REQUEST FOR PROPOSALS
CONSTRUCTION MANAGER AT RISK SERVICES

DATE ISSUED: __6/23/2017________

THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA

for and on behalf of

UNIVERSITY OF NEBRASKA – KEARNEY

REQUEST PROPOSALS FOR:

K013P010

STUDENT UNION INTERIOR UPGRADE

DUE DATE/ TIME: __July 14, 2017 by 11:59:59 p.m._______________
REQUEST FOR PROPOSALS (RFPs)
FOR
CONSTRUCTION MANAGER AT RISK
STUDENT UNION INTERIOR UPGRADE 2017
INFORMATION AND INSTRUCTIONS TO CONTRACTORS

1 GENERAL INFORMATION

1.1 The University of Nebraska intends to procure a qualified construction manager/general contractor to provide pre-construction services and construction services as the Construction Manager at Risk (CMR) for the Student Union Interior Upgrade. The estimated construction cost is $5,000,000.

1.2 The Statement of Qualifications (SOQ) and Price Proposals must be submitted as outlined in Section 4 at the date and time described therein.

1.3 Questions and inquiries pertaining to the selection process should be directed to Alan Wedige at wedigeald@unk.edu by the date indicated in Section 5.

1.4 The University of Nebraska shall not be held responsible for any oral instructions. Any changes to this Request for Proposals (RFP) will be in the form of an addendum, which will be posted at www.unk.edu/officesfacilities/planning_construction/current_addenda_items.php

1.5 The University of Nebraska reserves the right to reject any or all SOQs, to waive any informality or irregularity in any SOQ received, and to be the sole judge of the merits of the respective SOQs received.

1.6 A pre-submittal conference for the Project will be held on the date indicated in Section 5 at the time and location specified therein. University staff will discuss the scope of work, general contract issues and respond to questions from the attendees. Because staff will not be available to respond to individual inquiries regarding the project scope outside of this pre-submittal conference, attendance at this pre-submittal conference is highly recommended.

1.7 The Project description is: The proposed project will remodel approximately two-thirds of the existing ground floor and will upgrade interior finishes in primary circulation spaces on the ground, first floor, and the open area to second floor.

1.8 The CMR services will be performed in three phases. Phase I will include an Initial Review. Phase II will include the pre-construction services and the preparation and submission of the Guaranteed Maximum Price (GMP). Phase III will include complete construction services for the construction of the Project.

1.9 The CMR will be selected on the basis of demonstrated competence and qualification for the type of services required with price as a factor, and thereafter the University will negotiate a contract with the firm evaluated to provide the best value to the University.
University of Nebraska
Construction Manager at Risk RFP Template
UNFP 6.3.7.1.1

1.10 The CMR will be an integral member of the Project Team, consisting of the CMR, representatives from the University, the Architect, and key design assist subcontractors and other consultants as required. Generally, it will be the responsibility of the CMR to integrate the design and construction phases, utilizing skills and knowledge of general contracting, to provide value engineering and constructability reviews, develop schedules; prepare detailed project construction estimates; study labor conditions; and, in any other way deemed necessary, to contribute to the development of the Project during the pre-construction/design phase.

1.11 The CMR assumes construction risk and has direct authority over the subcontractors. The CMR will act as the University’s fiduciary and have a relationship of trust and confidence between itself and the University. The Project will be an “open book” job whereby the University may attend any and all meetings of the CMR firm relating to the Project and have access to any and all books and records of the CMR relating to the Project.

2 - ANTICIPATED SCOPE OF WORK

2.1 After being selected, the CMR will execute a contract with the University to provide pre-construction services during the design phase of the project as follows:

2.1.1 CMR will be a part of the Project Design Team and participate with the University staff and the Architect during Project development. Participation may include leadership and overall team coordination.

2.1.2 CMR will provide value analysis services, value engineering and offer cost savings suggestions and best value recommendations.

2.1.3 CMR will provide Project planning and scheduling.

2.1.4 CMR will provide constructability studies and reviews.

2.1.5 CMR will provide construction cost models, estimates based on marketplace conditions, and cash flow development and analysis.

2.1.6 CMR may be requested to manage a subcontractor design assist process during the pre-construction phase.

2.1.7 CMR will assist in the coordination of Contract Documents

2.1.8 At the completion of the design or at any earlier time as required by the University, CMR will submit a Construction Guaranteed Maximum Price (GMP) to the University.

2.2 After CMR has submitted a GMP acceptable to the University, CMR and University intend to execute a second contract for complete construction services for the construction of the project. The CMR will assume the risk of delivering the Project through a guaranteed maximum price contract. The CMR will be responsible for construction means and methods.
The CMR will be selected through a best value selection process. The Technical Qualifications will be weighted at a maximum of 70% of the total evaluation. The Fee and General Conditions Price Proposal will be weighted at a maximum of 30% of the total evaluation.

Firms interested in providing construction manager at risk services must submit a Statement of Qualifications (SOQ) that addresses the following evaluation criteria. Applicants are encouraged to organize their submissions in such a way as to follow the general evaluation criteria listed below. Information included within the SOQ may be used to evaluate your firm as part of any criteria regardless of where that information is found within the SOQ. Information obtained from the SOQ and from any other relevant source may be used in the evaluation and selection process.

3.2 Cover Letter (1-page) containing at a minimum:

Company name, contact name, address, fax number, and email address
3.3 **SOQ Submission Verification**

THIS PAGE MUST BE INCLUDED AS THE LAST PAGE OF YOUR SUBMISSION

By signature below I verify that I have read and understand this request for qualifications, including:

- SECTION 1.8 – regarding willingness to perform work within the Board of Regents approved budget
- SECTION 3.4.6 – regarding willingness to abide by the University’s standard form agreement
- SECTION 5.7 – regarding timely execution of the contract
- Confirmed number of Addendum issued: ________

I hereby submit these qualification for consideration.

**SUBMITTING FIRM:**

FIRM NAME:__________________________________

SIGNATURE: __________________________________

PRINTED NAME: _______________________________

TITLE:________________________________________

DATE:________________________________________
3.4 Technical Qualifications Criteria

3.4.1 General Information

- Description of firm/team
- Legal company organization; organization chart with names
- List of applicable Nebraska licenses

3.4.2 Relevant Firm Experience (20 points)

a. Applicant’s overall reputation, service capabilities and quality as it relates to this project.

b. List and briefly describe 3-5 comparable projects completed by your firm or currently in progress; include your firm’s role, and discuss contract amendment history, if applicable. For each project, include: contract value and construction value (original value plus contract amendments, if applicable), project owner, project location, contact name and title, address, current/accurate telephone number, fax number, and email address (if available).

c. A minimum of three referrals and references from other agencies and owners. If possible, references should be from the projects listed above.

d. List and describe any litigation; arbitration; claims filed by your firm against any project owner as a result of a contract dispute; any claim filed against your firm; termination from a project.

e. Applicant’s capacity and intent to proceed without delay if selected for this work.

f. Type and amount of self-performed work.

3.4.3 Team Experience & Qualifications (20 points)

a. Describe each team member’s position within the firm. Provide resumes of each proposed team member in Appendix A. List professional continuing education.

b. Briefly describe each team member’s role on this project.

c. Provide “team” experience working together on similar projects.

d. Identify proposed subconsultants/subcontractors, and your method of subconsultant/subcontractor selection, if applicable. Attach a proposed Subconsultant/Subcontractor Selection Plan as part of Appendix A.

e. Explain your understanding of, and experience with, the CMR Delivery Method.

3.4.4 Project Understanding and Approach (20 points)

a. Describe your understanding of the project.

b. Identify and discuss any potential problems during design and construction.

c. Identify and discuss methods to mitigate those problems.

d. Describe the work you anticipate self-performing, and the work you anticipate being performed by subconsultants/subcontractors.
3.4.5 **Approach to Project Management**  
(20 points)

a. Describe your approach to change orders.

b. Describe your planning, scheduling, estimating, and construction management tools.

c. Describe your quality control plan, dispute resolution, and safety management.

3.4.6 **Other Factors**  
(20 points)

a. Current workload and ability to proceed promptly.

b. Willingness to abide by the University’s standard form Agreement.

c. Provide statement regarding your assurance that this engagement will not result in a conflict of interest.

d. Relevant factors impacting the quality and value of work.

3.4 **Price Proposal**

3.4.1 **Fee and General Conditions**

The attached Fee and General Conditions Worksheet shall be completed and submitted as the Price Proposal. The Price Proposal shall become 30% of the total evaluation score. Contract award will include the proposed prices.

4 - **SUBMITTAL REQUIREMENTS**

4.1 The SOQ shall include a one-page cover letter plus a maximum of fifteen (15) pages to address the SOQ criteria specified in Section 3 (excluding Resumes, Subconsultant/Subcontractor Selection Plan, and Fee and General Conditions Price Proposal). Table of Contents, section dividers, and the 3.3 SOQ Submission Verification pages do not count towards the total page count. Resumes for each key team member shall be limited to no more than two pages. Resumes and Subconsultant/Subcontractor Selection Plan shall be attached as Appendix A.

4.2 **Price Proposal Submission**: One copy of the Fee and General Conditions Price Proposal shall be separately enclosed in a sealed envelope clearly marked as follows: “Fee and General Conditions Price Proposal, _Student Union Interior Upgrade___, firm name, address, telephone number”. Deliver the sealed Price Proposal by the date and to the address indicated in Section 5 below.

4.3 **Statement of Qualifications and Appendix A Submission**: One electronic PDF copy of the Statement of Qualifications and Appendix A must be uploaded by the date and in the location indicated in Section 5 below. The electronic file name should include the firm name.

4.4 Failure to comply with the following criteria may be grounds for disqualification:
University of Nebraska
Construction Manager at Risk RFP Template
UNFP 6.3.7.1.1

- Receipt of submittal by the specified cut-off date and time to the specified location/address.
- Adherence to maximum page requirements.

4.5 Adherence to the maximum page criteria is critical; each page side (maximum 81/2” x 11”) with criteria information will be counted. Pages that have photos, charts and graphs will be counted towards the maximum number of pages.

5 - SELECTION PROCESS AND SCHEDULE

5.1 The evaluation will be scored in two parts. The first part is a point score for the Technical Qualifications, which has a maximum of ___70___% of the Total Score. The second part is the point score for the “Fee and General Conditions Price Proposal” which has a maximum of ___30___% of the Total Score. The total of the percentage achieved in each category becomes the Total Score.

5.2 The Project Evaluation Board will first evaluate the Technical Qualifications. A minimum 5-member Project Evaluation Board will evaluate each Statement of Qualifications (SOQ) and select a minimum of three finalists that will be Short Listed for the project. The Short List firms will meet with the Project Evaluation Board for interviews. The purpose of the interview will be to expand on the information provided in the SOQ, not to repeat information already provided. Those firms selected for the Short List will be provided additional instruction by the University. Those firms not selected for further consideration will be notified.

5.3 The following tentative schedule has been prepared for this project. Firms interested in this project must be available on the interview meeting date.

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-submittal conference:</td>
<td>Thursday, July 5, 2017</td>
</tr>
<tr>
<td>Deadline for inquiries:</td>
<td>Thursday, July 11, 2017</td>
</tr>
<tr>
<td>Statement of Qualifications due:</td>
<td></td>
</tr>
<tr>
<td>Due by 11:59:59 p.m. Friday, July 14, 2017</td>
<td></td>
</tr>
<tr>
<td>Upload PDF file to the link provided at:</td>
<td></td>
</tr>
<tr>
<td>Price Proposal Due:</td>
<td></td>
</tr>
<tr>
<td>Sealed proposal must be received at the following address prior to 5:00:00 p.m. on Friday July 14, 2017</td>
<td></td>
</tr>
<tr>
<td>Deliver to the attention of:</td>
<td></td>
</tr>
<tr>
<td>Rebecca Koller</td>
<td></td>
</tr>
<tr>
<td>University of Nebraska Administration</td>
<td></td>
</tr>
<tr>
<td>3835 Holdrege St</td>
<td></td>
</tr>
<tr>
<td>Lincoln, NE 68583</td>
<td></td>
</tr>
<tr>
<td>Firms notified for interview:</td>
<td>Wednesday, July 26, 2017</td>
</tr>
<tr>
<td>Interviews:</td>
<td>Wednesday, August 2, 2017</td>
</tr>
</tbody>
</table>

Date: 03/2009, Revised 5/2017
5.4 The Project Evaluation Board will then determine a Technical Qualification score for each Short List firm based on the published criteria in this RFQ. Consideration will be given to both the written Statement of Qualifications and any oral presentations or interviews. No other factors or criteria will be used in the technical qualification scoring. The Project Evaluation Board will score Technical Qualifications prior to opening the Price Proposals.

5.4 The Price Proposal will be scored in accordance with the equation provided below. This will result in the percentage value for the Price Proposal.

**Calculating Price Proposal**

\[
\text{Stipulated} \% \times \left(1 - \frac{(\text{offeror's price proposal} - \text{lowest price proposal})}{\text{lowest price proposal}}\right)
\]

5.5 The Total Score will be calculated by adding the Technical Qualification percentage and the Price Proposal percentage. The highest Total Score will be recommended for contract award.

5.6 Requests for debriefings or to review Statements of Qualifications submitted, shall be made in writing to the University. All information submitted by firms and related Project Evaluation Board evaluations and rankings shall be considered confidential until after contract execution and award by the Board of Regents.

5.7 The University will enter into negotiations with the highest ranking team using the University’s standard form Construction Manager at Risk Agreement. If the selected team is unwilling to execute the University’s standard form Agreement and/or the selected firm fails to execute the University’s standard form Agreement within two weeks of notification, the University may then negotiate with the second or third ranked team until a contract is executed for Board of Regents approval. If the University is unsuccessful in negotiating a contract, the University may decide to terminate the selection process.

5.8 If the University is unsuccessful in negotiating a construction contract with the CMR, the University may decide to terminate the selection process and award construction through the competitive low bid process.

**6 - ATTACHMENTS**

6.1 Construction Services Contract

6.2 Fee and General Conditions Worksheet

6.3 Architectural Program
Attachment #6.1

RFP for the University of Nebraska at Kearney University of Nebraska at Kearney – UNK Student Union Interior Upgrade

Construction Manager at Risk Services Construction Services Contract
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UNIVERSITY OF NEBRASKA
CONSTRUCTION MANAGER AT RISK AGREEMENT

THIS CONSTRUCTION MANAGER AT RISK AGREEMENT (the “Agreement”) is
made and entered into as of the Effective Date (as hereinafter defined) by and between THE
BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA, a public body having
corporate powers under the State of Nebraska, or Owner’s representative (the “Owner”), and
[Insert Construction Manager’s Name], a [Insert type of entity and state of
incorporation/formation] (the “Construction Manager”). The “Effective Date” shall be the date
on which the last of the Parties has executed this Agreement.

WHEREAS, this Agreement sets forth the terms and conditions pursuant to which the
Construction Manager is engaged to perform certain construction management services for the
following project (the “Project”):

UNIVERSITY OF NEBRASKA [INSERT CAMPUS]
Project Title: ___________________________ Project
Number: ______________________________ Invitation
Number: ______________________________

As prepared by the Architect/Engineer (the “Architect”):
[Insert Firm Name]
[Insert Address]

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter
contained and other good and valuable consideration, the sufficiency of which is hereby
acknowledged, the Owner and Construction Manager agree as follows:

ARTICLE 1
GENERAL PROVISIONS

1.1 The “Contract Documents” consist of this Agreement, the General Conditions (to the
extent applicable and to the extent not otherwise modified herein), the Specifications, the Drawings,
Modifications issued after execution of this Agreement, and other documents listed in this
Agreement. Said documents form the Contract between the Parties and all are as fully a part of this
Agreement as if attached hereto or repeated herein. The Contract represents the entire and
integrated agreement between the Parties hereto and supersedes prior negotiations, representations,
or agreements, either written or oral.

1.2 In the event of an inconsistency between the General Conditions and this Agreement,
this Agreement shall govern. In the event of a conflict between the Agreement and any specification
or exhibit attached hereto, the more specific criteria shall prevail.
1.3 The following is an enumeration by title, date, and other description, of the Contract Documents:

1.3.1 This Agreement.

1.3.2 The General Conditions for Construction Projects (the “General Conditions”), which is attached hereto as Exhibit A.

1.3.3 The following Specifications indicated below, which are attached hereto as Exhibit B: (Check all that apply)

- Schedule of Allowances
- Due Diligence/Third Party Reports
- Field Engineering
- Alternates
- Temporary Facilities
- Product Requirements/Substitution Procedures

1.3.4 The Drawings are as follows, and are attached hereto as Exhibit C: (Check all that apply)

- General Drawings
- Architectural Drawings
- Mechanical Drawings
- Electrical Drawings

1.3.5 Other documents, if any, forming part of the Contract Documents are as follows, and are attached hereto as Exhibit D:

<table>
<thead>
<tr>
<th>Title</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

1.4 Except as otherwise set forth herein, this Agreement specifically incorporates any and all terms and conditions of the General Conditions in effect at the time of execution of this Agreement. Parties acknowledge and agree to be bound by the terms of the General Conditions. Terms capitalized under this Agreement include those which are specifically defined in this Agreement or any other Contract Document, including the General Conditions. For purposes of the Contract Documents, the term “Contractor” shall mean and refer to the Construction Manager.

1.5 In addition to the definitions set forth in the General Conditions, the following terms shall be defined as follows:
1.5.1 “Construction Manager Fee” shall mean the fee owed to Construction Manager for Preconstruction Phrase services and Construction Phase services performed under this Agreement.

1.5.2 “Construction Phase” shall mean the services provided under Section 2.3.

1.5.3 “Cost of the Work” shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work.

1.5.4 “Design Documents” shall mean all design documents provided by Architect and approved by Owner pursuant to the Contract Documents including, without limitation, those for use in constructing the Project, performing the Work, and rendering the Project fully operational, and shall include, without limitation, plans drawings, specifications, manuals, and related materials prepared by or on behalf of the Architect.

1.5.5 “Direct Personnel Expense” shall mean the direct salaries of the Construction Manager’s personnel engaged in the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

1.5.6 “Guaranteed Maximum Price” shall mean the maximum cost of Construction Manager’s services under this Agreement, which is equal to the sum of the estimated Cost of the Work and the Construction Manager’s Fee, as adjusted by changes in the Work approved in writing by the Owner.

1.5.7 “Preconstruction Phase” shall mean the services provided under Sections 2.1 and 2.2 of this Agreement.

1.5.8 “Preliminary Project Schedule” shall mean the preliminary Project schedule prepared, and periodically updated, by Construction Manager based on the requirements of the Project provided by Owner.

1.5.9 “Work” shall mean the services performed by Construction Manager under this Agreement.

ARTICLE 2
CONSTRUCTION MANAGER’S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article, which shall constitute the Work. The services set forth in Sections 2.1 and 2.2 constitute the Preconstruction Phase services and the services set forth in Section 2.3 constitute the Construction Phase services. If the Owner and Construction Manager agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which both phases shall proceed concurrently.
2.1 PRECONSTRUCTION PHASE

2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner’s program and Project budget requirements, each in terms of the other.

2.1.2 The Construction Manager shall jointly schedule and attend regular meetings with the Owner and Architect. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements, and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

2.1.3 When Project requirements described in Section 2.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, the Preliminary Project Schedule for the Architect’s and Owner’s review and the Owner’s written approval. The Construction Manager shall obtain the Architect’s and Owner’s approval of the portion of the Preliminary Project Schedule relating to the performance of the Architect’s services. The Construction Manager shall coordinate and integrate the Preliminary Project Schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the Preliminary Project Schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of Shop Drawings and Samples, delivery of materials or equipment requiring long-lead time procurement, Owner’s occupancy priority, and proposed date of Substantial Completion. If Preliminary Project Schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendation to the Owner and Architect.

2.1.4 The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

2.1.5 PRELIMINARY COST ESTIMATES

2.1.5.1 When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review and approval of Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

2.1.5.2 When Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare for the review and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner and Construction Manager.
2.1.5.3 When Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager Fee. During the preparation of the Contract Documents, the Construction Manager shall monitor such documents in comparison to the Guaranteed Maximum Price. Should changes in such documents occur which would impact the Guaranteed Maximum Price, the Construction Manager shall promptly inform the Owner.

2.1.5.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner’s budget, the Construction Manager shall make appropriate recommendations to the Owner. Should the Construction Manager’s estimate exceed previously approved estimates or the Owner’s budget, the Construction Manager shall meet with the Owner to reconcile the differences between their two estimates.

2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

2.2.1 When the Design Documents are approved by the Owner, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated cost of the Work and the Construction Manager Fee. The estimated cost of the Work shall include the Construction Manager’s contingency, a sum established by the Construction Manager for the Construction Manager’s exclusive use to cover costs arising under Section 2.2.2 and other costs which are properly reimbursable as a cost of the Work but not the basis for a Change Order.

2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect that is 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 BASIS OF GUARANTEED MAXIMUM PRICE

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

1. A list of the Drawings and Specifications, including all addenda thereto, which were used in preparation of the Guaranteed Maximum Price proposal;

2. A list of allowances, if any, and a statement of their basis;
3. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications;

4. The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the fee that comprise the Guaranteed Maximum Price; and

5. The date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Contract Documents issuance dates upon which the date of Substantial Completion is based.

2.2.4 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discovers 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.

2.2.5 Prior to the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal in writing and issuance of a notice to proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the cost of the Work, except as the Owner may specifically authorize in writing.

2.2.6 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal in writing, the Guaranteed Maximum Price and its basis shall be set forth in Amendment No. 1. The Guaranteed Maximum Price shall be subject to additions and deductions only by a Change Order and the Contract Time shall be subject to adjustment only by a Change Order.

2.2.7 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

2.3 CONSTRUCTION PHASE

2.3.1 GENERAL

2.3.1.1 The Construction Phase shall commence upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal in writing and issuance of a notice to proceed.
2.3.2 ADMINISTRATION

2.3.2.1 Pursuant to Article 5 of the General Conditions, the Construction Manager shall be responsible for the bidding and scope of Work to be performed by Subcontractors. If the Owner has reasonable objection to a Subcontractor proposed by the Construction Manager, the Construction Manager shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work and had a lower bid than the replacement Subcontractor, the Guaranteed Maximum Price shall be increased by the difference and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor’s Work. However, no increase in the Guaranteed Maximum Price shall be allowed for such change if the Contractor failed to act promptly and responsively in submitting names, as required.

2.3.2.2 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute an agenda and minutes for such meetings.

2.3.2.3 Promptly after the Owner’s acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with the General Conditions that includes the Owner’s occupancy requirements.

2.3.2.4 The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner at all times upon request.

2.3.2.5 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 at regular intervals, advising the Owner whenever projected costs exceed budgets or estimates. Upon request, cost control reports shall be included as part of the monthly written report to be provided by the Construction Manager to the Owner.

2.3.2.6 The Construction Manager shall develop and maintain a program acceptable to the Owner to assure quality control of the construction. The Construction Manager shall supervise the Work of all Subcontractors, providing instruction to each when its Work does not conform to the requirements of the plans and specifications and continue to manage each Subcontractor to ensure that corrections are made in a timely manner so as not to affect the progress of the Work. Owner shall be the sole judge of performance and acceptability.

2.3.2.7 The Construction Manager shall maintain exclusively for the Project a competent full-time staff at the Project Site to coordinate and direct the Work and progress of the Subcontractors. All of the Construction Manager’s Project management and on-site supervisory personnel shall be consistent with the Construction Manager’s interview presentation and shall not
be removed or replaced without the Owner’s consent, which consent will not be unreasonably withheld. The Owner shall have the right to direct the Construction Manager to remove or replace any on-site personnel whose performance becomes unsatisfactory to the Owner. In such event, the Construction Manager shall promptly replace such personnel, without consideration of any additional compensation for the replacement.

2.3.2.8 The Construction Manager shall establish on-site organization and lines of authority in order to carry out the overall plans of construction. The Construction Manager shall identify an on-site staff member to represent the Construction Manager, on a daily basis with authority to negotiate Change Orders and contract Modifications on behalf of the Construction Manager. The Construction Manager shall make available such executive personnel as necessary to execute Change Orders or other contract modifications on behalf of the Construction Manager so as not to delay the progress of Work.

2.3.2.9 The Construction Manager shall establish procedures for coordination among the Owner, Architect, Subcontractors and Construction Manager with respect to all aspects of the Work. The Construction Manager shall require of the various Subcontractors coordination drawings as may be necessary to properly coordinate the Work among the Subcontractors.

2.3.2.10 In coordination with the Architect, the Construction Manager shall establish and implement procedures for tracking and expediting the processing of Shop Drawings and Samples, as required by the General Conditions and the Contract Documents.

2.3.2.11 The Construction Manager shall determine the adequacy of Subcontractors’ personnel and equipment, and the availability of materials and supplies to meet the Project Schedule. In consultation with the Owner, the Construction Manager shall take necessary corrective actions when requirements of a subcontract or a Subcontractor’s schedule are not being met.

2.3.2.12 The Construction Manager shall maintain a system of accounting consistent with generally accepted accounting principles. The Construction Manager shall preserve all accounting records for a period of four (4) years after final acceptance of Work. The Owner shall have access to all such accounting records at any time during the performance of the Work and for a period of four (4) years after final acceptance of the Work.

2.3.2.13 The Construction Manager shall develop and implement a system for the preparation, review and processing of Change Orders. Without assuming any of the Architect’s responsibilities for design, the Construction Manager shall recommend necessary or desirable changes to the Owner, and shall review requests for changes and submit recommendations to the Owner.

2.3.2.14 Upon request by the Owner, the Construction Manager shall promptly prepare and submit estimates of probable cost for changes in the Work, including similar estimates from the
Subcontractors. If directed by the Owner, the Construction Manager shall promptly secure formal written Change Order proposals from a Subcontractor.

2.3.2.15 The Construction Manager shall make provisions for Project security acceptable to the Owner to protect the Project Site and materials stored off-site against theft, vandalism, fire and accidents, as required by job and location conditions. Mobile equipment and operable equipment at the Project Site, and hazardous parts of new construction subject to mischief, shall be locked or otherwise made inoperable or protected when unattended.

ARTICLE 3
PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

3.1 COMPENSATION

3.1.1 For services described in Sections 2.1 and 2.2 the Construction Manager’s compensation shall be calculated as follows: [Insert Contract Sum or Calculation of Sum].

3.1.1 The Owner and the Construction Manager agree that if the Project is terminated by the Owner prior to commencement of the Construction Phase, but in no event later than [Insert Date], the compensation paid to the Construction Manager for its services described in Sections 2.1 and 2.2 shall be the lesser of the Construction Manager’s actual cost of services or [Insert Stipulated Sum Termination Fee]. Commencing with the execution of this Agreement, the Construction Manager may bill for actual costs not to exceed the sum set forth in Section 3.1.1 above for such services on the first day of each month. Owner shall pay such invoices, as approved by Owner, within forty five (45) days from receipt of each invoice. On the other hand, if the Project proceeds into the Construction Phase, the Construction Manager’s sole compensation for the Project, including compensation for services described in Sections 2.1 and 2.2 shall be as provided below in Article 4.

3.2 PAYMENTS

3.2.1 Payments shall be made monthly following presentation of the Construction Manager’s invoice and, where applicable, shall be in proportion to services performed.

3.2.2 Payments are due and payable forty-five (45) days from the date the Construction Manager’s invoice is received by the Owner. Amounts unpaid after the date on which payment is due shall bear interest at the interest rate set forth in the General Conditions beginning on the date payment is due.

ARTICLE 4
COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:
4.1 GUARANTEED MAXIMUM PRICE

4.1.1 The sum of the Cost of the Work and the Construction Manager’s Fee are guaranteed by the Construction Manager not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by a Change Order. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner. Any savings to the Guaranteed Maximum Price shall be returned one hundred percent (100%) to the Owner.

4.2 COMPENSATION

4.2.1 In the absence of the Owner and Construction Manager agreeing to Guaranteed Maximum Price and executing Amendment No. 1, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of (a) the Cost of the Work as defined in Article 5, and (b) the Construction Manager’s Fee. Construction Manager Fee is equal to the fee for (a) Preconstruction Phase services described in Sections 2.1 and 2.2 and (b) Construction Phase services equal to [Option 1: _____ percent (\(\%\)) of the Cost of the Work (as herein defined)]/[Option 2: __________ Dollars and \(\_\_\_\_\_\_\_\_\_\_\_\_)].

ARTICLE 5
COST OF THE WORK FOR CONSTRUCTION PHASE

5.1 COSTS TO BE REIMBURSED

5.1.1 The Cost of the Work shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 5.

5.1.2 LABOR COSTS

5.1.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the Project Site or, with the Owner’s agreement, at off-site workshops.

5.1.2.2 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 that such costs are based on wages and salaries included in the Cost of the Work.

5.1.3 SUBCONTRACT COSTS

5.1.3.1 Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts. If the Construction Manager competitively bids a segment of the Project and is the low bidder on that work, then the Construction Manager shall treat that segment of work as a subcontract and such portion of the Project shall be fixed at the amount of the bid.
5.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

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

5.1.4.2 Costs of materials in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner’s option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited the Owner as a deduction from the Cost of the Work.

5.1.5 COST OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

5.1.5.1 Cost including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the Project Site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

5.1.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the Project Site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner’s prior approval.

5.1.5.3 Costs of removal of debris from the Project Site.

5.1.6 MISCELLANEOUS COST

5.1.6.1 That portion directly attributable to this Contract of premiums for insurance and bonds.

5.1.6.2 Fees and assessments for the building permit and for other permits, licenses and inspections and tests for which the Construction Manager is required by the Contract Documents to pay, except those related to nonconforming Work.

5.1.6.3 Royalties and license fees paid for the use of particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; 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.

5.1.6.4 Data processing costs related to the Work.
5.1.6.5 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner’s written permission, which permission shall not be unreasonably withheld.

5.1.6.6 Expenses incurred in accordance with the Construction Manager’s standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

5.1.6.7 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner, which approval shall specifically authorize inclusion in the Cost of the Work.

5.1.7 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Section 5.1 which are incurred by the Construction Manager:

1. In taking action to prevent threatened damage, injury or loss in the case of an emergency affecting the safety of persons and property; or

2. In repairing or correcting damaged, or nonconforming Work executed by the Construction Manager or the Construction Manager’s Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement of the Construction Manager or the Construction Manager’s foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

5.1.8 The costs described in Sections 5.1.1 through 5.1.7 shall be included in the Cost of the Work notwithstanding any provision the General Conditions or any conditions of this Agreement which may require the Construction Manager to pay such costs.

5.2 COSTS NOT TO BE INCLUDED IN COST OF THE WORK

5.2.1 The Cost of the Work shall not include:

1. Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the Project Site office;

2. Expenses of the Construction Manager’s principal office and offices other than the Project Site office;
3. Overhead and general expenses, except as may be expressly included in Section 5.1;

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

5. Rental costs of machinery and equipment, except as specifically provided in Section 5.1;

6. Costs due to the negligence of the Construction Manager, or its agents, employees, or Subcontractors or to the failure of the Construction Manager, or its agents, employees or Subcontractors to fulfill a specific responsibility to the Owner set forth in this Agreement;

7. Costs incurred in the performance of the Preconstruction Phase Services;

8. Any cost not specifically and expressly described in Section 5.1; and

9. Costs which would cause the Guaranteed Maximum Price to be exceeded.

5.3 DISCOUNTS, REBATES AND REFUNDS

5.3.1 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 therefore 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 secured.

5.3.2 Amounts which accrue to the Owner in accordance with the provisions of Section 5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

5.4 ACCOUNTING RECORDS

5.4.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s accountants shall be afforded access to the Construction Manager’s records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of four (4) years after Final Payment, or for such longer period as may be required by law.
6.1 PROGRESS PAYMENTS

6.1.1 Based upon Applications for Payment submitted to the Owner by the Construction Manager, the Owner shall make progress payments as described in the General Conditions and further described below.

6.1.2 Upon request from Owner, 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 to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager’s Fee; plus (3) payrolls for the period covered by present Application for Payment.

6.1.3 Each Application for Payment shall be based upon 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 Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Construction Manager’s Applications for Payment.

6.1.4 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage 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 which has actually been incurred by the Construction Manager on account of the 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.

6.1.5 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 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;

2. Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the Project Site at a location agreed upon in writing;
3. Add the Construction Manager’s Fee, less retainage of five percent (5%). The Construction Manager’s Fee shall be computed upon the Cost of the Work described in the two preceding clauses at the rate stated in Section 4.2.1 or, if the Construction Manager’s Fee is stated as a fixed sum in Section 4.2.1, shall be an amount which bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion;

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

5. Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 6.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered Owner in such documentation; and

6. Subtract amounts, if any, for which the Owner has withheld.

6.1.6 In taking action on the Construction Manager’s Application for Payment, Owner 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 Owner has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 6.1.4 or other supporting data; that the Owner has made exhaustive or continuous on-site inspections or that the Owner 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 accountants acting in the sole interest of the Owner.

6.2 FINAL PAYMENT

6.2.1 Final Payment shall be made by the Owner to the Construction Manager in accordance with the General Conditions.

ARTICLE 7
TERMINATION OR SUSPENSION

7.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

7.1.1 Prior to execution by both Parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the Owner may terminate this Agreement at any time without cause, and the Construction Manager may terminate this Agreement for any of the reasons described in the General Conditions.

7.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this Article 7 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of notice of
termination: provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 3.1.1.

7.1.3 If the Owner or Construction Manager terminates this Contract pursuant to this Section 7.1 after commencement of the Construction Phase, the Construction Manager shall be paid an amount calculated as follows:

1. Take the Cost of the Work incurred by the Construction Manager;

2. Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination based on the schedule of values submitted by the Construction Manager in accordance with the Contract Documents, or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, and amount which bears the same ratio to that fixed sum fee as the Cost of 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 on account of the Preconstruction Phase or Construction Phase.

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 5.1. 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 7, 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.

7.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

7.2.1 Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in the General Conditions.

7.3 SUSPENSION

7.3.1 After commencement of the Construction Phase, the Work may be suspended by the Owner as provided in the General Conditions.
ARTICLE 8
CONTRACT TIME

8.1 TIME OF SUBSTANTIAL COMPLETION

8.1.1 The date of Substantial Completion of the Construction Phase Work will be determined at the time Guaranteed Maximum Price is established and submitted as part of Amendment No. 1. Contract time is of the essence.

8.2 DAMAGES FOR FAILURE TO ACHIEVE TIMELY SUBSTANTIAL COMPLETION

8.2.1 Construction Manager, at its sole expense, shall take all reasonable steps to expedite performance of any activity, contract, delivery, or inspection where necessary to mitigate any delay, caused by or under the control of Construction Manager or its Subcontractors, to maintain the preliminary or construction schedules, and to achieve Substantial Completion by the Substantial Completion Date. In addition, there shall be no time extensions granted for inclement weather, except as allowed under the General Conditions. The Construction Manager shall sequence the work, provide temporary enclosures, provide additional labor, extend work hours or make other provisions necessary to complete the work on schedule should unusually inclement weather occur.

8.2.2 Construction Manager and Owner agree that the following methods of calculating and determining Owner’s damages resulting from Construction Manager’s failure to achieve completion within the Contract Time (Check applicable provision below):

- All damages, losses and expenses incurred by Owner, whether direct or consequential, as a result of delay in achieving Substantial Completion within the Contract Time. (No liquidated damages apply.)

- Liquidated damages for delay in achieving Substantial Completion in accordance with Section 8.1.1 and Amendment No. 1.
8.2.3 Construction Manager acknowledges, recognizes and agrees that the exact amount of such damages will be extremely difficult, if not impossible, to ascertain if Construction Manager fails to achieve Substantial Completion within the Contract Time. Accordingly, if the Construction Manager fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Construction Manager as liquidated damages and not as a penalty, the sum of \[ \text{dollars and No/100} (\$\frac{N/A}{100}) \] per calendar day commencing upon the first day following expiration of the Contract Time and continuing until the actual date of Substantial Completion.

8.2.4 Construction Manager and Owner agree that all amounts payable hereunder by Construction Manager shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Agreement, as a result of delayed completion of the Work. When Owner reasonably believes that Substantial Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due Construction Manager an amount then believed by Owner to be adequate to recover liquidated damages applicable to the delay in achieving Substantial Completion, or any part thereof. Any liquidated damages not so withheld shall be payable by Construction Manager to Owner upon demand by Owner plus interest from the date of demand at the highest legal rate. In the event any portion of the liquidated damages provisions set forth, above, are determined to be a penalty and unenforceable under applicable law, then Owner shall be entitled to recover its actual damages for Construction Manager’s delay in achieving Substantial Completion. Accordingly, if Construction Manager fails to achieve Substantial Completion within the Contract Time, as required by this Agreement, Construction Manager shall be liable to Owner for liquidated damages for unexcused delay as provided in Section 8.2.3 herein.

ARTICLE 9
INSURANCE AND BONDS

9.1 CONSTRUCTION MANAGER’S LIABILITY INSURANCE

9.1.1 GENERAL REQUIREMENTS The Construction Manager shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located with a Best’s Credit Rating of at least A+, such insurance as will protect the Construction Manager from claims set forth below which may arise out of or result from the Construction Manager’s operations under the Agreement and for which the Construction Manager may be legally liable, whether such operations be by the Construction Manager or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

9.1.1.1 claims under workers compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

9.1.1.2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Construction Manager’s employees;
9.1.1.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Construction Manager’s employees;

9.1.1.4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Construction Manager, or (2) by another person;

9.1.1.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

9.1.1.6 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; and

9.1.1.7 claims involving contractual liability insurance applicable to the Construction Manager’s obligations.

9.1.2 INSURANCE NOT LESS THAN LIMITS OF LIABILITY SPECIFIED: The insurance required by Section 9.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages shall be written on an occurrence basis and shall be maintained without interruption from Date of Commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. Unless otherwise modified in writing, the Construction Manager shall maintain the following levels of insurance coverage:

9.1.2.1 WORKERS’ COMPENSATION AND EMPLOYER’S LIABILITY

Workers’ Compensation ......................... Nebraska Statutory Limit

Employer’ Liability Annual Limits Per Insured (minimum)

Bodily Injury by Accident .................................................. $100,000
Bodily Injury by Disease - policy limit............................... $100,000
Bodily Injury by Disease - each employee....................... $500,000

The Construction Manager shall provide a blanket waiver of subrogation.

9.1.2.2 AUTOMOBILE LIABILITY

Combined single limit of $1,000,000 per occurrence.

9.1.2.3 COMMERCIAL GENERAL LIABILITY

Annual Limits of Liability (minimum)

General Aggregate ...................................................... $2,000,000
Products/Completed Operations Aggregate .................. $2,000,000
Personal/Advertising Injury Aggregate ......................... $1,000,000
Each Occurrence Limit.................................................$1,000,000

1. Occurrence form

2. Deductible to Construction Manager for property damage claims not to exceed $5,000 per occurrence

3. Coverage extensions to include:
   - Contractual liability to include construction contracts
   - General aggregate per project
   - Construction Manager to carry complete operations coverage for three (3) years following substantial completion (need certificate of insurance for each of three years)
   - Blanket waiver of subrogation
   - Additional insured endorsement to cover vicarious liability including completed operation
   - Remove fellow employee exclusion.
   - Modified Notice of Occurrence, supervisors and up
   - 60 Day notice of cancellation basis

9.1.2.4 EXCESS LIABILITY

Each Occurrence .................................................$5,000,000 (minimum)
Annual Aggregate ................................................$5,000,000 (minimum)

The Construction Manager shall provide a blanket waiver of subrogation.

9.1.2.5 CONSTRUCTION MANAGER SELF-INSURANCE OF MACHINERY, TOOLS AND EQUIPMENT: The Construction Manager shall, at the Construction Manager’s own expense, provide insurance coverage for owned or rented machinery, tools or equipment.

9.1.3 CERTIFICATES OF INSURANCE: Certificates of insurance acceptable to the Owner shall be submitted to the Construction Manager for transmittal to the Owner with a copy to the Architect prior to commencement of the Work. These certificates and the insurance policies required by this Section 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. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. Information concerning reduction of coverage shall be furnished by the Construction Manager with reasonable promptness in accordance with the Construction Manager’s information and belief.

9.2 WAIVERS OF SUBROGATION: The Construction Manager waives all rights against the Architect and the subcontractors, Sub-subcontractors, consultants, agents and employees of any of
them, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Article or other property insurance applicable to the Work. The Construction Manager shall require of the Architect, Architect’s consultants, 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.

9.3 PAYMENT, PERFORMANCE AND GMP BONDS: The Construction Manager shall furnish when requested by Owner or where required by NEB. REV. STAT. § 52-118, payment bond and bonds covering faithful performance of this Agreement and payment of obligations arising thereunder with minimum Best Rating “A”. The amount of said bonds shall be equal to the GMP, as adjusted by Change Orders, if any. The Construction Manager shall require performance and payment bonds of all subcontractors when the Subcontract amount exceeds Fifteen Thousand Dollars ($15,000.00). Copies of all such bonds shall be delivered to Owner.

9.4 COMMENCEMENT OF WORK: By entering into this Agreement, the Construction Manager agrees that it shall not commence operations on the project site or elsewhere prior to the effective date of insurance required by this Article to be in effect and provided to the Owner and Architect. The Date of Commencement of the Work shall not be changed by the effective date of such insurance.

ARTICLE 10
MISCELLANEOUS PROVISIONS

10.1 TIME IS OF THE ESSENCE: All limitations of time set forth herein are material and time is of the essence of this Agreement.

10.2 INDEMNIFICATION: Construction Manager shall indemnify and hold the Architect and Owner and their respective agents, representatives and employees harmless from and against all 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, but only to the extent caused by the acts or omissions or the Construction Manager, its subcontractors or 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. Additionally, the Construction Manager shall indemnify, defense and hold Owner harmless from and against any and all claims from subcontractors and suppliers for liens or claims in the nature of liens for the value of work, labor or materials for which the Construction Manager received payment from Owner.

10.3 DISPUTE RESOLUTION: No claim or dispute among any of the parties shall be submitted to arbitration for resolution unless the parties involved agree in writing to do so after such claim or
dispute has arisen, and any provision that may require arbitration under any circumstance in the Contract Documents shall have no effect.

10.4 CONSEQUENTIAL DAMAGES: IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL THE CONSTRUCTION MANAGER SEEK, BE ENTITLED TO OR RECOVER ANY MONIES FOR WORK NOT PERFORMED, FOR LOSS OF REVENUE OR LOST PROFITS OR FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES. CONSTRUCTION MANAGER HEREBY WAIVES CONSEQUENTIAL DAMAGES FOR CLAIMS, DISPUTES OR OTHER MATTERS IN QUESTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROJECT.

10.5 COMPLIANCE WITH APPLICABLE LAWS: As a material term of this Agreement, the Construction Manager shall at all times comply with, and require all employees, agents and subcontractors to comply with all existing applicable laws, rules and regulations and all policies of Owner.

10.6 EXTENT OF AGREEMENT: The Contract Documents represent the entire and integrated agreement between the Owner and the Construction Manager and supersede all prior negotiations, representations and agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

10.7 OWNERSHIP AND USE OF DOCUMENTS: All documents prepared by the Architect, and copies thereof furnished to the Construction Manager, are for use solely with respect to this Project. They are not to be used by the Construction Manager, Subcontractors or suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of the Owner and Architect. The Construction Manager, Subcontractors and suppliers are granted a limited license to use and reproduce applicable portions of such documents appropriate to and for use in the execution of their Work under the Contract Documents.

10.8 GOVERNING LAW: This Agreement shall be governed by the laws of the State of Nebraska.

10.9 ASSIGNMENT: Once this Agreement is accepted and signed by the Owner, the Owner and the Construction Manager respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Agreement shall assign the Agreement as a whole without the 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 Agreement.

10.10 HAZARDOUS MATERIALS: The Construction Manager is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. The Construction Manager shall indemnify the Owner for all cost and expense Owner may incur (i) for remediation of a material or substance the Construction Manager brings to the site and negligently handles or (ii) whether the Construction Manager fails to perform its obligations under the Contract
Documents; provided, however, Construction Manager will not be responsible for costs and expenses due to the Owner’s negligence.

10.11 INDEPENDENT CONTRACTOR: The Construction Manager (as well as all subcontractors) shall function as an independent contractor for the purposes of this Agreement and shall not be considered an employee of the Owner for any purpose. The Construction Manager shall assume sole responsibility for any debts or liabilities that may be incurred by Construction Manager in fulfilling the terms of this Agreement and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Agreement. Nothing in this Agreement shall be interpreted as authorizing Construction Manager or its agents and/or employees to act as an agent or representative of or on behalf of the Owner or to incur any obligation of any kind on behalf of the Owner.

10.12 SEVERABILITY: This Agreement is subject to all applicable federal and state laws, rules and regulations. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of this Agreement shall continue in full force and effect.

10.13 NO WAIVER OF RIGHTS: The waiver of any breach of any term or condition in this Agreement shall not be deemed a waiver of any prior or subsequent breach. No delay or omission by either of the parties hereto in exercising any right or power accruing upon the noncompliance or failure of performance by the other party hereto of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

[Remainder Intentionally Left Blank; Signature Page to Follow.]
IN WITNESS WHEREOF this Agreement has been duly executed by the parties.

NAME OF CONSTRUCTION MANAGER

________________________________________
By

________________________________________
Name

________________________________________
Title

________________________________________
Date

THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA

________________________________________
By

________________________________________
Name

________________________________________
Title

________________________________________
Date

ATTEST:

________________________________________
By

________________________________________
Name

________________________________________
Title

________________________________________
Date
ACKNOWLEDGMENTS

State of ___________ )
County of ___________ ) ss. CONSTRUCTION MANAGER

Before the undersigned, a Notary Public duly qualified in and for said, county and state, personally came ________________________, the ______________________ of ________________________, an ______________________ authorized to do business in the State of Nebraska, and known to be the said officer of said corporation, and the same and identical persons who signed the foregoing Agreement as said officers, and each acknowledge their signing of this Agreement to be their duly authorized act and deed as such officers on behalf of said corporation.

Subscribed and sworn to before me this ___ day of ____, 20___.

________________________________________
Notary Public

State of Nebraska )
County of ___________ ) ss. BOARD OF REGENTS

Before the undersigned, a Notary Public duly qualified in and for said county and state, personally came ________________________, the ______________________ of ________________________, the ___ for the Board of Regents of the University of Nebraska, and known to me to be the said officer of said public corporation, and the same and identical persons who signed the foregoing Agreement as said officer, and each acknowledged their signing of this Agreement to be their duly authorized act and deed as such officer on behalf of said public corporation.

Subscribed and sworn to before me this____day of ____, 20___.

________________________________________
Notary Public

ARTICLE 1 - GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS
The Contract Documents consist of those documents set forth in Article 2 of the University of Nebraska Standard Form Construction Agreement dated May 24, 2006. 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. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid 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 Architect and Contractor or any Subcontractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and 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 provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.4 THE PROJECT
The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner 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, and performance of related services.

1.1.7 THE PROJECT MANUAL
The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required
only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

.1 In the event of inconsistencies or discrepancies among Contract Documents, interpretations will be based on following priorities:
   a. The Agreement.
   b. Addenda, those of later date having precedence over earlier date.
   c. The General Conditions of the Contract for Construction.
   d. Division 1 (General Requirements) of the Specifications (other than the General Conditions).
   e. Drawings and Divisions 2-48 of the Specifications.

.2 In case of an inconsistency or discrepancy between Drawings and Divisions 2-48 of the Specifications or within either Document, not clarified by addenda, Contractor is deemed to provide the better quality or the greater quantity of the Work.

.3 Repeated features throughout must be constructed alike, although drawn in detail only once and, similarly, all detail and ornament must be continued throughout all moldings, bands, etc., and all indications of material, etc., shall apply to all similar features throughout.

.4 For Work specified to be done "as directed," Contractor must obtain written direction from Owner's Representative before undertaking such work.

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 and scope of Work of subcontractors and shall assume full responsibility for complete coordination of subcontractors. Owner and/or Architect will not act as arbiter as to which trade or subcontractor is to furnish and install various items indicated or required to perform construction.

1.2.3 REFERENCES
   .1 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 in the Contract Documents, shall be and include 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.
   
   .2 All references to the "Manufacturer's Specifications," "Manufacturer's Directions" or "Manufacturer's Recommendations' shall refer to the referenced manufacturer's published specifications or manuals. These publications hereby are made a part of and incorporated by this reference in 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.
   
   .3 No provision or term of any referenced standard specification, manual, or code, or manufacturer's specification, direction, recommendation or publication, whether or not specifically made a part of or incorporated by reference in the Contract Documents, shall be effective to change the duties and responsibilities of the Owner or Architect, or any of their consultants, agents, or employees from those set forth in the Contract Documents or Owner-Architect Agreement, nor shall such provision or term be effective to assign to Architect or any of Architect's consultants, agents, or employees, any duty, responsibility, or authority to supervise, direct, or control the furnishing or performance of the Work or any duty, responsibility, or authority to undertake any duty or responsibility contrary to the provisions of the Contract Documents or Owner-Architect Agreement.

1.2.4 Wherever an article, device or piece of equipment is referred to in the singular, such reference shall apply to as many such articles as are shown on the Contract Documents or are required to complete the installation.
1.3 CAPITALIZATION

1.3.1 Terms capitalized in these General Conditions include those which 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

1.4.1 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.

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

.1 In the interest of conciseness, references to specification sections and details are preceded by the word "see". Any such references are to be interpreted to include applicable form of the phrase "and comply with,"

.2 In the interest of conciseness, certain sentences, statements, and clauses omit any form of the verb "shall," normally expressed in verb phrase with verbs such as "furnish", "install", "provide", "perform", "construct", "erect", "comply", "apply", "submit", etc. Any such sentences, statements, and clauses shall be interpreted to include the applicable form of the phrase "the Contractor shall," and requirements described therein shall be interpreted as mandatory elements of the Contract.

1.5 EXECUTION OF CONTRACT DOCUMENTS

1.5.1 The Contract Documents shall be signed by the Owner and Contractor.

1.5.2 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.

1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier 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. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights.
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 term “Owner” means the Owner or the designated Owner’s Representative. The University Owner’s Representative will be designated at the start of the Project.

2.1.2 Owner as referred to in these documents is: The Board of Regents of the University of Nebraska.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 Any other provision 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 appropriated by the Legislature of the State of Nebraska as provided by law, or the availability of other funds of the Owner specifically approved by formal action of the Board of Regents of the University of Nebraska for the purpose of payment of the Contract Sum or any part thereof.

2.2.2 Except for permits and fees, including those required under Section 3.7.1, which are the responsibility of the Contractor under the Contract Documents, 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. Information will be furnished only to extent it is readily available to or can reasonably be determined by Owner.

2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

2.2.5 Contractor will be furnished free of charge up to 10 copies of Contract Documents, including documents reissued because of changes or revisions. Additional copies may be purchased at cost of reproduction, postage and handling.

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or persistently 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.

2.3.2 Owner may declare Contract or in default for any one or more of following conditions or reasons:

.1 Failure to complete the Work within Contract period or any extension thereof.
.2 Failure or refusal to comply with order of Architect or Owner's authorized representative within reasonable time.
.3 Failure or refusal to remove rejected materials.
.4 Failure or refusal to perform anew any defective or unacceptable work.
.5 Bankruptcy or insolvency, or making of any assignment for benefits of creditors.
.6 Failure to provide qualified superintendent, competent workmen or subcontractors to carry on the Work in an acceptable manner.
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.7 Failure to execute the Work according to agreed schedule of completion.
.8 Disregard or violation of any provisions of Contract Documents.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-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. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

2.4.2 Neither Owner nor its officers, agents, or employees are in any way liable or accountable to Contractor or its Surety for the method by which completion of said Work, or any portion thereof, is accomplished or for price paid therefor. Contractor and Surety are responsible for all costs for completion of the Work including cost in excess of original Contract price. Contractor will be paid any amount saved if cost of completion is less than original Contract price. Owner does not forfeit the right to recover damages from Contractor or Surety for failure to complete the Contract by taking over the Work or by declaring Contract or Contractor in default. Maintenance of the Work remains Contractor's and Surety's responsibility as provided for in Owners Protective Bond and Guarantee of Contractor.

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 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 or Owner in the Architect's or Owner's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.1.4 Contractor shall use an electronic verification system to determine the work eligibility status of any new employee physically performing services within the State of Nebraska, as required pursuant to Neb. Rev. Stat. §4-108 to §4-114 as of the effective date of this Contract, or as such law may be amended from time-to-time. Compliance with these Nebraska statutes shall be considered a material term of this Contract.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other 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. The Contractor is responsible for recognizing such errors, inconsistencies or omissions and requesting clarification thereof and is responsible for consequences of failing to conduct a careful examination of the site as described herein. Any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect and Owner as a request for information in such form as the Architect or Owner may require.

3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect and Owner, but 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. The Contractor shall not proceed with the Work affected by a reported error, omission or inconsistency without receiving clarification or instruction from the Owner. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Owner and Architect.

3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Owner and Architect.

3.2.4 By entering into the Agreement with Owner, Contractor acknowledges that the Contractor has examined all the Contract Documents and other documents pertaining to the Work, examined the character of the site and any existing structures, and is well acquainted with the nature of the Work and with all other matters which can in any way affect the Work.

3.2.5 The Contractor may use soil information described in Bidding Documents at the Contractor's own risk. Any additional soil information necessary to perform the Work is the responsibility of the Contractor and is to be obtained at the Contractor's expense.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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 equipment furnished by Owner and/or by Others and to be installed by Contractor, the Contractor shall use manufacturer's current detail drawings, as approved and provided by Owner, to establish roughing-in dimensions, size of and location of service. In case of conflict, the equipment detail drawings and dimensions shall be used, except where aesthetic or structural considerations make an adjustment necessary.

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, 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. The Contractor shall coordinate and discuss its utility needs with the Owner. The Contractor shall verify the location of the nearest utilities services and use those services most efficient to the completion of the Work. See General Requirements for additional provisions regarding any Owner-furnished utilities.

3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

3.4.2.1 It is the intent of the drawings and specifications to secure competition consistent with the level of quality and performance desired by the Owner and set out in these documents.

3.4.2.2 When the drawings and/or specifications refer to any item, article, material, method, fabrication, assembly or construction by means of one or more manufacturer's trade name, catalog reference or similar means of identification or manufacturer, the Contractor shall furnish one of the makes so identified without substitution unless other make or makes have been approved by addendum to the contract documents prior to the receipt of bids. Requests for the approval of items of equal quality should be made in writing to the Architect ten days prior to the date of the receipt of bids so that a list of acceptable equal quality items can be made known to all bidders by an addendum. If substitutions for named items, articles, materials, methods, fabrications, assembly or construction are approved, the Contractor assumes all responsibility for coordination and performing the related changes in the Work necessitated by such substitutions and shall include in its bid all costs involved therein.

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

3.4.4 University of Nebraska Policy Prohibiting Sexual Harassment.

3.4.4.1 Federal law and policies of the Board of Regents of The University of Nebraska prohibit sexual harassment. Sexual harassment includes; unwelcome sexual advance toward a University employee or student, request for a sexual favor, and other verbal or physical conduct of a sexual nature that is so pervasive as to create a hostile or offensive working environment for University employees or a hostile or offensive academic environment for University students.

3.4.4.2 Contractor, subcontractors or suppliers working under Contract for this Project are required to exercise control over their employees so as to prohibit acts of sexual harassment. Employer of any person whom University of Nebraska, in its reasonable judgment, determines has committed an act of sexual harassment agrees as a term and condition of this Contract to remove such person from the Project site and from University of Nebraska premises and to take such other action necessary to cause sexual harassment to cease.

3.4.5 Contractor’s Drug Free Work Place Policy. Contractor certifies that as a condition of the Agreement that neither Contractor nor any employee of Contractor shall engage in unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance including alcohol or alcoholic beverages, in conducting any activity covered by this Agreement. Both the department of Public Institutions and the University of Nebraska reserve the right to request and receive a copy of the Contractor’s drug Free Work Place Policy. Contractor further agrees to insert a provision similar to this statement in all subcontracts for services required under this Contract.

3.4.6 Use of Tobacco Products. The use of tobacco products in University facilities is prohibited.

3.4.7 Employees Under Work Release. The Contractor shall give written notice to the Owner’s Representative of any employee on the project site that is on the Department of Correctional Services Work Release Program. This notice shall be given prior to that employee starting on the project site.
3.5 **WARRANTY**

3.5.1 The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Warranties and guarantees of equipment suppliers will be assigned directly to the Owner at the end of the general warranty periods concluding one year from the date of Substantial Completion.

3.6 **TAXES**

3.6.1 Sales and use taxes on tangible personal property to be incorporated into the project are to be excluded under the following procedure: The Owner will appoint the Contractor as a Purchasing Agent for the Owner. Such appointment will authorize the Contractor and his subcontractors to issue Exempt Sales Certificates to the vendors when purchasing tangible personal property to be incorporated into the project.

3.6.2 Owner shall furnish Contractor with a Purchasing Agent Appointment and Exempt Sale Certificate Form for items incorporated into the Work considered by State of Nebraska to be exempt from Sales Tax. Contractor is responsible to monitor valid dates and notify Owner if an extension is necessary. (Ref. Neb. Rev. Stat. § 77-2704.15). This Appointment and Exempt Sales Certificate does not apply to:

1. Purchase of materials to be used but not incorporated into the Contract work, including but not limited to form lumber, scaffolding, etc.
2. Purchase or rental of machinery, equipment or tools owned or leased by Contractor and used in performing the work.

3.7 **PERMITS, FEES AND NOTICES**

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded. Whereas, the Owner is an agency of the State of Nebraska, certain fees, licenses and permits may not be required. Therefore, the Contractor should coordinate securing any permits or licenses with the Owner prior to obtaining such. For additional requirements, see General Requirements.

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

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.
SECTION 00 72 13 - GENERAL CONDITIONS

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;

.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 in sufficient time to avoid delay in the Work.

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. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

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 information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.10.2 The Contractor shall prepare and keep current, for the Owner's and Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

3.10.4 Project Schedule: See General Requirements.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and Owner and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.
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 which 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. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. 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 which 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 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. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has 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 with consent of the Owner 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 which 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 or approvals performed 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 or design criteria required by the Contract Documents.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.13.2 Contractor shall provide adequate protection throughout the course of the Work, for all trees and shrubs on the site indicated in Contract Documents not to be removed. Contractor shall be responsible for damage to any such trees or shrubs during the period of construction and shall replace or repair, any trees or shrubs damaged by Contractor, its subcontractors or employees, with plantings acceptable to Owner at no cost to Owner. Damaged sod areas shall be replaced with top grade sod of a type acceptable to Owner. All landscape repairs shall carry one-year full guarantee.

3.13.3 Contractor shall enforce Owner's Instructions regarding smoking, noise, signs, advertisements, and fires.

3.13.4 Contractor shall keep the site of construction reasonably free from weeds during the course of construction. Contractor shall cut all weeds on the site so as to discourage further germination.

3.13.5 All utilities, curbs, drives, pavements, streets, buildings, railings, guardrails, improvements, mechanical and electrical equipment, etc., which are damaged or cut during construction and are to be used after construction shall be repaired such that the quality of repaired item equals or exceeds its condition prior to construction.

3.13.6 Continued occupancy of existing facilities: See General Requirements.

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.

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

3.15 CLEANING UP

3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.
3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 ACCESS TO WORK

3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.3, 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 which would otherwise exist as to a party or person described in this Section 3.18.

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

3.18.3 Contractor agrees to indemnify and hold Owner, Architect, Architect's Consultants and agents and employees of any of them harmless from any and all loss or damages arising out of labor disputes between organized local labor units, whether or not of the same trade or craft, or other labor concerns of any kind that may occur during performance of the Contract, to the fullest extent permitted by law.

ARTICLE 4 - ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.
Architect, Engineer, Architect/Engineer or Engineer/Architect hereinafter called the Architect as indicated in Bidding Requirement. Each of these terms means the Architect or an affiliate as otherwise provided in Contract Documents, or duly authorized representatives, such representatives acting severally within the scope of particular duties entrusted to them, unless otherwise provided in Contract Documents. When Contractor is required to contact, notify or otherwise interact with the Architect, contact the Owner's Representative first. Request instructions from Owner's Representative as to whether the Architect should also be contacted.

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 and Architect. Consent shall not be unreasonably withheld.

4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new architect.

4.1.4 Architect shall not be liable to Contractor for any claim, cause of action arising out of Architect's responsibilities under Contract, either personally or as an official of Owner, it being understood that in such matters Architect acts as agent and representative of Owner.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 Owner will provide administration of the Contract as described in Contract Documents during construction and until final payment is due. Owner will advise and consult with Architect.

4.2.2 A registered architect and/or registered engineer representing the Architect shall make not less than one visit to the project site each month during progress of construction, or as directed by Owner, with the Owner's Representative at a time mutually agreed upon between the Owner's Representative and the Architect. On the basis of on-site observations, the Architect shall endeavor to guard the Owner against defects and deficiencies in the Work and shall assist the Owner in obtaining faithful performance of Contract Documents by the Contractor.

4.2.3 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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

4.2.5 The Architect shall not determine amounts owing to the Contractor and shall not issue Certificates for Payment.

4.2.6 The Architect shall advise the Owner in matters relating to rejection of Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable to ensure proper implementation of the intent of the Contract Documents, the Architect will advise the Owner to require additional or special inspection or testing of the Work in accordance with the provisions of the Contract Documents whether or not such Work is fabricated, installed or completed.

4.2.7 The Architect and the Owner will concurrently 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. Approval or other appropriate action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while
allowing sufficient time 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. Review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. Review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect and the Owner, of any construction means, methods, techniques, sequences or procedures. Approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8 With the consent of the Owner, the Architect shall prepare data for Change Orders and Construction Change Directives as required by the Owner. The Architect shall receive a copy of all executed Change Orders and Construction Change Directives.

4.2.9 The Architect shall assist the Owner in determining the dates of Substantial Completion and Final Completion. The Architect will receive and review for completeness written warranties and related documents required by the Contract and assembled by the Contractor. After review of the required documents, the Architect will forward them to Owner for Owner’s review and records. The Architect will assist the Owner in preparation of a Certificate of Substantial Completion upon compliance with the requirements of the Contract Documents. The Architect shall assist the Owner and Contractor in the preparation of a "punch list" to be attached to the Certificate of Substantial Completion.

4.2.10 Owner will provide one or more Owner Representatives at the Project site who will furnish construction observation services.

4.2.11 The Architect will interpret matters concerning performance under and requirements of, the Contract Documents on written request of the Owner. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

4.2.12 Interpretations of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

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

4.2.14 Architect shall advise and consult with the Owner during the Construction Administration Phase. Architect shall have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by Owner in writing.

4.3 CLAIMS AND DISPUTES

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

4.3.2 Time Limits on Claims. 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. Claims must be initiated by written notice to the Architect and the other party.

4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 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.
4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which 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, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. If requested by the Owner, the Architect will promptly investigate such conditions and advise Owner as to whether 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. If the Owner 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 Owner shall so notify the Contractor in writing, stating the reasons. Claims in opposition to such determination must be made within 21 days after the Owner has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be subject to further proceedings pursuant to Section 4.5.

4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) an order for a change in the Work issued by the Architect or Owner, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.

4.3.6.1 Any claims for additional cost will be allowed only if the labor, materials, and equipment and the work related thereto have been ordered in writing by the Owner. Claims for such additional cost must be approved by the Owner before payment is made.

4.3.7 Claims for Additional Time

4.3.7.1 If the Contractor wishes to make 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.

4.3.7.2 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.

4.3.7.3 Time extensions for unusually severe weather. The procedure for determination of time extensions for unusually severe weather shall be as set forth in this Article 4.3.7.3. The following listing defines monthly anticipated adverse weather for the Contract period.

Contractor’s schedule must reflect these anticipated adverse weather delays in all weather dependent activities.

**MONTHLY ANTICIPATED ADVERSE WEATHER CALENDAR DAYS**

<table>
<thead>
<tr>
<th>JAN</th>
<th>FEB</th>
<th>MAR</th>
<th>APR</th>
<th>MAY</th>
<th>JUN</th>
<th>JUL</th>
<th>AUG</th>
<th>SEP</th>
<th>OCT</th>
<th>NOV</th>
<th>DEC</th>
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<tbody>
<tr>
<td>(08)</td>
<td>(05)</td>
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<td>(06)</td>
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<td>(02)</td>
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</tr>
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The schedule above will constitute the base line for monthly, or a portion thereof, weather time evaluations. Upon acknowledgement of Notice to Proceed and continuing throughout the Contract, on a monthly basis, actual adverse weather days will be recorded on a calendar day basis (including weekends and holidays) and compared to the monthly anticipated adverse weather schedule, above. The term "actual adverse
weather days” shall include days impacted by adverse weather. The number of actual adverse weather days shall be calculated chronologically from the first to the last day in each month. Once the number of actual adverse weather days anticipated in schedule above has been exceeded, Owner will examine all actual adverse weather days to determine whether Contractor is entitled to a time extension. These actual adverse weather days must prevent 50 percent or more of Contractor’s workday, delay Work critical to timely completion of the Project, and be documented in Contractor Quality Control reports. Owner will convert any delays meeting these requirements to calendar days and issue a Change Order to Contractor.

4.3.8 Injury or Damage to Person or Property. If either party to the Contract 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.

4.3.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a Change Order or Construction Change Directive or as a result of other changes in the Work or variations from quantities that are included in the Contract Documents as estimated quantities for unit priced work, so that application of such unit prices to estimated quantities of Work stated in the Contract Documents will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted. A material change in the estimated quantities stated in the Contract Documents shall be deemed to have occurred only when the unit priced work item quantity is increased in excess of 125 percent or decreased below 75 percent of the original quantity stated in the Contract for such unit priced work item. This § 4.3.9 shall apply only to unit priced work items where estimated quantities are stated in the Contract Documents.

4.3.10 Claims for Consequential Damages. The Contractor hereby waives all claims against the Owner for all consequential damages arising out of or relating to this Contract. This waiver includes, but is not limited to, 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. This waiver is applicable without limitation to all consequential damages due to Owner’s termination in accordance with Article 14.

4.4 RESERVED

4.5 MEDIATION

4.5.1 Any Claim arising out of or related to the Contract shall be subject to mediation prior to the institution of legal or equitable proceedings by either party. The parties shall endeavor to resolve their Claims by mediation the procedures for which shall be mutually agreed upon by the parties. Request for mediation shall be provided by written notice to the other party. The request may be made concurrently with the institution of legal or equitable proceedings but, in such event, mediation shall proceed in advance of legal or equitable proceedings which shall be stayed pending mediation for a period of 60 days from the date of receipt of the request by the other party, unless stayed for a longer period by agreement of the parties or court order. In the event the parties cannot agree upon a mediator and on the procedures and timing for medication within 60 days of a party’s receipt of a request for mediation, such failure shall not preclude either party from instituting legal or equitable proceedings.

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 are not to contact Architect or Owner directly. All requests for information should be directed to the Contractor.

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

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and 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 Owner will promptly reply to the Contractor in writing stating whether or not the Owner, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.

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

5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner makes reasonable objection to such substitute.

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. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. 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 which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements which 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.

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.

ARTICLE 6 - CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. 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 Section 4.3.

6.1.2 RESERVED

6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. 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 and the separate contractors 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 which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY

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

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and Owner 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 Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor 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.
SECTION 00 72 13 - GENERAL CONDITIONS

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 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 Owner 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 and Contractor; a Construction Change Directive may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect with the consent of the Owner.

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

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner and Contractor, stating their agreement upon all of the following:
   .1 change in the Work;
   .2 the amount of the adjustment, if any, in the Contract Sum; and
   .3 the extent of the adjustment, if any, in the Contract Time.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner, 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 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect and Owner 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.
SECTION 00 72 13 - GENERAL CONDITIONS

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor 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.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner 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 allowance for overhead and profit in accordance with the schedule of construction modification procedures identified in General Requirements. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

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

7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Owner. 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.

7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner will make an interim determination for purposes of monthly progress payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with Article 4.

7.3.9 When the Owner and Contractor agree concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK

7.4.1 The Architect with the consent of the Owner and the Owner will have 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 shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

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.
8.1.2.1 Work or storage of materials or equipment on site shall not commence until the later of written notice to proceed is issued, or upon execution of Contract. In no event shall construction commence until the Contract is executed. Following such execution it is essential that performance under the contract begin within ten days of Owner’s Notice to Proceed.

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. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

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

8.2.4 In the event Contractor shall fail to complete the Work by the completion date provided in the Contract, then Contractor shall be considered to be in breach of the Contract and will be liable to Owner for any and all damages suffered by Owner as a result of such breach of Contract.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 In the event that, at any time, Contractor’s commencement or performance of the Work is delayed or interfered with by acts or neglect of the Owner or Architect, or of any 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 other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine, but Contractor shall not be entitled to any increase in the Contract Price or to damages or additional compensation as a consequence of such delay or interference. No allowance for an extension of time for any cause whatsoever shall be claimed by, or granted to, Contractor unless Contractor shall have made written request within the time periods and in the manner set forth in the Contract Documents.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

8.3.3 This Section 8.3 does not preclude recovery of damages by Owner for delay under any provision of the Contract Documents.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

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

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.2.2 Schedule of Values: See General Requirements.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 Applications for Payment: See General Requirements.

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

9.3.2.1 The Owner may approve progress in an amount equal to 95% of all work and materials under the following conditions:

The Contractor shall obtain the approval of the Owner’s Representative before making any arrangements to obtain an Application for Payment for materials stored off the site. Materials must be suitable for storage and must be properly packaged as necessary.

The Contractor shall furnish and maintain a suitable storage site and proper storage conditions, which must be approved in advance by the Owner's Representative.

Storage Conditions: Material covered by the Request for Application for Partial 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.

Material must not be commingled with other similar material, but must be stored by itself and must be plainly labeled, "PROPERTY OF THE BOARD OF REGENTS, UNIVERSITY OF NEBRASKA", with project name.

It must be stored so that it can be readily inspected, measured, and counted, at all times, by the Owners’ representatives.

Request for Application for Partial Payment for materials stored under the above conditions must be accompanied by a Bill of Sale, properly identifying the material and transferring ownership of the materials to the Board of Regents, University of Nebraska. The Bill of Sale must be accompanied by an inventory of stored material, together with a description of the storage site by street number and city, or by a legal description of the premises.

RESPONSIBILITY: The Contractor agrees that, in accepting partial payment for the stored materials, he 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 plans and specifications.

The Contractor further agrees that acceptance by the Owner of a Bill of Sale for stored material does not imply acceptance of such material for the purpose of this Contract. Such acceptance shall not occur until completion of the Work by the Contractor and final acceptance thereof by the Owner.
The Contractor further agrees that the usual guarantees covering his Work under the plans, specifications and contract are in no way impaired as a result of the partial payment and acceptance of the Bill of Sale. For additional conditions and requirements for payment for materials stored off site, see General Requirements.

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 payments have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.4 RESERVED

9.5 DECISIONS TO WITHHOLD PAYMENT

9.5.1 The Owner may withhold payment in whole or in part, if in its sole discretion exercised in good faith based on observations at the site and on the data comprising the Application for Payment, the Work has not progressed to the point indicated, or the Work is not in conformance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion), or the Contractor is otherwise not entitled to payment in the amount specified. If the Owner decides to withhold payment on all or part of the amount of the Application, it will notify the Contractor within seven days of receipt of the Application. If the Owner and Contractor cannot agree on a revised amount, the Owner will pay the amount not in dispute, in accord with the Contract Documents. The Owner may also withhold payment because of subsequently discovered evidence or subsequent observations, to such extent as may be necessary, in the opinion of the Owner, to protect the Owner from loss because of:
   .1 defective Work not remedied;
   .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
   .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
   .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
   .5 damage to the Owner or another 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 persistent failure to carry out the Work in accordance with the Contract Documents.

9.5.2 When the above reasons for withholding payment are removed, payment will be made within a reasonable time for amounts previously withheld.

9.6 PROGRESS PAYMENTS

9.6.1 After the Contractor submits an Application 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 promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, pursuant to the terms of its Subcontract, and, unless conflicting with Subcontract terms, reflecting percentages actually retained from payments to the Contractor on account of such 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 Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner on account of portions of the Work done by such Subcontractor.

9.6.4 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 Payment to material 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 An Application for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

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

9.7 FAILURE OF PAYMENT

9.7.1 If the Owner does not pay the sum requested in any Application for Payment within 45 days after receipt of such Application, less any amount withheld in accordance with subparagraph 9.5.1, then the Contractor may, upon seven days written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Sum shall be increased by the amount of the Contractor's reasonable cost of shut-down, delay and start-up, which shall be effected by appropriate Change Order in accordance with Paragraph 4.3.5 and 4.3.6, unless modified by the Contract as provided in Article 7.

9.8 SUBSTANTIAL COMPLETION

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use and a temporary occupancy permit has been issued by the appropriate public authorities in accordance with all applicable laws and regulations. Upon prior notice to the Owner, the Owner may occupy the Work, or portions thereof, for the purpose of performing its preparatory tasks to make the Work suitable for its intended use. Such preparatory tasks to be performed by Owner include, but are not limited to, installation of temperature controls, installation of moveable equipment, and performance of custodial work.

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

9.8.3 Upon receipt of the Contractor's list, the Architect and Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the 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 Owner. In such case, the Contractor shall then submit a request for another inspection by the Architect and Owner 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 which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect and Owner 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. Upon prior notice to Contractor, Owner may occupy portions of the Work for the purpose of performing its preparatory tasks to make the Work suitable for its intended use. Such preparatory tasks to be performed by Owner include, but are not limited to, installation of temperature controls, installation of moveable equipment, and performance of custodial work.

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

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

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Project Closeout: See General Requirements for Project closeout requirements.

9.10.1.1 Upon completion of the items contained on the Contractor’s list described in § 9.8.2 and of any items identified by Owner or Architect as described in § 9.8.3, Contractor shall request that a final inspection be made by Owner and Architect to determine final completion.

9.10.2 Once final occupancy permit has been issued by the appropriate public authorities in accordance with all applicable laws and regulations and upon receipt of written notice that the Work is ready for final inspection and acceptance and upon Owner’s receipt of a final Application for Payment, the Owner and Architect will promptly make such inspection and, when the Owner and Architect find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate of Completion 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. The Architect’s final Certificate of Completion will constitute a further
representation that conditions listed in Subparagraph 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 Owner a final Application for Payment and either provides to Owner or satisfies all the following requirements: (1) an affidavit or other evidence satisfactory to Architect and Owner that payrolls, bills for materials and equipment, and other indebtedness connected with the Work (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 (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, and (6) issuance by the Architect of a final Certificate of Completion. 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.

9.10.2.1 Before final payment can be made, Department of Labor Division of Employment Form No. 16. Certificate of Contribution Status must be received from the State of Nebraska Department of Labor certifying that Contractor and each of its subcontractors have paid all contributions and interest due to and including the calendar quarter immediately preceding date of substantial completion.

9.10.2.2 Contributions Under Nebraska Employment Security Law. The Contractor and all Subcontractors engaged to perform any part of the Work shall make payment to the Unemployment Compensation Fund of the State of Nebraska of all contributions and interest due under the provisions of the Employment Security Law, Neb. Rev. Stat. 48-601 et seq. (Reissue 1988), as amended, on wages paid to individuals employed in the performance of the Contract; and before final payment shall be made of the final 3 percent of this Contract, the Contractor shall secure and file with the Owner, and cause any Subcontractor to secure and file with the Owner, written clearance from the Commissioner of the Department of Labor of the State of Nebraska, certifying that all payments then due of contributions or interest which may have arisen under this Contract have been made by the Contractor or any Subcontractor to the Unemployment Compensation Fund.

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, the Owner shall, upon application by the Contractor, 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 Owner. 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 Owner except those arising from:
   .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
   .2 failure of the Work to comply with the requirements of the Contract Documents or with applicable codes and standards in the industry;
   .3 terms of special warranties required by the Contract Documents;
   .4 all warranties provided for in the Contract Documents; and
   .5 claims arising out of latent defects in the Work.

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 BOARD OF REGENTS

9.11.1 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 of any part thereof shall be contingent upon the availability of funds appropriated by the Legislature of the State of Nebraska as provided by law, or the availability or other funds of the Owner specifically approved by formal action of the Board of Regents of the University of Nebraska for the purpose of payment of the Contract Sum or any part thereof. The appropriation, availability of funds, and the specific approval by formal action of the Board of Regents shall be conditions precedent to Owner’s obligation to make any payment to Contractor for the Work.

ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. This requirement applies continuously 24 hours per day during construction of the Project.

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 give notices and comply with applicable laws, ordinances, rules, 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 in writing at least 48 hours before breaking ground, to all persons, Public Utility Companies, Owners of the property having structures or improvements in proximity to site of the Work, Superintendents, inspectors, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise, who may be affected by Contractor's operation, in order that they may remove any obstruction for which they are responsible and have a representative on site to see that their property is properly protected. Such notice does not relieve the Contractor of responsibility for any damages, claims, and defense of all actions against the Owner and the Architect resulting from performance of such work in connection with or arising out of the Contract.

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

10.2.4 The Contractor shall exercise the utmost care so as not to endanger life or property in the execution of the Work. Contractor is fully responsible for any and all damages, claims and for the defense of all actions against Owner and Architect resulting from the failure to exercise such care. Explosives shall not be employed in the prosecution of the Work.

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

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

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.2.8 Duty of Architect to conduct construction review of Contractor's performance does not include review of adequacy of Contractor's safety measures in, on, or near construction site.

10.2.9 Utilities or other services, indicated to be abandoned, shall be maintained in service as required until new facilities are provided, tested and ready for use. Contractor shall schedule work so that it does not necessitate long periods of shut-down of existing facilities and these shut-downs shall be coordinated with and at the convenience of Owner. See General Requirements for additional requirements.

10.2.10 All improvements on or about site and adjacent property which are not to be altered, removed or otherwise changed shall be returned to conditions which existed prior to initiation of the Work.

10.3 HAZARDOUS MATERIALS

10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. 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, which adjustments shall be accomplished as provided in Article 7.

10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Architect, Architect's consultants and agents and employees or any of them from and against claims, damages, losses and expenses arising out of or resulting from performance of the Work in the affected area if in fact the material is asbestos or polychlorinated biphenyl (PCB) 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) including loss of use resulting therefrom, but only to the extent caused by negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner or anyone for whose acts the Owner may be liable except if such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Subparagraph 10.3.3.
10.3.4 Fines, penalties and any other action ordered by Environmental Protection Agency or State Department of Environment arising from performance of this Contract, are responsibility of Contractor and as such not recoverable from Owner in any fashion.

10.3.5 Hazardous waste, if any, that is generated from the work shall be properly disposed of at the end of the work by the Contractor pursuant to applicable hazardous waste laws and regulations. The Contractor shall coordinate the disposal with the Owner's Representative. The waste left on-site at the end of the work shall be properly disposed of by the University with all costs associated for the disposal deducted from outstanding pay invoices and/or billed to the Contractor. The term 'hazardous waste' means hazardous wastes as defined pursuant to the federal Resource Conservation and Recovery Act, as amended. The Contractor must furnish receipts (shipping manifests) from recognized official disposal sites for the disposal of hazardous wastes - including, but not limited to asbestos, PCB ballasts, etc.

10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

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

10.6 EMERGENCIES

10.6.1 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 Section 4.3 and Article 7.

10.7 WATER PRECAUTIONS

10.7.1 Contractor shall keep all parts of site, including excavations, free from any accumulation of water, no matter the source or cause.

10.7.2 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 all laws, or administrative regulations, rules or local ordinances 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.

10.8 SIGNS

10.8.1 The Contractor shall not erect signs, billboards, or advertisements on or about premises, except as required by Contract. The display of signs other than those required by law shall be limited to those required by Contract Documents and for safety.

10.8.2 Contractor shall furnish and maintain all signs as required for execution of the Work and as required by law.

10.9 WEAPONS POLICY

10.9.1 Possession of dangerous weapons (concealed or unconcealed) on University property, on the work site, in University vehicles, or in personal vehicles when on University property shall be a violation of University policy. (A dangerous weapon shall include guns, knives, explosives, or any other device as determined by the University, which in the manner used or intended is capable of producing death or bodily injury. Devices authorized by the Vice Chancellor for Business and Finance and/or provided to its employees for the purpose of carrying out work responsibilities shall not be deemed dangerous weapons for the purpose of this policy.) Violations of this policy shall make the offender subject to appropriate disciplinary action.
ARTICLE 11 - INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations 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 which 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;
.8 claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18; and
.9 claims under employers' liability by members of the employees' family for loss of consortium or third party action against the Contractor.

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. See § 11.1.5, below, for additional requirements. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. 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. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. 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 in accordance with the Contractor's information and belief.

11.1.4 Contractor shall obtain insurance in accordance with University of Nebraska Contractors Certificate of Insurance Form and Preparation Instructions for Contractors Certificate of Insurance.

11.1.5 Insurance required shall be written for not less than limits of liability that are specified on Owner's Insurance Form. Contractor shall complete this form prior to commencing any work on the Project, and it shall become part of the Contract Documents.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.
11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Sections 11.1.1.2 through 11.1.1.5.

11.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

11.3.3 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Section 11.1.

11.4 PROPERTY INSURANCE

11.4.1 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 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

11.4.1.1 The University of Nebraska shall maintain an "All-peril" Builders Risk/Property Insurance Policy with a $2,000 deductible per occurrence for the structures of buildings while under construction, erection or fabrication as shown and described in the Contract Documents. The Contractor is responsible for the $2,000 per-occurrence-deductible for each claim. Coverage is restricted to the United States of America and the District of Columbia.

11.4.1.2 The Contractor shall provide and maintain "All peril" installation floater insurance for the materials, supplies, machinery, fixtures and equipment that will become a part of the installation, fabrication or erection project as shown and described in the Contract. Coverage under the Contractor's installation floater shall pay for direct physical loss to property while:

- In transit;
- At the site of installation, fabrication or erection, as shown and described in the Contract; and in storage awaiting installation, fabrication or erection.

Evidence of installation floater insurance shall be reflected or stated on the Certificate of Insurance by the Contractor and be on file with the University prior to start of Work.

11.4.1.3 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 which 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.

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

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

11.4.16 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.

11.4.17 Notice of and Proof of Loss: The contractor shall notify the Owner's Representative at the earliest possible time but no later than 60 minutes after an occurrence, and shall notify The Risk Management Office of the University of Nebraska, 3835 Holdrege Street, Lincoln, Nebraska, 68583-0742 (402) 472-5229 within 24 hours of a loss. The contractor shall file Proof of Loss with the Owner's Representative and the Risk Management Office of the University of Nebraska 3835 Holdrege Street, Lincoln, Nebraska, 68583-0742 within a reasonable length of time, but no more than 30 days after the final amount of loss is known by the contractor.

11.4.2 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.

11.4.3 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.

11.4.4 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.

11.4.5 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 11.4.7 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.

11.4.6 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.

11.4.6.1 Copies of Owner's insurance are on file at the University's Office of Risk Management and may be reviewed or obtained by Contractor if requested.

11.4.7 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 11.4 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.

11.4.8 A loss insured under 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 11.4.10. 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.

11.4.9 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 in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

11.4.10 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.

11.5 PERFORMANCE BOND AND PAYMENT BOND

11.5.1 Contractor, before commencing the Work, shall furnish a bond, in a sum not less than Contract Sum, with a corporate surety company acceptable to Owner and authorized to do business in the State of Nebraska, conditioned for faithful completion of the Work and performance of Contract, and insuring payment of all laborers and mechanics for labor and payment of all material and equipment used or rented in performing the Contract.

11.5.1.1 Should the principal amount of the Owner's Protective Bond be modified as a result of a Change Order, the Contractor shall provide to the Owner written confirmation from the Surety indicating that bond has been modified and to what extent it has been modified.

11.5.2 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 permit a copy to be made.

ARTICLE 12 - UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.
SECION 00 72 13 - GENERAL CONDITIONS

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

12.2 CORRECTION OF WORK

12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

1221.1 The Contractor shall promptly correct rejected Work or Work 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 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

12221 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.

12222 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

12223 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

12.2.3 The Contractor shall remove from the site portions of the Work which 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 which 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 which the Contractor might have 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

12.3.1 If the Owner prefers to accept Work which 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

13.1.1 The Contract shall be governed by the law of the place where the Project is located.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. Should the Contractor assign its right to receive all or any part of any sum due or to become due under this Contract, the assignment must provide that the rights of assignees in and to any sum due or to become due under the Contract shall be subordinate to any liens and claims for services rendered; for payment of all laborers and mechanics for labor performed; for payment for all materials and equipment furnished and for payment for all materials and equipment used or rented in performance of the Work and for payment of any liens, claims, or amounts due to any governmental agency or affiliate.

13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume 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

13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or 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 to the last business address known to the party giving notice.

13.4 RIGHTS AND REMEDIES

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

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

13.5 TESTS AND INSPECTIONS

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. 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 and Owner timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures.

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

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

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

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

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

13.6 INTEREST

13.6.1 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 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.7.1 As between the Owner and Contractor:
   .1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
   .2 Between Substantial Completion and Final Completion. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate of Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate of Completion; and
   .3 After Final Completion. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate of Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

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 which requires all Work to be stopped;

.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped; or

.3 because the Owner has not made payment on an Application for Payment within the time stated within the Contract Documents.

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

14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment as set forth and subject to the limitations in § 14.4.3.

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 persistently 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 persistently or 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 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

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

14.2.2 When any of the above reasons exist, the Owner 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 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 accept assignment of subcontracts pursuant to Section 5.4; and

.3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon 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 determined by the Owner, upon application, and this obligation for payment shall survive termination of the Contract.
14.2.5 If Owner's termination of the Contract is based upon a reason that is subsequently determined to not be a default of this Contract, such termination shall instantaneously and automatically be deemed a termination for the convenience of Owner. In any such termination, the Owner shall be liable to Contractor only for accepted Work completed prior to the date of Owner's sending notice to Contractor of such termination, and Contractor agrees that in such case Owner is not and shall not be liable for any loss of anticipated profits on labor and material not yet furnished on the Project or on any portion of the unperformed Work.

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.

14.3.3 In event Owner is unable to make any payment under Contract due to non-appropriation of funds by Legislature or non-availability of other funds of Owner approved by the Board of Regents for purpose of payment of Contract Sum or any part thereof, upon giving 7 days written notice to Contractor, terminate the Contract. Upon such termination Contractor shall be entitled to recover from Owner payment as set forth and subject to the limitations of § 14.4.3.

14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

14.4.3 In case of such termination for Owner's convenience, the Contractor shall be entitled to receive payment for Work executed and costs incurred for terminating and demobilizing operating from the project site, but shall not be entitled to either overhead or profit on Work not executed.

15.1 NEBRASKA FAIR EMPLOYMENT PRACTICE ACT

15.1.1 Neither the Contractor nor any Subcontractor shall discriminate against any employee or applicant for employment to be employed in the performance of the Contract, with respect to hire, tenure, terms, conditions, or privileges of employment, because of race, color, religion, sex or national origin, as prohibited by the Nebraska Fair Employment Practice Act. The Contractor hereby warrants and represents that it is in compliance with said Act. Any failure to so comply during the performance of this Contract shall be a material breach of the Contract. The Contractor shall receive from each Subcontractor warranties and representations similar in substance to those contained in this paragraph.
15.2 EQUAL OPPORTUNITY CLAUSE AND CERTIFICATION OF NON-SEGREGATED FACILITIES

15.2.1 Attached in the General Requirements is a copy of the University of Nebraska Equal Opportunity Clause and Certification of Non-Segregated Facilities, which is incorporated herein by this reference. The Contractor hereby represents that it is in compliance with Executive Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor of the United States of America as set forth in the Attachment.

END OF SECTION 00 72 13
EXHIBIT B

SPECIFICATIONS
EXHIBIT D

OTHER CONTRACT DOCUMENTS
Amendment No. 1 to Agreement
Between Owner and
Construction Manager

Pursuant to Section 2.2 of the Agreement as of the Effective Date (as hereinafter defined) between THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA, a public body having corporate powers under the State of Nebraska, or Owner’s representative (the “Owner”), and [Insert Construction Manager’s Name], a [Insert type of entity and state of incorporation/formation] (the “Construction Manager”), the Owner and Construction Manager establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below. The “Effective Date” shall be the date in which the last of the Parties have executed the Agreement.

ARTICLE 1
GUARANTEED MAXIMUM PRICE

The Construction Manager’s Guaranteed Maximum Price for the Work, including the estimated Cost of the Work as defined in Article 6 and the Construction Manager’s Fee is [___________ Dollars and __/100 ($___________.__)]. This Guaranteed Maximum Price is for the performance of the Work in accordance with the Contract Documents.

ARTICLE II
CONTRACT TIME

The date of Substantial Completion established by this Amendment is: [Insert Substantial Completion Date]

[Remainder Intentionally Left Blank; Signature Page to Follow.]
IN WITNESS WHEREOF this Amendment No. 1 has been duly executed by the parties.

NAME OF CONSTRUCTION MANAGER

By

______________________________________________
Name

______________________________________________
Title

______________________________________________
Date

THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA

By

______________________________________________
Name

______________________________________________
Title

______________________________________________
Date

ATTEST:

By

______________________________________________
Name

______________________________________________
Title

______________________________________________
Date
Attachment #6.2

RFP for the University of Nebraska at Kearney University of Nebraska at Kearney – UNK Student Union Interior Upgrades

Construction Manager at Risk Services Fee and General Conditions Worksheet
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Place dollar amount where X is. Move to correct column if different from example.

**TOTAL PRICE PROPOSAL**

$(Fee + GC + Direct Costs)
Attachment #6.3

RFP for the University of Nebraska at Kearney University of Nebraska at Kearney – UNK Student Union Interior Upgrades

Construction Manager at Risk Services Architectural Program
1. Introduction

A. Background and history

The Nebraskan Student Union was built in 1962 as the Food Service Building. Constructed with brick exterior walls and concrete pan joist floors, the building has 21,356 gross square feet on the ground floor and 22,814 gross square feet on the first floor, with a 3,000 square foot mechanical penthouse. In 1982 a 24,222 gross square foot addition was constructed on the west and south west sides of the building, adding to both ground and first floor. This addition added a large south facing entry that opens up to the campus. In 2000 another 25,922 gross square foot addition was built on the west and south west end. This most recent addition extended the ground, first, and second floors, as well as adding a new third floor. The total existing building gross square feet of 97,314.

The building is still home to the main food service for the campus, which resides on the first floor, with retail food establishments on the ground floor.

Other organizations currently located in the Nebraskan Student Union:
- The Multi-Cultural Affairs Offices and student space
- UNK Student Government Offices
- UNK College Bookstore

B. Project description

The proposed project will remodel approximately two-thirds of the existing ground floor and will upgrade interior finishes in primary circulation spaces on the ground, first floor, and the open area to second floor.

The ground floor remodel will include:
- New interior finish updates throughout circulation and student spaces to give the building a modern look.
- Reconfiguring existing retail areas to create a more open entrance for the Union. The new entry will be designed as a better tool for attracting new students.
- New spaces for retail dining options will be developed adjacent to building corridors to maximize visibility and traffic.
- Remodeling the large meeting room with upgraded technology and more accessible entrance. The new entry will be visible from the entrance to the Union with new signage to clearly delineate the room.
- New furniture in the food court that is movable to allow for maximum flexibility of the space

The first-floor remodel will include:
- New interior finish updates throughout circulation and student spaces
- New furniture in student spaces and private dining area
C. Purpose and objectives

The purpose of this project is to provide more open and connected student space throughout the Union. With two large additions and many renovations over 50 years, each phase has its own character and traffic flow dividing spaces and preventing student connectivity. This redesign and update will provide the university with a unique recruitment tool in rural Nebraska, showcasing student life at UNK with student-focused amenities promoting learning and living on campus to incoming freshman.

In addition to circulation space adjustments, the project will provide two new retail spaces, a more open and accessible fireplace lounge area, two large student meeting rooms, and an updated entrance. The retail spaces will be relocated and remodeled to create better visibility and aid in connecting more areas of the Union.

The Nebraskan Student Union is also a place where the University connects with the community and community businesses. This project will enhance the ability of the University of Nebraska to demonstrate to the community its innovation and commitment to students in rural Nebraska. Through updated design and technology in the campuses most accessed building, the University of Nebraska will have more opportunities to collaborate and engage with those in the community.

Objectives from the University of Nebraska-Kearney Mission Statement include:

- To enhance the aesthetic of the student union to help with recruitment of new students
- To provide modern dining options for all the student body along with the public to utilize the student union

2. Justification of the Project

A. Data that supports the funding request

The latest addition to the Nebraskan Student Union in 2000 was able to add needed space but did not address any renovation of the existing building. To continue to increase and improve upon activity in the Union and student life on campus the aging portions of the building need to be updated.

Current make-up air in the building is insufficient to replace all of the air currently exhausted from the kitchen and environmental exhaust fans are causing the building to have a negative pressure with respect to outdoors. This negative air pressure is causing multiple issues throughout the building. High amounts of infiltration near the building entrances and the Food Court area result in uncomfortable areas for students and campus visitors. Circulation areas are under lit leaving dark spaces throughout the corridors. Portions of the existing below grade sanitary sewer piping within the original building are severely degraded resulting in piping failures and causing portions of the existing sewer to be taken out of service. All these issues will need to be addressed in order to adequately serve the new student and food retail areas.

Designing the Union with zones for food service retail, student organizations, community meeting spaces, and lounge areas while keeping areas open and connected will help each area flow together. The updating and remodeling will create a more comfortable, inviting, and organized facility that demonstrate UNK’s commitment to student and community spaces.

B. Alternatives considered (when applicable)

None
3. Location and site considerations
   A. County: Buffalo
   B. Town or campus: University of Nebraska at Kearney
   C. Proposed site: The Nebraskan Student Union Building
   D. Statewide building inventory: 51ZZ0016700B
   E. Influence of project on existing site conditions
      1) Relationship to neighbors and environment
         The Nebraskan Student Union is located at the northeastern corner of campus. It is a central hub for the athletic fields and on-campus housing for the University. No exterior work is anticipated with this project.
      2) Utilities
         Existing power, natural gas, domestic water, and fire water services are currently provided to the Nebraskan Student Union. The existing services are adequate to serve the same function in the remodeled spaces.
      3) Parking & circulation
         Existing parking is currently on two sides of the Nebraskan Student Union including commuter parking, faculty/staff parking and meter parking. No additional parking will be required for the interior renovation. Circulation paths are currently in place on all sides of the Union.
4. Comprehensive Plan Compliance

A. Compliance with the University of Nebraska Strategic Framework, Campus Roles and
Mission and Campus Strategic Plan.
This project complies with the objectives of the University Strategic Planning Framework for 2014-2016:

“3. The University of Nebraska will play a critical role in building a talented, competitive workforce
and knowledge-based economy in Nebraska in partnership with the state, private sector and other
educational institutions.
   b. Increase proportion of the most talented Nebraska high school students who attend the
      University of Nebraska.
      i. Increase enrollment of Nebraska students ranked in top 25% of their high school class.
   c. To attract talent to the state, increase the number of nonresident students who enroll at the
      university.
      i. Increase enrollment of nonresident undergraduate students at UNL, UNO and UNK.”

“5. The University of Nebraska will serve the entire state through strategic and effective
engagement and coordination with citizens, businesses, agriculture, other educational institutions,
and rural and urban communities and regions.
   f. Use university resources to engage Nebraskans outside cities where our major campuses are
      located.
      ii. Effectively use regional research and extension operations and statewide extension for
          engagement with the university.”

The renovation of the Nebraskan Student Union will be an essential tool for the University of
Nebraska to increase enrollment and create more opportunities for connecting with the community.
Redesigning the space creates more student focused areas, therefore promoting student interaction
on campus and with the community. With updating interior finishes and technology throughout this
remodel, the project will create a more appealing resource for both students and the community.

B. Consistency with the agency comprehensive capital facilities plan (year of plan and updates or
revisions)
In 1997, the Master Plan was developed to “...give decision makers a broad vision for the
institution’s future growth and to establish goals that are open, flexible and consistent with an
optimal university design.” Since then, several supplements have been published including the
UNK Facilities Development Plan 2006-2015 and a subsequent Mid-Plan Progress Report dated
April 2012.

This program statement will update the findings from the Facilities Development Plan 2006-2015
which stated the Nebraskan Student Union was a “full modernized facility that has literally changed
the way students, employees, and community members use the heart of our campus.”

The union renovation project will be in line with the Facilities Development Tasks to “improve
campus venues for special events/performances, recreation and athletics activities and
conferences/meetings.”
C. Consistency with the current version of the CCPE Project Review Criteria/Statewide Plan

The Statewide Facilities Plan is Chapter Six of the Comprehensive Statewide Plan for Postsecondary Education dated April 6, 2006. This plan includes the following goals:

“Nebraskans will advocate a physical environment for each of the state’s postsecondary institutions that: supports its role and mission; is well utilized and effectively accommodates space needs; is safe, accessible, cost effective, and well maintained; and is sufficiently flexible to adapt to future changes in programs and technologies.”

“Major fire and life safety, accessibility, and deferred repair needs are addressed when major renovations projects are undertaken…”

This plan also asks “those who are responsible for the planning, construction, maintenance, and financing of the physical environments of postsecondary education to consider the following:

- What are the best ways to adapt the existing physical environment to support changes in academic programs? What facilities will these programs require? How will the courses of these programs be delivered?
- When new facilities are constructed, how can they be made more adaptable to future change?
- What are cost-effective strategies for maintaining campus facilities?
- How will the various infrastructures of the campuses be enhanced and maintained—not only the utilities, but the information technology networks, roads, walks, landscapes, and instructional and research equipment?
- How will those physical elements of the campuses that support and encourage human interaction be preserved and enhanced?

This project addresses these questions in the following ways:

- This project is adapting the existing Union space to support students learning and engagement on campus
- Through this remodel, the space will be designed in a way that is flexible with the changing needs of students. As an example furniture will be used as a design solution to activate and encourage flexibility within the existing building square footage.
- The existing flooring throughout the ground floor of the Union is currently a costly maintenance item. The new remodel will provide a low-maintenance finish and be used as a design tool to pull all public spaces in the Union together.
- The technology upgrades in this project will be used to connect full-time students, non-traditional students and the community to the University of Nebraska. Electronic signage will be installed to display announcements of activities on campus and throughout the Union, and collaboration technologies exclusively for student use will be updated.

5. Analysis of existing facilities

A. Function and purpose of existing programs as they relate to the proposed project

The food facilities spaces in the Union currently house three retail tenants and a coffee shop. All three retail tenants share a space that houses all of the kitchen hoods and equipment. Limited storage is available in the space with the coffee shop having the most storage of any tenant.

Programmatic considerations would make room for one larger tenant. The coffee shop area could be relocated along the central main axis of the Union’s circulation.

A few meeting rooms are currently located in the Union. The Cedar Room is located in the middle of the Union behind the facilities storage room. This provides difficult wayfinding to get into the
space for any large meetings. One option that will be considered is to move the Cedar Room south towards the corridor so it is easier to view from the central Union corridor.

The fireplace lounge, with its lounge type atmosphere, is a space for students to study and it can accommodate formal meeting setting. Currently, it is small, dark and closed off at times. A possible solution would be to move this space towards the south side of the building so it is visible and open to the public and allows for natural light into the space. The dated lighting and technology at the main entrance will be updated to help establish the brand and marketing efforts.

B. Square footage of existing areas:

C. Utilization of existing space by facility, room and/or function (whichever is applicable)

D. Physical deficiencies
Currently, the HVAC system makeup air is insufficient causing negative air pressure resulting in a sewer smell that is evident throughout the building. The current location of the vestibule adjacent to the Food Court makes the area cold and uninviting for students and visitors. Fire sprinkler piping and heads located in the vestibules risk the possibility of freezing.

Flooring throughout the circulation corridors and food court is old and damaged in areas and needs to be replaced. Circulation areas are under lit creating dark spots in the corridors.

Portions of the existing below grade sanitary sewer piping within the original building are severely degraded resulting in piping failures and causing portions of the existing sewer to be taken out of service.

An air handling unit that serves a large portion of the area to be remodeled is currently partially shut down in the winter time due to a lack of a preheat coil, and a cold air stratification problem that causes the low-limit sensor to activate, shutting down the air handling unit. This unit serves approximately 14,000 SF of the first floor and will serve new vendor areas and student spaces. Outside air to the unit is shut down during this partial shutdown, contributing to the negative air pressure problem. The air handling unit is original to the 1982 building addition, making it approximately 34 years old. This unit utilizes pneumatic controls which do not allow for the precise control and energy saving strategies that current direct digital control (DDC) systems are capable of.

The air handling unit that conditions the Cedar Room area is a single zone air handling unit that also serves the Antelope Bookstore. The air handling unit is controlled in response to the temperature in the Antelope Bookstore so the Cedar Room will need to be moved to a VAV air handling unit and provided with hot water reheat terminal units in order to create separate zoning for that space.

Existing lighting throughout is compact fluorescent with short lamp life. Linear fluorescent lighting is also used. Lighting controls are limited. Audio-visual systems are not used in welcoming locations or with any sense of consistency.

E. Programmatic deficiencies
The west portion of the Union is open 24 hours a day for student access and it is currently not equipped with sufficient student study and meeting spaces. The 24 hour access area is also in need of vending choices for students. The fireplace lounge is seen as a place only for student/staff meetings and is not used for any studying by students on an everyday basis. There is no space
dedicated for small to medium size student study groups. The current information desk is also
oversized for the function it serves.

The current Food Court area is located in a way that separates different areas of the Union, creating
small, irregular spaces. It currently creates a lack of visibility to the current coffee shop area and
separates traffic flow. Technology and interactive signage is another missing component from the
Union. This building provides many of the community access events and advancements in signage
is important to the success of its meeting spaces.

Currently, the central, older entrance is outdated and in need of a design that connects it to the
newer area of the Union. By creating more meeting spaces in this central area, it will create needed
visibly for the organizations that use these spaces.

F. Replacement cost of existing building
The replacement cost of the Nebraskan Student Union was listed as $22,642,868 in the June 30,
2015 Facilities Management Information Report (FMIR) (calculated for insurance purposes). This
figure does not include movable equipment, land, artwork and utilities beyond five feet away from
the building.

6. Facility Requirements and the Impact of the Proposed Project

A. Functions and purpose of the proposed program
1) Activity identification and analysis
The project will provide the following spaces designed appropriately for their use:
   • Meeting Rooms: updated finishes and space for studying or organized activities
     of faculty and students.
   • Retail Dining: new dining facilities to offer wider food options to students with
     or without a meal plan, and to the public.
   • Lounge Space: space for socializing or studying with modern furniture to
     maximize flexibility of the space.

2) Projected occupancy/use levels
   • Personnel projections
     Approximately 6-8 retail staff to serve the new food retail spaces.
   • Describe/justify projected enrollments/occupancy
     No academic/administrative staffing changes are anticipated based on this work.

B. Space requirements
1) Square footage by individual areas and/or functions
   See table 6.B.3. The size and layout of the individual spaces are based on discussion with
   staff and students that would use the facilities along with space available in the current
   building footprint.

2) Basis for square footage/planning parameters
   Spaces are based upon the size and scope of the programmatic needs, university space
   guidelines, and existing building constraints.
### 3) Square footage difference between existing and proposed areas (net and gross)

<table>
<thead>
<tr>
<th>Room Use</th>
<th>Room Use Code</th>
<th>Existing NASF</th>
<th>Renovated NSF</th>
<th>Change</th>
</tr>
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<tbody>
<tr>
<td><strong>Office Facilities</strong></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Office</td>
<td>310</td>
<td>311</td>
<td>213</td>
<td></td>
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<tr>
<td>Office Service</td>
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<td>161</td>
<td></td>
<td></td>
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<tr>
<td>Office Service</td>
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<td>235</td>
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<tr>
<td><strong>Category 300 Subtotals</strong></td>
<td></td>
<td>707</td>
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<td>(494)</td>
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<tr>
<td>Study Service - TV lounge</td>
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<td>290</td>
<td>426</td>
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<tr>
<td>Study Service</td>
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<td>91</td>
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<tr>
<td><strong>Category 400 Subtotals</strong></td>
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<td><strong>General Use Facilities</strong></td>
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<tr>
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<td>192</td>
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<tr>
<td>Exhibition Service</td>
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<td>204</td>
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<td>Food Facilities – Coffee Shop</td>
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<td>1,567</td>
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<td>Food Facilities – Dining Hall</td>
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<td>Food Facilities - Retail</td>
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<tr>
<td>Food Facilities – Service Storage</td>
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<tr>
<td>Food Facilities Service - Kitchen</td>
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<td>Food Facilities - Retail Service</td>
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<td>673</td>
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<tr>
<td>Lounge – Fireplace lounge</td>
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<td>590</td>
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<td>Merchandising Facility Information Desk</td>
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<td>219</td>
<td>130</td>
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<td>Merchandising Facility Service</td>
<td>665</td>
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<td>188</td>
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<tr>
<td>Recreation – Game Room</td>
<td>670</td>
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<tr>
<td>Recreation – Poster Room</td>
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<td>Meeting Room – Cedar Room</td>
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<tr>
<td>Meeting Room</td>
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<td>Meeting Room</td>
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<td>Meeting Room Service – AV Storage</td>
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<tr>
<td>Meeting Room Service</td>
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<tr>
<td>Storage</td>
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<td>Data Processing/Computer</td>
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<tr>
<td>Data Processing/Computer</td>
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<td><strong>Category 700 Subtotals</strong></td>
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<tr>
<td><strong>Total Existing Space</strong></td>
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<td>12,020</td>
<td>12,243</td>
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<tr>
<td><strong>Total Gross Square Footage</strong></td>
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<td></td>
<td>22,442</td>
<td></td>
</tr>
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</table>
C. Impact of the project on existing space
   1) Reutilization and function(s)
      The proposed renovation will help traffic flow within the Union. The re-designed
      entrance will be more open and inviting. Additional circulation has been added so that
      each area is open and visible from other assembly and food areas. Spaces in the 24 hour
      access area will be increased to give students more opportunities for studying and
      collaboration. Meeting rooms will be organized to be more visible for all students. The
      new Food Court options will be organized for better visibility, and traffic flow will allow
      for better student access.
   2) Demolition
      The building will remain occupied during remodeling. Demolition will start in the central
      Food Court area with partitions to separate student traffic to the second floor main
      cafeteria/dining and the retail space. This area will need to be completed for food vendor
      operations before demolition can occur in other areas.
   3) Renovation
      Renovation will proceed through the academic year as required by the General
      Contractor. The project will most likely be broken into 2-3 phases in a 12 month
      construction period. This will allow the 24 hour area of the union to be renovated
      immediately after the new Food Court areas are operational. The third phase will include
      the addition of a meeting room, a new guardrail and handrail.

7. EQUIPMENT REQUIREMENTS
   A. List of available equipment for reuse
      Items planned for reuse in the Union include select pieces of office equipment (i.e., computers,
      printers, etc.). A more detailed list of re-useable equipment will be developed during the design
      development phase of the project.
   B. Additional Equipment
      1) Fixed equipment
         Fixed equipment will include new food service equipment required by the new retail
         areas. A more detailed list of movable equipment will be developed during the design
         phase.
      2) Movable equipment
         Moveable equipment will consist of new furniture in the meeting rooms, food court and
         lounge spaces. A more detailed list of movable equipment will be developed during the
         design phase.
      3) Special or technical equipment
         Special or technical equipment will include video cameras, media walls, TV’s for
         students, and TV’s that will run ads and show student and campus events in the
         corridors. A more detailed list of additional equipment will be developed during the
         design phase.
8. SPECIAL DESIGN CONSIDERATIONS

A. Construction Type
The project consists of a renovation of the Nebraskan Student Union located on the University of Nebraska-Kearney campus. Currently the building is a type II-B construction which is non-combustible materials. All new framing and materials would comply with type II-B non-combustible materials dictated by IBC and NFPA standards. No new structural components will be required for this renovation.

B. Heating and Cooling Systems
Cooling for the remodeled spaces in the building will be provided through the buildings air handling units. The remodeled spaces will be heated by hot water reheat coils located in the VAV terminal units, by unit heaters located in vestibules and mechanical room spaces, and by finned tube heaters located along the perimeter of the building.

The air distribution from existing air handling units will be modified to serve the remodeled spaces. New VAV terminal units with hot water heating coils will be used throughout the remodeled spaces. Dedicated terminal units will be provided for each conference room, office, meeting rooms, and food vendor areas. Existing VAV terminal units will be reused in spaces that are primarily undergoing cosmetic changes, and where the zoning will not need to be changed.

AH-8 will be replaced by a new VAV air handling unit to allow remodeled areas to be conditioned in an efficient, reliable manner year-round. The air handling unit system will consist of return / relief fans, economizer / relief section, filter section, air blender, preheat coil, cooling coil, and supply fans. The new air handling unit will improve the overall operation of the building’s HVAC systems, and the new unit will require less maintenance than the existing air handling unit. The new air handling unit will also introduce additional ventilation air into the building, resulting in improved indoor air quality and a reduction of the negative pressure inside the building.

Recessed cabinet unit heaters with hot water coils will be provided for the remodeled entry vestibules.

Existing kitchen exhaust systems will be modified to support the relocation of exhaust hoods and make-up air systems in the food vendor area.

Direct digital controls (DDC) will be utilized for all new equipment. The new controls will connect to the existing building DDC system. Temperature control sensors located in public spaces will not have display or set point adjustment.

C. Sustainability
The project will be designed in compliance with the NU and UNK sustainability requirements as noted in the UNK design guidelines.

D. Life Safety/ADA
The building will be renovated to comply with current building, fire, and life safety codes, and will be fully accessible under the currently adopted ADA and Nebraska Accessibility Guidelines.

The existing NFPA 13 wet fire sprinkler system will be modified to serve the remodeled areas of the building. The existing 6” fire service entrance will be reused.

The building does not have a generator, and one will not be provided as part of this project. New exit and emergency lighting will be provided with battery back-up per NFPA requirements.
The building main fire alarm control panel was recently upgraded to campus standards with voice evacuation. This system will remain and be expanded throughout the remodeled areas.

E. Security
Security will be provided by card access at all entrances. Close circuit television (CCTV) cameras will be relocated as required by new construction. Existing security gates will remain and new security gates will be provided for new retail areas. Card access control will be provided at the new data room and at the existing main data closet.

F. Historic or architectural significance
There are no known historic issues or requirements affecting the facility.

G. Artwork (for applicable projects)
Not applicable.

H. Phasing
Renovation would be broken up into 2-3 phases to allow for maximum usage of the building throughout the year by the students. The first phase would renovate the food court area, then move to the 24-hour area, and the meeting room addition.

I. Future expansion
No future expansion is planned at this time

J. Other
Electrical, Lighting and Technology considerations:

The main building electrical service was replaced in 2000. Existing panels will be re-used to serve remodeled areas. New panels may be needed for new food and coffee vendors.

All of the existing lighting and controls in the remodeled areas will be replaced with LED. LED lighting will reduce energy and maintenance costs. New lighting concepts shall be designed to integrate with the architecture, help establish the campus brand, and aid in visual interest of the space to draw in students. Accent lighting will be implemented at both main entrances and throughout the commons areas to enhance the architectural experience. Light control systems will be easily expandable, and will have dimming capabilities, zone control, and interface with the AV system in meeting rooms.

A new dedicated data room will be provided to replace the one removed by demolition work. Existing cabling will be re-routed back to new room. The new room will be sized per University standards. Backbone cabling will be provided from the existing main head-end room to the new closet. New cabling will be installed according to University guidelines including dual Category 6A cabling to all wireless access points.

The telecommunications infrastructure will be designed to not only implement current high bandwidth technologies, but will also be adequately sized to easily implement future technologies. AV may include way finding, large scale video displays, and touch screens. Conference rooms, meeting rooms, and student collaboration areas will include multiple media displays, sound system, control system, and audio and video teleconferencing. Controls will be user friendly and intuitive.
9. PROJECT BUDGET & FISCAL IMPACT

A. Cost Estimate Criteria

1) Identify recognized standards, comparisons and sources
   The cost estimate was developed by recent projects completed on the UNK campus, recent bid projects in Kearney and the R.S. Means Cost Estimating Guide.

2) Identify year and month on which estimates are made and inflation factor used
   Cost per square foot estimates were compared to recent projects completed in the last two years and a 4% increase due to inflation was used for the current estimate.

3) Gross and net square feet
   Gross square feet                     GSF  22,442 S.F.
   Net assignable square feet            NASF 12,243 S.F.

4) Project cost per net and gross square foot
   $217 per NASF
   $214 per GSF

5) Construction cost per gross square foot
   $178 per GSF

B. Total project cost

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<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>General Construction</td>
<td>4,800,000</td>
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<tr>
<td>Fixed Equipment</td>
<td>20,000</td>
</tr>
<tr>
<td>Site Work/Utilities</td>
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<tr>
<td>Construction Contingency</td>
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<tr>
<td><strong>TOTAL CONSTRUCTION COSTS</strong></td>
<td><strong>$5,000,000</strong></td>
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<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Project Planning</td>
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<td>Professional Consultant Fees</td>
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<td>Professional In-house</td>
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<td>Equipment - Movable</td>
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<td>Equipment - Special/Technical</td>
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<tr>
<td>Land Acquisition</td>
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<tr>
<td>Artwork</td>
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<tr>
<td>Other</td>
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<tr>
<td>Non-construction Contingency</td>
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<tr>
<td><strong>TOTAL NON-CONSTRUCTION COSTS</strong></td>
<td><strong>$1,000,000</strong></td>
</tr>
</tbody>
</table>

**TOTAL PROJECT COST**  $6,000,000

C. Fiscal impact based on first full year of operations

1) Estimated additional operational and maintenance costs per year
   None

2) Estimated additional programmatic costs per year
   None
10. FUNDING
   A. Total funds required: $6,000,000
   
   B. Project Funding Sources:
      Restricted Revenue Bonds Funds $5,000,000
      Food Vendor Equity Contribution $1,000,000
   
   C. Fiscal year expenditures
      FY 2016-2017 $3,000,000
      FY 2017-2018 $2,000,000
      FY 2018-2019 $1,000,000

11. TIMELINE
   a. Program Statement March 2017
   b. Funding
   c. Professional consultant(s) selection April 2017
   d. Intermediate Design Documents August 2017
   e. Receive bids for construction September 2017
   f. Award of contract and start of construction October 2017
   g. Completion of construction August 2018

12. HIGHER EDUCATION SUPPLEMENT
   A. Coordinating Commission for Postsecondary Education (CCPE) Review
      1) ☒ CCPE review is required and information is included
      2) ☐ CCPE review is not required.

   B. Method of Contracting

      1) Identify method
         Construction Manager at Risk (CMR)

      2) Provide rationale for method selection
         A Construction Manager is recommended to help identify and develop realistic timeframes
         to phase the work while the building is occupied.