

**SECTION 00 73 00
SUPPLEMENTARY CONDITIONS**

PART 1 GENERAL

1.01 SUMMARY

1.02 THESE SUPPLEMENTARY CONDITIONS AMEND AND SUPPLEMENT THE GENERAL CONDITIONS DEFINED IN AIA DOCUMENTS A201 - 2017 AND OTHER PROVISIONS OF THE CONTRACT DOCUMENTS AS INDICATED BELOW. ALL PROVISIONS THAT ARE NOT SO AMENDED OR SUPPLEMENTED REMAIN IN FULL FORCE AND EFFECT.

1.03 THE TERMS USED IN THESE SUPPLEMENTARY CONDITIONS THAT ARE DEFINED IN THE GENERAL CONDITIONS HAVE THE MEANINGS ASSIGNED TO THEM IN THE GENERAL CONDITIONS.

1.04 MODIFICATIONS TO GENERAL CONDITIONS

PART 2 PRODUCTS - NOT USED

PART 3 EXECUTION - NOT USED

PART 4 MODIFICATIONS TO AIA A201 - 2017

4.01 ARTICLE 1 - GENERAL PROVISIONS

- A. Add the following paragraphs:
 - 1. § 1.2.4; In cases of discrepancy between the drawings and specifications, or within the document itself, provide notification to the Architect to clarify. In the event of a conflict, the better quality or more stringent requirement takes precedence.
 - 2. § 1.2.5; Contractor is solely responsible for coordination of bidding and scope or Work of subcontractors. Neither Architect or Owner will act as arbiter as to which trade or subcontractor is to furnish and install various items indicated or required to perform construction.
- B. Add the following paragraph:
 - 1. § 1.9; Notwithstanding anything herein to the contrary, the Owner and Contractor agree to execute such other documents as may be necessary for Owner to be in compliance with all rules and regulations of the Federal Emergency Management Act or Nebraska Emergency Management Act.

4.02 ARTICLE 2 OWNER

- A. Delete the following paragraph in its entirety and replace it with the following:
 - 1. § 2.1.2; It shall be distinctly understood that by virtue of this Contract, no mechanic, contractor, material person, artisan, or laborer, skilled or unskilled, shall ever in any manner have, claim, or acquire any lien upon the buildings or any of the improvements of whatsoever nature or kind so erected or to be erected by virtue of this Contract or upon any of the land on which said buildings or any of the improvements are so erected, built, or situated, such property belonging to a political subdivision of the State of Nebraska. It shall be further understood that this Contract is not written for the benefit of third parties.
- B. Add the following paragraph:
 - 1. § 2.1.3; The Owner may require that the Contractor use and/or respond to certain Owner-furnished forms or inquiries during the course of the Project. From time to time, there may be future revisions, changes, additions or deletions to these forms. The fact that the Owner modifies and increases reasonable reporting requirements shall not serve as the basis for a claim for additional time or compensation by the Contractor.
- C. Delete the following paragraph in its entirety and replace it with the following:
 - 1. § 2.3.6; The Contractor will be furnished free of charge a minimum 2 copies of drawings and project manuals. Additional sets will be furnished at the cost of reproduction, postage

and handling. Signed and sealed prints as required for governing authority's review and approval will be supplied at no cost.

4.03 ARTICLE 3 - CONTRACTOR

- A. Delete the following paragraph in its entirety and replace with the following:
 - 1. § 3.4.3; The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor releases, indemnifies and holds harmless the Owner for Contractor's forces' non-compliance with owner's drug-free, alcohol-free, weapon-free, harassment-free, and tobacco-free zones, contractor's forces' non-compliance with criminal law, or contractor's or contractor's forces' non-compliance with immigration law or regulations. Any individual found by the Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.
- B. Add the following paragraphs:
 - 1. § 3.4.4; Acceptance of materials by or on behalf of Architect does not bar future rejection if subsequently found to be defective of inferior in quality or uniformity to material specified or not as represented.
 - 2. § 3.4.5; After the Contract has been executed, the Architect will consider a formal request for the substitution of products in place of those specified only under the conditions listed below:
 - a. By making requests for substitutions, the Contractor:
 - 1) Represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified.
 - 2) Represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified.
 - 3) Certifies that the cost data presented is complete and includes all related costs under this Contract, except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently becomes apparent.
 - 4) Will coordinate the installation of the accepted substitute, making such changes as may be required for work in all respects.
 - 5) Will reimburse Owner and Architect for review on redesign services associated with reapproval by Architect.
 - 3. § 3.5.3; The Prime Contractor does hereby guarantee the Work to conform to the Warranty described (in §3.5.1) for a period of one full year from the date of acceptance of the Work as designated in the Certificate of Substantial Completion. Where warranties are written in any of the Sections for longer terms, such longer terms shall apply.
 - 4. § 3.5.4; All warranties shall commence no earlier than the substantial completion date of the entire project regardless of when a particular item or piece of equipment is installed or operational.
 - 5. § 3.12.11: The Architect's review of Contractor's submittals shall be limited to examination of an initial submittal and one (1) re-submittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to reimbursement from the Contractor of amounts paid to the Architect for evaluation of such additional re-submittals.

4.04 ARTICLE 4 - ADMINISTRATION OF THE CONTRACT

A. Add the following paragraph:

1. § 4.1.3 In carrying out any provisions of Contract or in exercising any power or authority granted thereby, there is no liability upon Architect to the Contractor, either personally or as an official of Owner, it being understood that in such matters the Architect acts as agent and representative of Owner.

4.05 ARTICLE 5 - SUBCONTRACTORS

A. Add the following subparagraph:

1. § 5.1.3; Architect shall not work directly with any subcontractor, sub-subcontractor or materials supplier. Contact to the Architect shall be made only through Contractor. Requests for information or clarification must be routed through Contractor.

B. Add the following subparagraph:

1. § 5.3.1; Contractor is fully responsible for acts and omissions of all subcontractors, and persons either directly or indirectly employed by them.

4.06 ARTICLE 7 - CHANGES IN THE WORK

A. Add the following paragraphs:

1. § 7.1.2.1; The Architect alone and without Owner approval cannot authorize a change that increases the Contract Sum or Contract Time without the City's written approval.
2. § 7.1.4; The Contractor shall not proceed with or commence any work for which contractor will request additional Contract Sum or Contract Time or which is deemed to be a Change in the Work without first receiving a signed written Change Order properly executed, or a written order or authorization to proceed from the Architect.
3. § 7.1.5; Failure of the Contractor to obtain written approval or authorization for any Changes in the Work shall constitute cause for rejection of a request for approval of any additional compensation associated with the Work.
4. § 7.1.6; The Contractor must submit change proposals covering a contemplated Change Order within ten (10) business days after the request of the Owner or Architect or within ten (10) business days of the event giving rise to the Contractor's claim for a change in the Contract Sum or Contract Time. No increase in the Contract Sum or extension of the Contract Time will be allowed the Contractor for the cost or time involved in making change proposals. Change proposals will define or confirm in detail the Work that is proposed to be added, deleted, or changed and must include any adjustment which the Contractor believes to be necessary in the Contract Sum or the Contract Time.
5. § 7.1.7; Each request for approval or additional work which is to require additional payment from the Owner, or in instances whether credit is to be allowed to the Owner for omission of certain work or materials, shall be accompanied by a price quotation, including a complete cost breakdown of materials, labor, overhead and profit.
6. § 7.2.2; Contractor stipulates that acceptance of a Change Order by the Contractor constitutes full accord and satisfaction for any and all Claims, whether direct or indirect, arising from the subject matter of the Change Order.
7. § 7.3.11; The total Contractor mark-up for overhead, profit or fee for work performed by the Contractor's own forces shall not exceed 10% of the cost of the Change in the Work. The total Contractor mark-up for overhead, profit or fee for supervision of work performed by subcontractors' forces shall not exceed 5% of the cost of the Change in the Work. The total subcontractor mark-up for overhead, profit or fee for work performed by the subcontractor's forces shall not exceed 10% of the cost of the Change in the Work. In no event shall total mark-up for overhead, profit or fee in any work which involves a subcontractor or one or more sub-subcontractors, regardless of who performs the work, exceed 15% of the total cost of the Change in the Work. For a change in contract sum resulting in a credit; credit to the Owner shall be the Architect approved net cost plus 1/2 of the overhead and profit percentage noted above.

4.07 ARTICLE 8 - TIME

A. Add the following subparagraphs:

1. § 8.1.2.1; Do not start work or store materials or equipment on site until written notice to proceed is issued, or upon execution of Contract.
2. § 8.1.3.1; The date of Final Completion is the date certified by the Architect in accordance with Section 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than thirty (30) calendar days after the date of Substantial Completion.
3. § 8.2.4: If at any time during the course of the Work, the Owner reasonably determines that the Contractor has fallen behind the critical path of the schedule, the Owner may upon written notice to the Contractor, require the Contractor to recover schedule by any means appropriate (including but not limited to the provision of extra shifts and/or overtime and/or adjustments to the schedule). Within five days of the Contractor's receipt of such written notice, the Contractor shall provide the Owner with a written recovery plan and shall commence recovery efforts. So long as the Contractor has fallen behind schedule for reasons attributable to the Contractor (and not to force majeure events), all costs associated with the recovery schedule shall be borne by the Contractor. If, however, the Contractor is not at fault for the delay in the work (due to force majeure events or other causes that would otherwise entitled the Contractor to an extension of Contract Time), then the Contractor shall be paid for the costs of recovering schedule pursuant to the provisions of the Contract Documents applicable to changes in the Work.
4. § 8.3.1.1; An extension of time shall only be considered if a critical path task is delayed. A delay in a non-critical path task shall not be grounds for a delay claim.
5. § 8.3.1.2; The sole remedy for delays other than those which are caused solely and exclusively by acts or omissions of the Owner (except actions taken by the Owner acting as a regulatory authority to protect the public health or safety or to conform to law), will be non-compensable time extensions for completion of the Work.
6. § 8.3.4; Owner may waive above requirements and grant extensions of time for any reason.

4.08 ARTICLE 9 - PAYMENTS AND COMPLETION

A. Add the following subparagraphs:

1. § 9.3.3.1; Lien Releases and Receipted Bills: Before receiving any payment, except the first, the Contractor shall furnish to the Architect, along with Contractor's "Request for Payment," partial (or final as the case may be) lien releases covering all materials used and subcontracts performed in connection with their contract through the date of the previous billing. In addition, the Contractor shall furnish with each request for payment, including the first, the contractor's own waiver of lien in the full amount of the request shall include a list of subcontractors, sub-subcontractors, and suppliers whose lien releases will be furnished with the following months request. Should the Contractor fail to furnish required lien releases, the amount of their "Request for Payment" not covered by such lien releases may not be certified.
2. § 9.3.3.2; Final Waivers of Lien: Before final payment will be made, the Contractor shall furnish final waivers of lien, or receipted bills, covering all materials used and subcontracts performed in connection with his contract, including their own final waiver of lien in the full amount of the contract.
3. § 9.3.3.3 Where statutory law limits retainage to less than that stated, the minimum statutory limit shall supersede the above limits. The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts.
4. § 9.3.4 Before the first application for payment is approved, the Prime Contractor shall have submitted an acceptable progress schedule.

5. § 9.3.6 An updated construction schedule indicating current progress in the work and proposed scheduling for completing the Work by the completion date shall be submitted with each monthly application for payment.
- B. Add the following to the sentence to subparagraph § 9.8.1
 1. subject only to completion of minor punch-list items, the absence of completion of which does not interfere with the Owner's intended use of the Project.
- C. Add the following sentence to subparagraph § 9.10.3;
 1. Notwithstanding the foregoing, in no event shall the retainage attributable to the unfinished Work be less than 125% of Owner's good faith estimate of the cost of finally completing the Work.
- D. Delete the following paragraph in its entirety and replace with the following:
 1. § 9.10.4; The making of final payment shall not constitute a waiver of any Claims by the Owner.

4.09 ARTICLE 10 - PROTECTION OF PERSONS AND PROPERTY

- A. Add the following sentence to subparagraph § 10.1:
 - a. This requirement applies continuously twenty-four (24) hours per day during the Construction Phase of the Project.
- B. Add the following paragraphs:
 1. § 10.1.1; The Contractor shall be required, in compliance with the Asbestos Emergency Response Act of 1986, to certify that all products and materials supplied as a part of this project shall be free of Asbestos.
 2. § 10.1.2 The Contractor shall have sole responsibility for safety of persons and property, and for compliance with OSHA and/or other governing parties.
 3. § 10.2.2.1: Contractor shall give notice in writing at least 48 hours before breaking ground to the Owner, public utility companies, Owners of property having structures or improvements in proximity to site of the Work, and 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 representative on site to see that their property is properly protected. Such notice does not relieve Contractor of responsibility for any damages, claims, and defense of all actions against Owner and Architect resulting from performance of such work in connection with or arising out of Contract.
- C. Delete the following paragraph in its entirety and replace with the following:
 1. § 10.2.4; The Contractor shall exercise the utmost care so as not to endanger life or property in the prosecution of the Work. If the Contractor is negligent, the Contractor will be responsible for any and all damages, claims and of the defense of all actions against Owner and Architect resulting from the failure to exercise such care. Explosives or other hazardous materials shall not be employed in the prosecution of the Work.
- D. Add new paragraphs:
 1. § 10.2.9; 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.
 2. § 10.2.10; Maintain utilities or other services indicated to be abandoned, in service until new facilities are provided, tested and ready for use.
 3. § 10.2.11; Contractor shall thoroughly document the existing conditions of the site, adjacent properties, and public ways. Return all conditions on or about the site and adjacent properties which are not shown to be altered, removed or otherwise changed to equal or better conditions which existed previous to starting work.
 4. § 10.3.7; Water Precautions: Keep all parts of site, including excavations, free from any accumulation of water, no matter what source or cause.

5. § 10.3.7.1; Dispose of water in such manner as will not endanger public health or cause damage or expense to property. Comply with requirements of any public agencies having jurisdiction. If sewers and streets are allowed to be used for drainage or disposal of water for construction, maintain and leave these satisfactorily clean upon completion of work.
6. § 10.3.8 Signs; Do not erect signs, billboards, or advertisements on or about premises, without prior Owner approval, except as required by Contract.
7. § 10.3.8.1; Furnish and maintain all necessary signs required for prosecution of the Work and as required by law.

4.10 ARTICLE 13 - MISCELLANEOUS PROVISIONS

- A. Add the following to subparagraph § 13.4.1:
 1. Contractor shall provide the testing and inspection services required by the Contract Documents at the Contractors expense.
- B. Delete the following paragraph in its entirety and replace it with the following:
 1. § 13.5; Any payment shall be deemed overdue on the thirty-first day after Owner received Architect's invoice or Contractor's Certificate for Payment for the Architect, if Owner's authorizing Board or Council meets more than once per month. Any such payment shall be deemed overdue on the forty-sixth day after Owner receives Architect's invoice or Contractor's Certificate for Payment from the Architect, if Owner's authorizing Board or Council meets once a month or less frequently. No interest shall be due on sums properly retained by Owner, except as provided by law, or on disputed sums unpaid by Owner.

4.11 ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

- A. Delete the following sentence in its entirety and replace it with the following:
 1. § 14.1.1; The Contractor may terminate the Contract if the Work is stopped for a period of sixty (60) consecutive calendar 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:
- B. Add the following to subparagraph §14.2.3:
 1. In all cases of termination or Contractor default, Architect will bill Owner for cost of additional services required in connection with reissuing documents or completing the Work. Owner will deduct this sum from money due Contractor and pay it to Architect.

4.12 ARTICLE 15 – CLAIMS AND DISPUTES

- A. Add the following subparagraphs:
 1. § 15.1.6.3 Claims for Additional Time. The procedure for determination of time extensions for unusually severe weather shall be set forth as follows. The following listing defines monthly anticipated adverse weather for the Contract period.
 2. § 15.1.6.3.1 Contractor's schedule must reflect these anticipated adverse weather delays in all weather-dependent activities.

Monthly Anticipated Adverse Weather Calendar Days:

 - January: 6 days.
 - February through November: 3 days.
 - December: 4 days.

The schedule above will constitute the base line for monthly, or a portion thereof, weather time evaluations. Upon acknowledgment 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 that delay the critical path as demonstrated by the Contractor's overall project schedule. 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, the Owner will examine all actual adverse weather days to determine whether Contractor is entitled to a time extension and a time extension will be granted if the adverse weather day impacted the critical path. These actual adverse weather days must prevent 50 percent or more of the 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. An adverse weather day must be reported on the day it occurs, otherwise it will not be considered.

- B. Add the following to paragraph § 15.4.1:
 - 1. Notwithstanding anything to the contrary in the Contract Documents or in any document forming a part hereof, there shall be no mandatory arbitration for any dispute arising hereunder.

END OF SECTION