

AGENDA FOR THE WEST HAYMARKET
JOINT PUBLIC AGENCY (JPA)
TO BE HELD FRIDAY, May 3, 2013 AT 9:30 A.M.

CITY-COUNTY BUILDING
555 S. 10TH STREET
CITY COUNCIL CHAMBERS ROOM 112
LINCOLN, NE 68508

1. Introductions and Notice of Open Meetings Law Posted by Door (Chair Beutler)
2. Public Comment and Time Limit Notification Announcement (Chair Beutler)

Individuals from the audience will be given a total of 5 minutes to speak on specific items listed on today's agenda. Those testifying should identify themselves for the official record.

3. Approval of the minutes from the JPA meeting held April 18, 2013 (Chair Beutler)
 - (Staff recommendation is for the JPA Board to approve the minutes as presented)
4. WH 13-41 Resolution to waive the Joint Public Agency's option to extend the commencement date for payment of the District Energy Corporation's Demand Charge -- Facilities Financing under the Energy Services Agreement with District Energy Corporation from September 1, 2013 to September 1, 2014. (Dan Marvin/Michael Rogers)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the resolution)
5. WH 13-42 Resolution to approve the Agreement with Hausmann/Dunn, a joint venture, to provide construction manager at risk preconstruction and construction phase services for Precast Parking Deck Nos. 2 and 3. (Paula Yancey)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the resolution)
6. WH 13-43 Resolution to approve Customer Energy Services Agreement with Project Oscar LLC for the delivery of thermal energy to the Project Oscar LLC premises located on the southwest corner of Canopy Drive and P Streets. (Dan Marvin/Chris Connolly)
 - Public Comment
 - (Staff recommendation is for the JPA Board to approve the resolution)
7. Set Next Meeting Date: Thursday, May 16, 2013 at 3:00 p.m. in City Council Chambers Room 112
8. Motion to Adjourn

WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)
Board Meeting
April 18, 2013

Meeting Began At: 3:00 P.M.

Meeting Ended At: 4:00 P.M.

Members Present: Chris Beutler, Eugene Carroll, Tim Clare

Item 1 -- Introductions and Notice of Open Meetings Law Posted by Door

Chair Beutler opened the meeting with introduction of the Board members. He advised that the open meetings law posted at the back of the room is in effect.

Item 2 -- Public Comment and Time Limit Notification

Public comment is welcome. Beutler stated that individuals from the audience will be given a total of five minutes to speak on specific items listed on today's agenda. Those testifying should identify themselves for the official record and sign in.

Item 3 -- Approval of the minutes from the JPA meeting held March 22, 2013

Beutler asked for corrections or changes to the minutes of the March 22, 2013 meeting. Being none, Carroll moved approval of the minutes. Clare seconded the motion. Motion carried 3-0.

Item 4 -- Approval of March 2013 Payment Registers

Steve Hubka, City Finance Director, presented the payment registers for March 2013. Hubka noted that the register was for just over \$11 million, including the Public Works bill. The largest expenditure was \$9.6 million to Mortenson.

Clare asked if we were on budget and if this is for Phase I or Phase II. Hubka responded that we are on budget and this reflects Phase I, except for any payments to PC Sports for coordination on Phase II. There is a separate report now for Phase II. Clare continued by asking if, from an audit perspective, we have all of the proper documents and signatures necessary. Hubka responded yes.

Hearing no public comment, Carroll moved approval of the payment registers. Clare seconded the motion. Motion carried 3-0.

Item 5 -- Review of March 2013 Expenditure Reports

Hubka explained that there are now three expenditure reports: 1) Operating budget for the JPA, 2) Phase I Budget Job Cost Report, and 3) Phase II Job Cost Report. The only expenditure to date out of Phase II is the \$20,000 paid to PC Sports for coordination of the Phase II projects.

Jane Kinsey, Watchdogs of Lincoln Government, questioned the total in the Contingency Fund. She inquired if it was over the \$6 million shown in this report and if it is the same amount as was planned originally.

Paula Yancey, Project Manager from PC Sports, explained that the amount Kinsey was referring to in this report is for Phase I only. In the Phase II budget, there is an additional contingency amount of 1.5% of the overall budget. There has been a contingency in all the budgets, which fluctuates up and down as budgets are reconciled and updated.

Item 6 -- West Haymarket Progress Report (Paula Yancey)

Yancey distributed a monthly information packet (attached hereto) on the status of the Pinnacle Bank Arena and associated infrastructure projects. She began the progress report with the local participation report on all workers, including engineering and professional services. Through March 2013, there have been 2,622 workers on site. Of the total workers, 1,534 (or 59%) live in Lincoln/Lancaster County and another 813 (or 31%) live in Nebraska outside Lancaster County. Only 275 (or 10%) were from outside Nebraska.

Clare asked if this means the arena project has created 2,622 jobs. Yancey explained that the workers have come through various projects, but that there have been opportunities on the various project for that number of people.

Looking at just the construction employees doing the work onsite who are using Davis Bacon certified payrolls there have been 2,341 workers on site. Of that total, 1,391 (or 59%) of the workers are from Lincoln/Lancaster County, 758 (or 33%) were from outside Lancaster but within Nebraska, and only 192 (or 8%) were from outside of Nebraska.

The West Haymarket company participation numbers show 400 firms have been awarded contracts. Out of the total firms, 295 (or 74%) were Nebraska contracts and 105 (or 26%) were outside Nebraska. That equates to \$159 million out of a total \$223 million awarded to firms that actually have an address in Nebraska.

Adam Hoebelheinrich, PC Sports, proceeded with the infrastructure update for the area around the arena. Hoebelheinrich displayed images of the area including:

- The first pour of 2013 -- they finished 7th Street major pours this week. Hawkins is doing a good job of scheduling their pours as weather permits.
- Parking Deck #1 – they are much further along now than shown in the image. They have completed about 90% of all precasts and will complete all within a couple of days. If not for the rainy weather, they already would be done. However, everything is on schedule and on budget. This shows the garage from Pinnacle Arena Drive looking north showing the west bay. The east and middle bay of the parking garage are already completed.
- Deck #1 Topping Pours – the east and west bays are about 40% complete, so there is lots of ready surface on which cars can travel.
- The TDP's Canopy Lofts & Hobson Hyatt Hotel/Condo Projects – TDP canopy lofts are shown as the yellow buildings. This shows the grey metal panels and brick finishes. Most of the windows are in, and they are working on interior finishes. In the foreground is the Hobson Hyatt Hotel/Condo Project. They have started steel on that and are well out of the ground on that

development as well. In this image, the arena is behind the yellow building and is taken from the parking garage looking northeast.

- View of “R” Street looking east. The street is poured. Parking Deck #1 is on the right, followed by the Lofts building, and then the Railyard framework. On the left side is the arena garage. This gives a picture of Arena Drive looking towards downtown.
- Pedestrian bridge construction – it is now possible to get a feel traveling over 180 where the bridge will sit and how it will look. In the last month, the girders have been set and today they were post-tensioning the strands that go through the precast to provide strength to the bridge.
- Pedestrian bridge – Loading Tensioning Cables
- Pedestrian bridge – Pouring Bridge Diaphragms
- Aerial view of the arena as of March 15
- Aerial view of the entire development area as of March 15 – this gives a good view of the last month’s progress and especially on the completion of Parking Deck #1.

John Hinshaw, Mortenson Construction, reported on the Pinnacle Bank Arena progress. His summary of the month’s milestones include:

- Painting and finishing on all levels of the building
- Acoustic ceiling grid installation has started
- Bathroom fixtures and finishes
- Erection of garage precast on the arena site is complete
- Ramp from grade between the Post Office and the arena has precast started and erection is up and will shortly reach the bridge shown in previous presentation slide
- Seating installation is ongoing
- Scoreboard has been delivered and assembled on site

They worked 101 consecutive days without a recordable safety incident, and only had one incident in the last 313 days. They average over 350 craft workers daily. Images displayed show a young person signing a wall and other images taken during Family Day where the workers were recognized and allowed to bring in their families to see what they do every day. As shown in the top right image, Coach Miles attended Family Day to shake hands, thank the workers, and sign some autographs.

The below construction images were viewed and are in the attached packet:

- Ribbon board – set in place and visual is set at the bottom of premium level
- Seat installation – complete on main concourse down and now working on upper concourse
- Feature tile on main concourse bathroom entrances
- Bathroom fixtures with stalls being set
- The UNL locker room where work has started in earnest – picture shows some tile in the men’s locker room
- Ceiling installation is ongoing throughout
- Mockup suite picture with some cleanup remaining and some small fixtures to complete
- Counter tops and millwork are being installed throughout the arena. Top left picture is of the pizza bar on the premium level.
- Premium level higher end finishes on main concourse
- Polished concrete work on main and upper levels
- Above the scaffolding, the finishings are complete and lobby light installation is shown. Shortly they will break down the lobby scaffold and open it for good.

- Scoreboard was assembled over the last week and a half. It can move up and down and will be lit up next month.
- Bridge arena ramp where it meets the bridge with two more bays of precast to be set
- Ramp precast erection where ramp on the right takes you to the bridge that takes you over to the festival space
- Ramp masonry on the base of the ramp
- Site work is ongoing around the arena. In spite of the wet weather, work continues. Here it shows an emergency generator for the arena.
- Garage precast erection for the completed garage

Responding to Clare's question, Hinshaw confirmed that they are on time and on budget. There was no public comment and the Board moved to the next agenda item.

Item 7 -- WH 13-34 Resolution to approve the Joint Public Agency Conduit Transfer Agreement between the City of Lincoln, Nebraska and the West Haymarket Joint Public Agency to transfer the JPA Conduit System to the City of Lincoln.

Dan Marvin, Secretary for West Haymarket JPA, introduced this resolution stating it was a transfer from the JPA to the City of the conduit placed under the streets. Under the streets are two pipes four inches in diameter through which they run conduit. The City has been actively recruiting providers to come to Lincoln and this provides some competition and redundancy for telecommunications. The idea is to provide this asset to the City so that the arena can hook into telecommunication services and also make it available for other developments in the area. This provides fiber to the festival space for SMG to do their business as well.

Responding to Kinsey's question, Marvin explained this was not a backup in case of failure. He explained that the City has a very active downtown fiber program to provide conduit for commercial services. They would like to invite other providers to come to Lincoln. By providing competition in the marketplace, you get the best pricing for those needing to take advantage of communication services – whether it is phone or internet services. With this transfer, they want to make this conduit available so that carriers can use this conduit to provide service to all the businesses in the area.

When installing streets, they want to include the things underground with the initial construction that have little cost and would be very expensive to install later. By providing opportunities for additional carriers it allows the arena, who needs a considerable amount of bandwidth, along with other businesses to get the best pricing.

Kinsey asked why this was financed through the arena project, rather than the City or a downtown group paying. She also wanted to know the total cost. Marvin responded that the JPA was tasked with providing the public infrastructure -- such as water, sewer, and roads. For very little cost, the conduit could be installed at the front end of the infrastructure completion. The cost of the entire district is approximately \$160,000.

Kinsey then asked how the decision was made to include this work. Marvin explained this was assumed since the project was started. Prior to the vote, the public was informed that the public infrastructure would be included with the project, and they would not be taxing the City of Lincoln's infrastructure budget for this work. It was discussed in 2009 when the budget was being developed.

Kinsey is worried that it sounds like this is being done for future internet in Lincoln and the arena is bearing the costs, rather than the other groups she mentioned. Marvin again reiterated that what he heard during development and decisions on these items years prior was that the public did not want the city taxpayers to bear additional costs due to construction. The costs were built into the budget.

Rick Peo, City Attorney's Office, confirmed that when the JPA was created it was always envisioned that JPA would install public improvements within the properties that were under its ownership. In that respect it is like a private developer that has to put in the public improvements for their land when it is developed. Those improvements are then eventually dedicated to the City of Lincoln. This was the plan from the beginning. The City of Lincoln has a conduit system and this transfer agreement is to put the JPA conduit system under common ownership. It will become the City conduit system operated by the City for continuity. This agreement is simply the formal process of turning over those improvements, such as previously happened with the streets. The decisions were made when UNL and the City created the JPA. This agreement is simply carrying out the nature of the legal agreements. Any new carriers coming in would be regulated by City ordinance. Responding to Kinsey, Peo explained that all of this was detailed in public documents, which are a matter of public record.

Carroll moved approval and Clare seconded the motion. Motion passed 3-0.

Item 8 -- WH 13-35 Resolution to approve Amendment No. 011 to the Agreement between DLR Group, Inc. and the West Haymarket Joint Public Agency to provide for the design and other services needed to change the flooring in the South and North Lobby areas of the Pinnacle Bank Arena from stained concrete to epoxy terrazzo.

Yancey reported that this resolution to approve Amendment No. 011 is for the design and construction documents required for the terrazzo flooring in the lobbies of the arena. The installation and construction agreement is coming up in a later agenda item. The design services are required for Mortenson to construct the floors and this is a reasonable cost, so they recommend approval of the \$8,000 to the DLR Group out of contingency dollars.

Kinsey asked how much money was involved and from where it would come. Yancey responded it was for \$8,000 and would come out of the contingency line item shown in the budget. Kinsey asked who makes up the DLR Group. Yancey detailed that DLR is its own company and has offices in both Omaha and Lincoln, as well as other locations across the country.

Kinsey asked why include the enhancement and why it was not included in the original plan. Yancey explained that they looked at the durability and lifetime of products after they reviewed where they were on the budget. They felt that it was a worthwhile addition as the terrazzo floors will last the lifetime of the building. This was looked at originally, but it was decided to wait and see where they were on the budget after the required components of the GMP. They wanted to make sure they got out of the ground, that they could coordinate with BNSF and get the railroad tracks out, etc. They wanted to be sure the majority of the finishes were bought out and to get through a couple of winters and then they planned to re-evaluate the budget.

Kinsey's understanding was that the Contingency Fund was for problems that might arise. She wanted to know what plan B will be if there are problems if the contingency is used to make items fancy. Yancey said that the contingency is actually for several items. They make sure the contingency is large enough at the beginning of the project to mitigate any circumstances outside the GMP that the owner needs to pay. At this stage, they are confident that they can anticipate and absorb any unforeseen costs

that may come. Unforeseen underground items, environmental items, and weather-related issues are pretty much behind them now. The contingency amount does not need to be as great at the end of the project. With that, they are now confident that the amount is sufficient to mitigate any additional risks, as well as provide enhancements to the building.

Kinsey questioned what would be done with the contingency dollars after opening of the arena. As explained by Yancey, the budgets will be reconciled at the end of the project. It is all JPA money.

Beutler stated they are dealing with the item in front of them. They are not anticipating a need for a plan B with regard to covering this particular item. Kinsey asked if the money is all spent will the City be responsible to pick up the cost. Beutler responded no because the arena is still under the JPA and there will be an ongoing budget. Responding to Kinsey as to whether there would be a contingency within that budget, Beutler was unsure since it has not been done yet.

Kinsey wondered, since the taxpayers support Pershing, if there will still be money to support the arena. She stated that the public was concerned about the increased budget beyond what was expected and now there is dipping into the Contingency Fund to make things a little bit fancier. Therefore, the issue is whether there is a plan B. She believes there is a crisis in government – not just nationally, but in Lincoln also.

Beutler strongly disagreed that there is a crisis in government in Lincoln. Beutler explained that the terrazzo is a good long-term investment, which lasts much, much, much longer than other floor coverings. The reason to invest in it if the capital is available upfront is that it is a solid, durable, long-term investment.

Carroll moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 9 -- WH 13-36 Resolution to approve Amendment No. 012 to the Agreement between DLR Group, Inc. and the West Haymarket Joint Public Agency to provide for a new office in the commissary storage area of the Pinnacle Bank Arena.

Yancey stated this resolution is another DLR Group amendment to provide design services and construction documents for an office previously decided upon for a kitchen or commissary manager. This includes electrical, data, walls, ceilings, and other required items needed to build the office space. The amount of the amendment is \$5,750 and approval is recommended.

Being no public comment, Carroll moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 10 -- WH 13-37 Resolution to approve Change Order No. 5 to the Final Guaranteed Maximum Price Amendment to the Amended and Restated Construction Manager at Risk Contract with M.A. Mortenson to add additional work including supports for the “N” sign, power for illuminated signage, refrigerators in the Loge Boxes, terrazzo flooring and sub-woofer speakers at the arena bowl.

Yancey distributed a Motion to Amend on this item due to the decision to remove a line item from Change Order No. 5 while discussions continue on that particular category. However, the overall resolution is for approval of Change Order No. 5 to Mortenson Construction’s Guaranteed Maximum Price.

This adds the 'N' to the outside of the building, which was agreed upon in the lease agreement. The cost of this item is out of the Contingency Fund. The power for the advertising signage was discussed earlier and will come out of the CSL Legends line item. It adds some loge box refrigerators that will come out of the FFE line item. Mortenson is installing other refrigerators and the decision was that this addition made sense for economies of scale and ease of installation. Finally, this includes the upgraded terrazzo flooring to come out of the Contingency Fund. The item proposed for removal is the subwoofer speakers. This change order is within the overall arena budget. The revised amount of the change order will be for \$630,495 and approval is recommended.

Kinsey announced she was sorry to hear that Mayor Beutler and Mr. Carroll do not believe there is a crisis of trust in government. She thinks if we use all of the contingency money, it looks like we are going to use it because it is available. People believe that is how government operates and it is not approved. She would like to know what contingency dollars will be left as all types of unknown problems could arise. If this is \$600,000, she questioned how much remains. Yancey responded that there are several millions remaining and there are several millions in the overall infrastructure contingency as well. They still believe that taking into account where the project is in the process and the remaining work they not only have enough to complete the projects successfully, but also they will be able to reconcile and remain within the budgets that the JPA has approved.

Kinsey wanted to know if there were plans to spend the millions that remain. Yancey responded no. They want to look at expenditures at appropriate times as they may arise. Kinsey followed up stating that due to the amount of money available the public should not be concerned over the expenditures for the items to make the arena fancy. Yancey responded that they would not recommend or authorize expenditures if they did not think unknowns were planned for or past the point of concern. Responding to Kinsey regarding disaster situations, Yancey explained that there is insurance for disaster situations. They tried to cover all the bases as to emergencies and disasters.

Kinsey asked if it is anticipated we should expect future fancy items to be added. Yancey responded not necessarily, but it could happen as we get ready to open and may need to use contingency dollars. However, they do not anticipate there to be large items that could not be covered. Yancey explained that in her experience in constructing similar buildings that this is the point in the project timeline where several owners have made the decision to install the terrazzo flooring.

Carroll moved approval of the main motion. Clare seconded the motion. Carroll moved approval of the motion to amend. Clare seconded the motion to amend.

Carroll explained that the amendment removes the subwoofer speakers from this item. Responding to a Clare inquiry, Yancey explained that the subwoofers were removed simply to allow time for further discussion and possible alternative funding source for the item. The subwoofers are a component of the sound system that creates additional sound capabilities within the building. Clare wanted to ensure that removing these from this item does not exclude them from the project. It is very important to the University that these be included. Yancey confirmed that removing them here, does not exclude them.

Motion to Amend No 1 carried 3-0. The main resolution as amended was adopted 3-0.

Item 11 -- WH 13-38 Resolution to approve Change Order No. 6 to the Final Guaranteed Maximum Price Amendment to the Amended and Restated Construction Manager at Risk Contract with M.A. Mortenson to add additional work to upgrade UNL lockers in the Arena.

Yancey explained that due to the amendment on the last item, this item needed amended as well. Because Change Order No. 5 changed, we start out with a lower contract value on this change order. Confirming Beutler's clarification, Yancey stated it is required due to the sequencing of the change orders.

Per the lease agreement, UNL is required to fund any upgrades or enhancements to their locker rooms beyond the base defined in the agreement. The University has provided a design and a list of upgrade items to be included. This change order is for Mortenson to complete the changes for the University. The total amount requested is \$514,605. This agreed upon amount will all be funded by UNL. They will repay the JPA for the cost of the changes. This does not come out of the JPA budget or the Contingency Fund.

Beutler asked if the amount was to cover upgrades in only the locker rooms to which Yancey answered in the affirmative. It covers upgrades to carpet, speakers, tile, lockers, changes in rooms all requested by the University.

Clare wanted to be sure to note that this does increase the budget. However, the University Athletic Department (private funds from that source – no taxpayer dollars) will be the revenue source for these additional dollars. He has talked to the Athletic Department and they are in full agreement with the changes and the dollar amount requested. Yancey agreed saying they have met several times to verify and for specifics on what UNL wants.

Kinsey thanked Clare for the clarification and was thankful to see these improvements would be covered by private, and not taxpayer, dollars.

Carroll moved approval of the main motion. Clare seconded the motion. Carroll then moved approval of the motion to amend. Clare seconded the motion to amend. Motion to Amend No 1 carried 3-0. The main resolution as amended was adopted 3-0.

Item 12 -- WH 13-39 Resolution to approve Change Order No. 9 to the Contract Agreement with Hawkins Construction Co. for the West Haymarket Joint Public Agency Infrastructure Improvements Core Area Roadway and Utilities Project to exclude certain quantities for items to be incorporated into the JPA Streetscape Project and make other actual quantities adjustments.

Yancey explained this resolution was to approve a deductive change order for \$166,590.62. This moves some scope in Hawkins Construction Co. to the streetscape contract to be discussed in the next item. This will reduce Hawkins contract to \$12,934,626.77 and they recommend approval of this change. Responding to Beutler's question, Yancey explained the savings would go to the streetscape item.

Kinsey thanked the board for the reduction on this item.

Carroll moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 13 -- WH 13-40 Resolution to approve the Contract Agreement between the West Haymarket Joint Public Agency and Sampson Construction Company, Inc. for the West Haymarket Joint Public Agency Infrastructure Improvements Core Area Roadway Streetscape Project (Bid No. 13-082).

As detailed by Yancey, WH 13-40 is to approve a contract with Sampson Construction for the streetscape project. The work bid through the Purchasing Department and Sampson was the lone bidder. After review of the bid, the team has determined it was responsive and within the scope requested. Therefore, they recommend award to Sampson for \$1,658,943.35. This contract provides for specialty pavements, trees, landscaping, benches, site amenities, and directional signage in the area.

Kinsey asked if this was in the original budget. Yancey responded it was located in several different line items throughout the budget.

Carroll moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

Item 14 -- Set Next Meeting Date

The next meeting date is set for Friday, May 3, 2013 at 9:30 a.m. in City Council Chambers Room 112.

Item 15 -- Motion to Adjourn

Carroll made a motion to adjourn the meeting. Clare seconded the motion. The meeting adjourned at 4:00 p.m.

Prepared by: Pam Gadeken, Public Works and Utilities

 **Pinnacle Bank Arena**

WEST HAYMARKET REDEVELOPMENT PROJECTS



Project Status Update
April 18, 2013

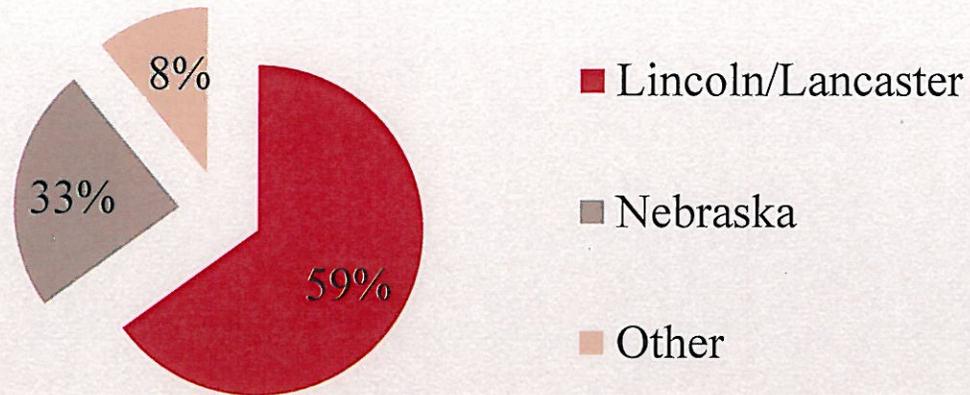
West Haymarket Local Participation Report All Workers – Including Engineering and Professional Services Through March 2013

	Total	Percentage
Lincoln/Lancaster County	1534	59%
Nebraska	813	31%
Other	275	10%
	2622	100%



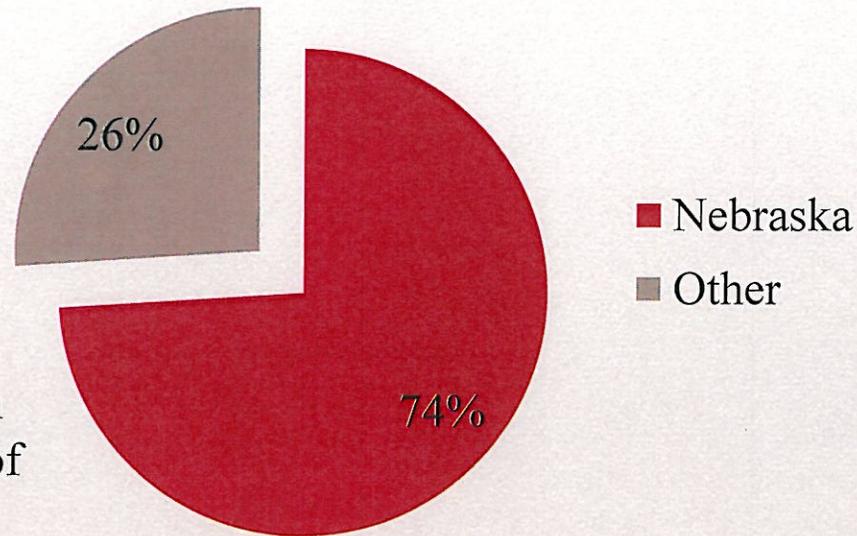
West Haymarket Local Participation Report Davis Bacon / Construction Employees Through March 2013

	Total	Percentages
Lincoln/Lancaster County	1391	59%
Nebraska	758	33%
Other	192	8%
	2341	100%



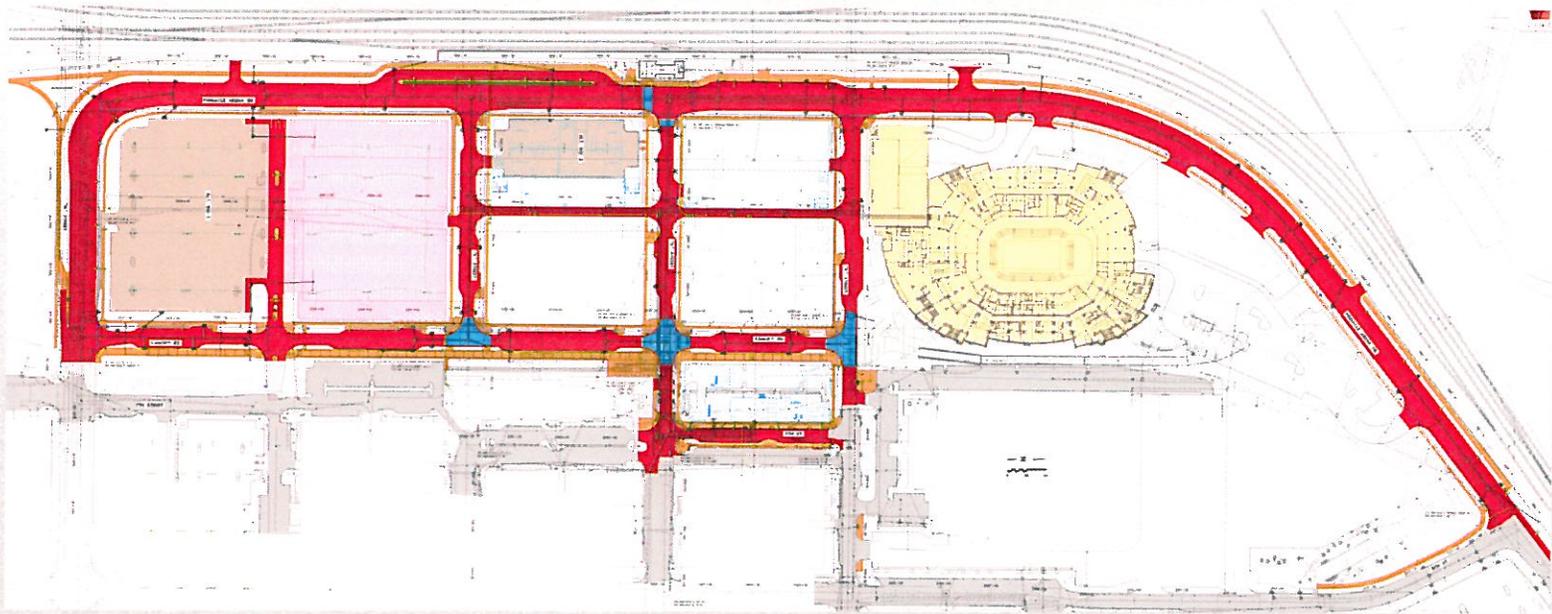
West Haymarket Company Participation

	Total	Percentage
Nebraska Contracts	295	74%
Other	105	26%
	400	100%



Approx. \$159 Million
Nebraska Dollars out of
\$223 Million

Infrastructure Progress



- **Core Area: 7th Street**



**1st Pour of
2013**





WHJPA Deck #1 : Setting Last Bay of Precast



WHJPA Deck #1: Topping Pours



**TDP's Canopy Lofts &
Hobson Hyatt Hotel / Condo Projects**



The New "R" Street Looking East



Post-Tensioning Ducts Through Girders



Loading Tensioning Cables

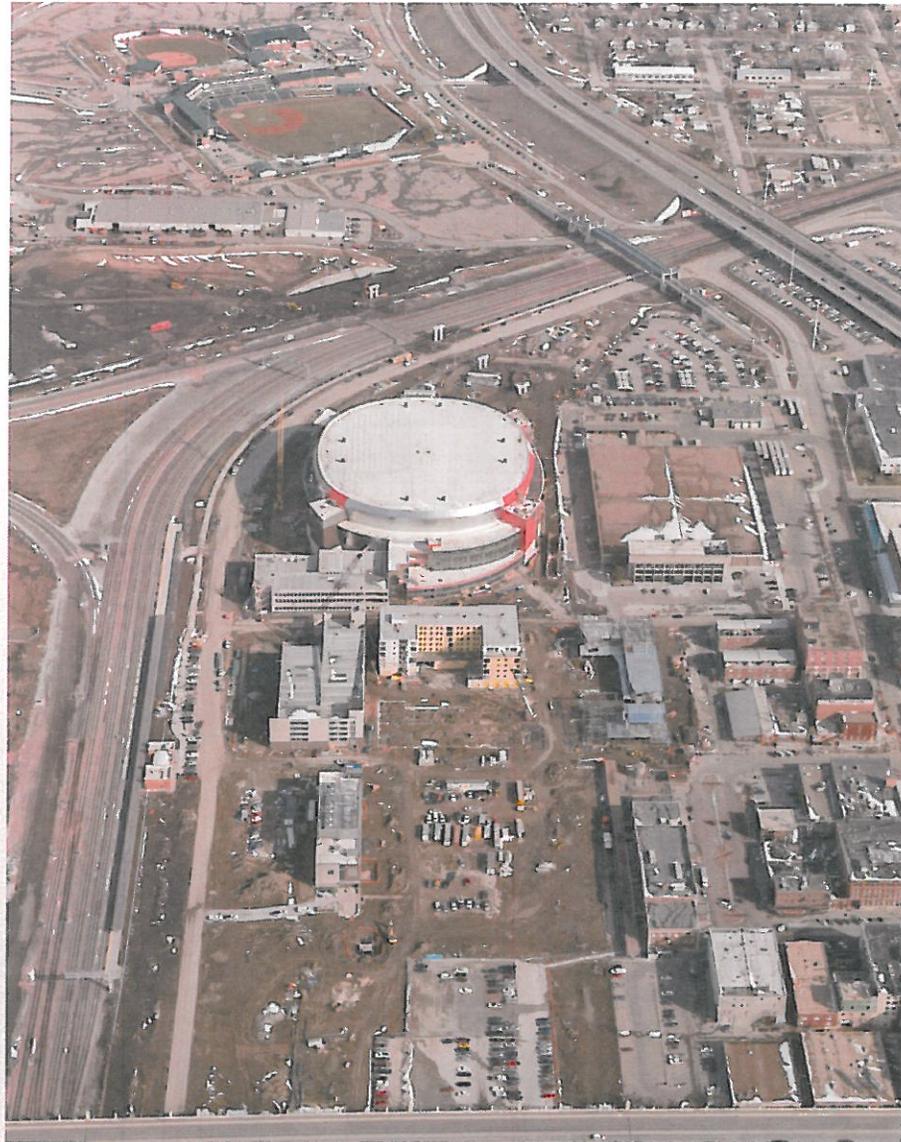


Pouring Bridge Diaphragms

AERIAL 3-15-2013



AERIAL
3-15-2013





Presentation to the JPA

 **Pinnacle Bank Arena**

April 18, 2013



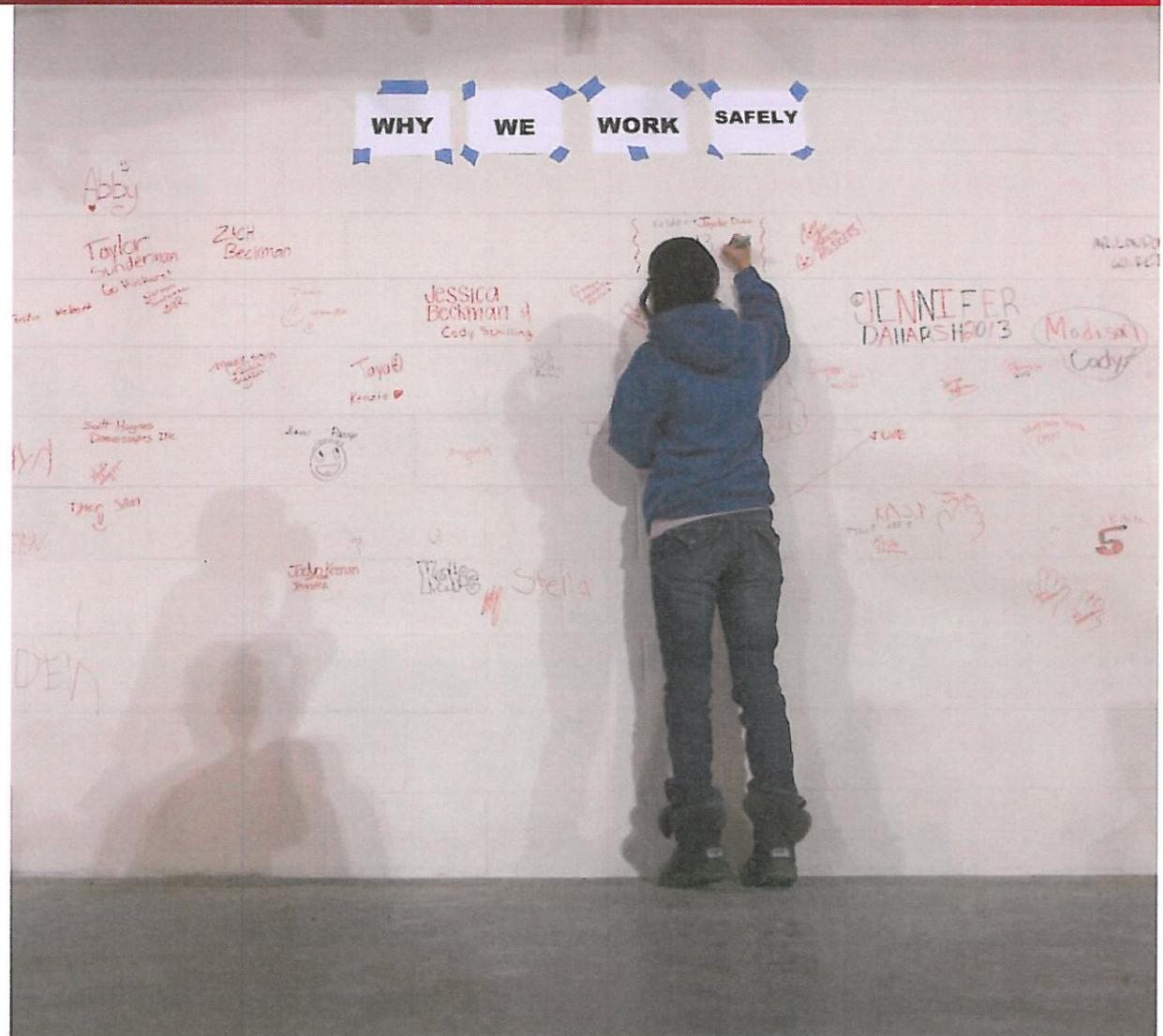


Milestones Achieved

- **Painting on all levels has started**
- **Ceiling installation started**
- **Bathroom fixtures and finishes**
- **Erection of garage precast is complete**
- **Ramp precast started**
- **Main level fixed seating nearly complete, and upper levels started**
- **Scoreboard delivered**

Safety

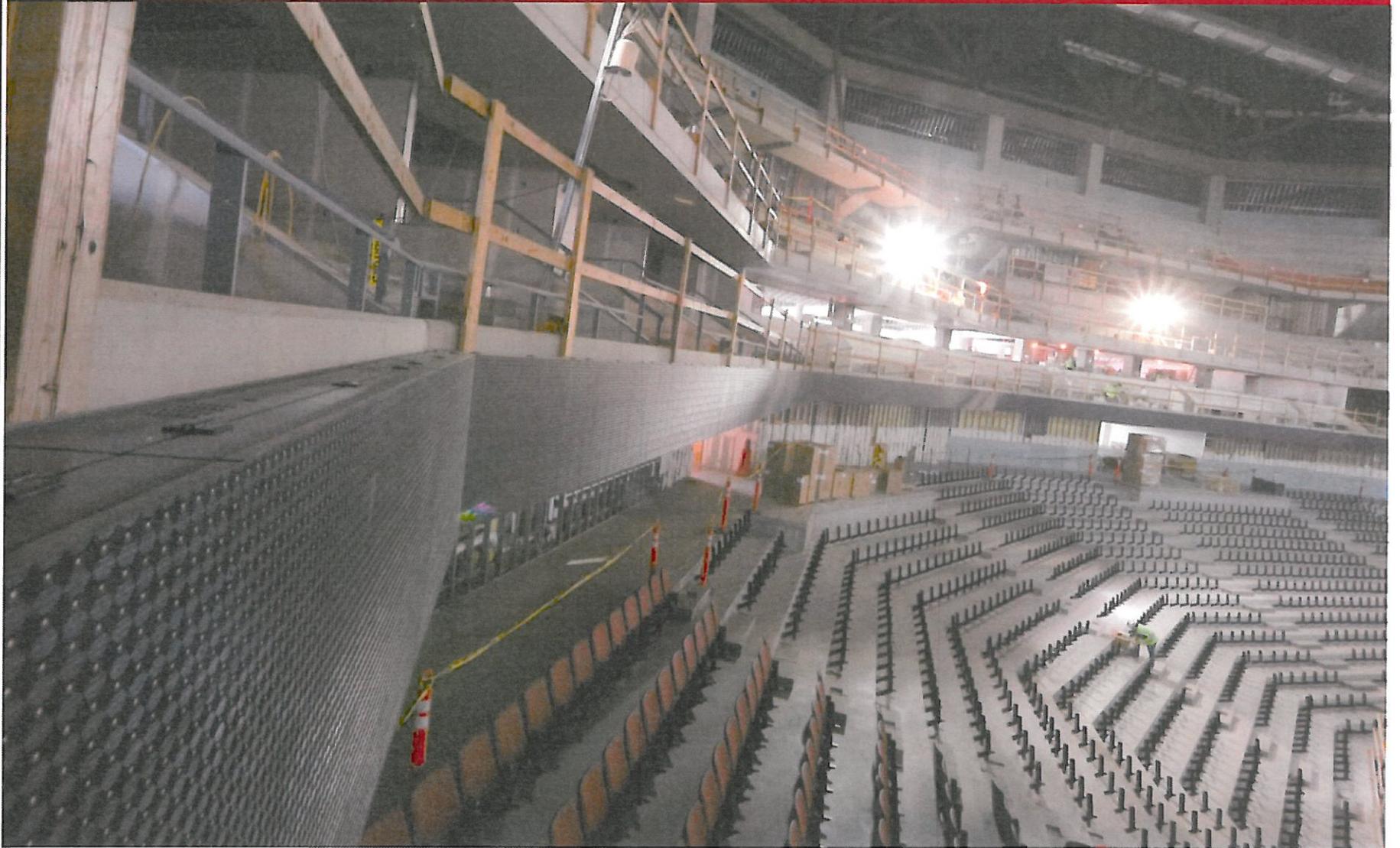
- Worked 101 consecutive days without a safety incident
- The Project averages over 350 Craft Workers daily
- 1 incident in last 313 days



Family Day



Ribbon Board



Seat Installation



Feature Tile in bathrooms



Bathroom fixtures



UNL Locker Room



Ceiling Installation



Mockup Suite



Counter tops



Premium Level Finishes



Polished Concrete



Lobby Light Installation



Scoreboard Assembly



Ramp Precast Erection



Ramp Precast Erection



Ramp Masonry



Site work



Garage Precast Erection



RESOLUTION NO. WH- _____

1 **WHEREAS**, the West Haymarket Joint Public Agency (the “**Agency**”) is party to an Energy Service
2 Agreement, dated as of October 6, 2011, as amended (the “**ESA**”) by and between the Agency and District
3 Energy Corporation, a nonprofit corporation and interlocal agency organized by the City of Lincoln,
4 Nebraska and The County of Lancaster, Nebraska (“**DEC**”), pursuant to which DEC provides thermal
5 services to the Agency;

6 **WHEREAS**, Section 6.03 of the ESA provides that “. . .[t]he Demand Charge – Facilities Financing
7 will commence no earlier than September 1, 2013, and, at the option of the [Agency], may be extended up
8 to September 1, 2014” (such option of the Agency to extend the commencement of such Demand Charge –
9 Facilities Financing hereinafter referred to as the “**Agency Option**”);

10 **WHEREAS**, in order to take advantage of current interest rates, DEC is proceeding with the issuance
11 and sale of one or more of its series of revenue bonds (the “**DEC Bonds**”) in part to finance improvements
12 to facilities which provide thermal services to the Agency and are or will be owned by DEC (the “**Project**”);
13 and

14 **WHEREAS**, to enable DEC to proceed with financing for the Project, the Agency deems it
15 necessary, advisable and in the best interests of the Agency to waive the Agency Option;

16 **NOW, THEREFORE, BE IT RESOLVED**, by the Board of the Agency, that the Agency hereby
17 waives the Agency Option and agrees to pay the Demand Charge – Facilities Financing (as such term is
18 referred to in the ESA) when due and payable in accordance with the other provisions of the ESA;

19 **BE IT FURTHER RESOLVED**, that the waiver given herein shall be valid, binding and enforceable
20 against the Agency;

21 **BE IT FURTHER RESOLVED**, that the Agency acknowledges and agrees that DEC will rely on
22 this Resolution as a valid waiver of the Agency Option;

1 **BE IT FURTHER RESOLVED**, that the chief financial officer and treasurer of the Agency (the
2 **“Authorized Officer”**) is hereby authorized and directed to execute all instruments and certificates necessary
3 or desirable to document the waiver of the Agency Option as contemplated hereby; and

4 **BE IT FURTHER RESOLVED**, that all acts heretofore taken by the Board of the Agency or any
5 officer of the Agency in connection with the matters referred to herein are hereby ratified, confirmed and
6 approved in all respects.

7 The City Clerk is directed to return an executed copy of this Resolution to Rick Peo, City Law
8 Department, for transmittal to DEC.

9 Adopted this _____ day of May, 2013.

Introduced by:

Approved as to Form & Legality:

Legal Counsel for
West Haymarket Joint Public Agency

West Haymarket Joint Public Agency
Board of Representatives

Chris Beutler, Chair

Tim Clare

Eugene Carroll

RESOLUTION NO. WH- _____

1 BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public
2 Agency:

3 That the Agreement between the West Haymarket Joint Public Agency and
4 Hausmann/Dunn, a joint venture, to provide construction manager at risk preconstruction and
5 construction phase services for Precast Parking Deck Nos. 1 and 2, is hereby approved subject to
6 the attached modifications to make the Agreement consistent with the Amended and Restated
7 Agreement for Deck 1, and the Chairperson of the West Haymarket Joint Public Agency Board of
8 Representatives is hereby authorized to execute said Agreement as modified on behalf of the West
9 Haymarket Joint Public Agency.

10 The City Clerk is directed to return a copy of this Resolution and the Agreement to
11 Hausmann Construction, c/o Chad Wiles, 8545 Executive Woods Drive, Suite 1, Lincoln, NE
12 68512 and to J.E. Dunn Construction, c/o Brett Chapman, 8420 West Dodge Road, Suite 303,
13 Omaha, NE 68114.

14 Adopted this _____ day of _____, 2013.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Chris Beutler, Chair

Tim Clare

Eugene Carroll

CONTRACT MODIFICATIONS

1. AIA Document A133-2009
 - Delete Section 5.3.6
 - Delete Section 6.8.1.12
 - Delete Section 6.8.1.13

2. Exhibit 1
 - Section 1A, First Paragraph – Delete word “agents” in line 3; replace “caused in whole or in part” (4th line from bottom) with “but only to the extent caused”
 - Section 2F, First Paragraph – Add “covered by insurance and allowed by the applicable policy” following “claims and suits against JPA” in the first sentence.
 - Section 6A – Replace the second to last sentence with “The maximum deductible for such insurance shall be \$10,000 for each occurrence (other than flood and earthquake), which deductible shall be the responsibility of the Contractor, but allowed as a Cost of Work”
 - Section 6B – Add “Flood and earthquake may be subject to sublimits”
 - Section 6E – Add a new paragraph: “The Contractor and Owner waive rights against each other for claims and damages to the extent such claims and damages are covered by property insurance during or after completion of the Work.”

 **AIA**® Document A133™ – 2009

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

AGREEMENT made as of the day of in the year 2013
(In words, indicate day, month and year.)

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

WEST HAYMARKET JOINT PUBLIC AGENCY ("JPA"),
a political subdivision and corporate body politic of the State of Nebraska
555 South 10th Street
Lincoln, NE 68508

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

HAUSMANN CONSTRUCTION AND
J.E. DUNN CONSTRUCTION, a Joint Venture

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

Parking Deck Nos. 2 and 3

The Design Professionals (hereinafter referred to as "Architect"):
(Name, legal status and address)

DAVIS DESIGN

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

Program Manager
Paula Yancey
PC Sports
140 North 8th Street
Suite 220
Lincoln, NE 68508
(402) 474-0155

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

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

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

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

Joey Hausmann – Hausmann Construction
Bret Chapman – J.E. Dunn Construction

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

RECITALS

A.

Owner desires to engage Construction Manager to perform Preconstruction Services and Construction Phase Services for the Project based upon the following understandings between the Owner and Construction Manager. Construction Manager understands and acknowledges that American Recovery and Reinvestment Act (ARRA) tax-favored bonds will fund all or a portion of the Project and therefore this Agreement is subject to Davis-Bacon Act; and that the Construction Manager is required to comply with 29 C.F.R. Parts 1, 3 and 5, and in particular with the contract clauses in 29 C.F.R. § 5.5(a). Construction Manager understands and acknowledges that the Construction Manager is required to pay Davis-Bacon Act prevailing wages in accordance with U.S. Department of Labor issued Building Construction General Wage Decision for Lancaster County, Nebraska in effect on the date the Guaranteed Maximum Price is accepted by the Owner "Effective Wage Decision." Construction Manager understands and acknowledges that the use of the term "Contracting Officer" in 29 C.F.R. Parts 1, 3 and 5 shall be deemed to refer to the Owner.

B.

Construction Manager possesses certain skills, experience, education and competency to perform the Construction Phase Services on behalf of the Owner and the Owner desires to engage Construction Manager for such services on the terms and conditions provided herein.

C.

Construction Manager hereby represents that Construction Manager is willing and able to perform the Construction Phase Services in accordance with this Agreement and the above understandings between Owner and Construction Manager. The Construction Manager hereby represents that Ray Rice shall be the Senior Superintendent; Gordon Hocker, Superintendent; and John Mackling, Superintendent for the Work during the Construction Phase Services.

In consideration of the above Recitals which are incorporated herein and made a part of this Agreement and the mutual obligations of the parties hereto, the Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

- 1 **GENERAL PROVISIONS**
- 2 **CONSTRUCTION MANAGER'S RESPONSIBILITIES**
- 3 **OWNER'S RESPONSIBILITIES**
- 4 **COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**
- 5 **COMPENSATION FOR CONSTRUCTION PHASE SERVICES**
- 6 **COST OF THE WORK FOR CONSTRUCTION PHASE**
- 7 **PAYMENTS FOR CONSTRUCTION PHASE SERVICES**
- 8 **INSURANCE AND BONDS**
- 9 **DISPUTE RESOLUTION**
- 10 **TERMINATION OR SUSPENSION**
- 11 **MISCELLANEOUS PROVISIONS**
- 12 **SCOPE OF THE AGREEMENT**

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, including the documents referred to in herein, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, whether or not attached hereto, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment, the form of which is attached hereto as **Exhibit A**, and revisions to the Drawings and Specifications prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and any other consultants or project representatives of the Owner and to exercise the Construction Manager's best skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and consistent with the Contract Document to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

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

Init.

term AIA Document A201-2007 shall mean the Modified AIA Document A201-2007 attached hereto as **Exhibit B**, which at times may be referred to in this Agreement as the "General Conditions."

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. Subject to Section 2.1.1, the Owner and Construction Manager may agree, in consultation with the Architect and Program Manager, to commence the Construction Phase prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

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

§ 2.1.2 Consultation

The Construction Manager shall jointly schedule and attend meetings with the Architect, Program Manager, and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall consult with and provide recommendations to the Owner, Program Manager, and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner, Program Manager, and Architect on constructability; availability of materials and labor; time requirements for procurement (especially for long-lead items), installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

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

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations to the Owner, Program Manager, and Architect with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager's recommendations shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 When the preliminary design and other design criteria have been prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, input from competent subcontractors, or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Program Manager, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and

Init.

Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's and Program Manager's review and the Owner's approval. The Construction Manager shall inform the Program Manager and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.5.3 All estimates shall be broken down by individual trades and cost components and include quantities and unit prices associated with the various identifiable elements of each trade. Estimates shall also include descriptions of limitations, scope, conditions, assumptions, quality standards, and other considerations used. Construction Manager shall provide such other information reasonably requested by the Owner to evaluate and understand the estimates provided.

§ 2.1.5.4 Subject to Construction Manager's right under the Contract Documents to an adjustment in the Guaranteed Maximum Price and the Substantial Completion Date, Owner reserves the right to change the project scope, the character and quality of building finishes, size, and structural, mechanical, electrical, or other building systems and finishes in order to bring project costs in alignment with the Owner's construction budget or to otherwise make adjustments as may be deemed necessary by the Owner to achieve Owner's desired purposes.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop subcontractors' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's and Program Manager's review and the Owner's acceptance, a procurement schedule for items that must be procured well in advance of construction. The Construction Manager shall expedite and coordinate the procurement, ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them. In advance of the establishment of the Final Guaranteed Maximum Price ("GMP"), the Construction Manager may with Owners approval procure Subcontracts for the following scopes of work and for any other scope of work agreed to by the Owner and the Construction Manager: mechanical electrical & plumbing (MEP) systems structural steel, precast concrete, cast-in-place concrete, exterior enclosure systems, and vertical transportation systems. Subcontracts shall be procured in accordance with Exhibit C. Any subcontracts that may be procured before commencement of the Construction Phase Services shall be contingent on such commencement.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall insure that its subcontractors are responsible for their respective performance specifications. The Construction Manager shall promptly report to the Architect, Program Manager, and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

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

§ 2.2 Guaranteed Maximum Price Proposals and Contract Time

§ 2.2.1 Guaranteed Maximum Price Proposal

At such time as the Drawings and Specifications for construction are deemed to be sixty percent (60%) complete or at such other time as mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal and within six weeks submit the Guaranteed Maximum Price Proposal to the Owner for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the

Init.

Work, including the Construction Manager's "Cost of Work" contingency described in Section 2.2.4, the cost of the General Conditions, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. 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.

§ 2.2.3 The Construction Manager's Guaranteed Maximum Price proposal shall include a written statement of its basis, including but not limited to the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract upon which the Guaranteed Maximum Price is based;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 The proposed Guaranteed Maximum Price, including a detailed statement of the estimated amount of the Cost of the Work organized by trade categories or systems and allowances, a detailed statement of the Cost of Work Contingency, and a detailed statement of the Cost of the General Conditions, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A time limit by which the Owner and Construction Manager must reach agreement upon the Guaranteed Maximum Price proposal (which shall not be less than 30 days).

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a Cost of Work Contingency for the Construction Manager's exclusive use. The term "Cost of Work Contingency" shall mean the line item included by the Construction Manager in the Guaranteed Maximum Price proposal that is available to cover the net amount of any additional costs resulting from unforeseen conditions and events not evidenced at the time that the parties execute the Guaranteed Maximum Price Amendment, to the extent that such conditions or events do not result in or constitute a change in the Work. Examples of such unforeseen conditions and events include, but are not limited to, the following:

- .1 Unanticipated cost overruns (including cost overruns resulting from errors or omissions in Scope of Work) on the Construction Manager's General Condition, self-performed work, and procurement of Subcontracts or other purchases of materials or labor costs;
- .2 Expediting or acceleration costs required to meet the date of Substantial Completion.

§ 2.2.4.1 The Cost of Work Contingency is not available for use by or for the benefit of the Owner or any other party, and shall not be used to cover: changes to the work; design revisions or problems; interference of the Owner/Architect or third parties for which Construction Manager is not responsible; matters related to land use proceedings; unknown conditions; allowance adjustments; unusually severe weather; or items for which Construction Manager is not responsible. The Cost of Work Contingency shall be managed by the Construction Manager.

§ 2.2.4.2 The Construction Manager shall provide Program Manager and Architect with a report on the status of the Cost of Work Contingency on a monthly basis throughout the duration of the Project after the Guaranteed Maximum Price has been established. In each such monthly report on the status of the Cost of Work Contingency, the Construction Manager shall identify (i) any amounts added to the Cost of Work Contingency which are a result of positive variances or savings in the components of the Cost of the Work, (ii) any amount allocable up to the date of the report which are a result of negative variances in components of the Cost of the Work, and (iii) any amounts reserved from the Cost of Work Contingency for anticipated negative variances in components of the Cost of the Work which have been identified but not fully evaluated. After being adjusted for items (i) through (iii) above, the remaining amount of the Cost of Work Contingency shall be designated as the unallocated portion of the Cost of Work Contingency.

§ 2.2.4.3 If, at the time Owner makes the final payment to the Construction Manager, there is a balance in the Cost of Work Contingency, it shall be retained by Owner.

Init.

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

§ 2.2.6 Following Owner's acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. In the event that the Owner and Construction Manager are not able to reach agreement upon a Guaranteed Maximum Price by the date specified in the Guaranteed Maximum Price proposal, Owner may (1) terminate this Agreement in accordance with the applicable provisions thereof, and make payment for all pre-construction services; or (2) incorporate alternate systems, equipment, finishes or other changes working in conjunction with Architect and Construction Manager to achieve reductions in the Guaranteed Maximum Price proposal. In the event of termination as provided above, Construction Manager grants to Owner the right to use any plans, details, estimates, cost breakdowns, or any other information provided by the Construction Manager as part of its preconstruction services for purposes related to the Project. Owner shall further retain the right to disclose such information to other parties or construction managers for their use provided that in such event the Owner shall indemnify and hold harmless the Construction Manager from and against any claims by any party arising out of the use of such information. In order to protect the Construction Manager's proprietary information, Owner agrees that except for proprietary information which would be mandatorily disclosed pursuant to a public records request, such information shall not be disclosed to other parties or construction managers without first receiving the approval of the Construction Manager, which approval shall not be unreasonably withheld. All submittals of documents and other information to the Owner shall clearly identify all matters which Construction Manager believes to be proprietary.

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

§ 2.2.8 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to reflect the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

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

§ 2.3 Construction Phase

§ 2.3.1 General

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

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's and Construction Manager's execution of the Guaranteed Maximum Price Amendment, or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Except for those portions of the Work performed by the Construction Manager's own personnel the Work or portions of the Work shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids or proposals. The Construction Manager shall obtain bids or proposals from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work through the City of Lincoln's E-bid process or in accordance with the Subcontractor Procurement process set forth in **Exhibit C**.

§ 2.3.2.1.1 Proposals shall be requested from subcontractors with respect to portions of the Work that Construction Manager customarily performs with the Construction Manager's own personnel. Unless Construction Manager can demonstrate to the Owner that the Project will be materially affected otherwise where such proposals are less than the

Init.

Construction Manager's proposal, the Construction Manager must either utilize the services of such subcontractor or reduce the Construction Manager's proposal to an amount equal to the lowest proposal received.

§ 2.3.2.1.2 Once Drawings and Specifications are completed to an appropriate level for any given bid or proposal package as determined by the Construction Manager and approved by the Owner, Construction Manager shall procure Subcontractors in accordance with Exhibit C, Subcontractor Procurement.

§ 2.3.2.1.3 Intentionally Omitted.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder or proposer (1) is selected by the Construction Manager, (2) is, in the judgment of the Construction Manager, qualified to perform that portion of the Work, and (3) has submitted a bid or proposal that conforms to the requirements of the Contract Documents, but the Owner does not approve the bidder or proposer selected, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid or proposal of the person or entity originally selected by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity subsequently selected by the Construction Manager and approved by the Owner.

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

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

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

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007, including Owner's occupancy requirements. Construction Manager shall notify all Subcontractors of the Project Schedule.

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

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

§ 2.3.2.9 The Construction Manager shall administer the Subcontracts, generally direct the Work of all Subcontractors, and take steps to ensure that the Work is being performed by the Subcontractors in accordance with the requirements of the Subcontracts and the Contract Documents. The Contract Manager will keep the Owner informed of the progress of the Work and will guard the Owner against defects and deficiencies in the Work. The Construction Manager will schedule, coordinate, inspect, and generally direct the Work, activities, and progress of the Subcontractors. The

Init.

Construction Manager will require that Subcontractors perform their work in a good and workmanlike manner so as to permit completion in accordance with the Drawings, Specifications, and Project schedule.

§ 2.3.2.10 The Construction Manager shall maintain competent full-time management and supervisory staff at or near the Project Site authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the Work and progress of the Subcontractors, and Construction Manager's on-site management and supervisory personnel performing portions of the Work. Construction Manager shall not change, remove or replace any of its supervisory personnel committed to the Project without the approval of the Owner. Such approval by the Owner will not be unreasonably withheld. At the direction of the Owner, the Construction Manager shall remove and replace any on-site member whose performance is reasonably determined by the Owner to be unacceptable. Construction Manager shall make such replacement immediately and without consideration of any additional costs for making the replacement. Owner shall have the right of approval of the qualifications of replacement personnel. Such approval will not be unreasonably withheld.

§ 2.3.2.11 The Construction Manager shall establish and maintain on-site organization and lines of authority for its personnel and shall provide this delineation to the Owner and Program Manager. The Construction Manager shall be the sole interface with all Subcontractors for the Owner and all of its agents and representatives. The Construction Manager shall identify and authorize an on-site management or supervisory staff member to negotiate change orders and contract modifications.

§ 2.3.2.12 The Construction Manager shall develop and maintain an orderly process of arranging the smooth and efficient execution of the Work among the Owner, Architect, Construction Manager, and Subcontractors.

§ 2.3.2.13 The Construction Manager shall work with the Architect to create and implement orderly procedures for submittal and transmittal of shop drawings and samples for action, and closely monitoring and expediting the submittal and approval of shop drawings and samples.

§ 2.3.1.14 The Construction Manager shall closely monitor, generally direct, and evaluate the performance of the Subcontractors and the availability of materials and supplies to ensure the Project is completed on schedule. When a Subcontractor fails to perform the responsibilities, requirements, or duties of a Subcontract, or a Subcontractor fails to meet a schedule, the Construction Manager shall take appropriate action to correct the situation.

§ 2.3.2.15 All of Construction Manager's books, accounting records, receipts, vouchers, and other documents relating to the Construction Manager's right to payment or to the Construction Manager's compliance with the Contract Documents shall be subject to audit and Owner shall have access to all such records at any reasonable time upon reasonable notice by the Owner during the performance of the Work and for a period of three (3) years after final acceptance of the Work. If upon an auditor's review, costs are overstated in excess of one point zero percent (1.0%) of the Final Contract Sum, the Construction Manager shall pay the Owner's costs for auditing Construction Manager's records. Construction Manager's obligation to pay the costs of audits where overstated shall not apply to any audits performed by the State under Nebraska law. In any case, the Final Contract Sum will be adjusted for any overstatements of costs. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Construction Manager's invoices and/or records shall be made within a reasonable amount of time (not to exceed ninety (90) days) from presentation of the Owner's findings to Construction Manager. The Construction Manager shall maintain all such records in a system and manner that is consistent with generally accepted accounting principles. The Construction Manager shall preserve all such records for a period of three (3) years after final acceptance of the Work.

§ 2.3.2.16 The Construction Manager shall provide the Owner, Program Manager, and Architect with written detailed cost estimates and supporting documentation, including cost estimates from Subcontractors, for proposed changes to the Work.

§ 2.3.2.17 The Construction Manager shall safeguard and protect the Project site, equipment at the site, and materials stored off-site against theft, vandalism, fire, and accidents.

§ 2.3.2.18 The Construction Manager shall use commercially reasonable efforts to maximize savings opportunities for cut and fill, reuse of remediated soils, fill brought in for utility relocation and final grading, and other potential coordination savings to achieve overall cost savings for the Owner.

Init.

§ 2.3.2.19 The Construction Manager shall establish, maintain and coordinate a safety program. A written copy of the safety program shall be provided to the Program Manager.

§ 2.4 Professional Services

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

§ 2.5 Hazardous Materials

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

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

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

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

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

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. However, the Construction Manager shall be responsible for immediately notifying Program Manager and Architect of any inaccuracy in the information furnished that the Construction Manager discovers.

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

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. Notwithstanding, prior to the commencement of any construction or excavation, the Construction Manager shall give notice to Diggers Hotline of Nebraska to locate and mark underground facilities on or adjoining the site and Project area. Furthermore, Construction Manager and each subcontractor shall be required to visit, inspect and learn as much about the site as may reasonably be learned from such inspection, but this provision shall not be deemed to require the Construction

Init.

Manager to perform borings, excavation, or destructive testing. Subject to Section 3.7.4 of AIA Document A201-2007, no change order or claim for additional cost and/or additional time will be allowed with respect to any existing conditions that are not shown on surveys or other documentation if such conditions are visible or could have been determined by the exercise of reasonable observation of the site and Project area.

§ 3.1.4.3 During the Construction Phase, the Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. Report(s) of the geotechnical engineer will be attached as an exhibit to this Agreement.

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

§ 3.2 Owner's Designated Representative

Paula Yancey of PC Sports, has been designated as the Owner's representative and is authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall have authority to make decisions on behalf of the Owner as are separately agreed to in writing between PC Sports as Program Manager and Owner. Program Manager shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority.

§ 3.2.1 **Legal Requirements.** The Owner shall provide all legal and accounting services with respect to Owner's obligations, including auditing services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. The Construction Manager shall provide all accounting services reasonably necessary to track and document project costs. In addition, the Construction Manager shall provide all insurance policies required of the Construction Manager in Article 8.

§ 3.3 Architect

The Owner has retained an Architect to provide services, duties and responsibilities that are necessary for the Preconstruction and Construction Phase services under this Agreement. Upon the Construction Manager's request, the Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

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

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2, the Construction Manager's compensation shall be:

A Fixed Lump Sum of Thirty-one Thousand One Hundred Seventy-three and 00/ths Dollars (\$31,173.00). Such lump sum amount includes all of the Construction Manager's costs of travel, local and long-distance telephone charges, computer and electronic copying and transmission expenses, delivery charges, Construction Manger's personnel expenses and overhead, and photocopying and reproductions (except for the cost of plan reproduction associated with Subcontractor procurement and determination of the Guaranteed Maximum Price).

§ 4.1.3 If the Preconstruction Phase services covered under this Agreement have not been completed within six (6) months from and after date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Intentionally Omitted.

Init.

§ 4.2 Payments

§ 4.2.1 Payment of the \$31,173.00 for Preconstruction Phase services shall be made in six (6) monthly payments of \$5,195.50.

§ 4.2.2 Each monthly payment is due and payable upon presentation of the Construction Manager's Application for Payment. Amounts unpaid thirty (30) days after the date of the Application for Payment shall bear interest at the rate entered below.

(Insert rate of monthly or annual interest agreed upon.)

1 % per month prorated for each day after which payment is due

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the General Conditions as defined in Section 5.1.6 plus the Cost of the Work as defined in Section 6.1.1 plus any amount allocable from Construction Manager's "Cost of Work Contingency to cover the net amount of any additional costs resulting from unforeseen conditions and events not evidenced at the time the parties executed the Guaranteed Maximum Price Amendment plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

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

To be Two and One-Tenth percent (2.1%) of the Cost of the Work included in the Guaranteed Maximum Price, to be fixed as a lump sum at the time of execution of the Guaranteed Maximum Price Amendment.

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

A fee of Two and One-Tenth percent (2.1%) of any net increase in the Cost of the Work will be added to change orders.

§ 5.1.3 Intentionally Omitted

§ 5.1.4 Intentionally Omitted.

§ 5.1.5 Intentionally Omitted.

§ 5.1.6 The General Conditions: Payment for the Costs of the Lump Sum General Conditions set forth in the Guaranteed Price Amendment shall be made in equal monthly installments beginning as of the date Construction Manager receives a Notice to Proceed and commences actual work at the jobsite to the scheduled date of Substantial Completion. The category of cost to be included in the Cost of the Lump Sum General Conditions are attached hereto marked as **Exhibit D** and incorporated herein by this reference.

(Table deleted)

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. Any costs or fees which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement or additional compensation from the Owner.

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

100% savings on Cost of Work and Cost of Work Contingency shall accrue to the Owner.

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

init.

§ 5.3 Changes in the Work

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

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

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 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 Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

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

§ 5.3.5 Intentionally Omitted.

§ 5.3.6 In no event will a change order be approved or will the contingency included in the Guaranteed Maximum Price as referenced in Section 2.2.4 be used for those circumstances or conditions marked "NO" in the chart below except as indicated therein.

CIRCUMSTANCE OR CONDITION		YES	NO
APPROVAL OF CHANGE ORDER OR USE OF CONTINGENCY			X
1	Correction of non-conforming work by a subcontractor except where approved by Owner.		X
2	Repair of damages to the work caused by a subcontractor except where approved by Owner.		X
3	Removal and relocation of incorrectly placed work by a subcontractor.		X
4	Correction of non-conforming work, repair of damages, or removal and replacement of defective or incorrectly placed work self performed by Construction Manager’s own forces.		X
5	Removal, relocation, and/or rerouting of work required as a result of a conflict in the location.	X	
6	An omission on the plans. (i.e. the mechanical plans show a piece of equipment requiring power but the electrical drawings don’t show a circuit to the equipment)	X	
7	A conflict between the requirements of the written specifications and a note or information shown on plans except when approved by the Owner.		X
8	Construction Manager’s failure to include an item of work or task in the GMP. Such failure by a subcontractor is not a cause for a change order or use of Construction Manager’s contingency.	X	
9	Cost of overtime to keep on schedule except where approved by Owner.		X
10	Cost for expediting the delivery of materials, equipment, or replacement parts except where approved by Owner.		X
11	Cost of Construction Manager’s supervision of subcontractors working extended hours or multiple shifts except where approved by Owner.		X
12	Cost of power or other utility services to portions of the work installed by Owner or during Owner’s setup of furniture and furnishings prior to substantial completion of the work.	X	
13	Utility system shutdowns or after hours/Sunday work associated with connections to		X

	public utility mainlines, it being presumed that all such connections located in public rights-of-way or mainline facilities serving other surrounding businesses will require connection during non-business hours.	
14	Uncovering of buried conditions shall be considered a change order to Owner.	X
15	A change of material or upgrade of material quality requested by the Owner shall be considered a change order to Owner.	X
16	Cost to correct or modify work required by the building inspector except where incorrectly shown on plans in which case the work shall be considered a change order to Owner.	X
17	Cost to remove and replace work not meeting the minimum requirements specified discovered from quality control testing.	X
18	Cost to repair finishes that are visually unacceptable to the architect.	X
19	Cost to repair damage caused by water intrusion or other weather related damage except where Construction Manager took reasonable precautions to protect the Work against such damage and as approved by Owner.	X
20	Where a subcontractor needs to be replaced due to non-performance, the cost increase to have another subcontractor take over the work.	X
21	Cost to repair damage to a subcontractor's completed work where the damage was caused by another subcontractor prior to acceptance of the work except where otherwise approved by Owner where Construction Manager is unable to reasonably assign the damage to subcontractors.	X
22	Adverse weather conditions beyond those reasonably anticipatable in the Lincoln area. Weather protection and other cold weather expenses are treated as Allowances.	X
23	Special event preparations such as Star City Parade, UNL Graduation, P Street Tenant demands.	X
24	Additional public protection measures beyond that reasonably anticipatable where required by Owner or Authority Having Jurisdiction.	X

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

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

§ 6.2 Labor Costs

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

§ 6.2.2 Intentionally Omitted.

§ 6.2.3 Intentionally Omitted.

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

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

§ 6.3 Subcontract Costs

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

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

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

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

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

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

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

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

| **§ 6.5.4** Intentionally Omitted.

| **§ 6.5.5** Intentionally Omitted.

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

§ 6.6 Miscellaneous Costs

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

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

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

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

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's

Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Intentionally Omitted.

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

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

§ 6.6.9 Intentionally Omitted.

§ 6.7 Other Costs and Emergencies

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

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

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

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

§ 6.8 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in the Cost of the Work in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Costs for services incurred during the Preconstruction Phase;
- .9 Cost for the General Conditions in excess of the fixed sum established pursuant to Section 5.1.6;
- .10 Any costs not specifically and expressly described in Costs of Work Costs To Be Reimbursed;
- .11 Unimproved costs which would cause the Guaranteed Maximum Price, if any, to be exceeded;
- .12 Except as provided in Section 5.3.6, Costs in repairing or correcting Work damaged or improperly executed by construction workers in the employ of the Construction Manager or any subcontractor; and

Init.

- .13 Costs in correcting defective or nonconforming work performed or supplied by a Subcontractor or material supplier.

§ 6.9 Discounts, Rebates and Refunds

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

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

§ 6.10 Related Party Transactions

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

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

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts. Construction Manager's records and accounts shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may, in the Owner's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; invoices and related payment documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other contractor records which may have a bearing on matters of interest to the Owner in connection with the contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of:

1. Construction Manager compliance with contract requirements,
2. Compliance with ethical practices,
3. Compliance with provisions for pricing change orders, invoices or claims submitted by the Construction Manager or any of his payees,
4. Cost of the General Conditions.

Init.

The Construction Manager shall require all payees (examples of payees include subcontractors and material suppliers) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between the Construction Manager and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Subcontractors' material suppliers, etc. The Construction Manager will cooperate fully and will cause all related parties and all of Construction Manager's subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to the Owner from time to time whenever requested, in an expeditious manner, any and all such information, materials and data.

The Owner's authorized representative or designee shall have reasonable access to the Construction Manager's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

The Construction Manager shall preserve these records for a period of three (3) years after final payment, or for such longer period as may be required by law.

§ 6.11.1 If any amount requested by Construction Manager in an approved pay application is overstated, the amount of the following pay application shall be reduced by the overpayment. If there are no remaining pay applications to be made, or if the amount of any overstatement exceeds the aggregate amount of any remaining pay applications, the Construction Manager shall reimburse the Owner for the difference between the overstatement and such remaining amounts of remaining pay applications.

§ 6.11.2 If upon auditor's review, costs are overstated in excess of one point zero percent (1.0%) of the Final Contract Sum, the Construction Manager shall pay the Owner's costs for auditing Construction Manager's records. Notwithstanding the above, Construction Manager may object to auditor's report, in which case the parties shall informally mediate any objections. Construction Manager's obligation to pay the costs of audits where overstated shall not apply to any audits performed by the State under Nebraska law. In any case, the Final Contract Sum will be adjusted for any overstatements of costs.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 7.1.3 Provided that an Application for Payment is received by the Architect and Program Manager not later than the Twenty-fifth (25th) day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the Twenty-fifth (25th) day of the following month. If an Application for Payment is received by the Architect after the Twenty-fifth (25th) day of the month, payment shall be made by the Owner not later than thirty (30) days after the Architect and Program Manager approve the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

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

Init.

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

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work which has actually been completed.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 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 Add the Construction Manager's Fee. The Construction Manager's Fee shall be paid in equal monthly payments over the duration of the project from commencement of the construction phase to Substantial Completion;
- .4 Subtract retainage of ten percent (10%) applied to the Cost of the Work exclusive of Construction Manager's General Conditions Cost, Cost of Work Performed pursuant to Section 2.3.2.1.1, and fee;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall 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.

§ 7.1.8 Except with the Owner's prior approval and except as provided in Section 7.1.7.8, payments to subcontractors shall be subject to retention of not less than ten percent (10%). The Owner and Construction Manager may agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) for the percentage of retainage held on Subcontracts to be less or for a portion of the retainage to be paid earlier where a substantial inequity to a Subcontractor may exist, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

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

§ 7.2 Final Payment

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

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

Init.

- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Owner, and such certificate shall not be unreasonably withheld.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

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

§ 7.2.3 If the Owner's auditors/accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request resolution 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 Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors/accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

(Paragraphs deleted)

ARTICLE 8 INDEMNIFICATION AND INSURANCE

§ 8.1 Indemnification of JPA

§ 8.1.1 Construction Manager agrees to defend, indemnify and hold harmless the JPA to the same extent and to the same terms and conditions as required by the Indemnification and Insurance Requirements for All West Haymarket Joint Public Agency Contracts, attached hereto as **Exhibit I**.

§ 8.2 Insurance

Construction Manager shall at all times during the term of this Contract purchase and maintain in place insurance coverage as required by the Indemnification and Insurance Requirements for All West Haymarket Joint Public Agency Contracts attached hereto as **Exhibit I**. Construction Manager agrees to provide all types of insurance required by the JPA. Construction Manager will furnish coverages against any and all perils required by the JPA.

(Table deleted)

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007.

§ 9.2 For any Claim subject to, but not resolved pursuant to Section 15.2 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

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

Litigation in a court of competent jurisdiction
(Paragraphs deleted)

§ 9.3 Initial Decision Maker

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

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

Paula Yancey
PC Sports
311 North 8th Street
Lincoln, NE 68508

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

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

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

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

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

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such

steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

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

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

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above.

§ 10.3 Suspension

§ 10.3.1 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 Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

§ 10.3.2 Notwithstanding anything to the contrary in the General Conditions of the Contract for Construction, Owner may, by giving written notice to the Construction Manager, suspend, delay, or interrupt the Work at any time for such period as the Owner may determine. In the event of such a delay that does not exceed thirty (30) days, all contracts and subcontracts will remain in full force and effect. In the event of a suspension in the Work, the Construction Manager shall be entitled to an equitable adjustment in the Guaranteed Maximum Price and the Contract Time to the extent Construction Manager can demonstrate that its costs, and the costs of its Subcontractors, have increased, and to the extent the time of performance has been delayed.

§ 10.4 Notwithstanding anything to the contrary in Article 10, the provisions of AIA Documents A201-2007 General Conditions of the Contract for Construction with respect to termination and suspension of this Agreement shall apply to all sections of this Article 10.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007, except as otherwise provided herein.

§ 11.2 Ownership and Use of Documents

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

§ 11.3 Governing Law

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

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement

Init.

without the written consent of the other, except that the Owner may assign this Agreement to the City of Lincoln, Nebraska ("City") if the City agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

§ 11.5.1 The Parties acknowledge that time is of the essence of this Agreement and that Owner will sustain damages as a result of Construction Manager's failure to achieve Substantial Completion by the dates indicated herein, which damages include, but are not limited to, loss of revenue, service charges, interest charges, breaches of rental contracts, utility charges, labor and employee expenses. Construction Manager does hereby agree, as a part consideration for the award of this Contract, to pay to the Owner, as liquidated damages and not as a penalty, the sums indicated herein for each calendar day beyond the dates set forth in the Agreement that the Construction Manager fails to achieve Substantial Completion of the Project as indicated herein and as may be extended in accordance with the Contract Documents. The indicated amount is fixed and agreed on by and between the Construction Manager and the Owner because of the impracticability and extreme difficulty of ascertaining the actual value of the damages, some of which are indefinite and not susceptible of easy proof, which the Owner will sustain by failure of the Construction Manager to achieve Substantial Completion of the Work by the date indicated. Said amount of damages is agreed to be a reasonable value which the Owner will sustain. The indicated amount shall be deducted from any monies due or that may become due to the Construction Manager and, if said monies are insufficient to cover said damages, then the Construction Manager shall pay the amount of the difference. The liquidated damages set forth in this Section 11.5.1 shall be the sole remedy of the Owner for delay by the Construction Manager in the performance of the Work.

For failure to achieve Substantial Completion of Precast Parking Deck Nos. 2 and 3 by the date established for Substantial Completion in the Guaranteed Maximum Price Amendment, as said date may be adjusted under the Contract Documents, the liquidated damages shall be \$1,000 per calendar day; provided, liquidated damages shall not exceed the amount of the Construction Manager's fee, in the aggregate.

§ 11.5.2 Independent Contractor. The Owner is interested only in the results produced by this Agreement. Construction Manager has sole and exclusive charge and control of the manner and means of performance. Construction Manager shall perform as an independent constructor and it is expressly understood and agreed that Construction Manager is not an employee of the Owner and is not entitled to any benefits to which Owner employees are entitled, including, but not limited to, overtime, retirement benefits, workmen's compensation benefits, sick leave or injury leave.

§ 11.5.3 Nebraska Law. This Agreement shall be construed and interpreted according to the laws of the State of Nebraska.

§ 11.5.4 Federal Immigration Verification.

§ 11.5.4.1 If Construction Manager is a business entity or corporation, then in accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, Construction Manager agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 USC 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. Construction Manager agrees to have each applicant for employment attest that he or she is a U.S. Citizen or qualified alien using the form attached hereto as Exhibit H. Construction Manager shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. 1324b. Construction Manager shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/verify.

§ 11.5.4.2 Public Benefits Eligibility Status Check. If Construction Manager is agreeing to determine eligibility for and provide a public benefit as public benefit is defined under Neb. Rev. Stat. §§ 4-108 through 4-114, Construction Manager agrees to have each applicant for public benefits attest that he or she is a U.S. citizen or qualified alien using the form attached hereto as Exhibit E. Construction Manager agrees to register and use the SAVE Program as required

Init.

under Neb. Rev. Stat. §§4-108 through 4-114. If the applicant indicates he or she is an alien, Construction Manager shall verify the applicant's lawful presence in the United States as provided under the SAVE Program and retain all documentation and provide copies of such documentation at the Owner's request. For information on the SAVE program, go to www.uscis.gov/SAVE.

§ 11.5.5 Davis-Bacon Act. Construction Manager agrees to comply with the Davis-Bacon Act. Construction Manager further agrees to comply with contract clauses set forth in 29 C.F.R. §5.5(a) which provide in part that Construction Manager shall:

- On a weekly basis pay all laborers and mechanics not less than the federal prevailing wages listed in the wage determinations included in the contract;
- Submit weekly certified payroll records to the JPA; and
- Post the applicable Davis-Bacon wage determinations with the Davis Bacon poster (WH-1321) on the job site in a prominent and accessible place where they can be easily seen by the Construction Manager's workers.

Construction Manager further agrees to pay the prevailing wages set forth in the Effective Wage Decision.. Construction Manager agrees to attach the Effective Wage Decision and include and/or incorporate the 29 C.F.R. §5.5(a) contract clauses in any subcontract in connection with the Work. Construction Manager shall also include a clause in any subcontract that the subcontractor shall attach the Effective Wage Decision and include and/or incorporate the 29 C.F.R. §5.5(a) contract clauses in any lower tier subcontract. Construction Manager shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. §5.5(a) and payment of prevailing wages in accordance with the Effective Wage Decision.

§ 11.5.6 Neb. Rev. Stat. § 77-1323 Certified Statement. Construction Manager, pursuant to the requirements of Neb. Rev. Stat. § 77-1323, has executed the Certified Statement attached hereto as part of **Exhibit F** certifying that all equipment to be used in performance of the Work, except that acquired since the assessment date has been assessed for the current year. Construction Manager understands and acknowledges that under Neb. Rev. Stat. §77-1324, any person, partnership, limited liability company, association, or corporation falsifying any statement required by Neb. Rev. Stat. § 77-1323 shall be guilty of a Class IV misdemeanor.

§ 11.5.7 Fair Employment Practices. Construction Manager and the Subcontractors shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to his hire, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex, disability, age, ancestry, marital status or national origin, pursuant to the requirements of Section 48-1122, Nebraska Reissue Revised Statutes and Section 48 as amended.

§ 11.5.8 Fair Labor Standards. Construction Manager and the Subcontractors shall maintain Fair Labor Standards in the performance of the Contract, as required by Nebraska Revised Statutes § 73-102 through 104 as amended.

§ 11.5.9 Unemployment Contribution. Construction Manager and the Subcontractors shall pay to the Unemployment Fund of the State of Nebraska unemployment contributions and interest due under the provisions of Section 48-601 through 48-671, Nebraska Reissue Revised Statutes of 1943, on wages paid to individuals employed in the performance of this Agreement.

§ 11.5.10 Living Wage. Construction Manager and the Subcontractors shall be subject to the Living Wage provisions of Lincoln Municipal Code Chapter 2.81 and all section and subsections therein.

ARTICLE 12 SCOPE OF THE AGREEMENT

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

Init.

§ 12.2 The Contract Documents listed in Section 1.1 comprise the Agreement. The following Exhibits are attached to this Agreement:

- Exhibit A - Guaranteed Maximum Price Amendment
- Exhibit B - AIA Document A201-2007
- Exhibit C - Subcontractor Procurement
- Exhibit D - General Conditions Cost-Category of Costs
- Exhibit E - Public Benefits Attest Form
- Exhibit F - Certified Statement
- Exhibit G - Staging Plan
- Exhibit H - Employee Attest Form
- Exhibit I - Indemnification and Insurance Requirements for All West Haymarket Joint Public Agency Contracts.

(Paragraphs deleted)

The parties recognize that the Contract Documents are not complete as of the date of execution of this Agreement. The Contract Documents shall be described with particularity in the Guaranteed Maximum Price Amendment.

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

CONSTRUCTION MANAGER:

**HAUSMANN CONSTRUCTION AND J.E. DUNN
CONSTRUCTION, A Joint Venture**

HAUSMANN CONSTRUCTION

By: _____

J.E. DUNN CONSTRUCTION

By: _____

(Table deleted)

OWNER:

WEST HAYMARKET JOINT PUBLIC AGENCY

By: _____
Chris Beutler, Chairperson of the West
Haymarket Joint Public Agency Board of
Representatives

Init.

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

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:44:22 on 04/24/2013.

PAGE 1

AGREEMENT made as of the day of in the year 2013

...

WEST HAYMARKET JOINT PUBLIC AGENCY ("JPA"),
a political subdivision and corporate body politic of the State of Nebraska
555 South 10th Street
Lincoln, NE 68508

...

HAUSMANN CONSTRUCTION AND
J.E. DUNN CONSTRUCTION, a Joint Venture

...

Parking Deck Nos. 2 and 3

...

The ~~Architect~~ Design Professionals (hereinafter referred to as "Architect"):

...

DAVIS DESIGN

...

Program Manager
Paula Yancey
PC Sports
140 North 8th Street
Suite 220
Lincoln, NE 68508
(402) 474-0155

PAGE 2

Joey Hausmann – Hausmann Construction
Bret Chapman – J.E. Dunn Construction

...

Additions and Deletions Report for AIA Document A133[™] – 2009 (formerly A121[™]CMc – 2003). Copyright © 1991, 2003 and 2009 by The American Institute of Architects. **All rights reserved.** **WARNING:** This AIA[®] Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA[®] Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 14:44:22 on 04/24/2013 under Order No.8680409353_1 which expires on 10/17/2013, and is not for resale.

User Notes:

(829506103)

(Name, address and other information)

RECITALS

A.

Owner desires to engage Construction Manager to perform Preconstruction Services and Construction Phase Services for the Project based upon the following understandings between the Owner and Construction Manager. Construction Manager understands and acknowledges that American Recovery and Reinvestment Act (ARRA) tax-favored bonds will fund all or a portion of the Project and therefore this Agreement is subject to Davis-Bacon Act; and that the Construction Manager is required to comply with 29 C.F.R. Parts 1, 3 and 5, and in particular with the contract clauses in 29 C.F.R. § 5.5(a). Construction Manager understands and acknowledges that the Construction Manager is required to pay Davis-Bacon Act prevailing wages in accordance with U.S. Department of Labor issued Building Construction General Wage Decision for Lancaster County, Nebraska in effect on the date the Guaranteed Maximum Price is accepted by the Owner "Effective Wage Decision." Construction Manager understands and acknowledges that the use of the term "Contracting Officer" in 29 C.F.R. Parts 1, 3 and 5 shall be deemed to refer to the Owner.

B.

Construction Manager possesses certain skills, experience, education and competency to perform the Construction Phase Services on behalf of the Owner and the Owner desires to engage Construction Manager for such services on the terms and conditions provided herein.

C.

Construction Manager hereby represents that Construction Manager is willing and able to perform the Construction Phase Services in accordance with this Agreement and the above understandings between Owner and Construction Manager. The Construction Manager hereby represents that Ray Rice shall be the Senior Superintendent; Gordon Hocker, Superintendent; and John Mackling, Superintendent for the Work during the Construction Phase Services.

In consideration of the above Recitals which are incorporated herein and made a part of this Agreement and the mutual obligations of the parties hereto, the Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

PAGE 3

The Contract Documents consist of this Agreement, including the documents referred to in herein. Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, whether or not attached hereto, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price ~~Amendment and revisions~~ Amendment, the form of which is attached hereto as Exhibit A, and revisions to the Drawings and Specifications prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

...

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and any other consultants or project representatives of the Owner and to exercise the Construction Manager's best skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and consistent with the Contract Document to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

...

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager. For the purposes of this Agreement, the term AIA Document A201-2007 shall mean the Modified AIA Document A201-2007 attached hereto as Exhibit B, which at times may be referred to in this Agreement as the "General Conditions."

PAGE 4

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. ~~The Subject to Section 2.1.1, the Owner and Construction Manager may agree, in consultation with the Architect, for Architect and Program Manager, to commence the Construction Phase to commence~~ prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

...

The Construction Manager shall jointly schedule and conduct/attend meetings with the ~~Architect~~ Architect, Program Manager, and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall ~~advise the Owner~~ consult with and provide recommendations to the Owner, Program Manager, and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the ~~Owner~~ Owner, Program Manager, and Architect on constructability; availability of materials and labor; time requirements ~~for procurement~~ for procurement (especially for long-lead items), installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

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

...

The Construction Manager shall provide recommendations to the Owner, Program Manager, and Architect with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction ~~Manager~~ Manager's recommendations shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

...

§ 2.1.5.1 ~~Based on~~ When the preliminary design and other design criteria have been prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, ~~volume~~ volume, input from competent subcontractors, or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Program Manager, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's and Program Manager's review and the Owner's approval. The Construction Manager shall inform the ~~Owner~~ Program Manager and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.5.3 All estimates shall be broken down by individual trades and cost components and include quantities and unit prices associated with the various identifiable elements of each trade. Estimates shall also include descriptions of limitations, scope, conditions, assumptions, quality standards, and other considerations used. Construction Manager shall provide such other information reasonably requested by the Owner to evaluate and understand the estimates provided.

§ 2.1.5.4 Subject to Construction Manager's right under the Contract Documents to an adjustment in the Guaranteed Maximum Price and the Substantial Completion Date, Owner reserves the right to change the project scope, the character and quality of building finishes, size, and structural, mechanical, electrical, or other building systems and finishes in order to bring project costs in alignment with the Owner's construction budget or to otherwise make adjustments as may be deemed necessary by the Owner to achieve Owner's desired purposes.

PAGE 5

The Construction Manager shall develop ~~bidders'~~ subcontractors' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's and Program Manager's review and the Owner's acceptance, a procurement schedule for items that must be ~~ordered~~ procured well in advance of construction. The Construction Manager shall expedite and coordinate the procurement, ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the

Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them. In advance of the establishment of the Final Guaranteed Maximum Price ("GMP"), the Construction Manager may with Owners approval procure Subcontracts for the following scopes of work and for any other scope of work agreed to by the Owner and the Construction Manager: mechanical electrical & plumbing (MEP) systems structural steel, precast concrete, cast-in-place concrete, exterior enclosure systems, and vertical transportation systems. Subcontracts shall be procured in accordance with Exhibit C. Any subcontracts that may be procured before commencement of the Construction Phase Services shall be contingent on such commencement.

...

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect-insure that its subcontractors are responsible for their respective performance specifications. The Construction Manager shall promptly report to the Architect, Program Manager, and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

...

§ 2.2

~~Guaranteed Maximum Price Proposal and Contract Time~~ Guaranteed Maximum Price Proposals and Contract Time

§ 2.2.1 ~~At a time to be~~ Guaranteed Maximum Price Proposal

At such time as the Drawings and Specifications for construction are deemed to be sixty percent (60%) complete or at such other time as mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal and within six weeks submit the Guaranteed Maximum Price Proposal to the Owner for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, the Construction Manager's "Cost of Work" contingency described in Section 2.2.4, the cost of the General Conditions, and the Construction Manager's Fee.

PAGE 6

§ 2.2.3 ~~The Construction Manager shall include with the Manager's~~ Guaranteed Maximum Price proposal shall include a written statement of its basis, which shall include including but not limited to the following:

.1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract; the Contract upon which the Guaranteed Maximum Price is based;

...

.3 ~~A statement of the~~ The proposed Guaranteed Maximum Price, including a detailed statement of the estimated amount of the Cost of the Work organized by trade categories or systems, allowances, contingency, systems and allowances, a detailed statement of the Cost of Work Contingency, and a detailed statement of the Cost of the General Conditions, and the Construction Manager's Fee;

...

.5 ~~A date by which the Owner must accept the Guaranteed Maximum Price.~~ time limit by which the Owner and Construction Manager must reach agreement upon the Guaranteed Maximum Price proposal (which shall not be less than 30 days).

§ 2.2.4 ~~In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered~~

~~reimbursable as the Cost of the Work but not included in a Change Order.~~ a Cost of Work Contingency for the Construction Manager's exclusive use. The term "Cost of Work Contingency" shall mean the line item included by the Construction Manager in the Guaranteed Maximum Price proposal that is available to cover the net amount of any additional costs resulting from unforeseen conditions and events not evidenced at the time that the parties execute the Guaranteed Maximum Price Amendment, to the extent that such conditions or events do not result in or constitute a change in the Work. Examples of such unforeseen conditions and events include, but are not limited to, the following:

- .1 Unanticipated cost overruns (including cost overruns resulting from errors or omissions in Scope of Work) on the Construction Manager's General Condition, self-performed work, and procurement of Subcontracts or other purchases of materials or labor costs;
- .2 Expediting or acceleration costs required to meet the date of Substantial Completion.

§ 2.2.4.1 The Cost of Work Contingency is not available for use by or for the benefit of the Owner or any other party, and shall not be used to cover: changes to the work; design revisions or problems; interference of the Owner/Architect or third parties for which Construction Manager is not responsible; matters related to land use proceedings; unknown conditions; allowance adjustments; unusually severe weather; or items for which Construction Manager is not responsible. The Cost of Work Contingency shall be managed by the Construction Manager.

§ 2.2.4.2 The Construction Manager shall provide Program Manager and Architect with a report on the status of the Cost of Work Contingency on a monthly basis throughout the duration of the Project after the Guaranteed Maximum Price has been established. In each such monthly report on the status of the Cost of Work Contingency, the Construction Manager shall identify (i) any amounts added to the Cost of Work Contingency which are a result of positive variances or savings in the components of the Cost of the Work, (ii) any amount allocable up to the date of the report which are a result of negative variances in components of the Cost of the Work, and (iii) any amounts reserved from the Cost of Work Contingency for anticipated negative variances in components of the Cost of the Work which have been identified but not fully evaluated. After being adjusted for items (i) through (iii) above, the remaining amount of the Cost of Work Contingency shall be designated as the unallocated portion of the Cost of Work Contingency.

§ 2.2.4.3 If, at the time Owner makes the final payment to the Construction Manager, there is a balance in the Cost of Work Contingency, it shall be retained by Owner.

PAGE 7

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following Owner's acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. In the event that the Owner and Construction Manager are not able to reach agreement upon a Guaranteed Maximum Price by the date specified in the Guaranteed Maximum Price proposal, Owner may (1) terminate this Agreement in accordance with the applicable provisions thereof, and make payment for all pre-construction services; or (2) incorporate alternate systems, equipment, finishes or other changes working in conjunction with Architect and Construction Manager to achieve reductions in the Guaranteed Maximum Price proposal. In the event of termination as provided above, Construction Manager grants to Owner the right to use any plans, details, estimates, cost breakdowns, or any other information provided by the Construction Manager as part of its preconstruction services for purposes related to the Project. Owner shall further retain the right to disclose such information to other parties or construction managers for their use provided that in such event the Owner shall indemnify and hold harmless the Construction Manager from and against any claims by any party arising out of the use of such information. In order to protect the Construction Manager's proprietary information, Owner agrees that except for proprietary information which would be mandatorily disclosed pursuant to a public records request, such information shall not be disclosed to other parties or construction managers without first receiving the approval of the Construction Manager, which approval shall not be unreasonably withheld. All submittals of documents and other information to the Owner shall clearly identify all matters which Construction Manager believes to be proprietary.

...

§ 2.2.8 The Owner shall authorize and cause the Architect to ~~provide the revisions to the~~ revise the Drawings and Specifications to ~~incorporate~~ reflect the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

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

...

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's ~~acceptance and Construction Manager's execution~~ of the Construction Manager's Guaranteed Maximum Price proposal Amendment, or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

...

§ 2.3.2.1 ~~Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel~~ Except for those portions of the Work performed by the Construction Manager's own personnel the Work or portions of the Work shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. ~~bids or proposals.~~ The Construction Manager shall obtain bids or proposals 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 Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection through the City of Lincoln's E-bid process or in accordance with the Subcontractor Procurement process set forth in Exhibit C.~~

§ 2.3.2.1.1 Proposals shall be requested from subcontractors with respect to portions of the Work that Construction Manager customarily performs with the Construction Manager's own personnel. Unless Construction Manager can demonstrate to the Owner that the Project will be materially affected otherwise where such proposals are less than the Construction Manager's proposal, the Construction Manager must either utilize the services of such subcontractor or reduce the Construction Manager's proposal to an amount equal to the lowest proposal received.

§ 2.3.2.1.2 Once Drawings and Specifications are completed to an appropriate level for any given bid or proposal package as determined by the Construction Manager and approved by the Owner, Construction Manager shall procure Subcontractors in accordance with Exhibit C, Subcontractor Procurement.

§ 2.3.2.1.3 Intentionally Omitted.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder or proposer (1) is ~~recommended to the Owner~~ selected by the Construction Manager, (2) ~~is~~ is, in the judgment of the Construction Manager, qualified to perform that portion of the Work, and (3) has submitted a bid or proposal that conforms to the requirements of the Contract Documents ~~without reservations or exceptions, but the Owner requires that another bid be accepted.~~ Documents, but the Owner does not approve the bidder or proposer selected, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid or proposal of the person or entity ~~recommended to the Owner~~ originally selected by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity ~~designated~~ subsequently selected by the Construction Manager and approved by the Owner.

PAGE 8

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

...

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of ~~A201-2007~~, A201-2007, including Owner's occupancy requirements. Construction Manager shall notify all Subcontractors of the Project Schedule.

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

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

§ 2.3.2.9 The Construction Manager shall administer the Subcontracts, generally direct the Work of all Subcontractors, and take steps to ensure that the Work is being performed by the Subcontractors in accordance with the requirements of the Subcontracts and the Contract Documents. The Construction Manager will keep the Owner informed of the progress of the Work and will guard the Owner against defects and deficiencies in the Work. The Construction Manager will schedule, coordinate, inspect, and generally direct the Work, activities, and progress of the Subcontractors. The Construction Manager will require that Subcontractors perform their work in a good and workmanlike manner so as to permit completion in accordance with the Drawings, Specifications, and Project schedule.

§ 2.3.2.10 The Construction Manager shall maintain competent full-time management and supervisory staff at or near the Project Site authorized to act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the Work and progress of the Subcontractors, and Construction Manager's on-site management and supervisory personnel performing portions of the Work. Construction Manager shall not change, remove or replace any of its supervisory personnel committed to the Project without the approval of the Owner. Such approval by the Owner will not be unreasonably withheld. At the direction of the Owner, the Construction Manager shall remove and replace any on-site member whose performance is reasonably determined by the Owner to be unacceptable. Construction Manager shall make such replacement immediately and without consideration of any additional costs for making the replacement. Owner shall have the right of approval of the qualifications of replacement personnel. Such approval will not be unreasonably withheld.

§ 2.3.2.11 The Construction Manager shall establish and maintain on-site organization and lines of authority for its personnel and shall provide this delineation to the Owner and Program Manager. The Construction Manager shall be the sole interface with all Subcontractors for the Owner and all of its agents and representatives. The Construction Manager shall identify and authorize an on-site management or supervisory staff member to negotiate change orders and contract modifications.

§ 2.3.2.12 The Construction Manager shall develop and maintain an orderly process of arranging the smooth and efficient execution of the Work among the Owner, Architect, Construction Manager, and Subcontractors.

§ 2.3.2.13 The Construction Manager shall work with the Architect to create and implement orderly procedures for submittal and transmittal of shop drawings and samples for action, and closely monitoring and expediting the submittal and approval of shop drawings and samples.

§ 2.3.1.14 The Construction Manager shall closely monitor, generally direct, and evaluate the performance of the Subcontractors and the availability of materials and supplies to ensure the Project is completed on schedule. When a

Subcontractor fails to perform the responsibilities, requirements, or duties of a Subcontract, or a Subcontractor fails to meet a schedule, the Construction Manager shall take appropriate action to correct the situation.

§ 2.3.2.15 All of Construction Manager's books, accounting records, receipts, vouchers, and other documents relating to the Construction Manager's right to payment or to the Construction Manager's compliance with the Contract Documents shall be subject to audit and Owner shall have access to all such records at any reasonable time upon reasonable notice by the Owner during the performance of the Work and for a period of three (3) years after final acceptance of the Work. If upon an auditor's review, costs are overstated in excess of one point zero percent (1.0%) of the Final Contract Sum, the Construction Manager shall pay the Owner's costs for auditing Construction Manager's records. Construction Manager's obligation to pay the costs of audits where overstated shall not apply to any audits performed by the State under Nebraska law. In any case, the Final Contract Sum will be adjusted for any overstatements of costs. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Construction Manager's invoices and/or records shall be made within a reasonable amount of time (not to exceed ninety (90) days) from presentation of the Owner's findings to Construction Manager. The Construction Manager shall maintain all such records in a system and manner that is consistent with generally accepted accounting principles. The Construction Manager shall preserve all such records for a period of three (3) years after final acceptance of the Work.

§ 2.3.2.16 The Construction Manager shall provide the Owner, Program Manager, and Architect with written detailed cost estimates and supporting documentation, including cost estimates from Subcontractors, for proposed changes to the Work.

§ 2.3.2.17 The Construction Manager shall safeguard and protect the Project site, equipment at the site, and materials stored off-site against theft, vandalism, fire, and accidents.

§ 2.3.2.18 The Construction Manager shall use commercially reasonable efforts to maximize savings opportunities for cut and fill, reuse of remediated soils, fill brought in for utility relocation and final grading, and other potential coordination savings to achieve overall cost savings for the Owner.

§ 2.3.2.19 The Construction Manager shall establish, maintain and coordinate a safety program. A written copy of the safety program shall be provided to the Program Manager.

PAGE 10

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. However, the Construction Manager shall be responsible for immediately notifying Program Manager and Architect of any inaccuracy in the information furnished that the Construction Manager discovers.

...

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. Notwithstanding, prior to the commencement of any construction or excavation, the Construction Manager shall give notice to Diggers Hotline of Nebraska to locate and mark underground facilities on or adjoining the site and Project area. Furthermore, Construction Manager and each subcontractor shall be required to visit, inspect and learn as much about the site as may reasonably be learned from such inspection, but this provision shall not be deemed to require the Construction Manager to perform borings, excavation, or destructive testing. Subject to Section 3.7.4 of AIA Document A201-2007,

no change order or claim for additional cost and/or additional time will be allowed with respect to any existing conditions that are not shown on surveys or other documentation if such conditions are visible or could have been determined by the exercise of reasonable observation of the site and Project area.

§ 3.1.4.3 ~~The~~ During the Construction Phase, the Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. Report(s) of the geotechnical engineer will be attached as an exhibit to this Agreement.

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

PAGE 11

~~The Owner shall identify a representative Paula Yancey of PC Sports, has been designated as the Owner's representative and is authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall have authority to make decisions on behalf of the Owner as are separately agreed to in writing between PC Sports as Program Manager and Owner. Program Manager shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.~~

§ 3.2.1 **Legal Requirements.** The Owner shall ~~furnish all legal, insurance and accounting services, including auditing services,~~ provide all legal and accounting services with respect to Owner's obligations, including auditing services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. The Construction Manager shall provide all accounting services reasonably necessary to track and document project costs. In addition, the Construction Manager shall provide all insurance policies required of the Construction Manager in Article 8.

...

The Owner ~~shall retain~~ has retained an Architect to provide services, duties and responsibilities ~~as described in AIA Document B103™ 2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager~~ that are necessary for the Preconstruction and Construction Phase services under this Agreement. ~~The~~ Upon the Construction Manager's request, the Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

...

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and ~~2.2~~ 2.2.2, the Construction Manager's compensation shall be:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

A Fixed Lump Sum of Thirty-one Thousand One Hundred Seventy-three and 00/ths Dollars (\$31,173.00). Such lump sum amount includes all of the Construction Manager's costs of travel, local and long-distance telephone charges, computer and electronic copying and transmission expenses, delivery charges, Construction Manger's personnel expenses and overhead, and photocopying and reproductions (except for the cost of plan reproduction associated with Subcontractor procurement and determination of the Guaranteed Maximum Price).

§ 4.1.3 If the Preconstruction Phase services covered ~~by~~ under this Agreement have not been completed within ~~()~~ months of the six (6) months from and after date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

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

PAGE 12

~~§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payment of the \$31,173.00 for Preconstruction Phase services shall be made in six (6) monthly payments of \$5,195.50.~~

~~§ 4.2.2 Payments are~~Each monthly payment is due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid () days after the invoice date~~Application for Payment. Amounts unpaid thirty (30) days after the date of the Application for Payment shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager below.~~

...

~~%~~1 % per month prorated for each day after which payment is due

...

~~§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds.~~funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the General Conditions as defined in Section 5.1.6 plus the Cost of the Work as defined in Section 6.1.1 plus any amount allocable from Construction Manager's "Cost of Work Contingency to cover the net amount of any additional costs resulting from unforeseen conditions and events not evidenced at the time the parties executed the Guaranteed Maximum Price Amendment plus the Construction Manager's Fee.

...

To be Two and One-Tenth percent (2.1%) of the Cost of the Work included in the Guaranteed Maximum Price, to be fixed as a lump sum at the time of execution of the Guaranteed Maximum Price Amendment.

...

A fee of Two and One-Tenth percent (2.1%) of any net increase in the Cost of the Work will be added to change orders.

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

Intentionally Omitted

~~§ 5.1.4 Rental rates for Construction Manager owned equipment shall not exceed percent (%) of the standard rate paid at the place of the Project.~~Intentionally Omitted.

~~§ 5.1.5 Unit prices, if any:~~Intentionally Omitted.

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

~~§ 5.1.6 The General Conditions:~~Payment for the Costs of the Lump Sum General Conditions set forth in the Guaranteed Price Amendment shall be made in equal monthly installments beginning as of the date Construction Manager receives a Notice to Proceed and commences actual work at the jobsite to the scheduled date of Substantial Completion. The category of cost to be included in the Cost of the Lump Sum General Conditions are attached hereto marked as Exhibit D and incorporated herein by this reference.

<u>Item</u>	<u>Units and Limitations</u>	<u>Price per Unit (\$0.00)</u>
-------------	------------------------------	--------------------------------

...

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. ~~To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price. Any costs or fees which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement or additional compensation from the Owner.~~

...

100% savings on Cost of Work and Cost of Work Contingency shall accrue to the Owner.

PAGE 13

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

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

...

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

§ 5.3.6 In no event will a change order be approved or will the contingency included in the Guaranteed Maximum Price as referenced in Section 2.2.4 be used for those circumstances or conditions marked "NO" in the chart below except as indicated therein.

<u>CIRCUMSTANCE OR CONDITION</u>	<u>YES</u>	<u>NO</u>
<u>APPROVAL OF CHANGE ORDER OR USE OF CONTINGENCY</u>		<u>X</u>
<u>1 Correction of non-conforming work by a subcontractor except where approved by Owner.</u>		<u>X</u>
<u>2 Repair of damages to the work caused by a subcontractor except where approved by Owner.</u>		<u>X</u>
<u>3 Removal and relocation of incorrectly placed work by a subcontractor.</u>		<u>X</u>
<u>4 Correction of non-conforming work, repair of damages, or removal and replacement of defective or incorrectly placed work self performed by Construction Manager's own forces.</u>		<u>X</u>
<u>5 Removal, relocation, and/or rerouting of work required as a result of a conflict in the location.</u>	<u>X</u>	
<u>6 An omission on the plans. (i.e. the mechanical plans show a piece of equipment requiring power but the electrical drawings don't show a circuit to the equipment)</u>	<u>X</u>	
<u>7 A conflict between the requirements of the written specifications and a note or information shown on plans except when approved by the Owner.</u>		<u>X</u>
<u>8 Construction Manager's failure to include an item of work or task in the GMP. Such failure by a subcontractor is not a cause for a change order or use of Construction Manager's contingency.</u>	<u>X</u>	
<u>9 Cost of overtime to keep on schedule except where approved by Owner.</u>		<u>X</u>

10	<u>Cost for expediting the delivery of materials, equipment, or replacement parts except where approved by Owner.</u>	X
11	<u>Cost of Construction Manager's supervision of subcontractors working extended hours or multiple shifts except where approved by Owner.</u>	X
12	<u>Cost of power or other utility services to portions of the work installed by Owner or during Owner's setup of furniture and furnishings prior to substantial completion of the work.</u>	X
13	<u>Utility system shutdowns or after hours/Sunday work associated with connections to public utility mainlines, it being presumed that all such connections located in public rights-of-way or mainline facilities serving other surrounding businesses will require connection during non-business hours.</u>	X
14	<u>Uncovering of buried conditions shall be considered a change order to Owner.</u>	X
15	<u>A change of material or upgrade of material quality requested by the Owner shall be considered a change order to Owner.</u>	X
16	<u>Cost to correct or modify work required by the building inspector except where incorrectly shown on plans in which case the work shall be considered a change order to Owner.</u>	X
17	<u>Cost to remove and replace work not meeting the minimum requirements specified discovered from quality control testing.</u>	X
18	<u>Cost to repair finishes that are visually unacceptable to the architect.</u>	X
19	<u>Cost to repair damage caused by water intrusion or other weather related damage except where Construction Manager took reasonable precautions to protect the Work against such damage and as approved by Owner.</u>	X
20	<u>Where a subcontractor needs to be replaced due to non-performance, the cost increase to have another subcontractor take over the work.</u>	X
21	<u>Cost to repair damage to a subcontractor's completed work where the damage was caused by another subcontractor prior to acceptance of the work except where otherwise approved by Owner where Construction Manager is unable to reasonably assign the damage to subcontractors.</u>	X
22	<u>Adverse weather conditions beyond those reasonably anticipatable in the Lincoln area. Weather protection and other cold weather expenses are treated as Allowances.</u>	X
23	<u>Special event preparations such as Star City Parade, UNL Graduation, P Street Tenant demands.</u>	X
24	<u>Additional public protection measures beyond that reasonably anticipatable where required by Owner or Authority Having Jurisdiction.</u>	X

PAGE 14

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

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

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

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

PAGE 15

~~§ 6.5.4 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. Intentionally Omitted.~~

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

PAGE 16

~~§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval. Intentionally Omitted.~~

...

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

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

...

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

...

- ~~.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;~~

...

- ~~.3 Overhead and general expenses, except as may be expressly included in the Cost of the Work in Sections 6.1 to 6.7;~~

...

- ~~.5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract; liable;~~

...

- ~~.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and~~
- ~~.8 Costs for services incurred during the Preconstruction Phase. Phase;~~
- ~~.9 Cost for the General Conditions in excess of the fixed sum established pursuant to Section 5.1.6;~~
- ~~.10 Any costs not specifically and expressly described in Costs of Work Costs To Be Reimbursed;~~
- ~~.11 Unimproved costs which would cause the Guaranteed Maximum Price, if any, to be exceeded;~~

Additions and Deletions Report for AIA Document A133™ – 2009 (formerly A121™CMc – 2003). Copyright © 1991, 2003 and 2009 by The American Institute of Architects. All rights reserved. **WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 14:44:22 on 04/24/2013 under Order No.8680409353_1 which expires on 10/17/2013, and is not for resale.

User Notes:

(829506103)

- .12 Except as provided in Section 5.3.6, Costs in repairing or correcting Work damaged or improperly executed by construction workers in the employ of the Construction Manager or any subcontractor; and
.13 Costs in correcting defective or nonconforming work performed or supplied by a Subcontractor or material supplier.

PAGE 17

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, ~~including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract.~~ Construction Manager's records and accounts shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may, in the Owner's judgment, have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; invoices and related payment documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other contractor records which may have a bearing on matters of interest to the Owner in connection with the contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of:

1. Construction Manager compliance with contract requirements,
2. Compliance with ethical practices,
3. Compliance with provisions for pricing change orders, invoices or claims submitted by the Construction Manager or any of his payees,
4. Cost of the General Conditions.

The Construction Manager shall require all payees (examples of payees include subcontractors and material suppliers) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between the Construction Manager and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Subcontractors' material suppliers, etc. The Construction Manager will cooperate fully and will cause all related parties and all of Construction Manager's subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to the Owner from time to time whenever requested, in an expeditious manner, any and all such information, materials and data.

The Owner's authorized representative or designee shall have reasonable access to the Construction Manager's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

The Construction Manager shall preserve these records for a period of three (3) years after final payment, or for such longer period as may be required by law.

§ 6.11.1 If any amount requested by Construction Manager in an approved pay application is overstated, the amount of the following pay application shall be reduced by the overpayment. If there are no remaining pay applications to be made, or if the amount of any overstatement exceeds the aggregate amount of any remaining pay applications, the Construction Manager shall reimburse the Owner for the difference between the overstatement and such remaining amounts of remaining pay applications.

§ 6.11.2 If upon auditor's review, costs are overstated in excess of one point zero percent (1.0%) of the Final Contract Sum, the Construction Manager shall pay the Owner's costs for auditing Construction Manager's records. Notwithstanding the above, Construction Manager may object to auditor's report, in which case the parties shall informally mediate any objections. Construction Manager's obligation to pay the costs of audits where overstated shall not apply to any audits performed by the State under Nebraska law. In any case, the Final Contract Sum will be adjusted for any overstatements of costs.

PAGE 18

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

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

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

...

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

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

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

PAGE 19

- .2 ~~Add that~~ 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 Add the Construction Manager's Fee, ~~less retainage of — percent (— %).~~ Fee. The Construction Manager's Fee shall be ~~computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the~~

~~Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion; paid in equal monthly payments over the duration of the project from commencement of the construction phase to Substantial Completion;~~

- .4 ~~Subtract retainage of percent (—%) from that portion of the Work that the Construction Manager self-performs; ten percent (10%) applied to the Cost of the Work exclusive of Construction Manager's General Conditions Cost, Cost of Work Performed pursuant to Section 2.3.2.1.1, and fee;~~

...

- .6 ~~Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or shortfall resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~

...

§ 7.1.8 The Owner and Construction Manager shall Except with the Owner's prior approval and except as provided in Section 7.1.7.8, payments to subcontractors shall be subject to retention of not less than ten percent (10%). The Owner and Construction Manager may agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) for the percentage of retainage held on Subcontracts, Subcontracts to be less or for a portion of the retainage to be paid earlier where a substantial inequity to a Subcontractor may exist., and the Construction Manager shall execute subcontracts in accordance with those agreements.

PAGE 20

- .3 ~~a final Certificate for Payment has been issued by the Architect. Owner, and such certificate shall not be unreasonably withheld.~~

...

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

§ 7.2.3 If the Owner's ~~auditors~~ auditors/accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request ~~mediation~~ resolution 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 Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's ~~auditors~~ auditors/accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

...

~~ARTICLE 8 — INSURANCE AND BONDS~~

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

ARTICLE 8 INDEMNIFICATION AND INSURANCE

§ 8.1 Indemnification of JPA

§ 8.1.1 Construction Manager agrees to defend, indemnify and hold harmless the JPA to the same extent and to the same terms and conditions as required by the Indemnification and Insurance Requirements for All West Haymarket Joint Public Agency Contracts, attached hereto as Exhibit I.

§ 8.2 Insurance

Construction Manager shall at all times during the term of this Contract purchase and maintain in place insurance coverage as required by the Indemnification and Insurance Requirements for All West Haymarket Joint Public Agency Contracts attached hereto as Exhibit I. Construction Manager agrees to provide all types of insurance required by the JPA. Construction Manager will furnish coverages against any and all perils required by the JPA.

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

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

~~§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3-15.2 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:~~

PAGE 21

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

1 Litigation in a court of competent jurisdiction

~~Other: (Specify)~~

...

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

...

Paula Yancey
PC Sports
311 North 8th Street
Lincoln, NE 68508

PAGE 22

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed ~~Maximum~~-Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the

amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

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

...

~~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 Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.~~ **§ 10.3.1** 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 Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

§ 10.3.2 Notwithstanding anything to the contrary in the General Conditions of the Contract for Construction, Owner may, by giving written notice to the Construction Manager, suspend, delay, or interrupt the Work at any time for such period as the Owner may determine. In the event of such a delay that does not exceed thirty (30) days, all contracts and subcontracts will remain in full force and effect. In the event of a suspension in the Work, the Construction Manager shall be entitled to an equitable adjustment in the Guaranteed Maximum Price and the Contract Time to the extent Construction Manager can demonstrate that its costs, and the costs of its Subcontractors, have increased, and to the extent the time of performance has been delayed.

§ 10.4 Notwithstanding anything to the contrary in Article 10, the provisions of AIA Documents A201–2007 General Conditions of the Contract for Construction with respect to termination and suspension of this Agreement shall apply to all sections of this Article 10.

...

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007, A201–2007, except as otherwise provided herein.

...

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender ~~the City of Lincoln, Nebraska ("City") if the City~~ agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, 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.

PAGE 23

§ 11.5.1 The Parties acknowledge that time is of the essence of this Agreement and that Owner will sustain damages as a result of Construction Manager's failure to achieve Substantial Completion by the dates indicated herein, which damages include, but are not limited to, loss of revenue, service charges, interest charges, breaches of rental contracts, utility charges, labor and employee expenses. Construction Manager does hereby agree, as a part consideration for the award of this Contract, to pay to the Owner, as liquidated damages and not as a penalty, the sums indicated herein for each calendar day beyond the dates set forth in the Agreement that the Construction Manager fails to achieve Substantial Completion of the Project as indicated herein and as may be extended in accordance with the Contract Documents. The indicated amount is fixed and agreed on by and between the Construction Manager and the Owner

because of the impracticability and extreme difficulty of ascertaining the actual value of the damages, some of which are indefinite and not susceptible of easy proof, which the Owner will sustain by failure of the Construction Manager to achieve Substantial Completion of the Work by the date indicated. Said amount of damages is agreed to be a reasonable value which the Owner will sustain. The indicated amount shall be deducted from any monies due or that may become due to the Construction Manager and, if said monies are insufficient to cover said damages, then the Construction Manager shall pay the amount of the difference. The liquidated damages set forth in this Section 11.5.1 shall be the sole remedy of the Owner for delay by the Construction Manager in the performance of the Work.

For failure to achieve Substantial Completion of Precast Parking Deck Nos. 2 and 3 by the date established for Substantial Completion in the Guaranteed Maximum Price Amendment, as said date may be adjusted under the Contract Documents, the liquidated damages shall be \$1,000 per calendar day; provided, liquidated damages shall not exceed the amount of the Construction Manager's fee, in the aggregate.

§ 11.5.2 Independent Contractor. The Owner is interested only in the results produced by this Agreement. Construction Manager has sole and exclusive charge and control of the manner and means of performance. Construction Manager shall perform as an independent constructor and it is expressly understood and agreed that Construction Manager is not an employee of the Owner and is not entitled to any benefits to which Owner employees are entitled, including, but not limited to, overtime, retirement benefits, workmen's compensation benefits, sick leave or injury leave.

§ 11.5.3 Nebraska Law. This Agreement shall be construed and interpreted according to the laws of the State of Nebraska.

§ 11.5.4 Federal Immigration Verification.

§ 11.5.4.1 If Construction Manager is a business entity or corporation, then in accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, Construction Manager agrees to register with and use a federal immigration verification system, to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 USC 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. Construction Manager agrees to have each applicant for employment attest that he or she is a U.S. Citizen or qualified alien using the form attached hereto as Exhibit H. Construction Manager shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. 1324b. Construction Manager shall require any subcontractor to comply with the provisions of this section. For information on the E-Verify Program, go to www.uscis.gov/everify.

§ 11.5.4.2 Public Benefits Eligibility Status Check. If Construction Manager is agreeing to determine eligibility for and provide a public benefit as public benefit is defined under Neb. Rev. Stat. §§ 4-108 through 4-114, Construction Manager agrees to have each applicant for public benefits attest that he or she is a U.S. citizen or qualified alien using the form attached hereto as Exhibit E. Construction Manager agrees to register and use the SAVE Program as required under Neb. Rev. Stat. §§4-108 through 4-114. If the applicant indicates he or she is an alien, Construction Manager shall verify the applicant's lawful presence in the United States as provided under the SAVE Program and retain all documentation and provide copies of such documentation at the Owner's request. For information on the SAVE program, go to www.uscis.gov/SAVE.

§ 11.5.5 Davis-Bacon Act. Construction Manager agrees to comply with the Davis-Bacon Act. Construction Manager further agrees to comply with contract clauses set forth in 29 C.F.R. §5.5(a) which provide in part that Construction Manager shall:

- On a weekly basis pay all laborers and mechanics not less than the federal prevailing wages listed in the wage determinations included in the contract;
- Submit weekly certified payroll records to the JPA; and
- Post the applicable Davis-Bacon wage determinations with the Davis Bacon poster (WH-1321) on the job site in a prominent and accessible place where they can be easily seen by the Construction Manager's workers.

Construction Manager further agrees to pay the prevailing wages set forth in the Effective Wage Decision..

Construction Manager agrees to attach the Effective Wage Decision and include and/or incorporate the 29 C.F.R. §5.5(a) contract clauses in any subcontract in connection with the Work. Construction Manager shall also include a clause in any subcontract that the subcontractor shall attach the Effective Wage Decision and include and/or incorporate the 29 C.F.R. §5.5(a) contract clauses in any lower tier subcontract. Construction Manager shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. §5.5(a) and payment of prevailing wages in accordance with the Effective Wage Decision.

§ 11.5.6 Neb. Rev. Stat. § 77-1323 Certified Statement. Construction Manager, pursuant to the requirements of Neb. Rev. Stat. § 77-1323, has executed the Certified Statement attached hereto as part of Exhibit F certifying that all equipment to be used in performance of the Work, except that acquired since the assessment date has been assessed for the current year. Construction Manager understands and acknowledges that under Neb. Rev. Stat. §77-1324, any person, partnership, limited liability company, association, or corporation falsifying any statement required by Neb. Rev. Stat. § 77-1323 shall be guilty of a Class IV misdemeanor.

§ 11.5.7 Fair Employment Practices. Construction Manager and the Subcontractors shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to his hire, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex, disability, age, ancestry, marital status or national origin, pursuant to the requirements of Section 48-1122, Nebraska Reissue Revised Statutes and Section 48 as amended.

§ 11.5.8 Fair Labor Standards. Construction Manager and the Subcontractors shall maintain Fair Labor Standards in the performance of the Contract, as required by Nebraska Revised Statutes § 73-102 through 104 as amended.

§ 11.5.9 Unemployment Contribution. Construction Manager and the Subcontractors shall pay to the Unemployment Fund of the State of Nebraska unemployment contributions and interest due under the provisions of Section 48-601 through 48-671, Nebraska Reissue Revised Statutes of 1943, on wages paid to individuals employed in the performance of this Agreement.

§ 11.5.10 Living Wage. Construction Manager and the Subcontractors shall be subject to the Living Wage provisions of Lincoln Municipal Code Chapter 2.81 and all section and subsections therein.

PAGE 25

§ 12.2 The following documents comprise the Contract Documents listed in Section 1.1 comprise the Agreement. The following Exhibits are attached to this Agreement:

1 AIA Document A133 - 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

Exhibit A - Guaranteed Maximum Price Amendment

2 AIA Document A201 - 2007, General Conditions of the Contract for Construction Exhibit B - AIA Document A201-2007

Exhibit C - Subcontractor Procurement

Exhibit D - General Conditions Cost-Category of Costs

3 AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed, or the following: Exhibit E - Public Benefits Attest Form

Exhibit F - Certified Statement

Exhibit G - Staging Plan

Exhibit H - Employee Attest Form

4 AIA Document E202™ 2008, Building Information Modeling Protocol Exhibit, if completed, or the following: Exhibit I - Indemnification and Insurance Requirements for All West Haymarket Joint Public Agency Contracts.

5 Other documents:

(List other documents, if any, forming part of the Agreement.)

The parties recognize that the Contract Documents are not complete as of the date of execution of this Agreement. The Contract Documents shall be described with particularity in the Guaranteed Maximum Price Amendment.

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

CONSTRUCTION MANAGER: HAUSMANN CONSTRUCTION AND J.E. DUNN CONSTRUCTION, A Joint Venture

HAUSMANN CONSTRUCTION

By: _____

J.E. DUNN CONSTRUCTION

By: _____

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

(Printed name and title)

OWNER: WEST HAYMARKET JOINT PUBLIC AGENCY

By: _____

Chris Beutler, Chairperson of the West Haymarket Joint Public Agency Board of Representatives

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Rick Peo , 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 14:44:22 on 04/24/2013 under Order No. 8680409353_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

AIA[®] Document A133[™] – 2009 Exhibit A

Guaranteed Maximum Price Amendment

for the following PROJECT:

(Name and address or location)

Parking Deck Nos. 2 and 3

THE OWNER:

(Name, legal status and address)

WEST HAYMARKET JOINT PUBLIC AGENCY ("JPA"),
a political subdivision and corporate body politic of the State of Nebraska
555 South 10th Street
Lincoln, NE 68508

THE CONSTRUCTION MANAGER:

(Name, legal status and address)

HAUSMANN CONSTRUCTION AND
J.E. DUNN CONSTRUCTION, a Joint Venture

ARTICLE A.1

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work plus the Cost of the General Conditions, as those terms are defined in this Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Attached hereto as Attachment A is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.

§ A.1.1.3 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 the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.) NONE

ADDITIONS AND DELETIONS:

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

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

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

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any: **See Attachment A.**
(Identify allowance and state exclusions, if any, from the allowance price.)

(Table deleted)

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based: **See Attachment A.**

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract: **See Attachment A.**

(Table deleted)

§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications: **See Attachment A.**
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)

(Table deleted)

§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings: **See Attachment A.**
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)

(Table deleted)

§ A.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

See Attachment A.

ARTICLE A.2

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment:

" _____, 2014 "

CONSTRUCTION MANAGER:

**HAUSMANN CONSTRUCTION AND J.E. DUNN
CONSTRUCTION, A Joint Venture**

HAUSMANN CONSTRUCTION

By: _____

J.E. DUNN CONSTRUCTION

By: _____

OWNER:

WEST HAYMARKET JOINT PUBLIC AGENCY

(Table deleted)

By: _____

Chris Beutler, Chairperson of the West
Haymarket Joint Public Agency Board of
Representatives

Additions and Deletions Report for AIA® Document A133™ – 2009 Exhibit A

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 14:46:54 on 04/24/2013.

PAGE 1

Parking Deck Nos. 2 and 3

...

WEST HAYMARKET JOINT PUBLIC AGENCY ("JPA"),
a political subdivision and corporate body politic of the State of Nebraska
555 South 10th Street
Lincoln, NE 68508

...

HAUSMANN CONSTRUCTION AND
J.E. DUNN CONSTRUCTION, a Joint Venture

...

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the ~~Work, as that term is defined in Article 6 of~~ Work plus the Cost of the General Conditions, as those terms are defined in this Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed (\$—), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 ~~Itemized Statement of the Guaranteed Maximum Price. Provided below Attached hereto as Attachment A is an~~ itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.
~~(Provide below or reference an attachment.)~~

...

(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.) NONE

PAGE 2

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any: See Attachment A.

...

Additions and Deletions Report for AIA Document A133™ – 2009 Exhibit A. Copyright © 1991, 2003 and 2009 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 14:46:54 on 04/24/2013 under Order No.8680409353_1 which expires on 10/17/2013, and is not for resale.

User Notes:

(843602537)

Item **Price (\$0.00)**

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based: See Attachment A.

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract: See Attachment A.

Document	Title	Date	Pages
-----------------	--------------	-------------	--------------

§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications: See Attachment A.

...

Section	Title	Date	Pages
----------------	--------------	-------------	--------------

§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings: See Attachment A.

...

Number	Title	Date
---------------	--------------	-------------

...

See Attachment A.

...

" _____, 2014 "

CONSTRUCTION MANAGER: HAUSMANN CONSTRUCTION AND J.E. DUNN
CONSTRUCTION, A Joint Venture

HAUSMANN CONSTRUCTION

By: _____

J.E. DUNN CONSTRUCTION

By: _____

OWNER: WEST HAYMARKET JOINT PUBLIC AGENCY

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

(Printed name and title)

By: _____
Chris Beutler, Chairperson of the West
Haymarket Joint Public Agency Board of
Representatives

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Rick Peo , 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 14:46:54 on 04/24/2013 under Order No. 8680409353_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009 Exhibit A, Guaranteed Maximum Price Amendment, 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)

AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

EXHIBIT B

for the following PROJECT:

(Name and location or address)

Parking Deck Nos. 2 and 3

THE OWNER:

(Name, legal status and address)

West Haymarket Joint Public Agency
555 South 10th Street
Lincoln, NE 68508

THE DESIGN PROFESSIONAL (hereinafter "ARCHITECT"):

(Name, legal status and address)

DAVIS DESIGN

THE PROGRAM MANAGER:

(Name, legal status and address)

PC Sports

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.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS

- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

INDEX

(Topics and numbers in bold are section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

Access to Work

3.16, 6.2.1, **12.1**

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.4.2, 13.7, 14.1, 15.2

Addenda

1.1.1, 3.11.1

Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.5**

Additional Insured

11.1.4

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7, 9.10, 11.1.3

Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10, 4.2.7, 9.3.2, 13.5.1

Arbitration

8.3.1, 11.3.10, 13.1.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.4.1, 3.12.7, 4.1, 4.2, 5.2, 6.3, 7.1.2, 7.3.7, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2

Architect's Additional Services and Expenses

2.4.1, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.4.1, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.5.2, 15.2, 15.3

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

9.7, 11.3.9, 11.3.10, 13.1.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.4.1

Boiler and Machinery Insurance

11.3.2

Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

Building Permit

3.7.1

Init.

AIA Document A201™ – 2007. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 14:55:17 on 04/24/2013 under Order No.8680409353_1 which expires on 10/17/2013, and is not for resale.

User Notes:

(1684105013)

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

Certificates of Inspection, Testing or Approval
13.5.4

Certificates of Insurance

9.10.2, 11.1.3

Change Orders

1.1.1, 2.4.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

2.2.1, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 7.4.1, 8.3.1, 9.3.1.1, 11.3.9

Claims, Definition of

15.1.1

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4

Claims and Timely Assertion of Claims

15.4.1

Claims for Additional Cost

3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, 15.1.4

Claims for Additional Time

3.2.4, 3.7.46.1.1, 8.3.2, 10.3.2, 15.1.5

Concealed or Unknown Conditions, Claims for
3.7.4

Claims for Damages

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Claims Subject to Arbitration

15.3.1, 15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1, 15.1.4

Commencement of the Work, Definition of

8.1.2

Communications Facilitating Contract

Administration

3.9.1, 4.2.4

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2

COMPLETION, PAYMENTS AND

9

Completion, Substantial

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7

Compliance with Laws

1.6.1, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2

Consolidation or Joinder

15.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, 6

Construction Change Directive, Definition of
7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.3

Contract, Definition of

1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 11.3.9, 14

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

Contract Documents, Copies Furnished and Use of
1.5.2, 2.2.5, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5

Contract Sum, Definition of

9.1

Contract Time

3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, 6.1.2

Contractor's Construction Schedules

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contractor's Employees

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1,

Contractor's Liability Insurance

11.1

Contractor's Relationship with Separate Contractors and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8

Contractor's Relationship with the Architect

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work

3.3.2, 3.18, 5.3.1, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

9.7

Contractor's Right to Terminate the Contract

14.1, 15.1.6

Contractor's Submittals

3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction

Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3

Contractual Liability Insurance

11.1.1.8, 11.2

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.2.5, 3.11

Copyrights

1.5, 3.17

Correction of Work

2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2

Correlation and Intent of the Contract Documents

1.2

Cost, Definition of

7.3.7

Costs

2.4.1, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

Cutting and Patching

3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4.1, 11.3.1, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Damages for Delay

6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2

Date of Commencement of the Work, Definition of

8.1.2

Date of Substantial Completion, Definition of

8.1.3

Day, Definition of

8.1.4

Decisions of the Architect

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification

9.4.1, 9.5, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of

2.3.1, 2.4.1, 3.5, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Definitions

1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1

Delays and Extensions of Time

3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

Disputes

6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site

3.11

Drawings, Definition of

1.1.5

Drawings and Specifications, Use and Ownership of

3.11

Effective Date of Insurance

8.2.2, 11.1.2

Emergencies

10.4, 14.1.1.2, 15.1.4

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Equipment, Labor, Materials or

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13.1, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work
 1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5,
 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2,
 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3
 Extensions of Time
 3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,
 10.4.1, 14.3, 15.1.5, 15.2.5
Failure of Payment
 9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
 Faulty Work
 (See Defective or Nonconforming Work)
Final Completion and Final Payment
 4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5,
 12.3.1, 14.2.4, 14.4.3
 Financial Arrangements, Owner's
 2.2.1, 13.2.2, 14.1.1.4
 Fire and Extended Coverage Insurance
 11.3.1.1
GENERAL PROVISIONS
1
Governing Law
13.1
 Guarantees (See Warranty)
Hazardous Materials
 10.2.4, 10.3
 Identification of Subcontractors and Suppliers
 5.2.1
Indemnification
 3.17, 3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2,
 11.3.7
Information and Services Required of the Owner
 2.1.2, 2.2, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5,
 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1,
 13.5.2, 14.1.1.4, 14.1.4, 15.1.3
Initial Decision
15.2
Initial Decision Maker, Definition of
 1.1.8
 Initial Decision Maker, Decisions
 14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
 Initial Decision Maker, Extent of Authority
 14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4,
 15.2.5
Injury or Damage to Person or Property
 10.2.8, 10.4.1
 Inspections
 3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
 9.9.2, 9.10.1, 12.2.1, 13.5
 Instructions to Bidders
 1.1.1
 Instructions to the Contractor
 3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2
Instruments of Service, Definition of
1.1.7
 Insurance
 3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 11

Insurance, Boiler and Machinery
11.3.2
Insurance, Contractor's Liability
11.1
 Insurance, Effective Date of
 8.2.2, 11.1.2
Insurance, Loss of Use
11.3.3
Insurance, Owner's Liability
11.2
Insurance, Property
 10.2.5, 11.3
 Insurance, Stored Materials
 9.3.2
INSURANCE AND BONDS
11
 Insurance Companies, Consent to Partial Occupancy
 9.9.1
 Intent of the Contract Documents
 1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4
Interest
13.6
Interpretation
 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1
 Interpretations, Written
 4.2.11, 4.2.12, 15.1.4
 Judgment on Final Award
 15.4.2
Labor and Materials, Equipment
 1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3,
 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
 Labor Disputes
 8.3.1
 Laws and Regulations
 1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13.1, 4.1.1, 9.6.4, 9.9.1,
 10.2.2, 11.1.1, 11.3, 13.1.1, 13.4, 13.5.1, 13.5.2,
 13.6.1, 14, 15.2.8, 15.4
 Liens
 2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8
 Limitations, Statutes of
 12.2.5, 13.7, 15.4.1.1
 Limitations of Liability
 2.3.1, 3.2.2, 3.5, 3.12.10, 3.17, 3.18.1, 4.2.6, 4.2.7,
 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2,
 11.2, 11.3.7, 12.2.5, 13.4.2
 Limitations of Time
 2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,
 5.2, 5.3.1, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5,
 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15
Loss of Use Insurance
11.3.3
 Material Suppliers
 1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5
Materials, Hazardous
 10.2.4, 10.3

Materials, Labor, Equipment and
1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13.1,
3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3,
9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
Means, Methods, Techniques, Sequences and
Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
2.1.2, 15.2.8
Mediation
8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, **15.3**,
15.4.1
Minor Changes in the Work
1.1.1, 3.12.8, 4.2.8, 7.1, 7.4
MISCELLANEOUS PROVISIONS
13
Modifications, Definition of
1.1.1
Modifications to the Contract
1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7,
10.3.2, 11.3.1
Mutual Responsibility
6.2
Nonconforming Work, Acceptance of
9.6.6, 9.9.3, **12.3**
Nonconforming Work, Rejection and Correction of
2.3.1, 2.4.1, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4,
12.2.1
Notice
2.2.1, 2.3.1, 2.4.1, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7,
9.10, 10.2.2, 11.1.3, 12.2.2.1, 13.3, 13.5.1, 13.5.2,
14.1, 14.2, 15.2.8, 15.4.1
Notice, Written
2.3.1, 2.4.1, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7,
9.10, 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14,
15.2.8, 15.4.1
Notice of Claims
3.7.4, 10.2.8, **15.1.2**, 15.4
Notice of Testing and Inspections
13.5.1, 13.5.2
Observations, Contractor's
3.2, 3.7.4
Occupancy
2.2.2, 9.6.6, 9.8, 11.3.1.5
Orders, Written
1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2,
14.3.1
OWNER
2
Owner, Definition of
2.1.1
Owner, Information and Services Required of the
2.1.2, **2.2**, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2,
9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1,
13.5.2, 14.1.1.4, 14.1.4, 15.1.3

Owner's Authority
1.5, 2.1.1, 2.3.1, 2.4.1, 3.4.2, 3.8.1, 3.12.10, 3.14.2,
4.1.2, 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3,
7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4,
9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2,
12.3.1, 13.2.2, 14.3, 14.4, 15.2.7
Owner's Financial Capability
2.2.1, 13.2.2, 14.1.1.4
Owner's Liability Insurance
11.2
Owner's Relationship with Subcontractors
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2
Owner's Right to Carry Out the Work
2.4, 14.2.2
Owner's Right to Clean Up
6.3
**Owner's Right to Perform Construction and to
Award Separate Contracts**
6.1
Owner's Right to Stop the Work
2.3
Owner's Right to Suspend the Work
14.3
Owner's Right to Terminate the Contract
14.2
**Ownership and Use of Drawings, Specifications
and Other Instruments of Service**
1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11.1, 3.17,
4.2.12, 5.3.1
Partial Occupancy or Use
9.6.6, **9.9**, 11.3.1.5
Patching, Cutting and
3.14, 6.2.5
Patents
3.17
Payment, Applications for
4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1,
14.2.3, 14.2.4, 14.4.3
Payment, Certificates for
4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1,
9.10.3, 13.7, 14.1.1.3, 14.2.4
Payment, Failure of
9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
Payment, Final
4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 12.3.1,
13.7, 14.2.4, 14.4.3
Payment Bond, Performance Bond and
7.3.7.4, 9.6.7, 9.10.3, **11.4**
Payments, Progress
9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3
PAYMENTS AND COMPLETION
9
Payments to Subcontractors
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2
PCB
10.3.1

Performance Bond and Payment Bond
7.3.7.4, 9.6.7, 9.10.3, 11.4

Permits, Fees, Notices and Compliance with Laws
2.2.2, 3.7, 3.13, 7.3.7.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF
10

Polychlorinated Biphenyl
10.3.1

Product Data, Definition of
3.12.2

Product Data and Samples, Shop Drawings
3.11, 3.12, 4.2.7

Progress and Completion
4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.3

Progress Payments
9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

Project, Definition of
1.1.4

Project Representatives
4.2.10

Property Insurance
10.2.5, 11.3

PROTECTION OF PERSONS AND PROPERTY
10

Regulations and Laws
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4

Rejection of Work
3.5, 4.2.6, 12.2.1

Releases and Waivers of Liens
9.10.2

Representations
3.2.1, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1

Representatives
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2, 13.2.1

Responsibility for Those Performing the Work
3.3.2, 3.18, 4.2.3, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field Conditions by Contractor
3.2, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor
3.12

Rights and Remedies
1.1.2, 2.3, 2.4, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, 13.4, 14, 15.4

Royalties, Patents and Copyrights
3.17

Rules and Notices for Arbitration
15.4.1

Safety of Persons and Property
10.2, 10.4

Safety Precautions and Programs
3.3.1, 4.2.2, 4.2.7, 5.3.1, 10.1, 10.2, 10.4

Samples, Definition of
3.12.3

Samples, Shop Drawings, Product Data and
3.11, 3.12, 4.2.7

Samples at the Site, Documents and
3.11

Schedule of Values
9.2, 9.3.1

Schedules, Construction
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Separate Contracts and Contractors
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

Shop Drawings, Definition of
3.12.1

Shop Drawings, Product Data and Samples
3.11, 3.12, 4.2.7

Site, Use of
3.13, 6.1.1, 6.2.1

Site Inspections
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5

Site Visits, Architect's
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Special Inspections and Testing
4.2.6, 12.2.1, 13.5

Specifications, Definition of
1.1.6

Specifications
1.1.1, 1.1.6, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

Statute of Limitations
13.7, 15.4.1.1

Stopping the Work
2.3, 9.7, 10.3, 14.1

Stored Materials
6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of
5.1.1

SUBCONTRACTORS
5

Subcontractors, Work by
1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

Subcontractual Relations
5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3

Submittal Schedule
3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of
6.1.1, 11.3.7

Init.

Substantial Completion
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 13.7

Substantial Completion, Definition of
9.8.1

Substitution of Subcontractors
5.2.3, 5.2.4

Substitution of Architect
4.1.3

Substitutions of Materials
3.4.2, 3.5, 7.3.8

Sub-subcontractor, Definition of
5.1.2

Subsurface Conditions
3.7.4

Successors and Assigns
13.2

Superintendent
3.9, 10.2.6

Supervision and Construction Procedures
1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3

Surety
5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7

Surety, Consent of
9.10.2, 9.10.3

Surveys
2.2.3

Suspension by the Owner for Convenience
14.3

Suspension of the Work
5.4.2, **14.3**

Suspension or Termination of the Contract
5.4.1.1, 14

Taxes
3.6, 3.8.2.1, 7.3.7.4

Termination by the Contractor
14.1, 15.1.6

Termination by the Owner for Cause
5.4.1.1, **14.2**, 15.1.6

Termination by the Owner for Convenience
14.4

Termination of the Architect
4.1.3

Termination of the Contractor
14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT
14

Tests and Inspections
3.1.3, **3.3.3**, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1.1, 12.2.1, **13.5**

TIME
8

Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4.1, 14.3.2, 15.1.5, 15.2.5

Time Limits
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4

Time Limits on Claims
3.7.4, 10.2.8, **13.7**, 15.1.2

Title to Work
9.3.2, 9.3.3

Transmission of Data in Digital Form
1.6

UNCOVERING AND CORRECTION OF WORK
12

Uncovering of Work
12.1

Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3

Unit Prices
7.3.3.2, 7.3.4

Use of Documents
1.1.1, 1.5, **2.2.5**, 3.12.6, 5.3

Use of Site
3.13, 6.1.1, 6.2.1

Values, Schedule of
9.2, 9.3.1

Waiver of Claims by the Architect
13.4.2

Waiver of Claims by the Contractor
9.10.5, 13.4.2, 15.1.6

Waiver of Claims by the Owner
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6

Waiver of Consequential Damages
14.2.4, 15.1.6

Waiver of Liens
9.10.2, 9.10.4

Waivers of Subrogation
6.1.1, **11.3.7**

Warranty
3.5, 4.2.9, **9.3.3**, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7

Weather Delays
15.1.5.2

Work, Definition of
1.1.3

Written Consent
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2

Written Interpretations
4.2.11, 4.2.12

Written Notice
2.3, 2.4, **3.3.1**, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1

Written Orders
1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

For the purpose of these General Conditions the Contract Documents consist of the Agreement [AIA Document A133-2009 Standard Form of Agreement Between Owner and Construction Manager (as modified)] between the Owner and Construction Manager (hereinafter the Agreement) and , Conditions of the Contract (General, Supplementary and other Conditions), as amended, 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.

§ 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 necessary 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/or 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, including 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 Program Manager is designated as the Initial Decision Maker to render initial decisions on Claims in accordance with Section 15.2.

§ 1.1.9 CONTRACTOR

Wherever the term "Contractor" is used herein, it shall mean Construction Manager unless specifically indicated otherwise.

Init.

AIA Document A201™ – 2007. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 14:55:17 on 04/24/2013 under Order No.8680409353_1 which expires on 10/17/2013, and is not for resale.

User Notes:

(1684105013)

§ 1.1.10 LAWS AND REGULATIONS

All laws, ordinances, rules, regulations and orders of any public authority, all standard specifications, manuals and codes, and all manufacturer's specifications, directions, recommendations and publications referred to for the performance of the Work or for the establishment of construction, materials or equipment standards, whether or not specifically made a part of or incorporated by reference into Contract Documents, shall mean and refer to the latest revisions or editions thereof in effect on the date of the Contract Specifications, or as to Change Orders, on the date of the Change Order.

§ 1.1.11 MANUFACTURER'S SPECIFICATIONS

All references to the Manufacturer's Specifications", "Manufacturer's Directions or "Manufacturer's Recommendations" shall mean and refer to the referenced manufacturer's published specification or manuals. Upon written approval of the Architect and Program Manager, such publications shall be made a part of and incorporated into the Contract Specifications as though repeated therein in full, and all manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned accordingly, unless specified to the contrary by the Architect.

§ 1.1.12 MISCELLANEOUS DEFINITIONS

"Furnish," unless specifically limited to context, means furnishing to project site items specified, to include unpacking and assembly if necessary. "Install" means incorporation in the Work, including all necessary labor, materials, equipment and connections necessary to complete installation.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all labor and materials, except that which is specifically designated to be supplied by others, all tools and equipment and any other items necessary for the proper execution and completion of the Work by the Contractor. The Contractor shall perform all necessary and incidental work and furnish any such materials as if they were particularly delineated or described in the Contract Documents. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 Work not particularly detailed, marked or specified subject to Architect's concurrence shall be the same as similar parts that are detailed, marked or specified such that all details, ornament, moldings, repeated features, etc. are constructed alike and continue throughout.

§ 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. Contractor is solely responsible for coordination of bidding, procurement and scope of work of Subcontractors and shall assume full responsibility for complete coordination of Subcontractors.

§ 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. Whenever references to specification sections and details are preceded by the word "see" any such reference is to be interpreted to include the phrase "and comply with."

§ 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, except that ownership of the Instruments of Service, not including the right of copyright, shall become the property of the Owner as soon as payment for the same has been completed. The Contractor,

Init.

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 Owner, 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 hereby designates Program Manager as the Owner's authorized representative who shall have authority to make such decisions on behalf of the Owner as are separately agreed to in writing between the Owner and the Project Manager. The Project Manager has designated Paula Yancey as its designated representative. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority.

§ 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.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

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

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

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Notwithstanding anything to the contrary herein, Contractor will be responsible for notifying BNSF (for excavations on BNSF property) and Diggers Hotline of Nebraska prior to excavation to identify the location of all overhead and underground utilities. Contractor shall not proceed with such excavation until verifying that the locators have performed their investigations or that observation of the excavation does not require the presence of BNSF and/or utility company representatives. Contractor will be responsible for the cost of repair of any existing utilities and/or other property damaged as a result of the failure of the Contractor to comply with the preceding sentence.

§ 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

Init.

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.

§ 2.3 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.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

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

§ 3.1.3 The Contractor shall not be relieved of 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. Contractor accepts all visible local requirements and visible existing conditions of the site.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and Program Manager any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect and/or Program Manager 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. Prior to commencing any excavation required by the Work, the Contractor shall notify BNSF's Project Engineer (for excavation on BNSF property or within 25 feet of a track) and Diggers Hotline of Nebraska and shall not proceed with the excavation until

Init.

such entities have marked the location of such facilities or verified that none exist. Any charges resulting from damaged facilities or utilities because of any failure on the part of the Contractor to comply with the preceding sentence shall be borne by the Contractor.

§ 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 has an affirmative duty to 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 fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

§ 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 reasonably cooperate with all other contractors performing work in the West Haymarket Redevelopment Area. Staging Areas for the Work shall be subject to the Owner's Staging Plan attached as **Exhibit G** to the Contract Documents. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

§ 3.3.4 For all equipment furnished by others to be installed by the Contractor, the Contractor shall use manufacturer's detail drawings, as furnished by others, as approved by the Architect or Owner, to establish rough-in dimensions and locations of services.

§ 3.4 LABOR AND MATERIALS

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

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with 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.

Init.

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

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner 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.

§ 3.5.2 The entire Work shall be warranted against defects in material and workmanship for a period of one (1) year, or such longer time as may be required by the Contract Documents, from the date of Substantial Completion except with respect to any "punch list" items noted at the time of Substantial Completion or occupancy by Owner if prior to date of Substantial Completion. All defects in material and workmanship appearing during the warranty period will be remedied to the reasonable satisfaction of the Owner at no additional cost to the Owner. Contractor, Program Manager, and Architect shall conduct an inspection approximately eleven (11) months after the Date of Substantial Completion to identify warranty defects. During such warranty period, if the Architect and/or Program Manager discover that any of the Work is not in accordance with the Contract Documents, the Architect and/or Program Manager shall notify the Owner and Contractor in writing. The Architect and/or Program Manager shall give such notice promptly after discovery of the condition. Upon receipt of such notice, the Contractor shall promptly correct the work, at the Contractor's expense. The Contractor shall extend the guarantee period for any portions of Work first performed after Substantial Completion. The Contractor shall extend the guarantee period for the number of days between Substantial Completion and the actual completion of such Work. All obligations shall survive acceptance of the Work under the Contract and termination of the Contract. If at any time within the period of guarantee, any of the Work included in the guarantee shall require any repair or reconstruction, the Owner shall notify the Contractor to make the repairs required. Upon receipt of such notice, the Contractor shall proceed with such repairs and shall complete the same within a time fixed by the Owner at the Contractor's cost and expense. If the Contractor shall neglect or fail to proceed with such repairs, then the Owner shall have the right to cause such repairs to be made in a reasonable manner and the whole cost thereof shall be paid directly by the Contractor or reimbursed by him to the Owner; and if the Contractor neglects or refuses to do so, such cost shall be paid by the Contractor's Surety on the performance bond required by the Contract Documents.

§ 3.5.3 Notwithstanding Contractor's warranty as required under Paragraph 3.5.2, Contractor will be responsible for the correction of any hidden or latent defects discovered after the initial warranty period, subject to applicable Nebraska Statutes and law.

§ 3.5.4 Where a greater warranty is called for in the Specifications and is required to be separate from the Specifications themselves, the warranty will be provided by the party or parties required in the Specifications to furnish the warranty. Such warranties shall be in a form consistent with the requirements of the Specifications.

§ 3.5.5 The Contractor shall secure and furnish to the Owner through the Architect, as a condition precedent to final acceptance and prior to application for final payment, all written guarantees and warranties required in the Specifications to be furnished separate from the warranties set forth in the Specifications.

§ 3.6 TAXES

The Contractor shall pay applicable sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Since the Owner is a governmental entity, it is anticipated that sales and use taxes on tangible personal property to be incorporated into the Work will be excluded under the following procedure: The Owner will issue a Purchasing Agent Appointment and Exempt Sales Certificate signed by the Purchasing Agent of the City of Lincoln. The Contractor performing the work for the Owner, except for work performed for the Lincoln

Init.

AIA Document A201™ – 2007. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 14:55:17 on 04/24/2013 under Order No.8680409353_1 which expires on 10/17/2013, and is not for resale.

User Notes:

(1684105013)

Water System, will be issued a Purchasing Agent Appointment and Exempt Sales Certificate signed by the Purchasing Agent of the Owner. The Purchasing Agent Appointment and Exempt Sales Certificate is to be used by the Contractor and his Subcontractors when purchasing tangible personal property to be actually incorporated into the Contract work, including materials incidental but necessary to the performance of the Contract, provided that such materials are actually incorporated into the contract work. It does not apply to either (1) the purchase of materials to be used but not incorporated into the contract work, including but not limited to form lumber, scaffolding, etc., or (2) the purchase or rental of machinery, equipment, or tools owned or leased by the Contractor or his Subcontractors and used in performing the Contract work.

Purchases qualifying as aforesaid shall be considered as being made by the Owner. The Owner shall be obligated to the vendor for the purchase price, but the Contractor or Subcontractor, as the case may be, shall handle all payments therefore on behalf of the Owner. The vendor shall agree to make demand or claim for payment of the purchase price from the Owner by submitting an invoice to the Contractor or Subcontractor. Title to all materials and supplies so qualifying shall vest in the Owner directly from the vendor. Regardless of the method of payment, title shall vest immediately in the Owner. The Contractor or Subcontractor shall not acquire title to any materials incorporated into the project. All invoices shall bear the Contractor's or Subcontractor's name as agent for the Owner.

The Contractor may reproduce copies of this Contract Agreement and of the original of the aforesaid Appointment and Certificate to furnish to his suppliers on each invoice or order. The Contractor shall enter the supplier's (the vendor's) name and address, the date, the invoice or order number, a description of the items, and the amount, in the spaces provided and shall sign the certificate on the line provided for the "Purchaser's Agent."

The Contractor shall provide each Subcontractor with a copy of this Contract Agreement and of said Appointment and Certificate, and on each Subcontractor's copy of said Appointment and Certificate the Contractor shall add the Subcontractor's name and address in the places provided therefor. Each Subcontractor is hereby given the authority to reproduce copies of the copy of said Appointment and Certificate thus provided him by the Contractor and to furnish the same to his (the Subcontractor's) suppliers on each invoice or order; and the Subcontractor shall complete and sign the same for his purchases in like manner as above set forth for the Contractor.

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

Init.

§ 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, Program Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 Subject to Section 3.7.4, the Contractor shall secure all applicable permits (including the building permit) and certificates, pay all fees and arrange for necessary inspections required by State, County, City or other authorities and pay all expenses for repairing highways, streets, sidewalks alley, etc. occasioned by execution of its 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 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 SUPERINTENDENT

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Program Manager the name and qualifications of a proposed superintendent. The Owner and Program Manager may reply within 14 days to the Contractor in writing stating (1) whether said party has reasonable objection to the proposed superintendent or (2) that said party requires additional time to review. Failure of the Owner and/or Program Manager to reply within the 14 day period shall constitute said party's 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, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's approval Contractor's construction schedule for the Work. The schedule shall take into account the need to provide for a smooth sequence of operations through cooperation and coordination of construction activities, sharing of shared access roads and staging areas with other contractors of the Owner performing work in the West Haymarket Redevelopment Area. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Contractor shall build into the schedule time delays due to adverse weather conditions as indicated in Section 15.1.5.4.

Init.

§ 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.

§ 3.10.4 Contractor in conjunction with Major Subcontractors shall provide a Bar Chart or CPM Schedule of work to Architect, Owner and Subcontractors. Contractor and its subcontractors are responsible for adherence to this schedule and shall supply sufficient new equipment, tools, and workmen to complete work within time limits specified in this schedule.

§ 3.10.5 Contractor shall within 15 calendar days of start of construction submit to Owner and Architect a copy of the Bar Chart or CPM Schedule, indicating the scheduled dates that various phases of work will start and finish. Contractor shall keep Owner apprised of any delays or changes in this schedule. The schedule shall be updated to current conditions and submitted with each pay request. No approval of a pay request will be given unless this updated schedule is submitted.

§ 3.10.6 Contractor shall on a daily basis prepare a report in which all events affecting the job and occurring that day are recorded. When requested by Owner, copies of these reports shall be submitted to the Owner for information and review.

§ 3.10.7 Contractor shall maintain a Shop Drawing and submittal log, which shall be updated to current conditions, reviewed at each progress meeting, and submitted with each request for payment.

§ 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 and updated weekly to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples, Warranties, Owner Manuals, Parts List, and similar required submittals (collectively "Record Documents"). 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

Init.

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. The Architect shall provide the Program Manager with signed submittals approved by the Architect.

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

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

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

§ 3.12.11 Upon Substantial Completion of the Work, the Contractor shall compile for and deliver to the Owner a set of corrected Specifications and Drawings conforming to the construction records of the Contractor and showing the recorded location of the changes in the Work. Within 15 days upon completion of all Work, the Contractor shall furnish to Architect one (1) complete set of final Specifications and Drawings in electronic format (PDF or agreed upon alternative) that have been corrected to show all revisions, deletions and additions. These final Specifications and Drawings shall bear the Contractor's and Subcontractor's signatures and date. The Architect shall then forward an electronic copy of the final Specifications and Drawings to the Owner. No final payment will be issued to the Contractor until the final set of Specifications and Drawings and other Record Documents are delivered to the Architect.

Init.

§ 3.13 USE OF SITE

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

§ 3.13.2 The Contractor and each Subcontractor shall provide their own security against theft and vandalism and protection against the elements for suitable storage of their materials or equipment delivered to the site or delivered to some other location agreed upon in writing, which are to be incorporated into this Project, and shall provide their own trailers or sheds for storage of their materials, equipment, tools, etc., if not otherwise provided by the Contractor. Areas for general storage and storage trailers or sheds shall be approved by the Owner. The Contractor and each Subcontractor shall deliver all cement, caulking materials, paint materials, lime, plaster, adhesives for resilient floors, acoustical materials, and all similar materials to the job or to the off-site storage location in original sealed containers, unopened, with seals unbroken and with labels plainly indicating manufacturer's name, brand, type and grade of materials. Containers which are broken, opened, water-marked or otherwise damaged and/or which contain caked, lumpy or otherwise damaged materials are unacceptable and shall be immediately removed from the premises. All the above-mentioned materials shall be stored above ground and protected from dampness, weather, and other damage.

§ 3.13.3 The Contractor shall enforce the Owner's instructions regarding use of the site, any designated offsite staging areas, and surrounding public streets regarding signage, advertisement, noise, clean-up, smoking, parking, deliveries, etc., and other reasonable rules of conduct and procedures for minimizing the impact of the Work on surrounding properties and public rights-of-way.

§ 3.13.4 All utilities, curbs, drives, streets, buildings, mechanical and electrical equipment which are damaged or cut during construction and are to be used after construction shall be repaired such that the condition of the repaired item equals or exceeds its condition prior to construction.

§ 3.13.5 The construction, placement of barricades, and posting of warning signs in the area of construction will be the responsibility of the Contractor. This shall include the placement of construction equipment and any obstacles which are created as a result of the construction project. The placement of barricades and warning signs shall be in compliance with the Manual on Uniform Control Devices and the 2007 edition of the Nebraska Department of Roads "Standard Specifications of Highway Construction" and approval by the City of Lincoln, Nebraska. To the extent permitted by law, the Contractor expressly accepts control of the construction equipment and any obstacles created during construction of the project. This Section does not alleviate Owner from statutory or common law duties related to landowners.

§ 3.13.6 The Contractor shall supply and maintain adequate sanitary facilities by providing temporary and portable units on the work site to comply with current City-County Health Department and State Department of Health requirements and regulations. These facilities are to be made available for the Contractor's employees and project personnel.

§ 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.

§ 3.14.3 Permission to patch any areas or items of work does not imply a waiver of the Architect's and/or Program Manager's right to require complete removal and replacement in said areas and of said items if, in Program Manager's opinion, after review and concurrence by Architect and/or other authority having jurisdiction in appropriate circumstances, patching does not satisfactorily restore the quality and appearance of the work.

Init.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall at all times keep the site of the Work free from accumulations of waste materials or rubbish caused by his employees or work, and at the completion of the Work he shall remove all rubbish from and about the Work and all tools, equipment, scaffolding and surplus materials and shall leave the site clean and ready for use. All sewers, conduits, pipes and appurtenances, and all tanks, pump wells, chambers, buildings and other structures shall be kept clean during construction; and as the Work or any part thereof approaches completion, the Contractor shall systematically and thoroughly clean and make any needed repairs to them. Contractor shall furnish, at Contractor's own expense, suitable tools and labor for removing all water and cleaning out all dirt, mortar and foreign substances. The Owner may remove or cause the removal of the rubbish and surplus materials and deduct the cost from the final estimate or charge the cost to the Contractor if the cleanup is not properly performed by the Contractor within three (3) days of written notice from the Owner.

§ 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, Program Manager 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 Owner, Program Manager, and Architect.

§ 3.18 INDEMNIFICATION -- Intentionally Omitted

(Paragraphs deleted)

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain a firm lawfully practicing architecture in the jurisdiction where the Project is located. Davis Design, Inc. is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Program Manager will provide administration of the Contract and have authority to act on behalf of the Owner to the extent provided in the Owner's agreements with Program Manager. . The Architect will provide administration of the Contract and have authority to act on behalf of the Owner only to the extent provided in the Owner's agreement with Architect.

§ 4.2.2 The Architect and Program Manager 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 and

Init.

Program Manager will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect and Program Manager 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 and Program Manager will keep the Owner and each other reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and Program Manager (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 and Program Manager will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect and Program Manager 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 will generally communicate with each other through Program Manager about matters arising out of or relating to changes or modifications to the Drawings and Specification or the interpretation thereof. 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 Program Manager. Notwithstanding, Owner and Contractor may communicate directly with Architect's consultants where Architect is not immediately available or where, in the judgment of the Owner or Contractor, Architect has been unresponsive.

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

§ 4.2.6 The Architect and/or Program Manager will have authority to reject Work that does not conform to the Contract Documents. Whenever the Program Manager and/or Architect considers it necessary or advisable, the Program Manager and/or 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 or Program Manager 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 or Program Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. Contractor shall promptly notify the Owner if the Program Manager and/or Architect rejects work or requests additional inspection/testing.

§ 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 Architect will prepare Change Orders and Construction Change Directives, and submit the same to the Program Manager for review and subsequent approval by the Owner and the Architect. The Architect and/or Program Manager will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

Init.

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

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

§ 4.2.11 The Program Manager shall act as the Owner's representative concerning performance under, and requirements of, the Contract Documents on written request of the Contractor. The Program Manager's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. The Architect shall decide matters relating to aesthetic effect consistent with the intent expressed in the Contract Documents.

§ 4.2.12 Advisory interpretations and final decisions of the Program Manager or Architect, respectively, 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 Program Manager and Architect will endeavor to secure faithful performance by both Owner and Contractor 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 Program Manager will review and respond to requests for information about the Contract Documents. The Program Manager'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.

§ 5.1.3 Subcontractors, sub-subcontractors, and material suppliers shall not contact the Architect, Program Manager, or Owner directly. Any information they might need shall be obtained through the Contractor.

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

§ 5.2.1 Subcontracts shall be procured in accordance with Subcontractor Procurement Exhibit attached to the Agreement as Exhibit C.

§ 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

Init.

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.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 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.

§ 5.3.2 The Contractor is fully responsible to the Owner for acts and omissions of its Subcontractors and persons employed by them or under their control including sub-subcontractors.

§ 5.3.3 Nothing in Contract Documents shall create a contractual relationship between any Subcontractor and the Owner, Project Manager, or the Architect.

§ 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 to the extent that Subcontractor can prove that cost increases are a result of material cost or wage rate increases.

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts to other contractors of the Owner ("separate contractor") 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

Init.

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; however, Contractor will coordinate the scheduling of the Work of the Contractor's separate subcontractors. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

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

§ 6.1.5 The Contractor shall reasonably cooperate with all separate contractors, including all reasonable coordination of Contractor's own Subcontractors. It is understood that reasonable cooperation in all phases of the work is to be expected by all separate contractors. Scheduling of their portions of work shall be arranged between them and the Contractor by Owner's Program Manager for smooth sequence of operations.

§ 6.1.6 Contractor shall permit any separate contractors to reasonably utilize its temporary facilities, telephone, power, water or other facilities available for use by its subcontractors in the execution of their work. Contractor may not charge any fees to separate contractors for permitting the reasonable use of Contractor's facilities, except for the actual out-of-pocket cost resulting to the Contractor (such as long-distance telephone charges, equipment rental, extraordinary utility usage, etc.).

§ 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Program Manager alone in accordance with Section 7.4 below.

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

§ 7.2 CHANGE ORDERS

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect, reviewed by the Program Manager and, if approved by the Owner, 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 Program Manager and 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 Program Manager 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 Program Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the *(Paragraphs deleted)* allowable Cost of the Work under the Agreement as may be needed and General Conditions Costs, as agreed to by the parties.

§ 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 Program Manager. 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 Program Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Program Manager and Architect determine, in their professional judgment, to be reasonably justified. The Program Manager's and 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 Owner or Contractor 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 Program Manager concerning the adjustments in the Contract Sum and Contract Time, or otherwise reaches agreement with Owner 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.

§ 7.3.11 Contractor will not delay the progress of the Work, pending final determination of value of the Change in the Work, in the event of the issuance of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Program Manager 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 Program Manager 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.

§ 8.2.4 By executing the Agreement, Contractor acknowledges that the fixing of the Contract Time, Completion Date, and amount of Liquidated Damages in the Contract Documents is fair and reasonable and has taken the following factors, among others, into consideration:

- .1 The urgent need of the Owner to have the project completed by the time specified in order to fulfill its commitments to bond holders, tenants, employees, and other building occupants, invitees, or users;
- .2 The size, general design, and location of the project;
- .3 The quantity, quality, and probable availability of labor and materials involved in the construction of the project;
- .4 The Contract Sum;
- .5 The average climatic range, the customary weather for the time period of the Construction Contract and the usual customs and practices prevailing in the construction industry in this area;
- .6 The impossibility of ascertaining and fixing the actual damages the Owner would sustain the event of delay in the completion of the project;
- .7 The applicable laws and governmental rules and regulations;
- .8 The weather conditions customarily encountered in the area of the Project and as described in Section 15.1.5.

Nothing in this Section 8.2.4 shall be deemed to limit Contractor's right to an adjustment in the Contract Time or the Contract Sum pursuant to other terms of the Contract Documents.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 The time for completion of the Work shall be extended or the contract otherwise adjusted upon written request from the Contractor to Owner, provided the request is based on delays or suspensions for causes beyond the control and are not the fault of the Contractor. Such delays shall include, but not be limited to, acts or neglects of the Owner, Program Manager or the Architect or separate contractors or any other party under the control of the Owner or others performing additional work, or to fires, floods, labor disputes, unusual delay in deliveries, epidemics, vandalism, abnormal weather conditions or acts of God; or the request is based upon a change in the scope of the Work which has been approved by the Owner. The length of such extension shall be the equivalent number of working days, if the contract time is expressed in working days, or the equivalent number of calendar days, if the contract time is expressed in calendar days or is expressed as a specific completion date, during which the Work was suspended or delayed. Requests for extensions in completion dates shall be in accordance with Section 15.1.2.

Certain delays will not be justified for extension of time. Such delays, shall include, but not limited to:

1. Delays caused by a Subcontractor, unless ultimately caused by circumstances otherwise permitting an extension of time under this Section 8.3.1.
2. Inadequate construction force.
3. Failure to place orders for equipment or materials in a timely manner.
4. Normal periods of adverse weather.
5. Subsurface or otherwise concealed subsurface conditions for which the Contractor is not entitled to relief under Section 3.7.4.

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

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents or under the law. If the Contractor is delayed any time in the commencement or progress of the Work by an act or neglect of the Owner, Program Manager, or Architect, or a separate contractor, then, in addition to an extension of time, the Contractor shall be entitled to an equitable adjustment in the Contract Sum for increased costs resulting from such delay.

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

The Contractor shall submit to the Owner, Program Manager, and Architect, before the first Application for Payment, a detailed and approved 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, Program Manager, and/or Owner may require. This schedule, unless objected to by the Architect, Program Manager, and/or Owner, 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 Program Manager and the Architect an itemized Application for Payment prepared in accordance with the schedule of values 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 Program Manager and/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, which have been approved by the Program Manager 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 by the Contractor at the site for subsequent incorporation in the Work. Notwithstanding the Owner having title to such material and equipment, pursuant to Paragraph 9.3.3, Contractor shall be responsible for the entire cost of any replacement, theft, repair, or other damage which make the materials unsuitable for incorporation in the Work, except to the extent caused by the Owner or parties under its control. Contractor will be held completely responsible for the materials until they are fully incorporated into the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures 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.

§ 9.3.2.1 The Owner may approve payment for materials and equipment stored off the site under the following conditions:

The Contractor shall furnish and maintain a safe, secure, and suitable insured storage site and proper storage conditions, which must be approved in advance by the Owner. Equipment and materials covered by an application for payment must be stored above grade, and must be properly protected at all times against weather, heat, cold, moisture, vandalism or theft and other hazards as the material may require. All protection must be provided by the Contractor, at his own expense, and must be maintained throughout the storage period. Materials and equipment must not be commingled with other similar materials or equipment, but must be stored separately and must be plainly labeled, "PROPERTY OF WEST HAYMARKET JOINT PUBLIC AGENCY", with project name. Materials and equipment stored at the site must be stored so that they may be readily inspected, measured, and counted, at all times, by the

Init.

Program Manager. Application for Payment for materials and equipment stored off the site must be accompanied by a bill of sale, properly identifying the material and transferring ownership of the materials to the Owner. The bill of sale must be accompanied by an inventory of stored materials or equipment, together with a description of the storage site by street number and city, or by a legal description of the premises. The Contractor agrees that in accepting payment for the materials or equipment stored off the site, it is in no way relieved of responsibility for the safe storage of the material and its safe transportation to, and installation in, the Work or for furnishing and installing the material in strict accordance with Drawings and Specifications. The Contractor further agrees that acceptance by the Owner of a bill of sale for stored materials or equipment does not imply acceptance of the same for the purpose of this Contract. Such acceptance shall not occur until completion of the Work by the Contractor and final acceptance by the Owner.

§ 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. Contractor shall provide conditional lien waivers to the Owner for all Work covered by an Application for Payment (to the extent of payment) no later than the time of payment. Contractor shall provide a final unconditional lien waiver for all Work covered by the payment with the Contractor's next Application for Payment.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Program Manager and Architect shall promptly review each Application for Payment and will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment for such amount as the Program Manager and Architect determine is properly due, or notify the Contractor and Owner in writing of the Program Manager's and 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 to Owner will constitute a representation by the Architect and Program Manager to the Owner, based on the Architect's and Program Manager's evaluation of the Work and the data comprising the Application for Payment, that 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 Program Manager and 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 Program Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and 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 Program Manager may withhold a Certificate for Payment in whole or in part, for the reasons set forth below. The Program Manager may, because of subsequently discovered evidence, nullify the whole or a part of a Certificate for Payment previously issued for the reasons set forth below:

- .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, Owner shall make payment of amounts previously withheld.

§ 9.5.3 Intentionally Omitted

§ 9.6 PROGRESS PAYMENTS

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

§ 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 The Contractor shall provide the Owner with a payment bond in the full penal sum of the Contract Sum.

§ 9.7 FAILURE OF PAYMENT

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

§ 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 and when the Contractor has secured a temporary or permanent certificate of occupancy so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Program Manager and 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 Program Manager and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Program Manager's and 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,

Init.

complete or correct such item upon notification by the Program Manager and/or Architect. In such case, the Contractor shall then submit a request for another inspection by the Program Manager and/or 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 not exceeding ninety (90) days within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in 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 Program Manager and 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.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, Program Manager 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 Owner, Program Manager, and Architect will promptly make such inspection and, when they find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect and Program Manager will promptly issue a final Certificate for Payment stating that 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 Program Manager's and 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 Program Manager and 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

Init.

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 Program Manager and Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Program Manager and 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 Program Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents;
- .4 latent and hidden defects discovered after final completion subject to Nebraska statutes and law; or
- .5 unrepaired items which were listed on a "punch list" prepared at time of Substantial Completion or at Final Completion.

§ 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.

§ 9.11 PAYMENT CONTINGENT UPON AVAILABILITY OF APPROPRIATED FUNDS OR FUNDS APPROVED BY OWNER
Any other provisions of the Contract Documents to the contrary notwithstanding, it is expressly understood and agreed that the legal obligation of the Owner to pay the Contract Sum or any part thereof shall be contingent upon the availability of funds specifically approved by formal action of Owner for the purpose of payment of the Contract Sum or any part thereof.

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. More specifically, the Contractor shall give notice to all operators by calling the One Call Diggers Hotline (#811) pursuant to the One-Call Notification Act (Neb. Rev. State §76-2301 to 76-2330) before commencing excavation. Contractor shall also give notice to BNSF if the execution is on BNSF property or within twenty-five feet (25') of any track.

§ 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. In addition, the Contractor shall:

- .1 Provide and maintain, required amount of, portable fire-fighting equipment including fire extinguishers. All persons working on the project shall be familiarized with the locations and operation of fire extinguishers.
- .2 Provide, erect, and maintain all required planking, barricades, guardrails, temporary sidewalks, etc., streets, drives adjoining property and the new building, as well as to prevent accidents to the public and the workmen at the jobsite.
- .3 Provide and maintain proper shoring and bracing to prevent earth from caving or washing into the building excavation.
- .4 Provide and maintain proper shoring and bracing for existing underground utilities, sewers, etc., encountered during excavation work, to protect them from collapse or other type of damage until such time as they are to be removed, incorporated into the new work, or can be properly backfilled upon completion of new work.
- .5 Provide heavy plank covering over walks, curbs, drives, etc., and heavy wood cribbing around all trees within the construction area and at corners of the new building to protect them from possible damage by trucking or otherwise.
- .6 Provide and maintain protection against rain, snow, wind, ice, storms and heat so as to maintain all Work, materials, apparatus, and fixtures, incorporated in the Work, free from injury or damage. At the end of the day's work, cover all Work subject to damage. Remove snow and ice as necessary for safety and proper execution of the Work.

§ 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. Notwithstanding anything to the contrary herein, the Contractor shall assume the responsibility for the protection of all finished construction under this Contract and shall repair and restore any and all damage to his finished construction to its original state, except that Contractor shall not be responsible for damage caused by the Owner or parties under its control.

§ 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. The Contractor shall not be responsible for any Hazardous Substance uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract

Init.

Document with specificity as to type and location to be within the scope of the Work. The Contractor shall be responsible for a Hazardous Substance created with any materials or equipment brought to the Site by the Contractor, Subcontractors, Suppliers, or anyone else for whom the Contractor is responsible.

If the Contractor encounters a Hazardous Substance or suspected Hazardous Substance or if the Contractor or anyone for whom the Contractor is responsible releases a Hazardous Substance, the Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby; and (iii) notify the Program Manager AND any regulatory agency required by law. The Program Manager shall promptly determine the necessity for the Owner to retain a qualified expert to evaluate such conditions or take corrective action, if any.

The Owner shall be deemed to be the generator of all Hazardous Substances that existed at the Project site prior to the commencement of the Contractor's Work (including for Hazardous Substances that are specifically identified by type and location to be part of the Work), and the Owner shall sign all manifests (as owner or generator, as indicated on the manifest) required to accompany the transportation and disposal of such Hazardous Substances. The Owner agrees that the Contractor is not responsible for any pre-existing Hazardous Substances at the Project site that are not specifically identified by type and location in the Contract Documents to be part of the Work or any Hazardous Substances brought to the Project site by anyone other than Contractor or its subcontractors. The Owner also agrees that Contractor is not responsible for any pre-existing Hazardous Substances at the Project site that are identified in the Contract Documents if Contractor uses reasonable care in the performance of its Work and has complied with any requirements included in the Contract Documents regarding such pre-existing Hazardous Substances.

To the extent the Contractor fails to use reasonable care in the performance of its Work and to comply with any requirements included in the Contract Documents regarding such pre-existing Hazardous Substances, Contractor shall be responsible for any and all civil or criminal penalties, fines, damages, or other charges imposed by any regulatory agency or court for all Hazardous Substances created or released for which the Contractor is responsible that are in violation of applicable statutes and laws and that are a result, direct or indirect, of work performed under this Contract. The Contractor shall also be responsible for reimbursement to the Owner for administration, reporting, and tracking expenses required as a result of any Hazardous Substances for which the Contractor is responsible. In the event the regulatory agency or court imposes a probationary period, the Contractor shall post bond for the probationary period to ensure that all such costs are reimbursed to the Owner. This responsibility shall apply whether penalties are imposed directly on the Contractor or any of its subcontractors, or the Owner. The Contractor shall defend and indemnify the Owner against such penalties. Regulatory agencies may include, but are not limited to, the Department of Environmental Quality and the US EPA.

§ 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 Hazardous Substance reported by the Contractor and, in the event such Hazardous Substance is found to be present, to cause it to be rendered harmless (which shall be deemed to mean remediated, removed or otherwise addressed as required by applicable regulations or authorities). Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, Program Manager, and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such Hazardous Substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor, Program Manager, 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 the Contractor, Program Manager, or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, Program Manager, and the Architect have no reasonable objection. When the Hazardous 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

Init.

(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. Owner shall procure and maintain insurance to cover the obligations in this paragraph. Contractor shall not incorporate in the Work any materials containing asbestos, PCB's, or other hazardous materials. Contractor shall not use, produce, store, release, dispose, or handle, in or about the project, or transfer to or from the project (or permit any other party to do such acts), any Hazardous Substance except in compliance with all applicable environmental laws.

§ 10.3.4 "Hazardous Substances" shall mean all substances, materials, and waste that are or become regulated or classified in the handling, storage, remediation, or disposal as hazardous or toxic under any Environmental Law, including but not limited to any hazardous, ignitable, corrosive, caustic, reactive, toxic, or polluting waste or substance; a "hazardous waste" (as defined in the regulations adopted under the Resource Conservation and Recovery Act of 1976); oil or petroleum products; asbestos; polychlorinated biphenyls; formaldehyde compounds, explosives, and radioactive materials. "Environmental Laws" shall mean any federal, state, or local statute, ordinance, rule, regulation, order, decree or guideline (or that of any quasi-governmental entity having jurisdiction over the Project or the Project site) pertaining to health, industrial hygiene or the environment, including without limitation the Federal Comprehensive Environmental Response, Compensation, and Liability Act.

§ 10.3.5 Intentionally Omitted

§ 10.3.6 If the Contractor is held liable by a government agency for the cost of remediation of a Hazardous Substance by reason of performing Work as required by the Contract Documents, the Owner shall defend, indemnify and hold harmless the Contractor for all cost and expense (including attorneys' fees, fines, judgments, and penalties) thereby incurred, except to the extent that such damage, loss or expense is due to the negligence of the Contractor.

(Paragraphs deleted)

§ 10.3.7 The Owner shall not be responsible under Section 10.3 for Hazardous Substances brought to the site by the Contractor.

§ 10.3.8 The Contractor agrees to indemnify, defend, and hold harmless, to the fullest extent allowed by law, the Owner, and its principals, officers, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorney's fees of any and every kind or character, known or unknown) arising out of or resulting from the acts or omissions of the Contractor regarding a Hazardous Substance for (1) any Hazardous Substance brought to the site by the Contractor or (2) any release, leak, spill, disposal of, or other handling in, on or about the site of any Hazardous Substance brought to the site by someone other than the Contractor, if the Contractor fails to use reasonable care in the performance of its Work and/or fails to comply with any requirements within the Contract Documents regarding Hazardous Substances and knew that such material was a Hazardous Substance at the time of the release, leak, spill, disposal or other handling, that results in any claim for damage whatsoever including any bodily injury, sickness, disease, cost of remediation, or damage to or destruction of tangible property, including loss of use resulting therefrom. Contractor further agrees to require that its Subcontractors release, defend and indemnify Owner to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Owner herein.

§ 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.

§ 10.5 WATER PRECAUTIONS

§ 10.5.1 The Contractor shall take all reasonable precautions to keep all parts of Site, including excavations, free from any accumulation of water, no matter what the source or cause.

§ 10.5.2 The Contractor shall dispose of water and waste water in such manner as will not endanger public health and safety or cause damage or expense to property. The Contractor shall comply with any law, or administrative regulatory, rule or local ordinance which is applicable to the disposal of water and waste water. If sewers and streets are allowed to be used for drainage or disposal of water during construction, they shall be maintained and left satisfactorily clean upon completion of Work.

§ 10.5.3 The Contractor shall not be responsible for contaminated ground water, unless the contamination of ground water shall be caused by the Contractor or any of its Subcontractors; provided Contractor shall not be responsible for contamination of ground water caused by Hazardous Materials already present at the site or brought to the site by other than the Contractor, unless Contractor fails to use reasonable care in the performance of the Work and/or fails to comply with any law, or administrative regulatory, rule or local ordinance which is applicable to the disposal of water and waste water.

§ 10.6 SIGNS

§ 10.6.1 The display of signs at the Project Site other than those required by law shall be limited to those required by Contract Documents and for safety and for the orderly management of the site, and signs that identify Contractor as the construction manager on the site. Subject to Owner's written approval, signage identifying, Architect, Owners or other primary parties may be erected on-site. Contractor shall submit a drawing showing the size, message and location of any such requested signs prior to the fabrication and installation thereof. Notwithstanding any provision to the contrary, the size, message and location of all signs must comply with Title 22 (Outdoor Signs and Structures) and Chapter 27.69 (Signs) of the City of Lincoln's Municipal Code and shall be subject to the approval of the Owner.

§ 10.6.2 The Contractor shall furnish and maintain all signs required for prosecution of the Work and as required by law and for public safety the control of vehicular and pedestrian traffic around the site typical for projects of similar scope and locale as deemed prudent by Contractor and Owner.

ARTICLE 11 PERFORMANCE BOND AND PAYMENT BOND

§ 11.1.1 The Contractor shall

(Paragraphs deleted)

furnish Performance and Labor and Material Payment Bond in the amount of one hundred percent (100%) of the Contract Sum. Such bonds shall be executed by the Contractor and by a corporate surety company authorized to transact business in the State of Nebraska. Such bonds shall be conditioned upon the faithful performance of all the terms and conditions of the Contract Document, and payment obligations arising thereunder, including holding harmless the Owner from failure to do so and including the making good of any guarantees or warranties which the Contract Documents may require. The Payment Bond shall be further conditioned upon the payment of all laborers and materialmen who provide labor, materials, etc. actually used or rented in the performance of the Contract, including insurance premiums and interest. The Contractor shall deliver the required bonds to the Owner at least three (3) days before commencement of any Work at the Project site.

§ 11.1.2 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.

§ 11.1.3 Should the principal amount of the Construction Performance Bond and Construction Payment Bond be modified as a result of a Change Order, the Contractor shall provide to the Owner written confirmation from the Surety indicating that the bond has been modified and to what extent it has been modified.

(Paragraphs deleted)

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 Program Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Program Manager, be uncovered for the Program Manager's or 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 Program Manager or Architect has not specifically requested to examine prior to its being covered, the Program Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, 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. Contractor shall be responsible for all costs associated with uncovering and recovering any Work that requires special inspection where such inspections were not performed

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Program Manager or 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 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.

§ 12.2.2.2 The one-year warranty period or any extended warranty period required by the Contract 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. Neither the one-year warranty period nor acceptance of premises by the Owner shall relieve the Contractor of liability as to "latent defects" in workmanship or material discovered after the warranty period, subject to Nebraska statutes and law.

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

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

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the laws of the State of Nebraska.

§ 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

init.

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 providing 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 there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

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

§ 13.5.2 If the Architect, Program Manager 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 Program Manager 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. The Contractor, prior to performing such Work, shall give timely notice to the Program Manager, Architect, and/or public authorities having jurisdiction of when and where tests and inspections are to be made so that the Program Manager, Architect and/or public authorities having jurisdiction 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 Program Manager and Architect.

§ 13.5.5 If the Program Manager and/or Architect are to observe tests, inspections or approvals required by the Contract Documents, the Program Manager and/or 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.

Init.

§ 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.

§ 13.8 CODES AND ORDINANCES

When the specifications or drawings call for work or materials of higher standard than those required by codes or ordinances, the specifications and drawings shall govern.

§ 13.9 TRADE SECTIONS

The specifications are generally divided into trade sections for the purpose of ready reference, consistent with the Construction Specifications Institute's format. The division of the Work among his subcontractors is the Contractor's responsibility and the Architect assumes no responsibility to act as arbiter to establish subcontract limits of work.

§ 13.10 SAFETY REGULATIONS

All work on this project will be done in accordance with the applicable regulations of the Federal Register, Occupation Safety and Health Administration, Occupation Safety and Health Act and other applicable State and Federal regulations. Compliance with these regulations shall be the responsibility of the Contractor.

§ 13.11 CONSTRUCTION AND GRADING STAKING

The Contractor shall be responsible and pay for all construction staking and layout (working from building corners, boundary corners, and elevation reference datum point established by Owner's Engineer) including, but not limited to establishing the location of all gridlines, curbs and finish floor elevations. Contractor shall not begin paving operations until Owner and Architect have approved grades. Owner reserves the right to have an independent Registered Civil Engineer, employed by the Owner, verify any or all locations, grades or elevations. The Contractor shall make all corrections as required at no extra cost to the Owner.

§ 13.12 FEES FOR TESTS AND INSPECTIONS

§ 13.12.1 All testing and inspection consultants shall be approved by the Contractor and Owner. The Contractor shall be solely responsible for having all tests and special inspections required by the Contract Documents performed, and shall notify the Consultant when inspections are required. No work requiring inspections under the Contract Documents shall be covered or enclosed until such inspections have been performed.

§ 13.12.2 The frequency of testing required will be as indicated in the Specifications section.

§ 13.12.3 The cost of all quality control testing shall be paid by the Owner; provided that any excessive retesting (as reasonably determined by Owner) required for quality control as a result of deficient initial tests shall be paid for by the Contractor.

§ 13.12.4 Testing of utility systems, water and gas piping, electrical and alarm systems, fire sprinkler systems, and other systems customarily requiring testing pursuant to mechanical, plumbing or electrical codes, or acceptance by municipalities or utility companies shall be performed and paid for by Contractor.

§ 13.13 TIME

Time is of the essence in each Subcontract Agreement between the Contractor and Subcontractor, and the above provisions shall be included in all subcontractors contracts.

§ 13.14 RELATIONSHIP OF PARTIES TO THE CONTRACT

It is the express intent of the parties that this Contract shall not create an employer-employee relationship. Employees of the Contractor, or the Subcontractor, or the Sub-subcontractor, shall not be deemed to be employees of Owner, and employees of Owner shall not be deemed to be employees of the Contractor or the Subcontractors. The Contractor, Subcontractor, Sub-subcontractor and Owner shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees, the Subcontractor's employees, the Sub-subcontractor's employees nor Owner's employees shall be entitled to any salary, wages or benefits from any other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local, and any other payroll taxes with respect to its employees' compensation.

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; or
- .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 only terminate after giving seven (7) days written notice of Contractor's intent to terminate. If the Owner is unable to satisfy or remove the cause for termination within seven (7) days after Contractor's notice of intent to terminate, Contractor may, upon seven (7) days written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, and reasonable costs of demobilization. Contractor shall perform all tasks described in Section 14.4.2 as a condition precedent to the receipt of payments to which Contractor is entitled.

§ 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.

Init.

§ 14.2.2 When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner, and after giving the Contractor and the Contractor's surety, if any, seven days' 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, and tools thereon owned by the Contractor and to be incorporated in the Work;
- .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 Program Manager or Architect, 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;
- .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;
- .4 obtain materials from Subcontractors and suppliers for which payment has been made and deliver them to the jobsite or such other location as designed by Owner. Also, move stockpiled materials at the site to locations within the building or other locations designated by Owner; and
- .5 where orders have been placed, determine to what extent and at what cost the orders may be canceled. Provide such information to Owner so Owner can decide whether to cancel or accept delivery and make payment. Deliver all such materials to the jobsite or to other location designed by Owner.

§ 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, plus reasonable demobilization costs.

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 Program Manager as the Initial Decision Maker with a copy sent to the Architect. 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 Change Orders shall be prepared and Certificates for Payment issued 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 pertaining to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

§ 15.1.5.3 The Contractor shall take due note of the fact that its failure to place orders for specified equipment or material sufficiently in advance of his scheduled date of installation will not be considered by the Architect or Owner as a valid reason upon which the Contractor may base his request for an extension of contract time, for any substitutes, or for any deviations from the drawings and/or specifications.

§ 15.1.5.4 No additional time will be allowed as a result of adverse weather unless all the following conditions are met:

- .1 The Contractor shall provide a written justification why Work could not effectively be performed under the weather conditions. The written justification shall include the project schedule of work and identify how the weather occurrence adversely affected the critical path of construction. If the critical path Work is indoors, temperature, wind speed, and precipitation will not be justifications for additional time unless the structure was not substantially enclosed or minimum indoor working temperature were not able to be maintained.
- .2 Claims for weather delay must be made in writing within twenty-one (21) working days from the end of the event occurrence except with respect to precipitation which shall be based on Paragraph (3) below.
- .3 Local Climatological Data from the US Department of Commerce, NOAA, National Climatic Data Center at the Municipal Airport, Lincoln, Nebraska will be used as the weather data for determining weather delay claims. The following will constitute factors for weather delay claims:
 - (1) Temperature: Any three hour period during working hours that is reported in the above referenced Climatological Data as being below zero degrees Fahrenheit.
 - (2) Wind Speed: Any three hour period during working hours that is reported in the above referenced Climatological Data as being in excess of 20 mph.
 - (3) Precipitation: Will be based on the number of days per month when precipitation exceeds .01 inch and the number of such days exceed the median number of days per month when the precipitation exceeds .01 inch as shown in the table below:

Median No. of Days when Precipitation Exceeds .01 inch by Month

Init.

Jan	8	Feb	6	Mar	8	Apr	10	May	11
Jun	9	Jul	8	Aug	9	Sep	7	Oct	6
Nov	5	Dec	5						

Notwithstanding the foregoing, it is understood and agreed by the parties that depending upon the circumstances certain amounts of precipitation may affect the project schedule. The Contractor shall notify the Architect and Owner in writing any time the Contractor believes that precipitation warrants an extension in the Contract Time. Any such notice shall be delivered to the Architect and Owner within twenty-one (21) days of occurrence of the precipitation believed by the Contractor to warrant an extension of the Contract Time.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

Except as provided below, the Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This waiver of consequential damages includes

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

This waiver of consequential damages is applicable, without limitation, to all consequential damages due to either party's termination of this Contract 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 Program Manager as the Initial Decision Maker.

§ 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 stating the reasons for rejection, (3) recommend approval of the Claim by the other party, (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 taking required action on the Claim. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense. In the event Owner fails to authorize retention of such persons, the Initial Decision Maker shall render a decision based on his experience and belief, or advise the Parties he is unable to resolve the claim because he lacks sufficient information to evaluate the merits.

§ 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 take action on the Claim as provided in Section 15.2.2..

§ 15.2.5 The Initial Decision Maker's action shall (1) be in writing; and (2) state the reasons therefor

§ 15.2.6 If the Owner and the Contractor resolve the Claim, the Project Manager shall prepare a Change Order or other documentation accordingly. If the Owner and the Contractor do not resolve the Claim after consideration of the foregoing, either party may seek a judicial resolution of any Claim.

Init.

(Paragraph deleted)

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

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

§ 15.2.9 Subject to Section 9.7, pending final resolution of any claims including legal proceedings, the Contractor shall carry on the Work and maintain its progress, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents **except** for items specifically in dispute.

§ 15.3 Intentionally Omitted.

(Paragraphs deleted)

§ 15.4 Intentionally Omitted.

(Paragraphs deleted)

Additions and Deletions Report for **AIA[®] Document A201[™] – 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 14:55:17 on 04/24/2013.

PAGE 1

EXHIBIT B

...

Parking Deck Nos. 2 and 3

...

THE OWNER:

(Name, legal status and address)

West Haymarket Joint Public Agency

555 South 10th Street

Lincoln, NE 68508

THE DESIGN PROFESSIONAL (hereinafter "ARCHITECT"):

...

DAVIS DESIGN

...

~~THE ARCHITECT:~~

~~THE PROGRAM MANAGER:~~

...

PC Sports

PAGE 4

2.2.1, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 7.4.1, 8.3.1, 9.3.1.1, 11.3.9

PAGE 5

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, ~~14.2.1~~, 14.2.1.1

PAGE 10

~~The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement. For the purpose of these General Conditions the Contract Documents~~

Additions and Deletions Report for AIA Document A201[™] – 2007. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997 and 2007 by The American Institute of Architects. All rights reserved. **WARNING: This AIA[®] Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA[®] Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law.** This document was produced by AIA software at 14:55:17 on 04/24/2013 under Order No.8680409353_1 which expires on 10/17/2013, and is not for resale.

User Notes:

(1684105013)

consist of the Agreement [AIA Document A133-2009 Standard Form of Agreement Between Owner and Construction Manager (as modified)] between the Owner and Construction Manager (hereinafter the Agreement) and Conditions of the Contract (General, Supplementary and other Conditions), as amended, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

...

The 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~~ necessary to fulfill the Contractor's obligations. The Work may constitute the whole or a part of 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~~ and/or by separate contractors.

...

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~~ including performance of related services.

...

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

§ 1.1.9 CONTRACTOR

Wherever the term "Contractor" is used herein, it shall mean Construction Manager unless specifically indicated otherwise.

§ 1.1.10 LAWS AND REGULATIONS

All laws, ordinances, rules, regulations and orders of any public authority, all standard specifications, manuals and codes, and all manufacturer's specifications, directions, recommendations and publications referred to for the performance of the Work or for the establishment of construction, materials or equipment standards, whether or not specifically made a part of or incorporated by reference into Contract Documents, shall mean and refer to the latest revisions or editions thereof in effect on the date of the Contract Specifications, or as to Change Orders, on the date of the Change Order.

§ 1.1.11 MANUFACTURER'S SPECIFICATIONS

All references to the Manufacturer's Specifications", "Manufacturer's Directions or "Manufacturer's Recommendations" shall mean and refer to the referenced manufacturer's published specification or manuals. Upon written approval of the Architect and Program Manager, such publications shall be made a part of and incorporated into the Contract Specifications as though repeated therein in full, and all manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned accordingly, unless specified to the contrary by the Architect.

§ 1.1.12 MISCELLANEOUS DEFINITIONS

"Furnish," unless specifically limited to context, means furnishing to project site items specified, to include unpacking and assembly if necessary. "Install" means incorporation in the Work, including all necessary labor, materials, equipment and connections necessary to complete installation.

PAGE 11

§ 1.2.1 The intent of the Contract Documents is to include all labor and materials, except that which is specifically designated to be supplied by others, all tools and equipment and any other items necessary for the proper execution and completion of the Work by the Contractor. The Contractor shall perform all necessary and incidental work and furnish any such materials as if they were particularly delineated or described in the Contract Documents. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 Work not particularly detailed, marked or specified subject to Architect's concurrence shall be the same as similar parts that are detailed, marked or specified such that all details, ornament, moldings, repeated features, etc. are constructed alike and continue throughout.

§ 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. Contractor is solely responsible for coordination of bidding, procurement and scope of work of Subcontractors and shall assume full responsibility for complete coordination of Subcontractors.

§ 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. Whenever references to specification sections and details are preceded by the word "see" any such reference is to be interpreted to include the phrase "and comply with."

...

§ 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.~~ except that ownership of the Instruments of Service, not including the right of copyright, shall become the property of the Owner as soon as payment for the same has been completed. 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 Owner, Architect's or Architect's consultants' reserved rights.

PAGE 12

§ 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.~~ hereby designates Program Manager as the Owner's authorized representative who shall have authority to make such decisions on behalf of the Owner as are separately agreed to in writing between the Owner and the Project Manager. The Project Manager has designated Paula Yancey as its designated representative. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. ~~The term "Owner" means the Owner or the Owner's authorized representative.~~

...

§ 2.2.3 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. Notwithstanding anything to the contrary herein, Contractor will be responsible for notifying BNSF (for

excavations on BNSF property) and Diggers Hotline of Nebraska prior to excavation to identify the location of all overhead and underground utilities. Contractor shall not proceed with such excavation until verifying that the locators have performed their investigations or that observation of the excavation does not require the presence of BNSF and/or utility company representatives. Contractor will be responsible for the cost of repair of any existing utilities and/or other property damaged as a result of the failure of the Contractor to comply with the preceding sentence.

PAGE 13

§ 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. Contractor accepts all visible local requirements and visible existing conditions of the site.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and Program Manager any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect and/or Program Manager 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. Prior to commencing any excavation required by the Work, the Contractor shall notify BNSF's Project Engineer (for excavation on BNSF property or within 25 feet of a track) and Diggers Hotline of Nebraska and shall not proceed with the excavation until such entities have marked the location of such facilities or verified that none exist. Any charges resulting from damaged facilities or utilities because of any failure on the part of the Contractor to comply with the preceding sentence shall be borne by the Contractor.

§ 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 have an affirmative duty to 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 fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

PAGE 14

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall reasonably cooperate with all other contractors performing work in the West Haymarket Redevelopment Area. Staging Areas for the Work shall be subject to the Owner's Staging Plan attached as Exhibit G to the Contract Documents. 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.

...

§ 3.3.4 For all equipment furnished by others to be installed by the Contractor, the Contractor shall use manufacturer's detail drawings, as furnished by others, as approved by the Architect or Owner, to establish rough-in dimensions and locations of services.

PAGE 15

~~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.~~ § 3.5.1 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.

§ 3.5.2 The entire Work shall be warranted against defects in material and workmanship for a period of one (1) year, or such longer time as may be required by the Contract Documents, from the date of Substantial Completion except with respect to any "punch list" items noted at the time of Substantial Completion or occupancy by Owner if prior to date of Substantial Completion. All defects in material and workmanship appearing during the warranty period will be remedied to the reasonable satisfaction of the Owner at no additional cost to the Owner. Contractor, Program Manager, and Architect shall conduct an inspection approximately eleven (11) months after the Date of Substantial Completion to identify warranty defects. During such warranty period, if the Architect and/or Program Manager discover that any of the Work is not in accordance with the Contract Documents, the Architect and/or Program Manager shall notify the Owner and Contractor in writing. The Architect and/or Program Manager shall give such notice promptly after discovery of the condition. Upon receipt of such notice, the Contractor shall promptly correct the work, at the Contractor's expense. The Contractor shall extend the guarantee period for any portions of Work first performed after Substantial Completion. The Contractor shall extend the guarantee period for the number of days between Substantial Completion and the actual completion of such Work. All obligations shall survive acceptance of the Work under the Contract and termination of the Contract. If at any time within the period of guarantee, any of the Work included in the guarantee shall require any repair or reconstruction, the Owner shall notify the Contractor to make the repairs required. Upon receipt of such notice, the Contractor shall proceed with such repairs and shall complete the same within a time fixed by the Owner at the Contractor's cost and expense. If the Contractor shall neglect or fail to proceed with such repairs, then the Owner shall have the right to cause such repairs to be made in a reasonable manner and the whole cost thereof shall be paid directly by the Contractor or reimbursed by him to the Owner; and if the Contractor neglects or refuses to do so, such cost shall be paid by the Contractor's Surety on the performance bond required by the Contract Documents.

§ 3.5.3 Notwithstanding Contractor's warranty as required under Paragraph 3.5.2, Contractor will be responsible for the correction of any hidden or latent defects discovered after the initial warranty period, subject to applicable Nebraska Statutes and law.

§ 3.5.4 Where a greater warranty is called for in the Specifications and is required to be separate from the Specifications themselves, the warranty will be provided by the party or parties required in the Specifications to furnish the warranty. Such warranties shall be in a form consistent with the requirements of the Specifications.

§ 3.5.5 The Contractor shall secure and furnish to the Owner through the Architect, as a condition precedent to final acceptance and prior to application for final payment, all written guarantees and warranties required in the Specifications to be furnished separate from the warranties set forth in the Specifications.

...

The Contractor shall pay applicable sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Since the Owner is a governmental entity, it is anticipated that sales and use taxes on tangible personal property to be incorporated into the Work will be excluded under the following procedure: The Owner will issue a Purchasing Agent Appointment and Exempt Sales Certificate signed by the Purchasing Agent of the City of Lincoln. The Contractor performing the work for the Owner, except for work performed for the Lincoln Water System, will be issued a Purchasing Agent Appointment and Exempt Sales Certificate signed by the Purchasing Agent of the Owner. The Purchasing Agent Appointment and Exempt Sales Certificate is to be used by the Contractor and his Subcontractors when purchasing tangible personal property to be actually incorporated into the Contract work, including materials incidental but necessary to the performance of the Contract, provided that such materials are actually incorporated into the contract work. It does not apply to either (1) the purchase of materials to be used but not incorporated into the contract work, including but not limited to form lumber, scaffolding, etc., or (2) the purchase or rental of machinery, equipment, or tools owned or leased by the Contractor or his Subcontractors and used in performing the Contract work.

Purchases qualifying as aforesaid shall be considered as being made by the Owner. The Owner shall be obligated to the vendor for the purchase price, but the Contractor or Subcontractor, as the case may be, shall handle all payments therefore on behalf of the Owner. The vendor shall agree to make demand or claim for payment of the purchase price from the Owner by submitting an invoice to the Contractor or Subcontractor. Title to all materials and supplies so qualifying shall vest in the Owner directly from the vendor. Regardless of the method of payment, title shall vest immediately in the Owner. The Contractor or Subcontractor shall not acquire title to any materials incorporated into the project. All invoices shall bear the Contractor's or Subcontractor's name as agent for the Owner.

The Contractor may reproduce copies of this Contract Agreement and of the original of the aforesaid Appointment and Certificate to furnish to his suppliers on each invoice or order. The Contractor shall enter the supplier's (the vendor's) name and address, the date, the invoice or order number, a description of the items, and the amount, in the spaces provided and shall sign the certificate on the line provided for the "Purchaser's Agent."

The Contractor shall provide each Subcontractor with a copy of this Contract Agreement and of said Appointment and Certificate, and on each Subcontractor's copy of said Appointment and Certificate the Contractor shall add the Subcontractor's name and address in the places provided therefor. Each Subcontractor is hereby given the authority to reproduce copies of the copy of said Appointment and Certificate thus provided him by the Contractor and to furnish the same to his (the Subcontractor's) suppliers on each invoice or order; and the Subcontractor shall complete and sign the same for his purchases in like manner as above set forth for the Contractor.

PAGE 16

§ 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 required to perform the Work.

...

§ 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~~ Owner, Program Manager, and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect and/or Program Manager will promptly investigate such conditions and, if the Architect and/or Program Manager determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, Program Manager will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect and/or Program Manager determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect and/or Program Manager shall promptly notify the ~~Owner~~ and Contractor in writing, stating the reasons. If ~~either party~~ Contractor disputes the Architect's and/or Program Manager's determination or recommendation, ~~that party~~ the Contractor 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~~ Owner, Program Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 Subject to Section 3.7.4, the Contractor shall secure all applicable permits (including the building permit) and certificates, pay all fees and arrange for necessary inspections required by State, County, City or other authorities and pay all expenses for repairing highways, streets, sidewalks alley, etc. occasioned by execution of its Work.

PAGE 17

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the ~~Architect~~ Program Manager the name and qualifications of a proposed superintendent. The ~~Architect~~ Owner and Program Manager may reply within 14 days to the Contractor in writing stating (1) whether ~~the Owner or the Architect~~ said party has reasonable objection to the proposed superintendent or (2) that ~~the Architect~~ said party requires additional time to review. Failure of the ~~Architect~~ Owner and/or Program Manager to reply within the 14 day period shall constitute said party's notice of no reasonable objection.

...

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's ~~information a approval~~ Contractor's construction schedule for the Work. The schedule shall take into account the need to provide for a smooth sequence of operations through cooperation and coordination of construction activities, sharing of shared access roads and staging areas with other contractors of the Owner performing work in the West Haymarket Redevelopment Area. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Contractor shall build into the schedule time delays due to adverse weather conditions as indicated in Section 15.1.5.4.

PAGE 18

§ 3.10.4 Contractor in conjunction with Major Subcontractors shall provide a Bar Chart or CPM Schedule of work to Architect, Owner and Subcontractors. Contractor and its subcontractors are responsible for adherence to this schedule and shall supply sufficient new equipment, tools, and workmen to complete work within time limits specified in this schedule.

§ 3.10.5 Contractor shall within 15 calendar days of start of construction submit to Owner and Architect a copy of the Bar Chart or CPM Schedule, indicating the scheduled dates that various phases of work will start and finish. Contractor shall keep Owner apprised of any delays or changes in this schedule. The schedule shall be updated to

current conditions and submitted with each pay request. No approval of a pay request will be given unless this updated schedule is submitted.

§ 3.10.6 Contractor shall on a daily basis prepare a report in which all events affecting the job and occurring that day are recorded. When requested by Owner, copies of these reports shall be submitted to the Owner for information and review.

§ 3.10.7 Contractor shall maintain a Shop Drawing and submittal log, which shall be updated to current conditions, reviewed at each progress meeting, and submitted with each request for payment.

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 and updated weekly~~ to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, ~~Samples and similar required submittals.~~ Samples, Warranties, Owner Manuals, Parts List, and similar required submittals (collectively "Record Documents"). 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.

...

§ 3.12.5 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. The Architect shall provide the Program Manager with signed submittals approved by the Architect.

PAGE 19

§ 3.12.11 Upon Substantial Completion of the Work, the Contractor shall compile for and deliver to the Owner a set of corrected Specifications and Drawings conforming to the construction records of the Contractor and showing the recorded location of the changes in the Work. Within 15 days upon completion of all Work, the Contractor shall furnish to Architect one (1) complete set of final Specifications and Drawings in electronic format (PDF or agreed upon alternative) that have been corrected to show all revisions, deletions and additions. These final Specifications and Drawings shall bear the Contractor's and Subcontractor's signatures and date. The Architect shall then forward an electronic copy of the final Specifications and Drawings to the Owner. No final payment will be issued to the Contractor until the final set of Specifications and Drawings and other Record Documents are delivered to the Architect.

~~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.~~ § 3.13.1 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.

§ 3.13.2 The Contractor and each Subcontractor shall provide their own security against theft and vandalism and protection against the elements for suitable storage of their materials or equipment delivered to the site or delivered to some other location agreed upon in writing, which are to be incorporated into this Project, and shall provide their own trailers or sheds for storage of their materials, equipment, tools, etc., if not otherwise provided by the Contractor. Areas for general storage and storage trailers or sheds shall be approved by the Owner. The Contractor and each Subcontractor shall deliver all cement, caulking materials, paint materials, lime, plaster, adhesives for resilient floors, acoustical materials, and all similar materials to the job or to the off- site storage location in original sealed containers, unopened, with seals unbroken and with labels plainly indicating manufacturer's name, brand, type and grade of materials. Containers which are broken, opened, water- marked or otherwise damaged and/or which contain caked, lumpy or otherwise damaged materials are unacceptable and shall be immediately removed from the premises. All the above-mentioned materials shall be stored above ground and protected from dampness, weather, and other damage.

§3.13.3 The Contractor shall enforce the Owner's instructions regarding use of the site, any designated offsite staging areas, and surrounding public streets regarding signage, advertisement, noise, clean-up, smoking, parking, deliveries, etc., and other reasonable rules of conduct and procedures for minimizing the impact of the Work on surrounding properties and public rights-of-way.

§3.13.4 All utilities, curbs, drives, streets, buildings, mechanical and electrical equipment which are damaged or cut during construction and are to be used after construction shall be repaired such that the condition of the repaired item equals or exceeds its condition prior to construction.

§ 3.13.5 The construction, placement of barricades, and posting of warning signs in the area of construction will be the responsibility of the Contractor. This shall include the placement of construction equipment and any obstacles which are created as a result of the construction project. The placement of barricades and warning signs shall be in compliance with the Manual on Uniform Control Devices and the 2007 edition of the Nebraska Department of Roads "Standard Specifications of Highway Construction" and approval by the City of Lincoln, Nebraska. To the extent permitted by law, the Contractor expressly accepts control of the construction equipment and any obstacles created during construction of the project. This Section does not alleviate Owner from statutory or common law duties related to landowners.

§ 3.13.6 The Contractor shall supply and maintain adequate sanitary facilities by providing temporary and portable units on the work site to comply with current City-County Health Department and State Department of Health requirements and regulations. These facilities are to be made available for the Contractor's employees and project personnel.

PAGE 20

§ 3.14.3 Permission to patch any areas or items of work does not imply a waiver of the Architect's and/or Program Manager's right to require complete removal and replacement in said areas and of said items if, in Program Manager's opinion, after review and concurrence by Architect and/or other authority having jurisdiction in appropriate circumstances, patching does not satisfactorily restore the quality and appearance of the work.

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation at all times keep the site of the Work free from accumulations of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project, his employees or work, and at the completion of the Work he shall remove all rubbish from and about the Work and all tools, equipment, scaffolding and surplus materials and shall leave the site clean and ready for use. All sewers, conduits, pipes and appurtenances, and all tanks, pump wells, chambers, buildings and other structures shall be kept clean during construction; and as the Work or any part thereof approaches completion, the Contractor shall systematically and thoroughly clean and make any needed repairs to them. Contractor shall furnish, at Contractor's own expense, suitable tools and labor for removing all water and cleaning out all dirt, mortar and foreign substances. The Owner may remove or cause the removal of the rubbish and surplus materials and deduct the cost from the final estimate or charge the cost to the Contractor if the cleanup is not properly performed by the Contractor within three (3) days of written notice from the Owner.

PAGE 21

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~~ Owner, Program Manager 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 Owner, Program Manager, and Architect.

§ 3.18 INDEMNIFICATION -- Intentionally Omitted

~~§ 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 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.~~

...

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

...

~~§ 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 Program Manager will provide administration of the Contract and have authority to act on behalf of the Owner to the extent provided in the Owner's agreements with Program Manager. . The Architect will provide administration of the Contract and have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.Owner's agreement with Architect.~~

~~§ 4.2.2 The Architect and Program Manager 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 and Program Manager will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect and Program Manager 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 and Program Manager will keep the Owner and each other reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and Program Manager (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 and Program Manager will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect and Program Manager 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.~~

PAGE 22

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor ~~shall endeavor to will generally~~ communicate with each other through ~~the~~

~~Architect-Program Manager~~ about matters arising out of or relating to ~~the Contract~~, changes or modifications to the Drawings and Specification or the interpretation thereof. 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~~ the Program Manager. Notwithstanding, Owner and Contractor may communicate directly with Architect's consultants where Architect is not immediately available or where, in the judgment of the Owner or Contractor, Architect has been unresponsive.

§ 4.2.5 Based on the Architect's and Program Manager's review and 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 and/or~~ Program Manager will have authority to reject Work that does not conform to the Contract Documents. Whenever the Program Manager and/or Architect considers it necessary or advisable, the Program Manager and/or 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 or Program Manager 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 or Program Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work. Contractor shall promptly notify the Owner if the Program Manager and/or Architect rejects work or requests additional inspection/testing.

...

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and ~~may authorize minor changes in the Work as provided in Section 7.4. The Architect submit the same to the Program Manager for review and subsequent approval by the Owner and the Architect.~~ The Architect and/or Program Manager will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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

PAGE 23

§ 4.2.11 ~~The Architect will interpret and decide matters~~ Program Manager shall act as the Owner's representative concerning performance under, and requirements of, the Contract Documents on written request of ~~either the Owner or Contractor~~. The ~~Architect's~~ Program Manager's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. The Architect shall decide matters relating to aesthetic effect consistent with the intent expressed in the Contract Documents.

§ 4.2.12 ~~Interpretations and decisions of the Architect~~ Advisory interpretations and final decisions of the Program Manager or Architect, respectively, 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 Program Manager and Architect will endeavor to secure faithful performance by both Owner and Contractor, ~~will not show partiality to either Contractor~~ and will not be liable for results of interpretations or decisions rendered in good faith.

...

§ 4.2.14 ~~The Architect-Program Manager~~ will review and respond to requests for information about the Contract Documents. The ~~Architect's~~ Program Manager'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.

...

§ 5.1.3 Subcontractors, sub-subcontractors, and material suppliers shall not contact the Architect, Program Manager, or Owner directly. Any information they might need shall be obtained through the Contractor.

§ 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. Subcontracts shall be procured in accordance with Subcontractor Procurement Exhibit attached to the Agreement as Exhibit C.

PAGE 24

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.

§ 5.3.1 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.

§ 5.3.2 The Contractor is fully responsible to the Owner for acts and omissions of its Subcontractors and persons employed by them or under their control including sub-subcontractors.

§ 5.3.3 Nothing in Contract Documents shall create a contractual relationship between any Subcontractor and the Owner, Project Manager, or the Architect.

...

§ 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-suspension to the extent that Subcontractor can prove that cost increases are a result of material cost or wage rate increases.

...

§ 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 to other contractors of the Owner ("separate contractor") 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.

PAGE 25

§ 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~~ them; however, Contractor will coordinate the scheduling of the Work of the Contractor's separate subcontractors. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

...

§ 6.1.5 The Contractor shall reasonably cooperate with all separate contractors, including all reasonable coordination of Contractor's own Subcontractors. It is understood that reasonable cooperation in all phases of the work is to be expected by all separate contractors. Scheduling of their portions of work shall be arranged between them and the Contractor by Owner's Program Manager for smooth sequence of operations.

§ 6.1.6 Contractor shall permit any separate contractors to reasonably utilize its temporary facilities, telephone, power, water or other facilities available for use by its subcontractors in the execution of their work. Contractor may not charge any fees to separate contractors for permitting the reasonable use of Contractor's facilities, except for the actual out-of-pocket cost resulting to the Contractor (such as long-distance telephone charges, equipment rental, extraordinary utility usage, etc.).

...

§ 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, resulting from delays caused by~~ improperly timed activities, damage to the Work or defective construction of a separate contractor.

PAGE 26

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the ~~Architect alone~~ Program Manager alone in accordance with Section 7.4 below.

...

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

...

§ 7.3.1 A Construction Change Directive is a written order prepared by the ~~Architect and~~ Architect, reviewed by the Program Manager and, if approved by the Owner, 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.

...

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

PAGE 27

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the ~~Architect-Program Manager~~ 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-Program Manager~~ may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 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 allowable Cost of the Work under the Agreement as may be needed and General Conditions Costs, as agreed to by the parties.

§ 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-Program Manager~~. 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 Program Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the ~~Architect determines, in the Architect's Program Manager and Architect determine, in their~~ professional judgment, to be reasonably justified. The Program Manager's and 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-Owner or Contractor 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-Program Manager~~ concerning the adjustments in the Contract Sum and Contract Time, or otherwise ~~reach agreement reaches agreement with Owner~~ 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.

§ 7.3.11 Contractor will not delay the progress of the Work, pending final determination of value of the Change in the Work, in the event of the issuance of a Construction Change Directive.

...

The ~~Architect-Program Manager~~ 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-Program Manager~~ and shall be binding on the Owner and Contractor.

PAGE 28

§ 8.2.4 By executing the Agreement, Contractor acknowledges that the fixing of the Contract Time, Completion Date, and amount of Liquidated Damages in the Contract Documents is fair and reasonable and has taken the following factors, among others, into consideration:

- .1 The urgent need of the Owner to have the project completed by the time specified in order to fulfill its commitments to bond holders, tenants, employees, and other building occupants, invitees, or users;
- .2 The size, general design, and location of the project;
- .3 The quantity, quality, and probable availability of labor and materials involved in the construction of the project;
- .4 The Contract Sum;
- .5 The average climatic range, the customary weather for the time period of the Construction Contract and the usual customs and practices prevailing in the construction industry in this area;
- .6 The impossibility of ascertaining and fixing the actual damages the Owner would sustain the event of delay in the completion of the project;
- .7 The applicable laws and governmental rules and regulations;
- .8 The weather conditions customarily encountered in the area of the Project and as described in Section 15.1.5.

Nothing in this Section 8.2.4 shall be deemed to limit Contractor's right to an adjustment in the Contract Time or the Contract Sum pursuant to other terms of the Contract Documents.

§ 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. The time for completion of the Work shall be extended or the contract otherwise adjusted upon written request from the Contractor to Owner, provided the request is based on delays or suspensions for causes beyond the control and are not the fault of the Contractor. Such delays shall include, but not be limited to, acts or neglects of the Owner, Program Manager or the Architect or separate contractors or any other party under the control of the Owner or others performing additional work, or to fires, floods, labor disputes, unusual delay in deliveries, epidemics, vandalism, abnormal weather conditions or acts of God; or the request is based upon a change in the scope of the Work which has been approved by the Owner. The length of such extension shall be the equivalent number of working days, if the contract time is expressed in working days, or the equivalent number of calendar days, if the contract time is expressed in calendar days or is expressed as a specific completion date, during which the Work was suspended or delayed. Requests for extensions in completion dates shall be in accordance with Section 15.1.2.

Certain delays will not be justified for extension of time. Such delays, shall include, but not limited to:

1. Delays caused by a Subcontractor, unless ultimately caused by circumstances otherwise permitting an extension of time under this Section 8.3.1.
2. Inadequate construction force.
3. Failure to place orders for equipment or materials in a timely manner.
4. Normal periods of adverse weather.
5. Subsurface or otherwise concealed subsurface conditions for which the Contractor is not entitled to relief under Section 3.7.4.

PAGE 29

§ 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. Documents or under the law. If the Contractor is delayed any time in the commencement or progress of the Work by an act or neglect of the Owner, Program Manager, or Architect, or a separate contractor, then, in addition to an extension of time, the Contractor shall be entitled to an equitable adjustment in the Contract Sum for increased costs resulting from such delay.

...

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the The Contractor shall submit to the Owner, Program Manager, and Architect, before the first Application for Payment, a detailed and approved 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-Architect, Program Manager, and/or Owner may require. This schedule, unless objected to by the Architect-Architect, Program Manager, and/or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.~~

...

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Program Manager and the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if values 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 Program Manager and/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, which have been approved by the Program Manager but not yet included in Change Orders.

...

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored by the Contractor at the site for subsequent incorporation in the Work. Notwithstanding the Owner having title to such material and equipment, pursuant to Paragraph 9.3.3, Contractor shall be responsible for the entire cost of any replacement, theft, repair, or other damage which make the materials unsuitable for incorporation in the Work, except to the extent caused by the Owner or parties under its control. Contractor will be held completely responsible for the materials until they are fully incorporated into the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.2.1 The Owner may approve payment for materials and equipment stored off the site under the following conditions:

The Contractor shall furnish and maintain a safe, secure, and suitable insured storage site and proper storage conditions, which must be approved in advance by the Owner. Equipment and materials covered by an application for payment must be stored above grade, and must be properly protected at all times against weather, heat, cold, moisture, vandalism or theft and other hazards as the material may require. All protection must be provided by the Contractor, at his own expense, and must be maintained throughout the storage period. Materials and equipment must not be commingled with other similar materials or equipment, but must be stored separately and must be plainly labeled, "PROPERTY OF WEST HAYMARKET JOINT PUBLIC AGENCY", with project name. Materials and equipment stored at the site must be stored so that they may be readily inspected, measured, and counted, at all times, by the Program Manager. Application for Payment for materials and equipment stored off the site must be accompanied by a bill of sale, properly identifying the material and transferring ownership of the materials to the Owner. The bill of sale must be accompanied by an inventory of stored materials or equipment, together with a description of the storage site by street number and city, or by a legal description of the premises. The Contractor agrees that in accepting payment

for the materials or equipment stored off the site, it is in no way relieved of responsibility for the safe storage of the material and its safe transportation to, and installation in, the Work or for furnishing and installing the material in strict accordance with Drawings and Specifications. The Contractor further agrees that acceptance by the Owner of a bill of sale for stored materials or equipment does not imply acceptance of the same for the purpose of this Contract. Such acceptance shall not occur until completion of the Work by the Contractor and final acceptance by the Owner.

§ 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. Contractor shall provide conditional lien waivers to the Owner for all Work covered by an Application for Payment (to the extent of payment) no later than the time of payment. Contractor shall provide a final unconditional lien waiver for all Work covered by the payment with the Contractor's next Application for Payment.

PAGE 30

§ 9.4.1 The Program Manager and Architect shall promptly review each Application for Payment and 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, Payment for such amount as the Architect determines Program Manager and Architect determine is properly due, or notify the Contractor and Owner in writing of the Program Manager's and 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 to Owner will constitute a representation by the Architect and Program Manager to the Owner, based on the Architect's and Program Manager'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, that 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 Program Manager and 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 Program Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and 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.

...

§ 9.5.1 The Architect Program Manager 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 for the reasons set forth below. The Program Manager may, because of subsequently discovered evidence, 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 issued for the reasons set forth below:

PAGE 31

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for Owner shall make payment of 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. Intentionally Omitted~~

...

~~§ 9.6.1 After the Architect has Program Manager and Architect have 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. Documents.~~

...

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

...

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

...

§ 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 and when the Contractor has secured a temporary or permanent certificate of occupancy so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Program Manager and 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 Program Manager and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Program Manager's and 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 Program Manager and/or Architect. In such case, the Contractor shall then submit a request for another inspection by the Program Manager and/or 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 not exceeding ninety (90) days within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

PAGE 32

§ 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 Program Manager and 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-Contractor.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, ~~Contractor-Contractor~~, Program Manager 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.

...

§ 9.10.1 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 Owner, Program Manager, and Architect will promptly make such inspection and, when ~~the Architect finds they find~~ the Work acceptable under the Contract Documents and the Contract fully performed, the Architect and Program Manager 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 Program Manager's and 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 Program Manager and 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 Program Manager and Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Program Manager and 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~~ Program Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

PAGE 33

- .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; Documents;
- .4 latent and hidden defects discovered after final completion subject to Nebraska statutes and law; or
- .5 unrepaired items which were listed on a "punch list" prepared at time of Substantial Completion or at Final Completion.

...

§ 9.11 PAYMENT CONTINGENT UPON AVAILABILITY OF APPROPRIATED FUNDS OR FUNDS APPROVED BY OWNER
Any other provisions of the Contract Documents to the contrary notwithstanding, it is expressly understood and agreed that the legal obligation of the Owner to pay the Contract Sum or any part thereof shall be contingent upon the availability of funds specifically approved by formal action of Owner for the purpose of payment of the Contract Sum or any part thereof.

...

§ 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. More specifically, the Contractor shall give notice to all operators by calling the One Call Diggers Hotline (#811) pursuant to the One-Call Notification Act (Neb. Rev. State §76-2301 to 76-2330) before commencing excavation. Contractor shall also give notice to BNSF if the execution is on BNSF property or within twenty-five feet (25') of any track.

§ 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. In addition, the Contractor shall:

- .1 Provide and maintain, required amount of, portable fire-fighting equipment including fire extinguishers. All persons working on the project shall be familiarized with the locations and operation of fire extinguishers.
- .2 Provide, erect, and maintain all required planking, barricades, guardrails, temporary sidewalks, etc., streets, drives adjoining property and the new building, as well as to prevent accidents to the public and the workmen at the jobsite.
- .3 Provide and maintain proper shoring and bracing to prevent earth from caving or washing into the building excavation.
- .4 Provide and maintain proper shoring and bracing for existing underground utilities, sewers, etc., encountered during excavation work, to protect them from collapse or other type of damage until such time as they are to be removed, incorporated into the new work, or can be properly backfilled upon completion of new work.
- .5 Provide heavy plank covering over walks, curbs, drives, etc., and heavy wood cribbing around all trees within the construction area and at corners of the new building to protect them from possible damage by trucking or otherwise.
- .6 Provide and maintain protection against rain, snow, wind, ice, storms and heat so as to maintain all Work, materials, apparatus, and fixtures, incorporated in the Work, free from injury or damage. At the end of the day's work, cover all Work subject to damage. Remove snow and ice as necessary for safety and proper execution of the Work.

PAGE 34

§ 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. Notwithstanding anything to the contrary herein, the Contractor shall assume the responsibility for the protection of all finished construction under this Contract and shall repair and restore any and all damage to his finished construction to its original state, except that Contractor shall not be responsible for damage caused by the Owner or parties under its control.

...

§ 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. The Contractor shall not be responsible for any Hazardous Substance uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Document with specificity as to type and location to be within the scope of the Work. The Contractor shall be responsible for a Hazardous Substance created with any materials or equipment brought to the Site by the Contractor, Subcontractors, Suppliers, or anyone else for whom the Contractor is responsible.~~

If the Contractor encounters a Hazardous Substance or suspected Hazardous Substance or if the Contractor or anyone for whom the Contractor is responsible releases a Hazardous Substance, the Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby; and (iii) notify the Program Manager AND any regulatory agency required by law. The Program Manager shall promptly determine the necessity for the Owner to retain a qualified expert to evaluate such conditions or take corrective action, if any.

The Owner shall be deemed to be the generator of all Hazardous Substances that existed at the Project site prior to the commencement of the Contractor's Work (including for Hazardous Substances that are specifically identified by type and location to be part of the Work), and the Owner shall sign all manifests (as owner or generator, as indicated on the manifest) required to accompany the transportation and disposal of such Hazardous Substances. The Owner agrees that the Contractor is not responsible for any pre-existing Hazardous Substances at the Project site that are not specifically identified by type and location in the Contract Documents to be part of the Work or any Hazardous Substances brought to the Project site by anyone other than Contractor or its subcontractors. The Owner also agrees that Contractor is not responsible for any pre-existing Hazardous Substances at the Project site that are identified in the Contract Documents if Contractor uses reasonable care in the performance of its Work and has complied with any requirements included in the Contract Documents regarding such pre-existing Hazardous Substances.

To the extent the Contractor fails to use reasonable care in the performance of its Work and to comply with any requirements included in the Contract Documents regarding such pre-existing Hazardous Substances, Contractor shall be responsible for any and all civil or criminal penalties, fines, damages, or other charges imposed by any regulatory agency or court for all Hazardous Substances created or released for which the Contractor is responsible that are in violation of applicable statutes and laws and that are a result, direct or indirect, of work performed under this Contract. The Contractor shall also be responsible for reimbursement to the Owner for administration, reporting, and tracking expenses required as a result of any Hazardous Substances for which the Contractor is responsible. In the event the regulatory agency or court imposes a probationary period, the Contractor shall post bond for the probationary period to ensure that all such costs are reimbursed to the Owner. This responsibility shall apply whether penalties are imposed directly on the Contractor or any of its subcontractors, or the Owner. The Contractor shall

defend and indemnify the Owner against such penalties. Regulatory agencies may include, but are not limited to, the Department of Environmental Quality and the US EPA.

§ 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~~ Hazardous Substance reported by the Contractor and, in the event such ~~material or substance~~ Hazardous Substance is found to be present, to cause it to be rendered ~~harmless~~ harmless (which shall be deemed to mean remediated, removed or otherwise addressed as required by applicable regulations or authorities). Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the ~~Contractor~~ Contractor, Program Manager, 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~~ Hazardous Substance or who are to perform the task of removal or safe containment of such material or substance. The ~~Contractor~~ Contractor, Program Manager, 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~~ the Contractor, Program Manager, or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the ~~Contractor~~ Contractor, Program Manager, and the Architect have no reasonable objection. When the ~~material or substance~~ Hazardous 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. Owner shall procure and maintain insurance to cover the obligations in this paragraph. Contractor shall not incorporate in the Work any materials containing asbestos, PCB's, or other hazardous materials. Contractor shall not use, produce, store, release, dispose, or handle, in or about the project, or transfer to or from the project (or permit any other party to do such acts), any Hazardous Substance except in compliance with all applicable environmental laws.

§ 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.~~ "Hazardous Substances" shall mean all substances, materials, and waste that are or become regulated or classified in the handling, storage, remediation, or disposal as hazardous or toxic under any Environmental Law, including but not limited to any hazardous, ignitable, corrosive, caustic, reactive, toxic, or polluting waste or substance; a "hazardous waste" (as defined in the regulations adopted under the Resource Conservation and Recovery Act of 1976); oil or petroleum products; asbestos; polychlorinated biphenyls; formaldehyde compounds, explosives, and radioactive materials. "Environmental Laws" shall mean any federal, state, or local statute, ordinance, rule, regulation, order, decree or guideline (or that of any quasi-governmental entity having jurisdiction over the Project or the Project site) pertaining to health, industrial hygiene or the environment, including without limitation the Federal Comprehensive Environmental Response, Compensation, and Liability Act.

§ 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.~~ Intentionally Omitted

§ 10.3.6 ~~If, without negligence on the part of the Contractor, If the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely~~ Hazardous Substance by reason of performing Work as required by the Contract Documents, the Owner shall defend, indemnify and hold harmless the Contractor for all cost and expense ~~thereby incurred (including attorneys' fees, fines, judgments, and penalties) thereby incurred,~~ except to the extent that such damage, loss or expense is due to the negligence of the Contractor.

§ 10.4 EMERGENCIES

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

ARTICLE 11 — INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 10.3.7 The Owner shall not be responsible under Section 10.3 for Hazardous Substances brought to the site by the Contractor.

§ 10.3.8 The Contractor agrees to indemnify, defend, and hold harmless, to the fullest extent allowed by law, the Owner, and its principals, officers, and employees from and against all claims, demands, suits, actions, payments, liabilities, judgments and expenses (including court-ordered attorney's fees of any and every kind or character, known or unknown) arising out of or resulting from the acts or omissions of the Contractor regarding a Hazardous Substance for (1) any Hazardous Substance brought to the site by the Contractor or (2) any release, leak, spill, disposal of, or other handling in, on or about the site of any Hazardous Substance brought to the site by someone other than the Contractor, if the Contractor fails to use reasonable care in the performance of its Work and/or fails to comply with any requirements within the Contract Documents regarding Hazardous Substances and knew that such material was a Hazardous Substance at the time of the release, leak, spill, disposal or other handling, that results in any claim for damage whatsoever including any bodily injury, sickness, disease, cost of remediation, or damage to or destruction of tangible property, including loss of use resulting therefrom. Contractor further agrees to require that its Subcontractors release, defend and indemnify Owner to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Owner herein.

§ 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.

§ 10.5 WATER PRECAUTIONS

§ 10.5.1 The Contractor shall take all reasonable precautions to keep all parts of Site, including excavations, free from any accumulation of water, no matter what the source or cause.

§ 10.5.2 The Contractor shall dispose of water and waste water in such manner as will not endanger public health and safety or cause damage or expense to property. The Contractor shall comply with any law, or administrative regulatory, rule or local ordinance which is applicable to the disposal of water and waste water. If sewers and streets are allowed to be used for drainage or disposal of water during construction, they shall be maintained and left satisfactorily clean upon completion of Work.

§ 10.5.3 The Contractor shall not be responsible for contaminated ground water, unless the contamination of ground water shall be caused by the Contractor or any of its Subcontractors; provided Contractor shall not be responsible for contamination of ground water caused by Hazardous Materials already present at the site or brought to the site by other than the Contractor, unless Contractor fails to use reasonable care in the performance of the Work and/or fails to comply with any law, or administrative regulatory, rule or local ordinance which is applicable to the disposal of water and waste water.

§ 10.6 SIGNS

§ 10.6.1 The display of signs at the Project Site other than those required by law shall be limited to those required by Contract Documents and for safety and for the orderly management of the site, and signs that identify Contractor as the construction manager on the site. Subject to Owner's written approval, signage identifying, Architect, Owners or other primary parties may be erected on-site. Contractor shall submit a drawing showing the size, message and location of any such requested signs prior to the fabrication and installation thereof. Notwithstanding any provision to the contrary, the size, message and location of all signs must comply with Title 22 (Outdoor Signs and Structures) and Chapter 27.69 (Signs) of the City of Lincoln's Municipal Code and shall be subject to the approval of the Owner.

§ 10.6.2 The Contractor shall furnish and maintain all signs required for prosecution of the Work and as required by law and for public safety the control of vehicular and pedestrian traffic around the site typical for projects of similar scope and locale as deemed prudent by Contractor and Owner.

ARTICLE 11 PERFORMANCE BOND AND PAYMENT BOND

~~§ 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 furnish Performance and Labor and Material Payment Bond in the amount of one hundred percent (100%) of the Contract Sum. Such bonds shall be executed by the Contractor and by a corporate surety company authorized to transact business in the State of Nebraska. Such bonds shall be conditioned upon the faithful performance of all the terms and conditions of the Contract Document, and payment obligations arising thereunder, including holding harmless the Owner from failure to do so and including the making good of any guarantees or warranties which the Contract Documents may require. The Payment Bond shall be further conditioned upon the payment of all laborers and materialmen who provide labor, materials, etc. actually used or rented in the performance of the Contract, including insurance premiums and interest. The Contractor shall deliver the required bonds to the Owner at least three (3) days before commencement of any Work at the Project site.~~

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

~~§ 11.1.3 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. Should the principal amount of the Construction Performance Bond and Construction Payment Bond be modified as a result of a Change Order, the Contractor shall provide to the Owner written confirmation from the Surety indicating that the bond has been modified and to what extent it has been modified.~~

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

~~§ 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~~

~~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.~~

~~§ 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 less 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.~~

~~§ 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.~~

~~§ 11.4 PERFORMANCE BOND AND PAYMENT BOND~~

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

~~§ 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.~~

PAGE 37

§ 12.1.1 If a portion of the Work is covered contrary to the Program Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, Program Manager, be uncovered for the Program Manager's or 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 Program Manager or Architect has not specifically requested to examine prior to its being covered, the Program Manager or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, 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. Contractor shall be responsible for all costs associated with uncovering and recovering any Work that requires special inspection where such inspections were not performed

PAGE 38

The Contractor shall promptly correct Work rejected by the Program Manager or 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.

...

§ 12.2.2.2 The one-year warranty period or any extended warranty period required by the Contract 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. Neither the one-year warranty period nor acceptance of premises by the Owner shall relieve the Contractor of liability as to "latent defects" in workmanship or material discovered after the warranty period, subject to Nebraska statutes and 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 laws of the State of Nebraska.~~

PAGE 39

§ 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~~ Program Manager timely notice of when and where tests and inspections are to be made so that the ~~Architect~~ Program Manager may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, ~~Owner~~ Program Manager 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~~ Program Manager 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~~ Owner. ~~The Contractor~~, prior to performing such Work, shall give timely notice to the ~~Architect~~ Program Manager, ~~Architect~~, and/or public authorities having jurisdiction of when and where tests and inspections are to be made so that the ~~Program Manager~~, ~~Architect~~ and/or public authorities having jurisdiction may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

...

§ 13.5.4 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 Program Manager and Architect.

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

PAGE 40

§ 13.8 CODES AND ORDINANCES

When the specifications or drawings call for work or materials of higher standard than those required by codes or ordinances, the specifications and drawings shall govern.

§ 13.9 TRADE SECTIONS

The specifications are generally divided into trade sections for the purpose of ready reference, consistent with the Construction Specifications Institute's format. The division of the Work among his subcontractors is the Contractor's responsibility and the Architect assumes no responsibility to act as arbiter to establish subcontract limits of work.

§ 13.10 SAFETY REGULATIONS

All work on this project will be done in accordance with the applicable regulations of the Federal Register, Occupation Safety and Health Administration, Occupation Safety and Health Act and other applicable State and Federal regulations. Compliance with these regulations shall be the responsibility of the Contractor.

§ 13.11 CONSTRUCTION AND GRADING STAKING

The Contractor shall be responsible and pay for all construction staking and layout (working from building corners, boundary corners, and elevation reference datum point established by Owner's Engineer) including, but not limited to establishing the location of all gridlines, curbs and finish floor elevations. Contractor shall not begin paving operations until Owner and Architect have approved grades. Owner reserves the right to have an independent Registered Civil Engineer, employed by the Owner, verify any or all locations, grades or elevations. The Contractor shall make all corrections as required at no extra cost to the Owner.

§ 13.12 FEES FOR TESTS AND INSPECTIONS

§ 13.12.1 All testing and inspection consultants shall be approved by the Contractor and Owner. The Contractor shall be solely responsible for having all tests and special inspections required by the Contract Documents performed, and shall notify the Consultant when inspections are required. No work requiring inspections under the Contract Documents shall be covered or enclosed until such inspections have been performed.

§ 13.12.2 The frequency of testing required will be as indicated in the Specifications section.

§ 13.12.3 The cost of all quality control testing shall be paid by the Owner; provided that any excessive retesting (as reasonably determined by Owner) required for quality control as a result of deficient initial tests shall be paid for by the Contractor.

§ 13.12.4 Testing of utility systems, water and gas piping, electrical and alarm systems, fire sprinkler systems, and other systems customarily requiring testing pursuant to mechanical, plumbing or electrical codes, or acceptance by municipalities or utility companies shall be performed and paid for by Contractor.

§ 13.13 TIME

Time is of the essence in each Subcontract Agreement between the Contractor and Subcontractor, and the above provisions shall be included in all subcontractors contracts.

§ 13.14 RELATIONSHIP OF PARTIES TO THE CONTRACT

It is the express intent of the parties that this Contract shall not create an employer-employee relationship. Employees of the Contractor, or the Subcontractor, or the Sub-subcontractor, shall not be deemed to be employees of Owner, and employees of Owner shall not be deemed to be employees of the Contractor or the Subcontractors. The Contractor, Subcontractor, Sub-subcontractor and Owner shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees, the Subcontractor's employees, the Sub-subcontractor's employees nor Owner's employees shall be entitled to any salary, wages or benefits from any other party, including but not limited to overtime, vacation, retirement benefits, workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local, and any other payroll taxes with respect to its employees' compensation.

PAGE 41

§ 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' may~~ only terminate after giving seven (7) days written notice of Contractor's intent to terminate. If the Owner is unable to satisfy or remove the cause for termination within seven (7) days after Contractor's notice of intent to terminate, Contractor ~~may, upon seven (7) 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, and reasonable costs of demobilization.~~ Contractor shall perform all tasks described in Section 14.4.2 as a condition precedent to the receipt of payments to which Contractor is entitled.

PAGE 42

§ 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~~ Owner may, without prejudice to any other rights or remedies of the Owner, and after giving the Contractor and the Contractor's surety, if any, seven days' 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, and tools thereon owned by the Contractor and to be incorporated in the Work;

...

§ 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, Program Manager or Architect,~~ upon application, and this obligation for payment shall survive termination of the Contract.

...

- .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.~~orders;
- .4 obtain materials from Subcontractors and suppliers for which payment has been made and deliver them to the jobsite or such other location as designed by Owner. Also, move stockpiled materials at the site to locations within the building or other locations designated by Owner; and
- .5 where orders have been placed, determine to what extent and at what cost the orders may be canceled. Provide such information to Owner so Owner can decide whether to cancel or accept delivery and make payment. Deliver all such materials to the jobsite or to other location designed by Owner.

§ 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, plus~~ reasonable demobilization costs.

PAGE 43

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

...

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.~~ Change Orders shall be prepared and Certificates for Payment issued in accordance with the decisions of the Initial Decision Maker.

...

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.~~ Work pertaining to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

...

§ 15.1.5.3 The Contractor shall take due note of the fact that its failure to place orders for specified equipment or material sufficiently in advance of his scheduled date of installation will not be considered by the Architect or Owner as a valid reason upon which the Contractor may base his request for an extension of contract time, for any substitutes, or for any deviations from the drawings and/or specifications.

§ 15.1.5.4 No additional time will be allowed as a result of adverse weather unless all the following conditions are met:

- .1 The Contractor shall provide a written justification why Work could not effectively be performed under the weather conditions. The written justification shall include the project schedule of work and identify how the weather occurrence adversely affected the critical path of construction. If the critical path Work is indoors, temperature, wind speed, and precipitation will not be justifications for additional time unless the structure was not substantially enclosed or minimum indoor working temperature were not able to be maintained.
- .2 Claims for weather delay must be made in writing within twenty-one (21) working days from the end of the event occurrence except with respect to precipitation which shall be based on Paragraph (3) below.
- .3 Local Climatological Data from the US Department of Commerce, NOAA, National Climatic Data Center at the Municipal Airport, Lincoln, Nebraska will be used as the weather data for determining weather delay claims. The following will constitute factors for weather delay claims:

- (1) Temperature: Any three hour period during working hours that is reported in the above referenced Climatological Data as being below zero degrees Fahrenheit.
- (2) Wind Speed: Any three hour period during working hours that is reported in the above referenced Climatological Data as being in excess of 20 mph.
- (3) Precipitation: Will be based on the number of days per month when precipitation exceeds .01 inch and the number of such days exceed the median number of days per month when the precipitation exceeds .01 inch as shown in the table below:

Median No. of Days when Precipitation Exceeds .01 inch by Month

<u>Jan</u>	<u>8</u>	<u>Feb</u>	<u>6</u>	<u>Mar</u>	<u>8</u>	<u>Apr</u>	<u>10</u>	<u>May</u>	<u>11</u>
<u>Jun</u>	<u>9</u>	<u>Jul</u>	<u>8</u>	<u>Aug</u>	<u>9</u>	<u>Sep</u>	<u>7</u>	<u>Oct</u>	<u>6</u>
<u>Nov</u>	<u>5</u>	<u>Dec</u>	<u>5</u>						

Notwithstanding the foregoing, it is understood and agreed by the parties that depending upon the circumstances certain amounts of precipitation may affect the project schedule. The Contractor shall notify the Architect and Owner in writing any time the Contractor believes that precipitation warrants an extension in the Contract Time. Any such notice shall be delivered to the Architect and Owner within twenty-one (21) days of occurrence of the precipitation believed by the Contractor to warrant an extension of the Contract Time.

~~The Except as provided below, the Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual-waiver-waiver of consequential damages includes~~

PAGE 44

~~This mutual-waiver-waiver of consequential damages is applicable, without limitation, to all consequential damages due to either party's termination of this Contract 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.~~

...

~~§ 15.2.1 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. Program Manager as the Initial Decision Maker.~~

~~§ 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, part stating the reasons for rejection, (3) recommend approval of the Claim by the other party, (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-taking required action on the Claim. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense. In the event Owner fails to authorize retention of such persons, the Initial Decision Maker shall render a decision based on his experience and belief, or advise the Parties he is unable to resolve the claim because he lacks sufficient information to evaluate the merits.~~

~~§ 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.~~ take action on the Claim as provided in Section 15.2.2..

~~§ 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.~~ Maker's action shall (1) be in writing; and (2) state the reasons therefor

~~§ 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. If the Owner and the Contractor resolve the Claim, the Project Manager shall prepare a Change Order or other documentation accordingly. If the Owner and the Contractor do not resolve the Claim after consideration of the foregoing, either party may seek a judicial resolution of any Claim.~~

~~§ 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.~~

PAGE 45

~~§ 15.2.9 Subject to Section 9.7, pending final resolution of any claims including legal proceedings, the Contractor shall carry on the Work and maintain its progress, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents except for items specifically in dispute.~~

~~§ 15.3 MEDIATION~~ 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.~~

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

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

~~§ 15.4 ARBITRATION~~ Intentionally Omitted.

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

~~§ 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.~~

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Rick Peo , 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 14:55:17 on 04/24/2013 under Order No. 8680409353_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Exhibit C

Subcontractor Procurement

1.1 All subcontracts shall be procured on the basis of best value offered to the Project and shall be lump sum subcontracts. There will be two processes utilized for the best value selection of subcontractors: one-step RFP and two-step RFQ/RFP. The complexity of the work package, completeness of the Contract Documents at the time of procurement, and the size of the package will determine if one-step or two-step procurement will be utilized.

1.2 One-step process: Construction Manager shall, for each scope package: (1) draft a request for proposal specific to the scope of work (RFP) that includes the evaluation criteria from Section 1.4 that will be considered for the scope in question; (2) publish an RFP as an open invitation to offer a proposal; (3) advertise the RFP and conduct public outreach to prospective subcontractors; (4) conduct an advertised pre-proposal meeting with prospective subcontractors; (5) publish RFP addenda as necessary; (6) receive proposals utilizing the City of Lincoln's eBid system; (7) conduct a private opening of proposals; (8) review and reconcile proposals to the extent possible based on the proposals themselves; (9) create a short-list of proposers to be interviewed (generally between three to five proposers); (10) conduct interviews of the short-listed proposers; (11) further reconcile and evaluate the proposals based on the criteria established under Section 1.4 below; (12) provide a recommendation of award by Construction Manager for the best value subcontractor; (13) subject to approval of Owner, award a lump sum subcontract to the proposer that offers the best value to the Project, which may or may not be the proposer offering the lowest price; and (14) after award, publish a scorecard that includes the resultant evaluation of all the proposers. Reconciliation of proposals may include requiring proposers to make adjustments to correct for unacceptable proposal clarifications, scope omissions, insufficient commitment to the project goals, and/or scope ambiguities. The purpose of the reconciliation is to ensure the proposals are comparable in all respects so that they can be fairly evaluated.

1.3 Two-step process: Construction Manager shall, for each scope package: (1) draft a request for qualifications (RFQ) that includes some or all of the qualitative items included in Section 1.4, and a request for proposal (RFP) instructions tailored to the scope of work and level of development of the Construction Documents that includes some or all of the qualitative items included in Section 1.4 and specifically including price. The RFQ and RFP will include the evaluation criteria from Section 1.4 that will be considered for the scope in question; (2) publish the RFQ as an open invitation to offer qualifications; (3) advertise the RFQ and conduct public outreach to prospective subcontractors; (4) conduct an advertised pre-submission meeting with prospective subcontractors; (5) publish RFQ addenda as necessary; (6) receive RFQ responses utilizing the City of Lincoln's eBid system; (7) conduct a private opening of RFQ responses; (8) review and evaluate the qualifications based on the criteria established under Section 1.4 below; (9) create a short-list of proposers to be invited to advance in the selection process and provide a proposal (generally between three to five proposers); (10) notify both the unsuccessful and successful proposers of the short list (11) publish the RFP to the short listed firms to offer a proposal; (12) publish RFP addenda as necessary; (13) receive proposals utilizing the City of Lincoln's eBid system and publish the names of the proposers and the scoring criteria to be used in the evaluation; (14) conduct a private opening of proposals; (15) review and reconcile proposals to the extent possible based on the proposals themselves; (16) conduct interviews of the firms submitting RFP's; (17) further reconcile and evaluate the proposals based on the criteria established under Section 1.4 below; (18) provide a recommendation of award by Construction Manager for the best value subcontractor; (19) subject to approval of Owner, award a lump sum

subcontract to the proposer that offers the best value to the Project, which may or may not be the proposer offering the lowest price; and (20) after award of the subcontract, publish a scorecard that includes the resultant evaluation of all the proposers. Reconciliation of proposals may include requiring proposers to make adjustments to correct for unacceptable proposal clarifications, scope omissions, insufficient commitment to the project goals, and/or scope ambiguities. The purpose of the reconciliation is to ensure the proposals are comparable in all respects so that they can be fairly evaluated.

1.4 Construction Manager will, for each scope package, prepare weighted criteria to be used to determine the proposer offering the best value to the Project. These criteria may include price, project approach, qualifications, technical competence, key personnel, relevant experience, resource capacity, financial strength and bonding capacity, community participation, local workforce and business utilization, responses of references, safety approach and safety record, quality approach and quality record, commitment to schedule, and other criteria to be determined by Construction Manager. Proposals will be required to include a proposed lump sum price and information that will permit the Construction Manager to evaluate the proposal based on the criteria established.

1.5 At all times during the evaluation process, a member, or staff member, of the JPA may observe the Construction Manager in subcontractor procurement.

EXHIBIT D

FEE AND GENERAL CONDITIONS WORKSHEET				
Cost Category	Fee & Overhead	General Conditions	Direct Cost	Comments
Home Office Expenses	\$0	\$0	\$0	
Project Executive	0	\$0	\$0	
Home Office Overheads	\$0	\$0	\$0	
Business Development	\$0	\$0	\$0	
Training & Development	\$0	\$0	\$0	
Other	\$0	\$0	\$0	
Profit	\$0	\$0	\$0	
	\$0	\$0	\$0	
Preconstruction Services	\$0	\$0	\$0	
Project Manager/Staff	0	\$12,000	\$0	
Estimating	0	\$15,000	\$0	
Scheduling	0	\$0	\$0	
VE	0	\$0	\$0	
Constructability Review	0	\$2,022	\$0	
Other	0	\$2,151	\$0	
	0	\$0	\$0	
Construction Phase Staff	0	\$0	\$0	
Project Executive	0	\$40,000	\$0	
Project Manager	0	\$66,834	\$0	
Superintendent(s)	0	\$196,676	\$0	
Project Engineer	0	\$91,272	\$0	
Safety Manager	0	\$8,500	\$0	
Estimators	0	\$0	\$0	
Schedulers	0	\$0	\$0	
Consultants	0	\$0	\$0	
Contract Administrator	0	\$27,641	\$0	
	0	\$0	\$0	
Administration	0	\$0	\$0	
Accounting	0	\$9,272	\$0	
QC/QA	0	\$9,000	\$0	
Risk Management	0	\$0	\$0	
Legal	0	\$0	\$0	
HR	0	\$0	\$0	
Labor Relations	0	\$0	\$0	
Builders Risk Insurance	0	\$24,630	\$0	
Supplier Bonds	0	\$0	\$0	
Other	\$0	\$6,277	\$0	
	\$0	\$0	\$0	
Jobsite Operations	\$0	\$0	\$0	
Trailers/Job Office	\$0	\$15,024	\$0	

EXHIBIT D

Telephones	\$0	\$3,828	\$0
Copiers/Fax/Office Equipment	\$0	\$2,100	\$0
Office Supplies	\$0	\$2,750	\$0
Vehicles, Fuel, Maintenance	\$0	\$17,700	\$0
Document Reproduction	\$0	\$5,000	\$0
Postage & Couriers	\$0	\$1,495	\$0
Site Signage	\$0	\$0	\$0
Drug Testing	\$0	\$0	\$0
Temporary Toilets	\$0	\$7,500	\$0
Water, Ice, Cups	\$0	\$1,500	\$0
Dumpsters	\$0	\$13,500	\$0
Licenses	\$0	\$0	\$0
Permits	\$0	\$0	\$136,211
Materials Layout	\$0	\$0	\$0
Field Engineering and Equipment	\$0	\$0	\$0
Surveying & Layout	\$0	\$5,000	\$0
Temporary Utilities	\$0	\$7,380	\$0
Interim Cleaning	\$0	\$0	\$0
Final Cleaning	\$0	\$10,000	\$0
Fire Protection	\$0	\$550	\$0
Mobilization	\$0	\$0	\$0
Demobilization	\$0	\$0	\$0
	\$0	\$0	\$0
Performance and Payment Bond	\$0	\$115,115	\$0
General Liability Insurance	\$0	\$148,500	\$0
Security Cost	\$0	\$0	\$0
	\$0	\$0	\$0
Total Fee/GC Estimator	2.10%	\$0	\$0
		\$0	\$0
TOTAL EACH COLUMN	2.10%	\$868,217	\$136,211
Estimated Number of Months			
Anticipated Start Date:	<u>1-Jun-13</u>		
Estimated Substantial Completion Date:	<u>1-Sep-14</u>		
Total Number of Months for Completion:	15		
Cost of General Conditions			
Total Number of Months for Completion:	15		
Total Cost of General Conditions:	<u>\$868,217</u>		
Cost of General Conditions per Month:	<u>\$57,881.13</u>		
TOTAL PRICE PROPOSAL			
(Fee + GC+ Direct Cost)	<u>\$1,479,428</u>		

Fencing

ALL LINES MUST BE FILLED IN!

UNITED STATES CITIZENSHIP ATTESTATION FORM FOR PUBLIC BENEFIT
(to be used pursuant to Section XXVII.C)

For the purposes of complying with Neb. Rev. Stat. §§ 4-108 through 4-114, I attest as follows:

I am a citizen of the United States.

OR

I am a qualified alien under the Federal Immigration and Nationality Act. My immigration status and alien number are as follows:

_____, and I
agree to provide a copy of my USCIS (United States Citizenship and
Immigration Services) documentation upon request.

I hereby attest that my response and the information provided on this form and any related application for public benefits are true, complete and accurate and I understand that this information may be used to verify my lawful presence in the United States.

PRINT NAME: _____
(First, Middle, Last)

SIGNATURE: _____

DATE: _____

Certified Statement Pursuant to Neb. Rev. Stat. § 77-1323

§ 77-1323 Every person, partnership, limited liability company, association, or corporation furnishing labor or material in the repair, alteration, improvement, erection, or construction of any public improvement shall furnish a certified statement to be attached to the contract that all equipment to be used on the project, except that acquired since the assessment date, has been assessed for taxation for the current year, giving the county where assessed.

Pursuant to Neb. Rev. Stat. § 77-1323, I, _____, do hereby certify that all equipment to be used on JPA Project/Bid No. _____, except that equipment acquired since the assessment date, has been assessed for taxation for the current year, in Lancaster County, Nebraska.

DATED this ____ day of _____, 20__.

By: _____

Title: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

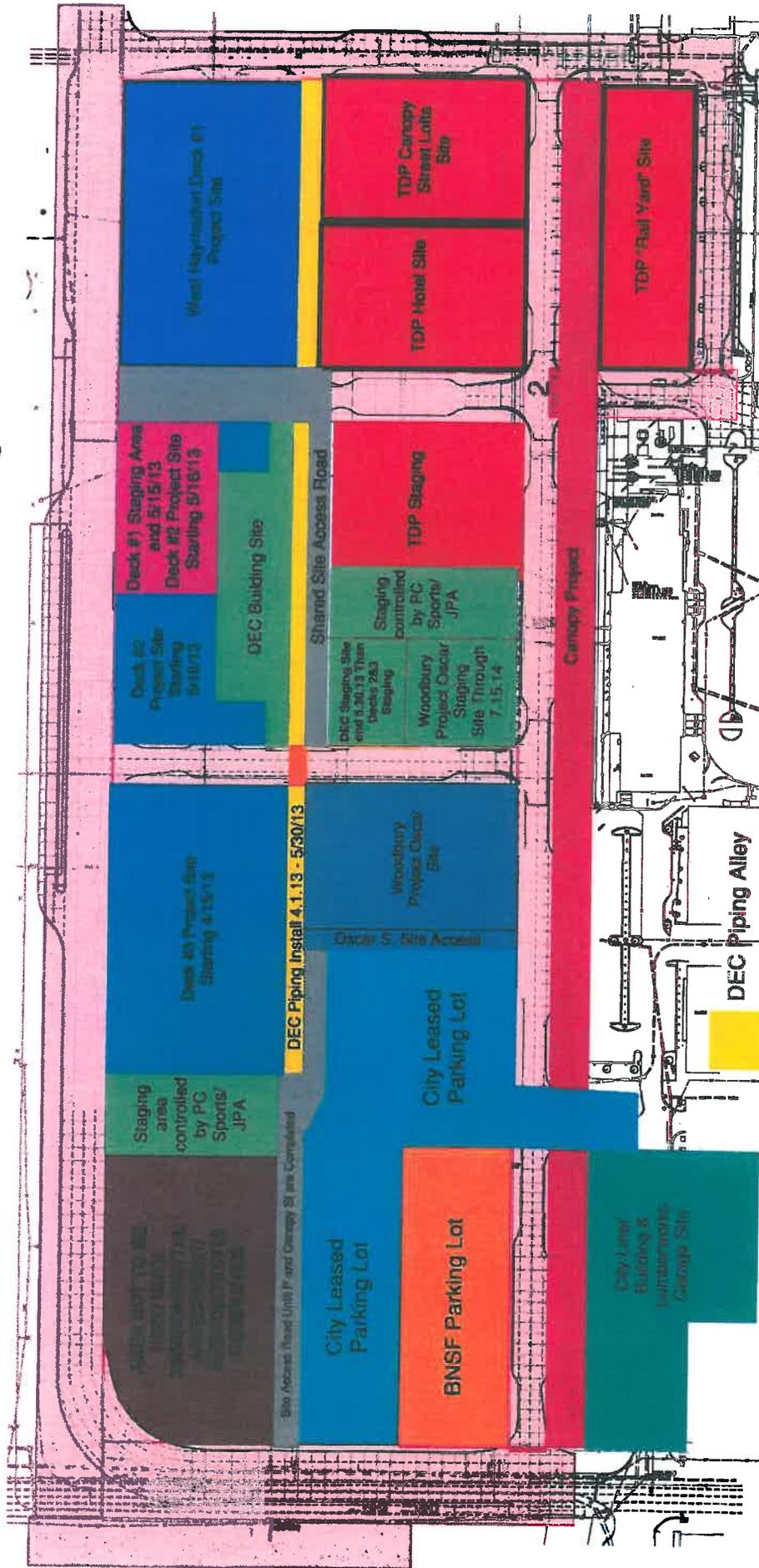
On _____, 20__, before me, the undersigned Notary Public duly commissioned for and qualified in said County, personally came _____ to me known to be the identical person, whose name is affixed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

Notary Public

(S E A L)

Effective 4/1/13 West Haymarket Construction, Staging, and Parking Coordination Plan



Core Area Roads Site, Staging, & Stockpile Locations
Additional Staging in Alter Area

Note* Construction Parking will be allowed on an "as available" basis or within staging sites. All personal vehicles will require some sort of identification to park in the West Haymarket footprint. Work trucks, if in use, are allowed where they are needed as long as they do not impede traffic.
Note** P Street will remain closed to the public traffic after other streets in the area are opened July/August '13 and will open upon completion of adjacent projects.

TERMS & CONDITIONS

- 1. The foregoing West Haymarket Construction, Staging, and Parking Coordination Plan (Effective 4/1/13) is not considered a final document but a working drawing. If the JPA determines changes are needed consideration will be given to the effect on all projects in order to limit impacts to the extent reasonably feasible.**
- 2. There will need to be a high level of coordination and teamwork in order to accomplish all projects in the area.**
- 3. All non-building site areas (roads, staging areas, parking lots, etc.) are to be left in the same or better condition vs. before their use.**
- 4. Access roads have been installed for everyone's use and should be maintained as such. Any project causing damage to the access road will be required to repair the road.**
- 5. If additional rock/material is requested for access roads or construction entrances, the project requesting additional rock will be required to add additional rock at its own cost and expense.**
- 6. The temp power location on "Q" is meant to serve the DEC, Deck 1, and TDP Projects. It will remain in place until no longer needed for those projects.**
- 7. Useable soil spoils from foundation and utilities work may be able to stay on site and provide a savings to both the JPA and the project involved. PC Sports shall be called prior to hauling soil spoils off site.**
- 8. Each project is to have and execute a SWPPP program. Special attention needs to be paid to track off cleanup and any potential run-off.**
- 9. If any fences, job trailers, or items that are not easily moved are to be located in the staging or ROW areas their location must be coordinated with PC Sports. If such fences, job trailers or items need to be relocated it will be at no additional cost to the JPA.**
- 10. Prior to moving to the staging site, a proposed site laydown plan is to be sent to PC Sports for review and approval.**
- 11. The JPA may require a screened joint site fence to be assembled between the Canopy and Pinnacle Arena Drive from "O" to "Q" in order to screen off construction after the Arena is open. Each project will be responsible to cover the costs of their sections of the fence.**

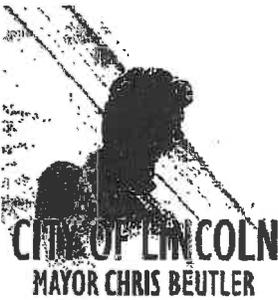


83319

smart # 11070200
7-26-10/law/tb

CITY OF LINCOLN
EXECUTIVE ORDER

NO. 083319



7/30

WHEREAS, there is concern over the inappropriate competitive advantages in the public bidding process for local publicly funded construction and delivery service contracts resulting from the misclassification of individuals performing construction labor services as "independent contractors" rather than "employees"; such "independent contractors" are commonly referred to as "1099 workers" due to the IRS form they receive rather than a W-4 which an employee receives;

WHEREAS, this misclassification of such individuals as "independent contractors" rather than as "employees" eliminates any obligation to pay these individuals legally required minimum or overtime wages, to provide legally required workers' compensation insurance, to make unemployment insurance payments, to pay legally required employment and payroll taxes, and to provide any other health, pension, or benefit such individuals would typically receive if properly classified as employees;

WHEREAS, this misclassification of individuals performing construction labor services for the contractor as "independent contractors" rather than "employees" is a violation of federal and state law, but is difficult to enforce once public construction or delivery service contracts have been bid, awarded, and entered into;

WHEREAS, the use of public funds to compensate contractors who unlawfully avoid their obligation to pay legally required minimum or overtime wages, to provide legally required workers' compensation insurance, to make unemployment insurance payments, to pay legally required employment and payroll taxes, and to provide any other health, pension, or benefit is not in the public interest; and

WHEREAS, the Employee Classification Act, Neb. Rev. Stat. §§ 48-2901 to 48-2912 (effective July 15, 2010) provides that any contract entered into between a political subdivision and a contractor shall require that each contractor who performs construction or delivery service pursuant to the contract submit to the political subdivision an affidavit attesting that (1) each individual performing services for such contractor is properly classified under the Employee Classification Act, (2) such contractor has completed a federal I-9 immigration form and has such form on file for each employee performing services, (3) such contractor has complied with Neb. Rev. Stat. § 4-114 requirements that the contractor register and use a federal immigration employment verification system to determine the work eligibility status of new employees physically performing services in the State of Nebraska, (4) such contractor has no reasonable basis to believe that any individual performing services for such contractor is an undocumented worker, and (5) as of the time of the contract, such contractor is not barred from contracting with the state or any political subdivision pursuant to § 48-2912 of the Employee Classification Act.

NOW, THEREFORE, BY VIRTUE OF THE AUTHORITY VESTED IN ME by the Charter of the City of Lincoln, I hereby establish the following policy as to the bid and award of contracts to contractors for construction and delivery services with the City of Lincoln:

The Purchasing Agent shall immediately include in the City of Lincoln's notice to bidders for construction contracts that all contractors submitting bids in response to the notice shall affirmatively certify to the Purchasing Agent that all individuals hired to perform construction or delivery labor services for the contractor under the contract shall be properly classified as employees and not as independent contractors if the individual does not meet the requirements of an independent contractor under federal and state law (including the requirements of the State of Nebraska Employee Classification Act), and that the contractor will comply with all legal obligations with respect to these employees (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes). The

notice to bidders shall further provide that contractors may use affidavits required pursuant to the Employee Classification Act for this purpose, but that a failure to make the affirmative certification to the Purchasing Agent shall render the bidder ineligible for award of the contract.

The Purchasing Agent shall immediately include the following provisions in contracts for construction or delivery services:

(1) Contractor agrees that each individual performing services for the contractor shall be properly classified as an employee and not as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and that contractor shall comply with all legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes).

(2) Contractor understands and agrees that failure to classify each individual hired to perform services under the contract as an employee rather than as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and/or failure to comply with legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes) shall be considered a breach of the contract and is a grounds for rescission of the contract by the City.

(3) Contractor additionally agrees to include the following provisions in each subcontract entered into with a subcontractor as part of the contractor's contract with the City:

(a) Subcontractor agrees that each individual performing services for the subcontractor shall be properly classified as an employee and not as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and that subcontractor shall comply with all legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay,

workers' compensation, unemployment compensation, and payment of federal and state payroll taxes).

(b) Subcontractor understands and agrees that subcontractor's failure to properly classify individuals hired to perform services under the subcontract as employees and not as independent contractors if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and/or failure to comply with legal obligations with respect to the employee (including, but not limited to, minimum and overtime pay, workers' compensation, unemployment compensation, and payment of federal and state payroll taxes) shall be considered a breach of the contract and is a grounds for rescission of the subcontract by the contractor.

(4) Contractor agrees that if subcontractor fails to or is suspected of failing to properly classify each individual hired pursuant to the subcontract as an employee and not as an independent contractor if the individual does not meet the requirements of an independent contractor under the State of Nebraska's Employee Classification Act and/or fails to comply with legal obligations with respect to the subcontractor's employee, the contractor shall take appropriate corrective action including, but not limited to, reporting the suspected violation of the State of Nebraska Employee Classification Act to the Nebraska Department of Labor or rescission of the subcontract by the contractor. Written notification of the corrective action shall be submitted to the City of Lincoln Purchasing Department. Contractor understands and agrees that contractor's failure to take appropriate corrective action shall be considered a breach of the contractor's contract with the City of Lincoln and is a grounds for rescission of the contract by the City.

(5) The City of Lincoln shall notify the Nebraska Department of Labor of any contractor or subcontractor it has determined is in breach of contract due to the terms of this order.

(6) Any contractor or subcontractor who shall have been determined by the Nebraska Department of Labor to have knowingly provided a false affidavit to the City of Lincoln

under the State of Nebraska's Employee Classification Act shall be referred to the Purchasing Agent of the City who shall determine whether to declare such contractor or subcontractor an irresponsible bidder who shall be disqualified from receiving any business from the municipality for a stated period of time, in accordance with Lincoln Municipal Code § 2.18.030(n)(1) or (2).

(7) This policy does not prohibit a contractor or subcontractor from hiring individuals to perform construction labor services as independent contractors, provided that the contractor's or subcontractor's use of such individuals as an independent contractor complies with the criteria found in subdivision 5 of Neb. Rev. Stat. § 48-604 and is otherwise valid under federal and state law and is not intended to circumvent lawful obligations under federal and state law or city contractual requirements.

The City Clerk is directed to send a copy of this Executive Order to Vince Mejer, City Purchasing Agent, for his record.

Dated this 28 day of July, 2010.


Chris Beutler, Mayor of Lincoln

Approved as to Form & Legality:

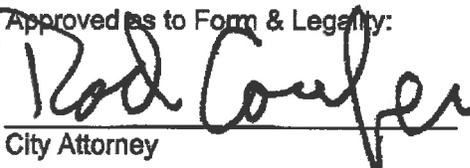

City Attorney

Exhibit I

**INDEMNIFICATION AND INSURANCE REQUIREMENTS
FOR ALL WEST HAYMARKET JOINT
PUBLIC AGENCY CONTRACTS**

1. INDEMNIFICATION

A. Indemnification of JPA

TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS JPA AND JPA'S MEMBERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) (COLLECTIVELY, "LIABILITIES") ARISING OUT OF, RESULTING FROM OR CAUSALLY RELATED TO (IN WHOLE OR IN PART), PERFORMANCE OF THE CONTRACT THAT RESULTS IN BODILY INJURY, SICKNESS, DISEASE, OR DEATH CAUSED IN WHOLE OR IN PART BY ANY ACT OR OMISSION OF THE CONTRACTOR, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE WHETHER OR NOT IT IS CAUSED IN WHOLE OR PART BY A PARTY INDEMNIFIED HEREUNDER.

Such indemnification shall not be construed to negate, abridge, limit or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.

- B. In any and all claims by any employee (whether an employee of the Contractor or subcontractor, or their respective agents or assigns or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable as an employer) in whole or in part against JPA, its officers, agents, employees, volunteers or consultants, the above indemnification shall not be limited in any way by the amount of damages, compensation, benefits or other contributions payable by or on behalf of a the employer under Worker's Compensation statutes, disability benefit acts, or any other employee benefit or payment acts as the case may be.
- C. The obligations of indemnification herein shall not include or extend to:
- (1) Any outside engineer's or architect's professional errors and omissions involving the approval or furnishing of maps, drawings, opinions, reports, surveys, change orders, designs or specifications within the scope of professional services provided to JPA and related to the Contract; and
 - (2) Any claims wholly caused by the JPA's sole negligence and excluding claims to the extent such claims are caused by the willful misconduct or gross negligence of the JPA.
- D. In the event of any litigation of any such claims shall be commenced against JPA, Contractor shall defend the same at Contractor's sole expense upon notice thereof from JPA. Contractor shall notify the insuring company that JPA reserves and does not waive any statutory or governmental immunity and neither Contractor, nor Contractor's counsel whether employed by Contractor or by an insurer on behalf of the Contractor shall waive such defenses or enter into any settlement or other disposition requiring waiver of any defenses or immunity of JPA without the express written consent of the JPA.

2. INSURANCE GENERAL PROVISIONS

- A. **Approved Coverage Prior to Commencing Work/Subcontractors Included.** Contractor shall purchase and maintain in place insurance to protect Contractor and JPA, its officers, agents, employees, volunteers and consultants from and against all liabilities and hazards as provided in these insurance requirements throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under Section 2. below and such insurance has been approved by the City Attorney for JPA, nor shall the Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been so obtained and approved.
- B. **Occurrence Basis Coverage.** All insurance shall be provided on an occurrence basis and not on a claims made basis, except for hazardous materials, errors and omissions, or other coverage not reasonably available on an occurrence basis; provided that all such claims made coverage is subject to the prior written approval of the City Attorney and must be clearly indicated as such in any certificate showing coverage.
- C. **Authorized and Rated Insurers Required.** All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted by the City Attorney.
- D. **Certificates Showing Coverage.** Prior to commencing the Work, Contractor must furnish to JPA adequate written documentation including certificate(s) of insurance, which have the original signature of the authorized representative, declaration pages or other acceptable policy information evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify JPA in writing at least 30 days prior to any cancellation, except that only ten (10) days prior notice is required for cancellation due to nonpayment of premium. Upon request from JPA, a certified duplicate original of any required policy must be furnished. Certificate(s) should be sent to the following address:

West Haymarket Joint Public Agency
c/o City Attorney
City of Lincoln, Nebraska
555 South 10th Street
Lincoln, NE 68508

Certificates of insurance may utilize an appropriate standard ACORD Certificate of Insurance form showing the specific limits of insurance coverage required by this Article; provided that restrictions, qualifications or declarations inconsistent with the requirements of this Article shall not relieve the Contractor from providing insurance as required herein. Such certificates shall show JPA as additional insured except for applicable Worker's Compensation coverage, to include all work performed for JPA and specifically including, but not limited to, any liability caused or contributed to by the act, error, or omission of the Contractor, including any related subcontractors, third parties, agents, employees, officers or assigns of any of them. The inclusion of JPA as additional insured shall be for coverage only on a primary basis for liability coverage, and no coverage shall contain a policy or other restriction or attempt to provide restricted coverage for JPA, whether on an excess, contributory or other basis regardless of any other insurance coverage available to JPA, including by specific endorsement where necessary, as indicated in the following requirements.

- E. **Terminology.** The terms "insurance," "insurance policy," or "coverage" as used in this article are used interchangeably and shall have the same meaning as "insurance" unless the context clearly requires otherwise. References to "ISO®" forms are merely for convenience and ease of reference, and an equivalent or better form as determined acceptable by the City Attorney may be used. (Note: ISO® is a registered trademark of ISO Properties, Inc.)

- F. **Other Requirements.** Contractor agrees to waive its right of recovery against JPA for all claims and suits against JPA, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of JPA. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against JPA for all claims and suits, except for claims and suits arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of JPA. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against JPA for loss of its owned or leased property or property under Contractor's care, custody or control, except for the right of recovery or right of subrogation arising wholly out of the sole negligence, or to the extent caused by the gross negligence or willful misconduct, of JPA.

Contractor is not allowed to self-insure without the prior written consent of JPA. If granted by JPA, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by Contractor in lieu of insurance. Any and all JPA liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Upon notification to JPA of cancellation, non-removal, substitution or material alteration of any such policy(ies), JPA shall have the option to (i) if feasible, pay, on behalf of the Contractor, any and all such premiums, penalties, fees for expenses necessary to keep such policy(ies) in full force and effect; or (ii) in the event that such policy(ies) cannot be kept in full force and effect, enter into the open market to procure such policy(ies) of insurance on behalf of Contractor as required by this Agreement at the then current market rate. Upon any of the above occurrences, JPA shall invoice the Contractor for reimbursement of such premiums, penalties, fees, or expenses advanced on the JPA's behalf plus an additional fifteen percent (15%) of such advanced amounts as remuneration for JPA's overhead. Such amounts advanced by JPA shall be paid by the Contractor within thirty (30) days after delivery of a statement for such expense.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

If any portion of the operation is to be subcontracted by Contractor, Contractor must require that its subcontractors provide and maintain the insurance coverages set forth herein, naming JPA as an additional insured, and requiring that the subcontractors release, defend and indemnify JPA to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify JPA herein.

Failure to provide evidence as required by Section 2. will entitle, but not require, JPA to immediately suspend work under this Agreement until such evidence is provided. Acceptance of a certificate that does not comply with this section will not operate as a waiver of Contractor's obligations hereunder. The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor will not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by JPA will not be limited by the amount of the required insurance coverage.

3. INSURANCE REQUIREMENTS

- A. **Scope of Required Coverage.** The Contractor shall take out and maintain during the life of the Contract such insurance in the forms and minimum amounts as specified in this Section and as will protect Contractor and JPA from the following claims arising out of or resulting from or in connection with the Contractor's operations, undertakings or omissions directly or indirectly related to the Contract, whether by the Contractor or any Subcontractor or 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, or other employee benefit acts;
- (2) Claims arising out of bodily injury, occupational sickness or disease, or death of an employee or any other person;
- (3) Claims customarily covered under personal injury liability coverage;
- (4) Claims other than to the work itself arising out of an injury to or destruction of tangible property, including the loss of use resulting therefrom;
- (5) Claims arising out of ownership, maintenance or use of any motor vehicle;
- (6) Railroad protective liability coverage in the event the contract involves work to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing.

B. Worker's Compensation Insurance and Employer's Liability Insurance. The Contractor shall provide applicable statutory Worker's Compensation Insurance with minimum limits as provided below covering all Contractor's employees, and in the case of any subcontracted work, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for Subcontractor's employees. This policy shall contain the following endorsement or language: "Waiver of subrogation in favor of JPA."

The Contractor shall provide Employer's Liability Insurance with minimum limits as provided below placed with an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract, and the Contractor shall require each Subcontractor similarly to maintain Employer's Liability Insurance on the Subcontractor's employees.

Coverage	Listing	Min Amt	Notes
Worker's Comp.			
	State	Statutory	
	Applicable Federal	Statutory	
Employer's Liability			
	Bodily Injury by accident	\$500,000	each accident
	Bodily Injury by disease	\$500,000	each employee
	Bodily Injury	\$500,000	policy limit

C. Commercial General Liability Insurance.

- (1) The Contractor shall provide Commercial General Liability Insurance in a policy form providing broad form contractual liability no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions "a" through "o" and with minimum limits as provided below.

Coverage	Min Amt	Notes
General	\$5,000,000/\$10,000,000	Each Occurrence/Aggregate
Products and Completed Operations	\$5,000,000/\$10,000,000	Each Occurrence/Aggregate
Personal and Advertising Injury	\$5,000,000/\$10,000,000	Each Occurrence/Aggregate
Fire Damage Limit	\$ 100,000	any one fire
Medical Damage Limit	\$ 10,000	any one person

(2) The required Commercial General Liability Insurance shall also include coverage for the following:

- Bodily injury and property damage.
- Fire legal liability
- Coverage for all premises and operations.
- Personal and advertising injury.
- Operations by independent contractors.
- X.C.U. Coverage including coverage for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below the surface of ground.
- Any fellow employee exclusions shall be deleted.
- Coverage shall not contain an absolute pollution exclusion, and applicable remaining coverage shall apply for pollution exposures arising from products and completed operations.
- Coverage for products and completed operations maintained for duration of work and shall be maintained for a minimum of three years after final acceptance under the Contract or the warranty period for the same whichever is longer, unless modified in any Special Provisions.
- Liability coverage which shall include contractually assumed defense costs in addition to any policy limits.
- Contractual liability coverage.

(3) This policy shall also include the following endorsements which shall be indicated on the Certificate of Insurance.

- The definition of insured contract shall be amended to remove any exclusion or other limitation for work being done within 50 feet of railroad property.
- Endorsement to provide the general aggregate per project endorsement.
- Endorsement to provide waiver of subrogation in favor of and acceptable to JPA.
- Endorsement to provide that the policy shall be primary and non-contributory with respect to any insurance carried by the JPA.
- Separation of insureds.
- Additional insured endorsement in favor of and acceptable to the JPA.

(4) If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing, Railroad Contractual Liability Endorsement (ISO® form CG24170196 or newer). The definition of insured contract shall be amended to remove any exclusion or other limitation for any work done within fifty (50) feet of railroad property.

D. Vehicle liability insurance coverage.

The Contractor shall provide reasonable insurance coverage for all owned, non-owned, hired and leased vehicles. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to JPA.
- Additional insured endorsement in favor of and acceptable to JPA.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by JPA.
- Endorsements to include contractual liability coverage and delete any fellow employee exclusion.
- If specifically required in the Special Provisions, the required coverage shall also include an endorsement for auto cargo pollution (ISO® form CA 99 48).

E. Umbrella/Excess Insurance. At the Contractor's option, the Commercial General Liability Insurance coverage limits specified in Section 3.C. above may be satisfied with a combination of primary and Umbrella/Excess Insurance.

F. Railroad Protective Liability. If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing or otherwise required by the Special Provisions or applicable requirements of an affected railroad, the Contractor shall provide Railroad Protective Liability Insurance naming the affected railroad/s as insured with minimum limits for bodily injury and property damage of \$5,000,000 per occurrence, \$10,000,000 aggregate, or such other limits as required in the Special Provisions or by the affected railroad. The original of the policy shall be furnished to the railroad and a certified copy of the same furnished to the City Attorney's office prior to any related construction or entry upon railroad premises by the Contractor or for work related to the Contract.

The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following endorsements:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.

No other endorsements restricting coverage may be added. The original policy must be provided to Railroad prior to performing any work or services under this C&M Agreement.

In lieu of providing a Railroad Protective Liability Policy, Contractor may participate in ANY RAILROAD'S Blanket Railroad Protective Liability Insurance Policy available to JPA and JPA Contractors.

G. Special Provision. At the JPA's option, the minimum insurance requirements specified above may be increased or decreased by special provision in a JPA contract.

4. CONTRACTOR'S INSURANCE FOR OTHER LOSSES.

- A. Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools owned, rented or used in connection with the Contract including any tools, machinery, equipment, storage devices, containers, sheds, temporary structures, staging structures, scaffolding, fences, forms, braces, jigs, screens, brackets, vehicles and the like owned or rented by Contractor, or Contractor's agents, subcontractors, suppliers, or employees.
- B. In connection with the above, Contractor shall cause or require any applicable insurance related to physical damage of the same to provide a waiver of a right of subrogation against JPA.

5. NOTIFICATION IN EVENT OF LIABILITY OR DAMAGE.

- A. The Contractor shall promptly notify JPA in writing and provide a copy of all claims and information presented to any of Contractor's insurance carrier/s upon any loss or claim or upon any occurrence giving rise to any liability or potential liability related to the Contract or related work. The notice to JPA shall include pertinent details of the claim or liability and an estimate of damages, names of witnesses, and other pertinent information including the amount of the claim, if any.
- B. In the event JPA receives a claim or otherwise has actual knowledge of any loss or claim arising out of the Contract or related work and not otherwise known to or made against the Contractor, JPA shall promptly notify the Contractor of the same in writing, including pertinent details of the claim or liability; Provided, however JPA shall have no duty to inspect the project to obtain such knowledge, and provided further that JPA's obligations, if any, shall not relieve the Contractor of any liability or obligation hereunder.

6. PROPERTY INSURANCE/ BUILDER'S RISK.

- A. The Contractor shall provide property insurance (a/k/a Builder's Risk or installation Floater) on all Projects involving construction or installation of buildings or structures and other projects where provided in the Special Provisions. Such insurance shall be provided in the minimum amount of the total contract sum and in addition applicable modifications thereto for the entire work on a replacement cost basis. Such insurance shall be maintained until JPA completes final acceptance of the work as provided in the Contract. Such insurance shall be written and endorsed, where applicable, to include the interests of JPA, Contractor, Subcontractors, Sub-subcontractors in the related work. The maximum deductible for such insurance shall be \$5,000 for each occurrence, which deductible shall be the responsibility of the Contractor. Such insurance shall contain a "permission to occupy" endorsement.
- B. All related Property Insurance shall be provided on a "Special Perils" or similar policy form and shall at a minimum insure against perils of fire including extended coverage and physical loss or damage including without limitation or duplication of coverage: flood, earthquake, theft, vandalism, malicious mischief, collapse, and debris removal, including demolition whether occasioned by the loss or by enforcement of applicable legal or safety requirements including compensation or costs for JPA's related costs and expenses (as owner) including labor required as a result of such loss.
- C. All related Property Insurance shall include coverage for falsework, temporary buildings, work stored off-site or in-transit to the site, whether in whole or in part. Coverage for work off-site or in-transit shall be a minimum of 10% of the amount of the policy.
- D. The Contractor's Property Insurance shall be primary coverage for any insured loss related to or arising out of the Contract and shall not be reduced by or coordinated with separate property insurance maintained by JPA.

RESOLUTION NO. WH- _____

1 BE IT RESOLVED by the Board of Representatives of the West Haymarket Joint Public
2 Agency:

3 That the Customer Energy Service Agreement between the West Haymarket Joint Public
4 Agency and Project Oscar, LLC for the delivery of thermal energy to the Project Oscar, LLC premises
5 located on the southwest corner of Canopy Drive and P Streets, is hereby approved and the Chairperson
6 of the West Haymarket Joint Public Agency Board of Representatives is hereby authorized to execute
7 said Agreement on behalf of the West Haymarket Joint Public Agency.

8 The Chairperson is further authorized to execute the attached Memorandum of Customer
9 Energy Services Agreement on behalf of the West Haymarket Joint Public Agency.

10 The City Clerk is directed to return a copy of this Resolution and the Agreement to Rick Peo,
11 City Law Department, for transmittal to Project Oscar, LLC.

12 The City Clerk is further directed to return the original Memorandum of Customer Energy
13 Services Agreement to Rick Peo, City Law Department, to be filed of record with the Register of Deeds
14 and indexed against Lot 1, Block 6, West Haymarket Addition and Lot 2, West Haymarket 1st
15 Addition.

16 Adopted this _____ day of _____, 2013.

Introduced by:

Approved as to Form & Legality:

West Haymarket Joint Public Agency
Board of Representatives

Legal Counsel for
West Haymarket Joint Public Agency

Chris Beutler, Chair

Tim Clare

Eugene Carroll

CUSTOMER ENERGY SERVICE AGREEMENT

Between

West Haymarket Joint Public Agency

And

Project Oscar, LLC

Energy Services to the Southwest Corner
of Canopy Drive and “P” Streets,
Lincoln, Nebraska

May 3, 2013

CUSTOMER ENERGY SERVICE AGREEMENT

This Customer Energy Service Agreement (“Agreement”) is entered into as of this 3rd day of May, 2013, by and between West Haymarket Joint Public Agency, and its successors and assigns (“JPA”) and Project Oscar, LLC, a Nebraska limited liability company, and its successors and assigns (“Customer”).

WITNESSETH:

WHEREAS, the Customer desires Energy Services (herein defined) be delivered to its approximately 70,100 square feet of office space and approximately 9,900 square feet of retail improvements, located approximately on the southwest corner of Canopy Drive and “P” Streets Lincoln, NE and legally described as Lot 2, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska (“Premises”); and

WHEREAS, District Energy Corporation, a nonprofit Nebraska corporation organized by The City of Lincoln, Nebraska and The County of Lancaster, Nebraska pursuant to (a) the Nebraska Interlocal Cooperation Act and (b) the Nebraska Nonprofit Corporation Act, and its successors and assigns (“DEC”) will provide Energy Services for sale to such buildings and projects as may be authorized from time to time; and

WHEREAS, the JPA and the DEC have entered into an Energy Services Agreement, dated October 1, 2011 wherein the JPA and DEC agreed for the DEC to construct a district energy plant on Lot 1, Block 6, West Haymarket Addition, Lincoln, Lancaster County, Nebraska (“Plant Site”) and distribution system equipment within public right-of-ways or easements and provide Energy Services (as defined in the Energy Services Agreement) to the Arena and certain other private buildings and facilities in the West Haymarket Redevelopment Area, including the Premises; and

WHEREAS, the DEC will charge the JPA the following monthly charges (defined in Art. I) pursuant to the Energy Services Agreement:

- Demand Charge - Facilities Financing
- Demand Charge - Other
- Commodity Charge; and

WHEREAS, under the Energy Services Agreement, the JPA is and will remain the DEC's sole customer and it is the JPA's responsibility to split off the proportional cost of the DEC bill to the Arena and the Points of Delivery to other buildings and facilities receiving heating and cooling from the Energy Services provided by the DEC to the JPA; and

WHEREAS, the Energy Services provided to the JPA will be developed in phases. The initial allocation of charges for providing Energy Services to the JPA is based upon a first phase service

capacity of 845,000 sq. ft. (460,000 sq. ft. public and 385,000 sq. ft. private, including the Premises). During the first phase of Energy Services, the Demand Charge - Facilities Financing, Demand Charge - Other, and the Commodity Charge will be allocated to end users on a square foot basis, except that for the Demand Charge - Facilities Financing, the end user percentage of total cost will be split 69% public and 31% private; and

WHEREAS, the JPA has developed Rate Class 1 (set forth in Exhibit A) as a pass-through rate that enables JPA to recover its actual capital costs as well as its actual operating costs, without including any JPA or DEC profits; and

WHEREAS, the JPA and DEC have entered into an Addendum to the Energy Service Agreement (“Addendum”) dated January 24, 2013 wherein DEC agrees to provide Energy Services to the Points of Delivery identified in Exhibit C attached to the Addendum, including the Premises, to read the Meter at each Point of Delivery and record such readings on a consistent monthly basis, calculate the amount to be billed to each Point of Delivery and mail monthly statements for JPA Customer Energy Services in the amounts calculated pursuant to Section 4.01 of this Agreement for each Point of Delivery to the address provided by the JPA; and

WHEREAS, in order for JPA to furnish such Customer Energy Services to the Customer, it is necessary, desirable and advisable that the Customer and JPA enter into this Agreement for such service.

NOW THEREFORE, the parties hereby agree as follows:

**ARTICLE 1
DEFINITIONS**

Unless the context otherwise requires, the terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined.

1.01 DEC

means District Energy Corporation acting through its duly appointed board members and agents acting within the scope of their duties and responsibilities, and its successors and assigns.

1.02 Energy Services

means the delivery of thermal energy by DEC to the JPA, through the generation, transmission, and distribution system and facilities operated by DEC (thermal energy system), for the purpose of heating and cooling public and private buildings and facilities in the West Haymarket Redevelopment Area.

1.03 Customer Energy Services

means the delivery of thermal energy by JPA to the Customer through the thermal energy system for the purpose of heating and cooling the Premises.

1.04 Service Piping

means the piping connecting the DEC distribution facilities to Customer's service pipe flange.

1.05 Point of Delivery

means the point where the JPA supplies thermal energy to the Premises and which, unless otherwise agreed between the JPA and Customer, shall be the point where DEC Piping is joined to the Customer's Service Piping and DEC thermal metering is installed.

1.06 Meter

means the device or devices including all auxiliary equipment necessary to measure and register a thermal quantity (energy or demand) that is supplied by JPA to the Point of Delivery.

1.07 Facilities

means the property and thermal energy system equipment used by DEC to provide Energy Services to the JPA and the Customer.

1.08 Parallel Production

means all forms of thermal energy which could operate by JPA or the Customer in parallel with the Facilities or Customer Energy Services. Such equipment may include, but is not limited to, heat-pumps, chillers or boilers, or geothermal loop field systems or facilities.

1.09 JPA Demand Charge - Facilities Financing

means the monthly charge the DEC will charge the JPA for DEC's total annual debt service on the DEC indebtedness issued to finance the cost of DEC Facilities in order to provide Energy Services to the JPA.

1.10 JPA Demand Charge - Other

means the monthly charge DEC will charge the JPA to provide Energy Services to the JPA. Demand Charge - Other includes the monthly electrical demand charge that LES charges the DEC to provide power at peak demand points, and also includes a charge for operation and maintenance which is comprised of (1) the cost of operating and

maintaining the Facilities (O&M), (2) administrative and general cost of managing the Facilities (A&G), and (3) the cost of debt service coverage to generate funds for future capital needs.

1.11 JPA Commodity Charge

means the monthly charge DEC will charge the JPA for energy used to produce and deliver thermal energy to the JPA.

1.12 JPA Total Charge

means the sum total of the monthly charges the DEC will charge the JPA for the JPA Demand Charge - Facilities Financing, the JPA Demand Charge - Other, and the JPA Commodity Charge billed to the JPA by the DEC.

**ARTICLE 2
AGREEMENT TERM**

- 2.01 This Agreement shall remain in effect and binding upon the Customer and JPA and their assigns for thirty-five (35) years from the Effective Date (defined below); provided that, the Customer shall have the exclusive option to extend this Agreement for three (3) additional five (5) year terms. The Customer shall provide written notice of exercising an option not less than one year prior to expiration of the Agreement or an option term.
- 2.02 This Agreement shall become effective on the date of substantial completion of the Premises (“Effective Date”) unless, prior to the Effective Date, another Effective Date is agreed to by both the JPA and the Customer.
- 2.03 In the event the building improvements located on the Premises are destroyed and not rebuilt, then the Customer may terminate this Agreement by providing sixty (60) days written notice of termination of this Agreement, where upon this Agreement shall terminate.

**ARTICLE 3
SERVICE**

- 3.01 JPA will provide Customer Energy Services to Customer and Customer will accept and use Customer Energy Services for all of Customer’s heating and cooling purposes at the Premises throughout the Term specified in Article 2, subject to Section 3.02 and Section 11.02.
- 3.02 The parties acknowledge that the Customer and/or its tenant(s) or lender, may require or elect to have Parallel Production system(s) for redundant, back-up or supplementary heating and/or cooling system(s) and/or alternative energy source(s) to heat and/or cool the Premises and/or a tenant’s space and shall be operated pursuant to Section 11.02.

- 3.03 JPA reserves the right to interrupt the supply of Customer Energy Services to enable DEC to make any necessary repairs or connections to its Facilities. JPA will attempt to give Customer 24 hours advance notice of such interruption.
- 3.04 JPA will use commercially reasonable efforts at all times to provide Customer with a regular and uninterrupted supply of Customer Energy Services throughout the year on a twenty-four-hour-a-day basis except as interruptions may be required by DEC to make any necessary repairs or connections to its Facilities, but JPA does not warrant or guarantee uninterrupted service, and JPA shall not be liable for any special, indirect or consequential damages relating to or arising from an interruption in service. In the event of any interruption of service, both parties shall be prompt and diligent in attempting to remove and overcome the cause of the interruption, and nothing contained herein shall be construed as permitting JPA to refuse to deliver, or Customer to refuse to accept, Customer Energy Services after the cause of interruption has been removed.
- 3.05 The Customer agrees and acknowledges that DEC currently owns all of the Facilities and is responsible for the operation, repairs, and maintenance of such Facilities on behalf of JPA. The parties further agree and acknowledge that the DEC is the agent of the JPA with regard to delivery of the Customer Energy Services. The Customer shall contact the JPA or a designated agent regarding all issues of billing and customer service. For purposes of this Agreement, the Customer consents to allowing JPA, DEC, or any of their employees, agents or contractors on or in the Premises, to the extent necessary, and at all times that are reasonable in order to repair or maintain the Facilities.

ARTICLE 4 TOTAL CHARGE RATES AND CHARGES

- 4.01 Upon the Effective Date, the Customer shall pay on a monthly basis the formula rate charges calculated by JPA for all customers in Rate Class 1 based upon the Rate Class 1 formula rate charge attached hereto and marked as Exhibit A. Under no circumstances shall JPA derive a profit from the Customer. JPA reserves the right to include administrative costs and overhead expenses necessary for performing this Agreement. The formula rate charges for Rate Class 1 shall be included in the books and records of the JPA. The Customer agrees that the Appendix to Exhibit A is an illustration of the formula rate charges for Rate Class 1 and is provided for informational purposes only. The Customer further agrees that the amount of each of the JPA Charges in said Appendix is not a representation or warranty by the JPA as to the actual amount of the JPA Charges to be billed to Customer and Customer understands and acknowledges that the cost for the JPA Charges in said Appendix are only estimated budget forecasts which are not guaranteed and which are subject to change.
- 4.02 The JPA shall have the right to amend, modify, or change the rate schedule for Rate Class 1, subject to this Section, following forty-five (45) days' notice to the Customer and an opportunity for the Customer to contest the amendment, modification, or change at a

hearing of the JPA Board of Representatives. A request for a hearing must be made within thirty (30) days of the notice of amendment, modification, or change of the rate schedule. Any amendment, modifications or changes by JPA to the rate schedule will not discriminate against the Customer and will be based on necessary adjustments to any or all elements of the JPA Total Charge and will be based upon the actual pass-through costs without including any JPA or DEC profits.

- 4.03 Energy Services provided by JPA to any building or other structure belonging to a third party that begins after execution of this Agreement by both parties shall not result in an increase in any costs to the Customer and the Customer's monthly charges under this Agreement shall be recalculated pursuant to the formula established for Rate Class 1.
- 4.04 JPA shall not charge the Customer nor shall the Customer pay for any Demand Charge-Facilities Financing as defined in Rate Class 1 (Exhibit A) for any month in which the Customer did not use or consume any Customer Energy Services from JPA.

ARTICLE 5 DELIVERY POINT

- 5.01 JPA rates are based upon the supply of Energy Services to the entire Premises through a single delivery and metering point. If JPA agrees to supply Energy Service to more than one Point of Delivery at the Premises, each Point of Delivery will be considered a separate service, provided however, meter readings shall be combined for billing purposes. Equipment which can transfer load between separately metered Energy Services may be allowed with the consent of the JPA.
- 5.02 The Parties acknowledge that the Energy Delivery Points described in Exhibit C of the Addendum as "Woodbury Building #1, Canopy Rd. & "P" St., Lincoln, NE 68508" is the same as the Premises. The location of the connection point on the Premises between DEC's system and the Customer's system shall be agreed upon by the JPA and Customer and must be approved by DEC.

ARTICLE 6 PAYMENT AND BILLING

- 6.01 Charges for Customer Energy Services shall be calculated monthly in accordance with Article 4 above.
- 6.02 JPA shall be paid monthly for Customer Energy Services made available to the Customer. Payment is due and payable at the accounting office of JPA at 555 S. 10th Street, Suite 103, Lincoln, NE 68508 upon the Customer's receipt of the monthly billing statement and is delinquent if not paid to JPA within thirty (30) days from the date rendered. Billing statements for the Premises Point of Delivery shall be sent to Project Oscar, LLC, 11422 Miracle Hills Drive, Suite 400, Omaha, NE 68154, unless the

Customer provides a different party or address. Any overdue balance is subject to a late charge of one percent per month.

- 6.03 Termination of Customer Energy Services may occur for nonpayment of an undisputed bill over sixty (60) days in arrears. JPA will provide written notice of delinquency status and termination thirty (30) days prior to termination of Customer Energy Services.
- 6.04 JPA may disconnect the Customer Energy Service to the Premises for the following causes:
- a. Without notice in the event of a condition determined by JPA or DEC to be hazardous or unsafe to the general public or any part of the thermal energy system.
 - b. Without notice in the event of JPA determining that Customer equipment is being used in such a manner as to adversely affect the Facilities or Energy Services to the JPA.
 - c. Without notice in the event of any unapproved Parallel Production installations by the Customer.
 - d. Without notice in the event of a violation of the provisions of Article 12 of this Agreement.
 - e. Upon 30 days' written notice in the event of any other violation or noncompliance with this Agreement.
 - f. Upon 30 days' notice for failure of the Customer to provide and maintain to DEC unobstructed access to the Facilities by JPA.
- 6.05 JPA may terminate the Customer Energy Service to the Premises for the causes in Section 6.04 after providing the Customer written notice and such failure continues for more than thirty (30) days after written notice thereof from JPA unless such failure cannot reasonably be cured within such thirty (30) day period and Tenant shall within such period commence and diligently pursue the curing of such failure.
- 6.06 In the event this Agreement is terminated under any provision of Article 6 herein, the JPA reserves the right to seek damages from Customer to compensate JPA for all actual losses, costs, expenses and damages, but not indirect, special, incidental or consequential damages, suffered by JPA as a result of Customer's breach of this Agreement.
- 6.07 Upon termination of this Agreement under this Article 6, JPA and DEC shall have the right to enter the Premises and remove all of DEC's equipment including, without limitation, all meters installed therein.

- 6.08 If the Premises is reconnected after disconnection, JPA may include a reconnection charge covering the cost of restoring Customer Energy Services including labor, material and equipment billed to the JPA by the DEC.
- 6.09 If the Customer questions the accuracy of the calculations of any monthly statement for Customer Energy Services, it shall be deemed to be a disputed bill. The Customer must present the disputed points in writing within thirty (30) days to avoid termination for nonpayment pursuant to Section 6.02. JPA will provide in writing a response to the disputed points within twenty (20) days of the receipt of Customer's dispute. The Customer has the right to contest the remaining disputed points at a hearing of the JPA Board of Representatives. A request for a hearing must be made within ten (10) days of receipt of JPA's written response.
- 6.10 DEC's standard rules and regulations for providing Energy Services to the JPA as in effect during the Term of this Agreement and as may be amended shall be applicable to the provision of Customer Energy Services under this Agreement and are incorporated herein by this reference. JPA, will provide the Customer a copy of the DEC's standard rules and regulations, including any amendments thereto. If there is a dispute regarding the DEC's standard rules and regulations, the Customer must present the disputed points in writing within thirty (30) days. JPA will provide in writing a response to the disputed points within twenty (20) days of the receipt of Customer's dispute. The Customer has the right to contest the remaining disputed points at a hearing of the JPA Board of Representatives. A request for a hearing must be made within ten (10) days of receipt of JPA's written response.
- 6.11 The Customer shall be responsible for payment of all applicable taxes due as a result of the service provided under this Agreement. The JPA shall include such taxes in the billing statement.

ARTICLE 7 SERVICE INSTALLATION

- 7.01 Prior to connection of the Premises to the Facilities, the Customer's piping and other equipment and controls must conform to DEC requirements or such other requirements of applicable governmental authorities or local utilities. It is the Customer's responsibility to obtain from applicable governmental authorities or local utilities, all information needed for the Customer's design of the Customer's heating and cooling equipment including but not limited to all required mechanical and control equipment, and the maximum pressure, flow and temperature available at the Point of Delivery.
- 7.02 The location of the Service Piping and Meters shall be determined by JPA in coordination with the Customer. Any piping installed without first determining the Point of Delivery shall be brought into conformance by the Customer upon notification by JPA. It is the Customer's responsibility to provide and maintain unobstructed access to the Meters for JPA. JPA, at its expense, (i) will cause the DEC to extend the Facilities under a Access

Easement area abutting the Premises' Point of Delivery on the west, including causing DEC to make the service tap connection, to the Building and (ii) will cause DEC to design and install all other DEC equipment and controls needed in order for the DEC to deliver Energy Services to the New Building, on or before October 1, 2013 and in accordance with DEC requirements. The Point of Delivery, including service tap location and location of the meter shall be in a reasonable location as determined by DEC in coordination with the Customer.

- 7.03 JPA has obtained and will continue to have the necessary fee title or easements for the Facilities to provide Customer Energy Services to the Premises during the Term of this Agreement.
- 7.04 JPA will authorize the connection of Service Piping as soon as practical after final inspection by the appropriate authority(s) and DEC.
- 7.05 The Customer shall notify JPA and DEC of any expected changes in Customer Energy Services which requires delivery of thermal energy for heating or cooling purposes at a level which exceeds 120% of the Customer's prior maximum level of thermal energy delivered for heating or cooling purposes. Such notice shall be given at least twelve (12) months prior to the expected change.
- 7.06 The Customer shall provide any devices necessary to protect the Customer's equipment from loss or damage due to disturbances in Customer Energy Services. It is expressly understood that the JPA has no liability for any such loss or damage and Customer shall bear the risk of all such loss or damage.
- 7.07 The Customer shall provide unrestricted access to a location on the JPA side of the Point of Delivery for the installation, maintenance and operation of DEC operated cutoff valves and thermal energy metering equipment.

ARTICLE 8 METERING

- 8.01 The JPA shall cause DEC to furnish all Meters required to measure the Customer Energy Services supplied, and to keep such Meters accurate within the limits specified in 8.02.
- 8.02 Either party at its own cost and expense may, at any reasonable time, request that any Meter used for billing purposes installed pursuant to the Agreement be tested by DEC. If a Meter is found to violate tolerances set by equipment manufacturer's specifications or to be otherwise defective, the JPA shall cause the Meter to be repaired or replaced by DEC and at no cost to the Customer. Customer shall be afforded an opportunity to have its representative present during all testing which has been requested by the Customer.
- 8.03 If any test of the Meters discloses inaccuracy in excess of the equipment manufacturer's specifications, the Customer's billing statement shall be adjusted for:

- a. If the period can be determined, the actual period during which inaccurate measurements were made;
 - b. If the period cannot be determined, the adjustments shall be made for the previous month or from the date of the latest test (if within the previous month) and for the elapsed period in the month during with the test was made. Overpayment shall be refunded to the Customer.
- 8.04 Should any Meter at any time fail to register or should the registration thereof be so erratic as to be meaningless, the amounts of Customer Energy Services provided shall be determined from the best data available.

**ARTICLE 9
CONSTRUCTION AND GRADE CHANGES**

- 9.01 The Customer shall be liable to JPA for (i) all costs incurred in the relocation and repair of Facilities necessitated by construction work or grade changes on the Premises or (ii) the Customer's Prorated Percentage as defined in Exhibit A required by other changes to the Energy Services or circumstances beyond the control of JPA and/or DEC.

**ARTICLE 10
SYSTEM DISTURBANCES**

- 10.01 Customer will install corrective equipment, to be approved by DEC and meeting the specifications of local utilities, if DEC has reasonably determined the operation of the Customer's equipment would result in a violation of DEC's standard rules and regulations for providing Energy Services to the JPA.
- 10.02 The Customer will protect DEC's distribution systems from accidental or intermittent contamination from the Premises. No mixing of DEC and Customer potable water shall occur. DEC will not supply either hot or cold water for consumption by Customer.
- 10.03 The Customer shall be responsible for the isolation of Customer's potable water system from possible contamination contained from DEC's distribution system equipment.

**ARTICLE 11
CUSTOMER PARALLEL OPERATION**

- 11.01 The Customer shall only be allowed to interconnect thermal production equipment with the Facilities upon meeting written DEC's Parallel Production requirements which shall be part of DEC's standard rules and regulations for providing Energy Services to the JPA.

11.02 A Parallel Production system(s) may be installed and operated by the Customer or tenant of the Customer in circumstances when: (a) the JPA cannot or is not supplying sufficient amounts Customer Energy Services for any reason other than those set forth in Sections 6.03 and 6.04; (b) the Customer has heating and cooling needs in excess of the capacity of the Customer Energy Services; (c) when the Customer or a tenant of the Customer is experimenting or operating a different heating and cooling technology than the steam and chilled water supplied by the Customer Energy Services supplied by the JPA; or (d) certain uses or situations on or in the Premises that require a substantially different cooling or heating requirement(s) than can be provided by JPA through the Customer Energy Services.

In the event that JPA cannot or is not supplying heating and cooling for any reason other than set forth in Sections 6.03 and 6.04, or is not due to (b) or (c) above, then the Customer may immediately begin operating a Parallel Production system(s). When Customer Energy Services are restored by JPA under (a) above, then the Customer shall cease operation of the Parallel Production system(s) unless (b), (c) or (d) above applies.

In the event the Customer anticipates that the Premises will need additional heating or cooling that may exceed the capacity of the Customer Energy Services under (b) above, then the Customer shall consult with JPA and DEC before operating any Parallel Production system(s). If the JPA and DEC can reasonably supply the needed heating and cooling, within the time reasonably needed by the Customer, then the Customer shall accept such Customer Energy Services from JPA as long as the Rate Class 1 formula is not increased. If the JPA and DEC cannot supply all necessary heating and cooling for the Premises, then the Customer shall accept and pay for the maximum amount of heating and cooling that can be supplied by the JPA and DEC and the Customer shall be permitted to supplement the heating and cooling with its Parallel Production System(s).

In the event the Customer or a tenant of the Customer seeks to experiment or operate a new heating and cooling technology on the Premises under (c) above, then the Customer or Customer and tenant shall consult with JPA and DEC before beginning any experiment or operation of the new technology that affects the heating and cooling system of the Premises. For purposes of experimentation or operation, the Customer may request a reduction in the amount of heating and cooling needed for the Premises during such experiment or operation. The Customer shall also be responsible for insuring that any such new heating and cooling technology complies with all applicable state and local statutes, codes, and rules for development or operation of heating and cooling equipment and facilities. If (c) above applies, then JPA may resume supply of Customer Energy Services on a date and time that the JPA and Customer or the tenant of the Customer may agree upon. The Customer agrees to indemnify and hold the JPA and DEC harmless from any direct damages to the operation, maintenance, repair to the Customer Energy Service, resulting from the negligent design, construction, installation, operation, maintenance, repair, or removal of any heating and cooling system owned or operated by the Customer or a tenant of the Customer.

ARTICLE 12
ASSIGNMENT AND SUCCESSORS

- 12.01 The Premises and Plant Site shall hereafter be held, transferred, sold, leased, conveyed and occupied, subject to this Agreement and shall inure to the benefit of, shall run with the land, and shall be binding upon the Premises and Plant Site (hereinafter referred to individually as a "Parcel" and collectively as the "Parcels") and each of which shall apply to and bind the heirs, assignees and successors in interest of each and every owner of a Parcel or Parcels. The provisions of this Agreement shall be binding upon parties and their successors and assigns; provided, however, that the obligations of parties pursuant to this Agreement shall be binding upon such party and its successors and assigns only during their respective periods of ownership.
- 12.02 Subject to Section 12.01, this Agreement shall not otherwise be assigned in whole or in part by the either party without the prior written approval of the other party. This Agreement shall be binding upon the successors and permitted assigns of each party.

ARTICLE 13
INDEMNIFICATION

- 13.01 The Customer shall, to the extent and as permitted by law, indemnify and hold JPA and DEC and their directors, employees, contractors, and agents harmless from any damage, liability or cost to the extent caused by the negligent or intentional acts, errors, or omissions of the Customer or caused by the breach of any of the representations, warranties or covenants of the Customer herein arising out of or in connection with the delivery of Customer Energy Services under this Agreement. Under no circumstances shall the Customer and its manager, members, directors, officers, employees, contractors, or agents, be liable to the JPA and DEC for any indirect, special, incidental or consequential damages, including but not limited to, loss of revenue, loss of full or partial use of facility, cost of capital or other similar damages.
- 13.02 The JPA shall, to the extent and as permitted by law, indemnify and hold the Customer and its manager, members, directors, employees, contractors, and agents harmless from any damage, liability or cost to the extent caused by the negligent or intentional acts, errors, or omissions of JPA or caused by the breach of any of the representations, warranties or covenants of the JPA herein arising out of or in connection with the delivery of Customer Energy Services under this Agreement. Under no circumstances shall JPA and its directors, officers, employees, contractors, or agents, be liable to the Customer for any indirect, special, incidental or consequential damages, including but not limited to, loss of revenue, loss of full or partial use of facility, cost of capital or other similar damages.

With a copy to: Seacrest & Kalkowski, PC, LLO
Attn: Kent Seacrest
1111 Lincoln Mall, Suite 350
Lincoln, NE 68508

**ARTICLE 15
ENTIRETY**

15.01 This Agreement is intended by the parties as the final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. Notwithstanding any indication to the contrary in this Agreement, Customer acknowledges that DEC is not a party to this Agreement and that Customer's sole rights and remedies with respect to the matters contained and described in this Agreement are against the JPA and not DEC. All prior written or oral understanding, offers or other communications of every kind pertaining to the sale of Customer Energy Services to the Customer by JPA are hereby superseded and replaced.

**ARTICLE 16
FORCE MAJEURE**

16.01 If JPA shall be wholly or partially prevented from performing any of its obligations under this Agreement by reason of or through strikes, lightning, rain, wind, riots, fire, flood, invasion, insurrection, civil commotion, accident, equipment failures, the order of any court, judge or civil authority, war, any act of God, the public enemy, or any other similar cause reasonably beyond its exclusive control and not attributable to its neglect, then in any such event, JPA shall be excused from whatever performance is prevented by such event to the extent so prevented, and JPA shall not be liable for any damage or loss resulting there from.

**ARTICLE 17
ADDITIONAL PROVISIONS**

17.01 Pursuant to Section 3.01 of the Energy Service Agreement, JPA warrants and represents the following:

- a. the DEC and JPA have determined that there will be, during the term of this Agreement, availability of Energy Services and Facilities to provide Customer Energy Services to the Premises.
- b. DEC has advised JPA of the available capacity, pressure and temperature for Energy Services and JPA will cause DEC to provide the available capacity, pressure and temperature for Customer Energy Services to the Customer or Customer's design team.

- 17.03 It is intended by the parties that this Agreement and the incorporated, attached and referenced documents shall be an integrated contract, but that invalidation of any of its provisions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect unless such court action shall materially change the intent of this Agreement. Any uncertainty or ambiguity existing herein shall not be interpreted against a party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.
- 17.04 A Memorandum of this Agreement shall be recorded with the Register of Deeds of Lancaster County, Nebraska, against the Premises and Plant Site, at the Redeveloper's expense.
- 17.05 This Agreement may be executed in one or more counterparts which, when assembled, shall constitute an executed original hereof.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

ATTEST:

WEST HAYMARKET JOINT PUBLIC AGENCY, a political subdivision and body corporate politic of the State of Nebraska

Secretary

By: _____
Chair

PROJECT OSCAR, LLC, a Nebraska limited liability company

By: MAKING HAY, LLC, a Nebraska limited liability company,
Its Manager

By: S2W DEVELOPMENT, LLC, a Wyoming limited liability
company, Its Manager

By: TETRAD REAL ESTATE, LLC,
a Wyoming limited liability company, Member

By: TETRAD CORPORATION,
a Wyoming corporation, Its Sole Member

By:

W. David Scott, President

By: WIEGERT DEVELOPMENT, LLC,
a Nebraska limited liability company, Member

By: _____
Zachary A. Wiegert, Manager

EXHIBIT A

RATE CLASS 1 RATE SCHEDULE

DATED: APRIL 29, 2013

APPLICABLE: The Customer will be placed on this rate upon the Effective Date of Customer Service Agreement.

CUSTOMER ENERGY SERVICE: Customer Energy Service shall be as defined in Article 3 of the Customer Service Agreement.

BILL: Demand Charges + Commodity Charge for Hot Water + Commodity Charge for Chilled Water + All Surcharges (if any) + overhead and administrative charges (if any); based on the rate in effect.

BILLING PERIOD: Under normal conditions, BILLING PERIODS typically range from 27 to 35 days. BILLS are rendered on the basis of the scheduled meter reading dates or a date agreeable with the JPA for final readings. There will be twelve billing periods per year.

RATE: (Elements)

Demand Charge – Facilities Financing	\$_____ per Billing Period
Demand Charge – Other	\$_____ per Billing Period
Commodity Charge for Chilled Water	\$_____ per MMBTU for cooling thermal energy per Billing Period
Commodity Charge for Hot Water	\$_____ per MMBTU for heating thermal energy per billing period

Calculation of Customer’s Monthly Demand Charge – Facilities Financing assuming no aid to construction:

Customer’s Monthly Demand Charge – Facilities Financing for each billing shall be the Customer’s Prorated Percentage. The “Customer’s Prorated Percentage” shall be the result of the total sq. ft. of the Premises divided by the total sq. ft. of private sector space¹ available to receive Phase 1 Energy Services times the private end user percentage of the

¹ Currently 385,000 sq. ft.

cost split between public and private users² of the JPA Demand Charge – Facilities Financing for the same billing period.

Calculation of Customer's Monthly Demand Charge – Other:

The Customer's Monthly Demand Charge-Other for each billing shall be the result of the monthly JPA Demand Charge – Other from DEC for the same billing period divided by the total sq. ft. of JPA (public & private) space³ available to receive Phase 1 Energy Services times the total sq. ft. of the Premises.

Customer's Monthly Commodity Charge:

The Customer's Monthly Commodity Charge shall be the Customer's actual share of the JPA Monthly Commodity Charge based upon the meter reading at the Point of Delivery for the Premises.

Upon request of Customer, JPA will, if practical, provide recorded energy consumption readings for the purpose of allocating Demand and Commodity Charges.

MINIMUM BILL: (Demand Charge – Facilities Financing) + (Demand Charge – Other) + (administrative, overhead, and other expenses necessary to perform the Agreement) + applicable taxes. The minimum bill shall be subject to the limitations in Article IV.

² Currently 69% public and 31% private

³ Currently 845,000 sq. ft.

SAMPLE BILLING STATEMENT

APPLICABLE: The Customer will be placed on this rate upon the Completion Date of Customer Service Agreement.

CUSTOMER ENERGY SERVICE: Customer Energy Service shall be as defined in Article 3 of the Customer Service Agreement.

BILL: Demand Charges + Commodity Charge for Hot Water + Commodity Charge for Chilled Water + All Surcharges (if any) + applicable taxes; based on the rate in effect.

BILLING PERIOD: Under normal conditions, BILLING PERIODS will range from 27 to 35 days. BILLS are rendered on the basis of the scheduled meter reading dates or a date agreeable with the JPA for final readings. There are twelve billing periods per year.

RATE: (Elements)

Demand Charge – Facilities Financing:	\$_____per square foot per Billing Period
Demand Charge – Other:	\$_____per square foot per Billing Period
Commodity Charge for Chilled Water:	\$_____ per MMBTU for cooling thermal energy per Billing Period
Commodity Charge for Hot Water:	\$_____ per MMBTU for heating thermal energy per billing period
Overhead and administrative expenses (Section 4.01):	\$_____
Applicable Taxes	\$_____
TOTAL:	\$_____

APPENDIX TO EXHIBIT A

A. DEMAND CHARGE – FACILITIES FINANCING

Issues of JPA Bonded Indebtedness	\$19,500,000.00
JPA Debt Service Amount	\$19,500,000.00
Annual Interest Rate	4%
Term – Years	30
JPA Annual Debt Service	\$ 1,127,700.00
Private Sector Load Factor (i.e. 31% of Annual Debt Service)	\$ 349,587.00
Aid to Construction Benefit (i.e. Reduction of Bonded Indebtedness)	\$ 0.578/Dollar in Aid

B. JPA DEMAND CHARGE – OTHER

Electrical Demand Charge (based upon LES Experience)	\$ 444,000.00/year
O&M Demand Charge	\$ 312,000.00/year
TOTAL	\$ 756,000.00/year

C. JPA COMMODITY CHARGE

Estimate Chilled Water Commodity Charge	\$ 66,670.00/year
Estimate Hot Water Commodity Charge	\$ 94,943.00/year
TOTAL	\$ 161,613.00/year

The above JPA Demand Charge – Facilities Financing is a budget forecast based upon the estimated cost of the Facilities to be financed by the issuance of bonded indebtedness in the amount of \$19.5 million with an assumed annual interest rate of 4% and 30 year term.

The above JPA Demand Charge – Other and JPA Commodity Charge are estimated charges based upon budget forecasts for the 2014 operating year (first full year of DEC operation of the Facilities) using historical costs at other DEC facilities.

NEW OR EXPANDED SQUARE FOOTAGE: Any new or expanded private sector square footage greater than 385,000 square feet will correspondingly reduce:

1. The Demand Charge –Facilities Financing rate schedule, whereby (i) public arena is entitled to receive 69% of the reduction and (ii) all of JPA’s private customers (existing and new customers) will be entitled to receive 31% of the reduction in the Demand Charge –Facilities

Financing and such 31% JPA's private customer reduction savings will be prorated based upon the total amount of square footage of private customer (existing and new) space; and

2. Demand Charge –Other rate schedule, whereby 100% of the reduction savings will be prorated based upon the total cumulative amount of square footage of (i) public arena and (ii) the private customers (existing and new) space.

Return the Original to:

City Attorney's Office
Attention: Chris Connolly
555 South 10th Street
Lincoln, NE 68508

MEMORANDUM OF CUSTOMER ENERGY SERVICE AGREEMENT

This Memorandum of Customer Energy Service Agreement ("**Memorandum**") is entered into as of this 3rd day of May, 2013 ("**Effective Date**"), by and between West Haymarket Joint Public Agency, and its successors and assigns ("**JPA**") and Project Oscar, LLC, a Nebraska limited liability company, and its successors and assigns ("**Customer**").

1. Customer Energy Service Agreement and Premises. The JPA, and Customer have entered into that certain Customer Energy Service Agreement dated as of this even date ("**Customer Agreement**"), describing the delivery of Customer Energy Services as defined in the Customer Agreement be delivered to its approximately 70,100 square feet of office space and approximately 9,900 square feet of retail improvements, located approximately on the southwest corner of Canopy Drive and "P" Streets Lincoln, NE and legally described as **Lot 2, West Haymarket 1st Addition, Lincoln, Lancaster County, Nebraska** ("**Premises**").

2. Plant Site. The JPA and the District Energy Corporation ("**DEC**") have entered into an Energy Services Agreement, dated October 1, 2011 wherein the JPA and DEC agreed for the DEC to construct a district energy plant on **Lot 1, Block 6, West Haymarket Addition, Lincoln, Lancaster County, Nebraska** ("**Plant Site**") and distribution system equipment within public right-of-ways or easements and provide Energy Services (as defined in the Energy Services Agreement) to the public arena and certain other private buildings and facilities in the West Haymarket Redevelopment Area, including the Premises.

3. Term. The Customer Agreement shall remain in effect and binding upon the Customer and JPA and their assigns for thirty-five (35) years from the substantial completion of the building improvement located upon the Premises or other date mutually agreed upon by the parties ("**Completion Date**"); provided that, the Customer shall have the exclusive option to extend the Customer Agreement for three (3) additional five (5) year terms. The Customer shall provide written notice of exercising an option not less than one year prior to expiration of the Customer Agreement or an option term.

4. **Inquiries.** Except as otherwise provided herein, any inquiries, notices or communications may be sent as follows:

a. If to the JPA: 555 S. 10th Street
Suite 300
Lincoln, Nebraska 68508

b. If to Customer: Project Oscar, LLC
Attn: Zachary A. Wiegert
11422 Miracle Hills Drive, Suite 400
Omaha, NE 68154

With a copy to: Dinwoodey L.L.C.
Attn: Jeffrey K. Woodbury
2733 E. Parleys Way, Suite 300
Salt Lake City, UT 84109

With a copy to: Tetrad Real Estate, LLC
c/o Tetrad Corporation
Attn: W. David Scott
11422 Miracle Hills Drive, Suite 400
Omaha, NE 68154

With a copy to: Wiegert Development, LLC
c/o Wiegert Properties, LLC
Attn: Zachary A. Wiegert
11422 Miracle Hills Drive, Suite 400
Omaha, NE 68154

With a copy to: Olsson Associates
Attn: Todd Lorenzen
1111 Lincoln Mall
Lincoln, NE 68508

5. **Remaining Terms.** The rest and remaining terms of the Customer Agreement are hereby incorporated into this Memorandum as if they were set forth in full. A full and correct copy of the Customer Agreement may be inspected at the office of the City Clerk of Lincoln, Nebraska.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, this Memorandum has been executed as of the date first above written.

ATTEST:

WEST HAYMARKET JOINT PUBLIC
AGENCY, a political subdivision and body
corporate politic of the State of Nebraska

Secretary

By: _____
Chair

PROJECT OSCAR, LLC, a Nebraska limited liability company

By: MAKING HAY, LLC, a Nebraska limited liability company,
Its Manager

By: S2W DEVELOPMENT, LLC, a Wyoming limited liability
company, Its Manager

By: TETRAD REAL ESTATE, LLC,
a Wyoming limited liability company, Member

By: TETRAD CORPORATION,
a Wyoming corporation, Its Sole Member

By:

W. David Scott, President

By: WIEGERT DEVELOPMENT, LLC,
a Nebraska limited liability company, Member

By: _____
Zachary A. Wiegert, Manager

