may complete the warranty item and invoice the Contractor for reimbursement of cost incurred. Owners shall incur no charge or expense for Contractor’s completion of punch list or warranty work. Contactor acknowledges that its punch list and warranty work obligations are included within the Contract Sum.

§ 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 except that, 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 such 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 such assignment.

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

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

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

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

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

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

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

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

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

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

§ 13.7 TIME LIMITS ON CLAIMS
The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT
§ 14.1 TERMINATION BY THE CONTRACTOR
§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

1. Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
2. An act of government, such as a declaration of national emergency that requires all Work to be stopped;
3. Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents;
4. The Owner has failed to furnish to the Contractor promptly, upon the Contractor’s request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.
§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days’ written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

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

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE
§ 14.2.1 The Owner may terminate the Contract if the Contractor
  .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
  .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
  .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
  .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor’s surety, if any, seven days’ written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:
  .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
  .2 Accept assignment of subcontracts pursuant to Section 5.4; and
  .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect’s services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent
  .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
  .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE
§ 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 written notice from the Owner of such termination for the Owner's convenience, the Contractor shall
.1 cease operations as directed by the Owner in the notice;
.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work;
and
.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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

ARTICLE 15 CLAIMS AND DISPUTES
§ 15.1 CLAIMS
§ 15.1.1 DEFINITION
A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

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

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

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

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

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time the Contractor is responsible for documenting how adverse weather conditions had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES
The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes all consequential or indirect damages, including but not limited to:
.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.
This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

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

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

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

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

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

§ 15.2.6 Intentionally omitted.

§ 15.2.7 Intentionally omitted.

§ 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 Intentionally omitted.

§ 15.3.2 Intentionally omitted.

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

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

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.
Additions and Deletions Report for  
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PAGE 1

Timnath Administration Building  
4750 Signal Tree Drive  
Timnath, CO 80547

... 

Town of Timnath  
4800 Goodman Rd.  
Timnath, CO 80547

...

alms2  
712 Whalers Way, Bldg B, Suite 100  
Fort Collins, CO 80525

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3.14, 6.2.5

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ARTICLE 1 GENERAL PROVISIONS

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The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect’s consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect’s consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect’s duties. Matters not expressly included in the Contract Documents but which are reasonably necessary to produce the result of complete and workable systems shall be deemed included as part of the Work. The foregoing shall not alter the warranties and representations of Contractor set forth herein and shall only be construed to add items to the Work which are reasonably necessary to make systems complete and workable as of the date of Substantial Completion.

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§ 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. Matters not expressly included in the Contract Documents but which are reasonably necessary to produce the result of complete and workable systems shall be deemed included as part of the Work. The foregoing shall not alter the warranties and representations of Contractor set forth herein and shall only be construed to add items to the Work which are reasonably necessary to make systems complete and workable as of the date of Substantial Completion.

... 

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

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§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. Owner represents that prior to the execution of the Guaranteed Maximum Price Agreement, an amount of money equal to or in excess of the Guaranteed Maximum Price will be appropriated for all payments to be made to Contractor pursuant to this Agreement. Owner further represents that no change order or other form of order or directive requiring additional compensable work to be performed, which work causes the aggregate amount payable under this Agreement to exceed the amount appropriated, will be approved or made by Owner unless Contractor is given written assurance by the Owner that lawful appropriations to cover the costs of the additional work have been made or unless such work is covered under a remedying provision in this Agreement. The Owner shall provide written evidence of such appropriation prior to commencement of the Work and prior to execution of every change order that increases the Guaranteed Maximum Price.

... 

§ 2.2.2 Except for those 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 all necessary approvals, easements, development fees, traffic impact fees, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities and for any escrowed funds for public improvements that may be required by government agencies.

... 

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

... 

§ 2.2.6 The Owner shall make arrangements for all third party testing and inspections services and shall bear all costs associated with these services.
§ 2.2.7 The Owner shall provide the Contractor with all tax exempt certifications as may be necessary to document the tax exempt status of the project.

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 Architect’s additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner with interest as provided in the Contract Documents.

§ 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. The terms “Construction Manager,” “Construction Manager/General Contractor,” or “CM/GM” shall mean Contractor.

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

§ 3.2.4 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 held 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—inconsistencies of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.
§ 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. Contractor is responsible to assist in the application for and coordination of all utility services to the Project as required to complete the Work. Owner is responsible for all costs for application and utility services.

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective, consult and coordinate with the Owner to ascertain whether a sales or use tax may be collectible on purchases of building materials, supplies and equipment used for the Work by the Contractor. Whenever possible, the Contractor shall have building materials, supplies, and equipment for the project delivered to the construction site by common carrier, conveyance by the seller, or by mail to avoid city or municipal sales and use taxes for which refunds will not be made to the Owner.

The Owner is exempt from the payment of any State sales and use taxes for materials, supplies and equipment used upon the project by the Contractor and subcontracts. For the purpose of exercising such exemption, the Contractor and all subcontractors shall be responsible for the fulfillment of the following requirements:

A. The Contractor and all subcontractors shall apply for and obtain a Certificate of Exemption of State sales/use taxes for the project from the Colorado Department of Revenue. A copy of such shall be filed with the Owner. No materials shall be purchased nor shall any work be commenced hereunder until such certificate is obtained.

B. The final bill submitted by the Contractor for final payment shall show the net cost of all materials purchased by the Contractor.

or merely scheduled. C. At the time of final completion, the Contractor shall execute affidavits in duplicate showing the amount of local municipal sales or use taxes, if any, paid by the Contractor upon materials used on the project, which affidavits shall further state that all such materials have been used or consumed in the project, and where books, records, and other substantiating evidence of payment of said taxes are located and where they may be examined by appropriate governmental authorities, an such examination is required.

D. The Contractor shall maintain sufficient records to verify the amount of sales and use taxes paid to any local governmental entity. Failure to keep such records resulting in the inability of the Owner to claim a refund for sales and use taxes for such materials, if allowed, shall render the Contractor liable for the amounts of such tax refunds as determined by the Architect’s cost estimates of such materials.
§ 3.7.6 The Contractor shall at all times be fully qualified and licensed under all applicable state and local licensing laws. The Contractor shall be responsible for ensuring that each of its Subcontractors are also fully qualified and licensed under all applicable state and local licensing laws.

§ 3.7.7 The requirements of subparagaphs 3.7.2, 3.7.3, and 3.7.4 shall not diminish or limit the Contractor’s responsibilities for compliance with all standards and requirements of the Contract Documents, particularly in the event that the standards of requirements of the Contract Documents exceed the requirements of such laws, ordinances, rules, regulations, lawful orders, of any authorized public entity with respect to the quality, character, methods, and craftsmanship required for the Work.

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.1 Material Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

1. Cost for labor to install Material Allowance items shall be included in the Contract Sum but not in the Material Allowance.

.2 Contractor’s costs - Material and Labor Allowances shall cover the cost of materials and equipment, delivery to the site and all required taxes, less applicable trade discounts and cost for unloading and handling at the site, labor, installation costs, overhead, and labor and installation costs.

.3 Overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum - contract sum but not in the allowances and

.4 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 3.8.2.3.8.2 and (2) changes in Contractor’s costs under Section 3.8.2.3.8.2.1.a.

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at ALL times 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. Important communications shall be confirmed in writing by the Contractor. Other communications shall be similarly confirmed on written request in each case.

§ 3.9.2 The Contractor, as soon as practicable after award at the time of execution of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.
§ 3.10.1 The Contractor shall promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's as required by the Contract Documents, will provide a construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, but not less than monthly, shall be related to the entire Project to the extent as required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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

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§ 3.12.11 Prior to commencement of construction, Contractor will provide to Owner a submittal schedule identifying timing of submittals for the Project. At that time, Owner shall identify all Shop Drawings that the Owner would like to review and approve.

...

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. The Contractor shall ensure the premises and surrounding area are cleaned daily. 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.

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§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents, Owner's Representative 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.

...

§ 3.18.3 Contractor agrees to protect, defend, hold harmless and indemnify the Indemnitees (as identified 3.18.1) from and against any and all claims, actions, liabilities, damages, losses, costs and expenses (including attorneys' fees) arising out of or resulting from Contractor's failure to purchase all insurance required under Article 11 of AIA Document A201-2007. In any and all claims against the Indemnitees or any employee of Contractor or any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this provision will not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor under Workers' or Workmen's Compensation Acts, disability benefit acts, or other employee benefit acts.
§ 3.18.4 In the event that it becomes necessary for Owner, Owner's Representative, Architect or Contractor to file a suit to enforce any agreement or provisions contained herein, the prevailing party in such suit shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees, costs and expenses including but not limited to court costs incurred in such suit.

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. At the Owner's sole discretion, Owner may undertake any or all administrative roles of the Architect. Upon written notification to the Contractor of such decision by the Owner, all references to "Architect" herein, as applicable, shall be read to mean Owner.

§ 4.2.8 The Architect-Contractor will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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

§ 5.2.5 A Subcontractor cannot commence work without an executed contract with the Contractor per Sections 5.1, 5.2 and 5.3. Contractor must execute all subcontracts in a timely manner so no delays in the Work are realized due to the aforementioned statement.

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

§ 6.4.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.
§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or an order for a minor change in the Work may be issued by the Architect alone.

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§ 7.1.4 Any adjustment to the Contract Sum or Contract Time arising out of any changes in the Work shall be signed in writing by the Owner. If the Contractor believes a change in the Work has been directed for which an adjustment in the Contract Sum or Contract Time is due, and there is not a written directive for such change signed by the Owner, then the Contractor shall, as a condition precedent to the preservation of any claim pertaining to such change, give written notice to the Owner and Architect prior to proceeding with any Work involved in the change (except for emergency conditions endangering life or property, as provided in paragraph 10.3 of the General Conditions). The written notice shall identify (i) the scope and nature of the change in the Work and (ii) the impact said change will have upon the Contract Sum and Contract Time. In the notice, the Contractor shall provide and identify specific cost and impacts, if any, and the specific extent of additional time to perform, if any, sought for adjustment to the Contract Sum and Contract Time by reason of the change. In the alternative, Contractor shall use its best efforts to provide specific maximum estimates of the costs and additional time required as a result of the alleged change. Contractor's failure to give prior written notice shall constitute a waiver of any claims for adjustment to the Contract Sum or Contract Time not otherwise approved in writing by the Owner, it being expressly understood that such prior notice, timely given is a condition precedent to Contractor's claim.

... The extent of the adjustment, if any, in the Contract Time with an updated Project Schedule showing the current critical path.

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§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. To establish the impact of any delay(s) on the Work, the Contractor must use the Project CPM Schedule to demonstrate such impact. The Contractor must show how the delay(s) affect the critical path and its impact on the date of Substantial Completion. The Contract Sum shall not be increased and the Contract Time shall not be extended for any delays contributed to by the primary, concurrent or contributory negligent acts or omissions of the Contractor, its Subcontractors, sub-subcontractors and suppliers of every tier and their respective agents and representatives of every tier.

... 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 between the Owner and the Contractor. 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.

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

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

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use without unreasonable interference by Contractor. Without limiting the foregoing, delivery by Contractor of a certificate of occupancy or a temporary certificate of occupancy for the Work shall be a condition precedent to Substantial Completion unless issuance of a certificate of occupancy or a temporary certificate of occupancy is withheld for reasons outside of the Contractor's control.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time to fifteen (15) calendar days within which the Contractor shall finish all items on the list accompanying the Certificate. Certificate unless a part or piece of equipment is not available to the Contractor within the fifteen days outlined above. If parts or equipment are needed to complete the item the Contractor shall complete the item within ten days of the Contractor's receipt of the necessary parts or equipment. 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.

§ 9.10.6 Notwithstanding anything contained herein to the contrary, Architect will not issue the final Certificate for Payment and final payment will not be made until the time of final settlement shall be established by the Owner and shall thereafter be advertised by two (2) publications of notice, the last of which shall appear at least ten (10) days prior to the time of final settlement as required pursuant to Section 38-26-107, C.R.S.. The Owner shall withhold from all payments to Contractor sufficient funds to insure the payment of all claims filed by any person that has furnished labor, materials, sustenance, or other supplies used or consumed by Contractor or a subcontractor in or about the performance of the Work, or that supplies laborers, rental machinery, tools, or equipment to the extent used in the prosecution of the Work whose claim therefore has not been paid by Contractor or the subcontractor, all in accordance with the provisions of Section 38-26-107, C.R.S.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or
expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. Nothing contained in this paragraph shall be deemed or construed to be a waiver of any rights or defenses available to Owner pursuant to the Colorado Governmental Immunity Act, the Colorado Constitution, or other applicable law.

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

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. The Contractor must have an approved "Emergency Management Plan" with the Owner, and the Contractor must not address the media without consent from the Owner.

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

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

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

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

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

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

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

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

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§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor

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shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

... Contractor shall schedule and attend with the Owner and the Architect an inspection of the Project eleven (11) months after Substantial Completion. The Owner, Contractor and Architect will inspect the project to determine whether any warranty items exist, and will prepare a list of warranty items for the Contractor to correct. The Contractor shall notify the Owner and Architect upon its completion of the warranty work and the Owner and Architect shall perform a follow-up inspection to confirm such completion.

...

§ 12.2.2 The one-year two-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.

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§ 12.2.6 The warranty on landscape is limited to one year and is only valid if the Landscape Subcontractor provides the landscape maintenance during the warranty period. Landscape maintenance is provided as an alternate and is not included in the contract amount unless stated otherwise.

...

§ 12.2.7 During the warranty period, Contractor shall assign a qualified and experienced representative to work directly with Owner’s representatives to address, commence and complete work to correct within fifteen (15) business days’ notice from either the Owner or the Architect, any and all warranty items identified from time to time by the Owner or the Architect. If Contractor does not complete the warranty item within fifteen (15) business days of notification by the Owner, the Owner, at its discretion, may complete the warranty item and invoice the Contractor for reimbursement of cost incurred. Owners shall incur no charge or expense for Contractor’s completion of punch list or warranty work. Contractor acknowledges that its punch list and warranty work obligations are included within the Contract Sum.

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

...

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

...

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes all consequential or indirect damages, including but not limited to:

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§ 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. Intentionally omitted.

...

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

...

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

...

§ 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. Intentionally omitted.

...

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Intentionally omitted.
Certification of Document's Authenticity
AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:39:17 on 04/13/2018 under Order No. 7986115104 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

Town manager

(Title)

4/25/18

(Dated)
EXHIBIT B

JLD AGREEMENT
April 5, 2018

April Getchius  
Town Manager  
Town of Timnath  
4800 Goodman Street  
Timnath, CO 80547

RE: Town of Timnath Administration Building  
SUBJ: Project Management Amendment

April,

The purpose of this letter is to amend the executed agreement between Jensen LaPlante Development (JLD) and the Town of Timnath to allow JLD’s project management services to advance from the preconstruction phase to construction.

Our current agreement allows for JLD to be compensated $5,000/month until the commencement of construction. Construction is scheduled to commence by 4/30/18 which allows us to amend our agreement accordingly; see below language from the agreement for reference.

"Prior to the commencement of the work, Consultant and Client will amend this agreement to authorize the Construction Phase of the Services. Once the work commences, the 2.0% fee identified above shall apply. Payments shall be made on a monthly basis, in equal installments based on an agreed upon overall project schedule."

Based on the sum of the general contractor’s agreement, design fees, town fees, and FF&E costs ($7,723,422 * 2%) = $154,468 total fee. JLD has been paid $20,000 to date, and we will submit our final preconstruction invoice for the month of March by 4/6/18 which will take our total paid to date to $25,000. Based on compensation through end of March, JLD’s remaining fees, ($154,468.00 less $25,000.00 = $129,468) will be amortized over the duration of the construction project. The construction duration is expected to be approximately 10 months, so JLD’s fees will be invoiced at $129,468 divided by 10 months equal $12,946.80/month.

Please acknowledge this amendment by signing below.

Sincerely,

By: Jeff Jansen  
Jeff Jensen  
Title: Manager

Town of Timnath

By: April Getchius  
April Getchius  
Title: Town Manager