



**CITY OF SEWARD**  
**City Council**  
**Regular Meeting**  
**Agenda**

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**Tuesday, April 18, 2023**

**7:00 PM**

**Municipal Building Council Chambers**

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**NOTICE IS HEREBY GIVEN** that a meeting of the City Council of the City of Seward, Nebraska will be held at 7:00 PM on Tuesday, April 18, 2023, in the Council Chambers, 142 N 7th Street, Seward, Nebraska in which the meeting will be open to the public. The Mayor and City Council reserve the right to adjourn into Closed Session as per Section 84-1410 of the Nebraska Revised Statutes. An Agenda for such meeting, kept continually current, is available at the Office of the City Clerk, 537 Main Street, Seward, Nebraska, during normal business hours. Individuals requiring physical or sensory accommodations, who desire to attend or participate, please contact the City Clerk's Office at 402.643.2928 no later than 3:30 PM on the Friday preceding the Council Meeting.

City financial claims and related invoices will be available for Council member review, audit and voluntary signatures at the meeting location beginning 30 minutes prior to the scheduled meeting time.

**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**DISCLOSURE OF OPEN MEETINGS ACT & OTHER NOTIFICATIONS**

This is an Open Meeting of the Seward Nebraska Governing Body. The City of Seward abides by the Nebraska Open Meetings Act in conducting business. A copy of the Nebraska Open Meetings Act is displayed on the north wall of this meeting room facility as required. Disclosure of meeting recording processes is posted in the Meeting Room. A participant sign-in sheet is available for use by any Citizen addressing the Council. Presenters shall approach the podium, state their name & address for the Clerk's record and are asked to limit remarks to five minutes. All remarks shall be directed to the Mayor who shall determine by whom any appropriate response shall be made. The City of Seward reserves the right to adjust the order of items on this Agenda if necessary and may elect to take action on any of the items listed.

**ROLL CALL**

**CONSENT AGENDA**

1. City Codes Director Report

**CURRENT YEAR: March 2023**

Permits	Quantity	Permit Fee	Valuation
NEW CONST.	3	\$ 5,341.85	\$ 1,258,233.31
REMODEL/ADDIT.	28	\$ 2,841.50	\$ 684,292.34
ACCESSORY	10	\$ 2,155.50	\$ 87,232.31
RELOCATE	24	\$ 1,200.00	\$ 425,496.56
ELECTRIC			
PLUMBING	8	\$ 720.00	
MECHANICAL	9	\$ 925.00	
SEWER TAP	2	\$ 500.00	
WATER TAP	2	\$ 1,676.00	
TEMP. ELEC.	1	\$ 50.00	
ELECTRIC SER.	2	\$ 400.00	
<b>TOTALS</b>	<b>89</b>	<b>\$ 15,809.85</b>	<b>\$ 2,455,254.52</b>

**LAST YEAR: March 2022**

Permits	Quantity	Permit Fee	Valuation
NEW CONST.	3	\$ 7,226.70	\$ 727,170.56
REMODEL/ADDIT.	5	\$ 189.85	\$ 33,000.00
ACCESSORY	22	\$ 1,134.00	\$ 123,992.00
RELOCATE	0	\$ -	\$ -
ELECTRIC		\$ -	\$ -
PLUMBING	17	\$ 2,190.00	\$ -
MECHANICAL	5	\$ 225.00	\$ -
SEWER TAP	3	\$ 750.00	\$ -
WATER TAP	3	\$ 2,514.00	\$ -
TEMP. ELEC.	2	\$ 100.00	\$ -
ELECTRIC SER.	3	\$ 600.00	\$ -
<b>TOTALS</b>	<b>63</b>	<b>\$ 14,929.55</b>	<b>\$ 884,162.56</b>

**YEAR TO DATE January to December 2023**

Permits	Quantity	Permit Fee	Valuation
NEW CONST.	4	\$ 8,713.46	\$ 1,681,114.39
REMODEL/ADDIT.	60	\$ 8,887.19	\$ 2,623,242.20
ACCESSORY	24	\$ 2,514.82	\$ 138,021.31
RELOCATE	107	\$ 6,315.00	\$ 1,878,453.75
ELECTRIC		\$ -	\$ -
PLUMBING	20	\$ 1,805.00	\$ -
MECHANICAL	26	\$ 11,466.00	\$ -
SEWER TAP	4	\$ 1,000.00	\$ -
WATER TAP	4	\$ 3,352.00	\$ -
TEMP. ELEC.	2	\$ 100.00	\$ -
ELECTRIC SER.	4	\$ 800.00	\$ -
<b>TOTALS</b>	<b>255</b>	<b>\$ 44,953.47</b>	<b>\$ 6,320,831.65</b>

**YEAR TO DATE January to December 2022**

Permits	Quantity	Permit Fee	Valuation
NEW CONST.	13	\$ 34,390.79	\$ 5,152,363.45
REMODEL/ADDIT.	11	\$ 928.73	\$ 191,293.69
ACCESSORY	43	\$ 1,636.70	\$ 151,192.00
RELOCATE	5	\$ 250.00	\$ 42,708.57
ELECTRIC		\$ -	\$ -
PLUMBING	37	\$ 3,260.00	\$ -
MECHANICAL	19	\$ 1,285.00	\$ -
SEWER TAP	12	\$ 3,000.00	\$ -
WATER TAP	12	\$ 11,283.00	\$ -
TEMP. ELEC.	6	\$ 300.00	\$ -
ELECTRIC SER.	12	\$ 3,200.00	\$ -
<b>TOTALS</b>	<b>170</b>	<b>\$ 59,534.22</b>	<b>\$ 5,537,557.71</b>

# OPEN Property Maintenance Code Violation Report

					Updated 4-11-2023
Property Address	Violation Type	Deadline	Owner Information	Delivery Type	Status
<b>2023</b>					
530 N 5th St	Trash, Junk left at property		Jeremy & Nicole Martin	Phone Call	Shannon Arena, CSO made contact. The owner said he would clean it up over the weekend. Officer Arena, checked back on Monday and there was small things. Everything is now cleaned up.
716 N 7th St	Fire damage, weeds, vehicles, decayed roof, decayed cellar entrance	4/10/2023	Dennis & Willa Taylor	Mail/In Person by PD	4-6-23 Willa Taylor delivered a work timeline for repair of the structure. Exterior wall fire damage repair has been weathertightened, Roof is being replaced week of 4-10-23, the cellar door enclosure is being ordered, Fast Freddy Plumbing will be repairing the plumbing issues, the excess vehicles have been removed from the property and clean up remains on going.
					Police Chief Peters and Building Director Dworak met with Dennis and Willa Taylor and discussed the situation. A 60 day notice for yard clean up and construction action plan was delivered. Upon follow up inspection, vehicles have been removed, a full dumpster was in the driveway and clean up had begun
716 N 7th	Vehicles, weeds	1/26/2023	Dennis & Willa Taylor	Letter	Shannon Arena, CSO has verified the vehicles, weeds, and the water service has not been turned back on

## 2. City Treasurer Report



TREASURER'S REPORT		MONTH OF: MARCH 2023					
VARIANCE AT: 50.00%							
	EXPENDITURES	CURRENT YTD		UNEXPENDED	PREVIOUS YTD	DIFFERENCE	
DEPARTMENT	BUDGET	EXPENDITURES	VARIANCE	BALANCE	EXPENDITURES	B/W BUDGET YEARS	
ELECTRIC	12,851,033	4,734,339	37%	8,116,694	4,703,740	30,600	
ELEC BOND PYMT	496,408	457,975	92%	38,433	452,130	5,845	
WATER	5,352,181	1,150,919	22%	4,201,262	858,244	292,675	
WATER BOND PYMTS	330,473	243,468	74%	87,006	245,345	(1,878)	
WATER SINKING FUND	- 0 -	- 0 -	0%	- 0 -	- 0 -	- 0 -	
WASTEWATER TREATMENT	2,567,932	1,021,589	40%	1,546,343	969,943	51,647	
WWTW BOND PYMT	294,463	12,081	4%	282,382	12,479	(398)	
WWTW SINKING FUND	- 0 -	- 0 -	0%	- 0 -	- 0 -	- 0 -	
<b>TOTAL BUSINESS-TYPE FUNDS</b>	<b>21,892,490</b>	<b>7,620,371</b>	<b>35%</b>	<b>14,272,119</b>	<b>7,241,880</b>	<b>378,491</b>	
GENERAL EXPENSES	2,785,801	138,269	5%	2,647,532	125,949	12,321	
LEGAL	72,852	30,219	41%	42,633	32,704	(2,485)	
POLICE	1,757,394	809,210	46%	948,184	697,182	112,027	
E911	233,204	116,602	50%	116,602	95,696	20,907	
POLICE EQUITABLE SHARING	- 0 -	- 0 -	0%	- 0 -	242	(242)	
STREET	5,335,795	1,304,580	24%	4,031,215	1,443,609	(139,030)	
STREET STP FUNDS	182,589	190,480	104%	(7,891)	154,462	36,017	
DEBT SERVICE	1,047,926	481,020	46%	566,906	481,956	(936)	
RAIL CAMPUS	35,500	24,546	69%	10,954	325	24,221	
CDBG ECON. DEV. LOAN FUND	- 0 -	- 0 -	0%	- 0 -	- 0 -	- 0 -	
CDBG-DOWNTOWN REVITAL GRANT	335,000	68,673	20%	266,327	17,110	51,563	
BLDGS & GRDS (CITY HALL)	23,826	11,570	49%	12,256	21,025	(9,455)	
LEVEE ACCREDITATION	195,000	2,910	1%	192,090	- 0 -	2,910	
CIVIC CENTER	304,708	156,336	51%	148,372	69,212	87,124	
LIBRARY	571,336	448,471	78%	122,865	260,437	188,035	
PUBLIC PROPERTIES	581,757	299,857	52%	281,900	223,330	76,528	
CEMETERY	256,210	136,434	53%	119,776	102,414	34,020	
GOLF COURSE	554,926	217,713	39%	337,213	213,279	4,434	
NEW PARK DEVELOPMENT	100	- 0 -	0%	100	58	(58)	
NEW CEMETERY DEVELOPMENT	- 0 -	- 0 -	0%	- 0 -	- 0 -	- 0 -	
GUTHMAN TRUST - REGULAR	145	- 0 -	0%	145	- 0 -	- 0 -	
GUTHMAN TRUST - PAVING	- 0 -	- 0 -	0%	- 0 -	- 0 -	- 0 -	
PERPETUAL CARE - PRINCIPAL	- 0 -	- 0 -	0%	- 0 -	- 0 -	- 0 -	
PERPETUAL CARE - INTEREST	- 0 -	- 0 -	0%	- 0 -	- 0 -	- 0 -	
BLDGS & GRDS (OTHER)	11,050	1,525	14%	9,525	1,410	116	
BUILDING INSPECTION	111,406	45,882	41%	65,524	49,600	(3,718)	
FIRE	775,879	153,927	20%	621,952	61,236	92,691	
FIRE EQUIPMENT SINKING FUND	- 0 -	- 0 -	0%	- 0 -	- 0 -	- 0 -	
TREE BOARD	12,550	375	3%	12,175	450	(75)	
PLANNING COMMISSION	23,828	9,353	39%	14,475	13,333	(3,980)	
ENGINEER	157,522	70,490	45%	- 0 -	71,236	(746)	
DOWDING POOL	266,515	31,314	12%	235,201	40,827	(9,513)	
CONCESSION STAND	- 0 -	- 0 -	0%	- 0 -	- 0 -	- 0 -	
SWIMMING LESSONS	9,036	- 0 -	0%	9,036	- 0 -	- 0 -	
RECREATION	363,259	202,526	56%	160,733	146,948	55,578	
SPORTS COMPLEX LIGHTS	- 0 -	- 0 -	0%	- 0 -	- 0 -	- 0 -	
SENIOR CENTER	219,128	81,427	37%	137,701	82,705	(1,278)	
SENIOR SHUTTLE	4,569	2,536	56%	2,033	2,160	376	
RECYCLING	113,675	13,771	12%	99,904	15,776	(2,005)	
WELLNESS CENTER	24,281	102	0%	24,179	- 0 -	102	
ECONOMIC DEVELOPMENT LB840	284,799	- 0 -	0%	284,799	50,012	(50,012)	
CAPITAL IMPROVEMENTS FUND	18,890,000	20	0%	18,889,980	- 0 -	20	
TAX INCREMENT FINANCING	696,706	170,023	24%	526,683	134,155	35,867	
<b>TOTAL GOVERNMENTAL FUNDS</b>	<b>36,238,272</b>	<b>5,220,161</b>	<b>14%</b>	<b>30,931,079</b>	<b>4,608,839</b>	<b>611,321</b>	

(UNAUDITED)

# Pledges By Pledgee And Maturity

BBA

**Pledged To: CITY TREASURER**

Jones Bank - Seward, NE

As Of 3/31/2023

Receipt# Safekeeping Location	CUSIP	ASC 320	Description Maturity	Prerfund	Pool/Type Coupon	Moody S&P	Original Face Pledged Percent	Pledged		Market Value
								Original Face	Par	
COMM: COMMERCE BANK	803760FG7	AFS	SARPY CO SID #180-REF NE 37 12/15/37 12/28/23 @ 100.00		4.25		250,000.00 100.00%	250,000.00	250,000.00	252,950.00
COMM: COMMERCE BANK	148006EZ8	AFS	CASS CO SD #1 NE 26 12/15/26		2.35		200,000.00 100.00%	200,000.00	200,000.00	196,904.00
COMM: COMMERCE BANK	25933AFG6	AFS	DOUGLAS SID #492-REF NE 28 08/15/28		3.20		175,000.00 100.00%	175,000.00	175,000.00	172,835.25
COMM: COMMERCE BANK	80373YCT1	AFS	SARPY CO SID #158-REF NE 29 11/15/29		3.10		155,000.00 100.00%	155,000.00	155,000.00	155,017.05
COMM: COMMERCE BANK	486890X92	AFS	KEARNEY NE 30 10/15/30		2.60	A+	150,000.00 100.00%	150,000.00	150,000.00	149,998.50
COMM: COMMERCE BANK	0792124W3	AFS	BELLEVUE-REF NE 30 12/15/30		3.10		250,000.00 100.00%	250,000.00	250,000.00	250,095.00
COMM: COMMERCE BANK	751265RA9	AFS	RALSTON-VEHICLE NE 32 06/01/32		3.70		300,000.00 100.00%	300,000.00	300,000.00	300,045.00
COMM: COMMERCE BANK	661615UB8	AFS	N PLATTE-REF NE 32 12/15/32		3.00	A	200,000.00 100.00%	200,000.00	200,364.96	199,120.00
COMM: COMMERCE BANK	698864HR9	AFS	PAPILLION MUNI FACS NE 33 12/15/33		3.00	Aa1	175,000.00 100.00%	175,000.00	176,135.39	175,096.25
COMM: COMMERCE BANK	818468BN9	AFS	SEWARD-REF NE 33 12/15/33		2.35	AA	400,000.00 100.00%	400,000.00	400,000.00	364,364.00
COMM: COMMERCE BANK	943776KA1	AFS	WAVERLY NE 34 06/01/34		2.95		335,000.00 100.00%	335,000.00	335,000.00	320,702.20
COMM: COMMERCE BANK	840372SX5	AFS	SOUTH SIOUX CITY-REF NE 36 08/01/36		2.20		200,000.00 100.00%	200,000.00	200,000.00	159,706.00
COMM: COMMERCE BANK	25929PDW6	AFS	DOUGLAS SID #491-REF NE 36 09/15/36		2.60		200,000.00 100.00%	200,000.00	200,000.00	157,438.00

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# Pledges By Pledgee And Maturity



**Pledged To: CITY TREASURER**

Jones Bank - Seward, NE

As Of 3/31/2023

Page 9 of 34

Receipt# Safekeeping Location	CUSIP	ASC 320 Description Maturity	Prerefund	Pool/Type Coupon	Moody S&P	Original Face Pledged Percent	Pledged		
							Original Face	Market Value	
COMM: COMMERCE BANK	80378EDN2	AFS SARPY SID #263-REF NE 36 09/15/36		3.80		260,000.00 100.00%	260,000.00	260,000.00	260,020.80
COMM: COMMERCE BANK	98676TCF8	AFS YORK NE-B-REF NE 36 10/01/36		1.85		200,000.00 100.00%	200,000.00	198,820.23	152,750.00
COMM: COMMERCE BANK	23087RHC5	AFS CUMING CO-B-REF NE 36 12/15/36		2.00		250,000.00 100.00%	250,000.00	250,000.00	194,627.50
COMM: COMMERCE BANK	68905WFK3	AFS OTOE CO NE SD #501-B NE 36 12/15/36		1.70	Aa3	200,000.00 100.00%	200,000.00	200,000.00	152,004.00
COMM: COMMERCE BANK	80378DT4	AFS SARPY CO SD#46 NE 36 12/15/36		2.00	AA-	200,000.00 100.00%	200,000.00	202,165.46	162,782.00
COMM: COMMERCE BANK	80377XC4	AFS SARPY CO SID #190-REF NE 37 10/15/37		4.00		205,000.00 100.00%	205,000.00	205,000.00	205,565.80
COMM: COMMERCE BANK	25929RCY9	AFS DOUGLAS CO SID #485 NE 38 05/15/38		2.65		200,000.00 100.00%	200,000.00	200,000.00	156,522.00
COMM: COMMERCE BANK	25933VBY5	AFS DOUGLAS CO SANTN 559 NE 38 06/15/38		4.10		165,000.00 100.00%	165,000.00	165,000.00	160,446.00
COMM: COMMERCE BANK	25932EDK2	AFS DOUGLAS CO SID #438 NE 38 08/15/38		4.20		250,000.00 100.00%	250,000.00	250,000.00	250,402.50
COMM: COMMERCE BANK	80373RDR9	AFS SARPY CO DT #220-REF NE 38 08/15/38		4.05		170,000.00 100.00%	170,000.00	170,000.00	170,222.70
COMM: COMMERCE BANK	80387LAP3	AFS SARPY CO SAN & IMP DT NE 38 08/15/38		2.75		290,000.00 100.00%	290,000.00	290,000.00	223,761.10
COMM: COMMERCE BANK	72778PCU5	AFS PLATTE CO SD #5 NE 38 12/15/38		2.00	AA-	200,000.00 100.00%	200,000.00	200,435.57	156,614.00
COMM: COMMERCE BANK	80379KDHO	AFS SARPY CO SID #272-REF NE 38 12/15/38		4.40		215,000.00 100.00%	215,000.00	215,000.00	215,582.65

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# Pledges By Pledgee And Maturity

BBA

Pledged To: CITY TREASURER

Jones Bank - Seward, NE

Page 10 of 34

Receipt# Safekeeping Location	CUSIP	ASC 320	Description Maturity	Prerefund	Pool/Type Coupon	Moody S&P	Original Face Pledged Percent	Pledged			
								Original Face	Par	Book Value	Market Value
COMM: COMMERCE BANK	25934MCK3	AFS	DOUGLAS SID #531-REF NE 39 01/15/39		4.35		200,000.00 100.00%	200,000.00	200,000.00	200,000.00	200,246.00
COMM: COMMERCE BANK	25936ECH6	AFS	DOUGLAS CO SID #561 NE 39 01/15/39		4.35		180,000.00 100.00%	180,000.00	180,000.00	180,000.00	180,149.40
COMM: COMMERCE BANK	25930BEE3	AFS	DOUGLAS CO SID #504 NE 39 08/15/39		3.40		215,000.00 100.00%	215,000.00	215,000.00	215,000.00	191,840.20
COMM: COMMERCE BANK	25931EGP9	AFS	DOUGLAS CO SAN #503 NE 39 08/15/39		2.65		225,000.00 100.00%	225,000.00	225,000.00	225,000.00	170,507.25
COMM: COMMERCE BANK	80373XBC1	AFS	SARPY CO SAN & IMPT NE 39 08/15/39		2.60		200,000.00 100.00%	200,000.00	200,000.00	200,000.00	151,072.00
COMM: COMMERCE BANK	80373YDV5	AFS	SARPY CO SID#158-REF NE 39 08/15/39		2.95		190,000.00 100.00%	190,000.00	190,000.00	190,000.00	148,859.30
COMM: COMMERCE BANK	25931BEJ1	AFS	DOUGLAS SID #507-REF NE 40 05/01/40		3.15		185,000.00 100.00%	185,000.00	185,000.00	185,000.00	142,779.30
COMM: COMMERCE BANK	25933VDM9	AFS	DOUGLAS CO SD #559 NE 40 05/15/40		3.40		175,000.00 100.00%	175,000.00	175,000.00	175,000.00	157,300.50
COMM: COMMERCE BANK	25933EEG9	AFS	DOUGLAS CO SAN & IMPT NE 40 11/15/40		3.15		190,000.00 100.00%	190,000.00	190,000.00	190,000.00	153,312.90
COMM: COMMERCE BANK	80388MBJ3	AFS	SARPY CNTY SANITATION NE 40 12/15/40		4.00		240,000.00 100.00%	240,000.00	240,000.00	240,000.00	238,908.00
COMM: COMMERCE BANK	617775EV9	AFS	MORRILL CO NE 41 06/15/41		2.25		240,000.00 100.00%	240,000.00	240,000.00	240,000.00	176,155.20
COMM: COMMERCE BANK	25936EDY8	AFS	DOUGLAS CO SID #561 NE 41 07/15/41		2.90		235,000.00 100.00%	235,000.00	235,000.00	235,000.00	176,837.50
COMM: COMMERCE BANK	25939LDA1	AFS	DOUGLAS CO SID #567 NE 41 07/15/41		2.75		200,000.00 100.00%	200,000.00	200,000.00	200,000.00	147,312.00

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# Pledges By Pledgee And Maturity



**Pledged To: CITY TREASURER**

Jones Bank - Seward, NE

As Of 3/31/2023

Page 11 of 34

Receipt# Safekeeping Location	CUSIP	ASC 320	Description Maturity	Prerefund	Pool/Type	Moody S&P	Original Face Pledged Percent	Pledged			
								Original Face	Par	Book Value	Market Value
COMM: COMMERCE BANK	25930LDN2	AFS	DOUGLAS CO SAN #530 NE 41 08/15/41		2.85		200,000.00 100.00%	200,000.00	200,000.00	200,000.00	147,554.00
COMM: COMMERCE BANK	80379QBT3	AFS	SARPY CO NE SAN-REF NE 41 08/15/41		2.75		255,000.00 100.00%	255,000.00	255,000.00	255,000.00	190,673.70
COMM: COMMERCE BANK	80387LAS7	AFS	SARPY CO SAN & IMP DT NE 41 08/15/41		2.90		200,000.00 100.00%	200,000.00	200,000.00	200,000.00	149,692.00
COMM: COMMERCE BANK	25938MDE2	AFS	DOUGLAS CO SAN & IMP NT NE 41 09/01/41		2.80		200,000.00 100.00%	200,000.00	200,000.00	200,000.00	145,596.00
COMM: COMMERCE BANK	25933EFW3	AFS	DOUGLAS CO NE SAN-B NE 41 09/15/41		2.85		235,000.00 100.00%	235,000.00	235,000.00	235,000.00	176,259.40
COMM: COMMERCE BANK	25939HCU7	AFS	DOUGLAS CO SID#563 NE 41 11/15/41		2.85		200,000.00 100.00%	200,000.00	200,000.00	200,000.00	149,780.00
COMM: COMMERCE BANK	119483EL5	AFS	BUFFALO CO SD #0009 NE 41 12/15/41		2.00	A1	200,000.00 100.00%	200,000.00	200,000.00	193,934.13	140,600.00
COMM: COMMERCE BANK	259327W42	AFS	DOUGLAS CO SD #17 NE 41 12/15/41		4.00	AA	250,000.00 100.00%	250,000.00	250,000.00	261,090.51	254,082.50
COMM: COMMERCE BANK	25932XD4	AFS	DOUGLAS CO NE SID-REF NE 41 12/15/41		2.75		250,000.00 100.00%	250,000.00	250,000.00	250,000.00	188,480.00
COMM: COMMERCE BANK	25940KAS4	AFS	SID DOUGLAS #596-REF NE 41 12/15/41		2.75		275,000.00 100.00%	275,000.00	275,000.00	275,000.00	206,659.75
COMM: COMMERCE BANK	808290FV7	AFS	SCHUYLER NE 42 03/15/42		2.75		250,000.00 100.00%	250,000.00	250,000.00	250,000.00	197,052.50
COMM: COMMERCE BANK	80376KBN2	AFS	SARPY CO SID #334 NE 42 05/15/42		3.70		215,000.00 100.00%	215,000.00	215,000.00	215,000.00	186,873.70
COMM: COMMERCE BANK	25932XE6	AFS	DOUGLAS CO SID #524 NE 42 09/15/42		4.65		250,000.00 100.00%	250,000.00	250,000.00	250,000.00	243,832.50

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# Pledges By Pledgee And Maturity



**Pledged To: CITY TREASURER**

Jones Bank - Seward, NE

As Of 3/31/2023

Page 12 of 34

Receipt# Safekeeping Location	CUSIP	ASC 320	Description Maturity	Prerefund	Pool/Type Coupon	Moody S&P	Original Face Pledged Percent	Pledged			
								Original Face	Par	Book Value	Market Value
COMM: COMMERCE BANK	25929MEM4	AFS	DOUGLAS CO SID #405-R NE 42 11/15/42		3.55		250,000.00 100.00%	250,000.00	250,000.00	250,000.00	214,340.00
COMM: COMMERCE BANK	25931EGT1	AFS	DOUGLAS CO SAN & IMPT NE 42 11/15/42		5.25		300,000.00 100.00%	300,000.00	300,000.00	300,000.00	306,708.00
COMM: COMMERCE BANK	25937XCT7	AFS	DOUGLAS CO SAN#570 NE 42 11/15/42		5.05		240,000.00 100.00%	240,000.00	240,000.00	240,000.00	244,749.60
COMM: COMMERCE BANK	25939HDQ5	AFS	DOUGLAS CO SAN #563 NE 42 11/15/42		5.15		190,000.00 100.00%	190,000.00	190,000.00	190,000.00	193,748.70
COMM: COMMERCE BANK	006058DK4	AFS	ADAMS CO NE 42 12/15/42		4.00	AA-	300,000.00 100.00%	300,000.00	300,000.00	312,111.38	305,019.00
COMM: COMMERCE BANK	122873AR3	AFS	BURT CO SCH DT#0020 NE 42 12/15/42		4.38	A2	250,000.00 100.00%	250,000.00	250,000.00	245,944.35	251,355.00
COMM: COMMERCE BANK	98636PBT6	AFS	YORK CO SCH DT#96 NE 42 12/15/42		4.50	Aa3	250,000.00 100.00%	250,000.00	250,000.00	254,855.89	256,555.00
COMM: COMMERCE BANK	3132DMPY5	AFS	FRLMC 30YR 03/01/50		3.50		1,000,000.00 100.00%	1,000,000.00	600,451.31	657,577.62	562,204.28
<b>60 Securities Pledged To: 1010 - CITY TREASURER</b>								<b>14,230,000.00</b>	<b>13,830,451.31</b>	<b>13,908,435.49</b>	<b>12,262,667.48</b>

CASH IN BANK \$11,435,564.06

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**Cattle Bank & Trust (052)  
Investment Portfolio (1)**

**Pledged Securities Detail  
March 31, 2023**

H231  
Page 1 of 79

Report Sequence: sgrp, CUSIP, Ticket

SGrp STyp Loc/PI	CUSIP Description S&P	Moody	Rate	State	Ticket-P#	Call Type Next Call Dt Call Price	Maturity Dt Issue Dt Intent	Total Face Total Par	Pledged Face % of Total	Pledge Values		Carrying Value Interest Rec	Market Value Collateral Value
										Par Value Book Value	Par Value Book Value		
PLEDGEE: CITY OF SEWARD (02)													
AGEN	3130AJRQ4		1.000		177048011-1	Cont	6/25/2027	250,000.00	250,000.00	250,000.00	222,485.75	222,485.75	222,485.75
FHLB	FHLB FIXED RATE NOTE				4/1/2023		6/25/2020	250,000.00	100.00%	229,312.67	666.67		223,152.42
D02/02	AA+	Aaa			100.000		AFS						
AGEN	3130ANK82		0.750		178004394-1	Ann	8/26/2026	370,000.00	370,000.00	370,000.00	332,486.44	332,486.44	332,486.44
FHLB	FHLB FIXED RATE NOTE				8/26/2023		8/26/2021	370,000.00	100.00%	328,294.37	269.79		332,756.23
D02/02	AA+	Aaa			100.000		AFS						
CMO	3137AWU78		1.250		185157011-1		12/15/2027	1,500,000.00	1,500,000.00	55,722.75	53,296.33	53,296.33	53,296.33
FHR	FHR 4145 AC						12/1/2012	55,722.75	100.00%	55,541.50	58.04		53,354.37
D02/02							AFS						
CMO	3137B0NV2		1.500		185157163-1		9/15/2025	2,000,000.00	2,000,000.00	57,672.98	55,716.80	55,716.80	55,716.80
FHR	FHR 4176 EC						3/1/2013	57,672.98	100.00%	57,561.30	72.09		55,788.89
D02/02							AFS						
GNMA	36176W2B6		4.000		185168920-1		12/15/2026	560,000.00	560,000.00	29,681.84	30,467.95	30,467.95	30,467.95
GNMA	GNMA POOL 778670						12/1/2011	29,681.84	100.00%	30,355.06	98.94		30,566.89
D02/02							AFS						
GNMA	36179V3Q1		2.500		177018890-1		1/20/2036	500,000.00	500,000.00	297,381.68	276,240.32	276,240.32	276,240.32
GNM2	GNMA2 POOL MAT107						1/1/2021	500,000.00	100.00%	311,820.40	619.55		276,859.87
D02/02							AFS						
GNMA	3620A9QG9		3.500		185171527-1		9/15/2024	750,000.00	750,000.00	11,239.94	11,107.03	11,107.03	11,107.03
GNMA	GNMA POOL 723255						9/1/2009	11,239.94	100.00%	11,358.97	32.78		11,139.81
D02/02							AFS						
GNMA	3620ARB59		3.500		185171588-1		5/15/2025	1,000,000.00	1,000,000.00	23,993.05	23,412.69	23,412.69	23,412.69
GNMA	GNMA POOL 737260						5/1/2010	23,993.05	100.00%	24,213.53	69.98		23,482.67
D02/02							AFS						
MBS	3128MDW74		3.500		177039340-1		12/1/2028	1,450,000.00	1,450,000.00	199,398.37	196,602.49	196,602.49	196,602.49
FGLM	FGLMC POOL G14970						12/1/2013	199,398.37	100.00%	208,290.86	581.58		197,184.07
D02/02							AFS						
MBS	3128MEHL8		5.000		185145155-1		11/1/2024	557,000.00	557,000.00	22.79	22.86	22.86	22.86
FGLM	FGLMC POOL G15435						5/1/2015	22.79	100.00%	23.02	0.09		22.95
D02/02							AFS						

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**Cattle Bank & Trust (052)  
Investment Portfolio (1)**

**Pledged Securities Detail  
March 31, 2023**

H231  
Page 2 of 79

Report Sequence: sgrp, CUSIP, Ticket

SGrp STyp Loc/PI	CUSIP Description S&P	Moody	Rate	Ticket-#	Call Type Next Call Dt Call Price	Maturity Dt Issue Dt Intent	Total Face Total Par	Pledged Face % of Total	Pledge Values		
									Par Value Book Value	Carrying Value Interest Rec	Market Value Collateral Value
MBS	3128MMLQ4		4.500	185145399-1		12/1/2024	1,015,000.00	1,015,000.00	7,425.33	7,480.00	7,480.00
FGLM	FHLMC POOL G18334					12/1/2009	7,425.33	100.00%	7,490.34	27.85	7,507.85
D02/02						AFS					
MBS	3128PNBR8		4.000	185147186-1		7/1/2024	1,300,000.00	1,300,000.00	7,365.74	7,321.90	7,321.90
FGLM	FHLMC POOL J09948					6/1/2009	7,365.74	100.00%	7,437.76	24.55	7,346.45
D02/02						AFS					
MBS	3128PQ4E8		4.500	185147195-1		2/1/2025	1,200,000.00	1,200,000.00	10,332.53	10,554.04	10,554.04
FGLM	FHLMC POOL J11721					2/1/2010	10,332.53	100.00%	10,494.82	38.75	10,592.79
D02/02						AFS					
MBS	3128Q0GL5		4.000	185147609-1		5/1/2027	425,000.00	425,000.00	22,894.19	22,756.79	22,756.79
FGLM	FHLMC POOL J19203					5/1/2012	22,894.19	100.00%	23,557.33	76.31	22,833.10
D02/02						AFS					
MBS	31329KRS5		3.000	177051131-1		4/1/2033	1,000,000.00	1,000,000.00	199,573.67	192,157.51	192,157.51
FGLM	FHLMC POOL ZA2297					9/1/2018	199,573.67	100.00%	189,974.22	498.93	192,656.44
D02/02						AFS					
MBS	3132ABS34		2.500	177051143-1		1/1/2031	860,000.00	860,000.00	229,132.82	219,528.89	219,528.89
FGLM	FHLMC POOL ZS7738					9/1/2018	229,132.82	100.00%	218,145.85	477.36	220,006.25
D02/02						AFS					
MBS	3132CWKP8		3.000	177046215-1		4/1/2035	810,000.00	810,000.00	402,879.38	385,632.18	385,632.18
FGLM	FHLMC POOL SB0302					3/1/2020	402,879.38	100.00%	397,245.68	1,007.20	386,639.38
D02/02						AFS					
MBS	3132CWSD7		2.500	178002051-1		4/1/2036	500,000.00	500,000.00	379,197.61	354,313.79	354,313.79
FGLM	FHLMC POOL SB0516					3/1/2021	379,197.61	100.00%	398,703.28	790.00	355,103.79
D02/02						AFS					
MBS	3132CWVM3		3.500	177041150-1		8/1/2036	400,000.00	400,000.00	344,717.88	337,903.47	337,903.47
FGLM	FHLMC POOL SB0620					2/1/2022	344,717.88	100.00%	364,211.44	1,005.43	338,908.90
D02/02						AFS					
MBS	31335HYR8		5.500	185150298-1		10/1/2023	3,250,000.00	3,250,000.00	3,034.07	3,013.69	3,013.69
FGLM	FHLMC POOL C90720					10/1/2003	3,034.07	100.00%	3,050.07	13.91	3,027.60
D02/02						AFS					
MBS	3133LPUE5		1.500	177041020-1		3/1/2032	500,000.00	500,000.00	430,625.98	395,742.69	395,742.69
FGLM	FHLMC POOL RD5081					2/1/2022	430,625.98	100.00%	425,358.13	538.28	396,250.97
D02/02						AFS					

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**Cattle Bank & Trust (052)**  
**Investment Portfolio (1)**

**Pledged Securities Detail**  
**March 31, 2023**

H231  
 Page 3 of 79

Report Sequence: sgrp, CUSIP, Ticket

SGrp STyp Loc/PI	CUSIP Description S&P	Rate	Moody	State	Ticket-P#	Call Type Next Call Dt Call Price	Maturity Dt Issue Dt Intent	Total Face Total Par	Pledged Face % of Total	Pledge Values		Market Value
										Par Value Book Value	Carrying Value Interest Rec	
MBS	31371LQY8 FNMA POOL 255271	5.000			185155978-1		6/1/2024	500,000.00	500,000.00	1,357.07	1,363.00	1,363.00
D02/02							5/1/2004	1,357.07	100.00%	1,355.29	5.65	1,358.65
MBS	31375HAP9 FNMA ARM POOL 334914	4.303			185156211-1		2/1/2026	1,000,000.00	1,000,000.00	434.56	434.54	434.54
D02/02							1/1/1996	434.56	100.00%	435.39	1.56	436.10
MBS	3138AMK38 FNMA POOL AL7513	4.500			185159473-1		7/1/2026	500,000.00	500,000.00	28,903.53	29,122.23	29,122.23
D02/02							7/1/2011	28,903.53	100.00%	29,519.04	108.39	29,230.62
MBS	3138EJLQ9 FNMA POOL AL2134	4.000			185159924-1		7/1/2027	443,000.00	443,000.00	26,150.93	25,994.72	25,994.72
D02/02							7/1/2012	26,150.93	100.00%	26,823.87	87.17	26,081.89
MBS	3138EKM9 FNMA POOL AL3191	3.500			185160071-1		2/1/2028	500,000.00	500,000.00	35,316.25	34,752.74	34,752.74
D02/02							2/1/2013	35,316.25	100.00%	36,226.67	103.01	34,855.75
MBS	3138EKK75 FNMA POOL AL3401	5.500			177039339-1		2/1/2034	2,000,000.00	2,000,000.00	290,113.40	301,563.60	301,563.60
D02/02							3/1/2013	290,113.40	100.00%	322,798.92	1,329.69	302,893.29
MBS	3138EKKJ9 FNMA POOL AL3380	5.500			177039338-1		1/1/2034	2,000,000.00	2,000,000.00	231,434.10	240,566.62	240,566.62
D02/02							3/1/2013	231,434.10	100.00%	256,516.17	1,060.74	241,627.36
MBS	3138ELYF4 FNMA POOL AL4309	4.000			185160221-1		10/1/2028	1,000,000.00	1,000,000.00	67,052.27	66,765.90	66,765.90
D02/02							10/1/2013	67,052.27	100.00%	69,025.10	223.51	66,989.41
MBS	3138EMCY5 FNMA POOL AL4586	4.000			185160242-1		2/1/2027	575,000.00	575,000.00	25,880.33	25,706.83	25,706.83
D02/02							12/1/2013	25,880.33	100.00%	26,562.18	86.27	25,793.10
MBS	3138EMPD7 FNMA POOL AL4919	3.500			184006560-1		3/1/2029	2,000,000.00	631,641.94	85,769.42	83,293.75	83,293.75
D02/02							2/1/2014	271,576.08	31.58%	89,595.84	250.16	83,543.92
MBS	3138EQ5H1 FNMA POOL AL8047	3.500			176002956-1		11/1/2030	1,050,000.00	1,050,000.00	249,083.30	241,881.39	241,881.39
D02/02							1/1/2016	249,083.30	100.00%	263,052.24	726.49	242,607.88

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**Cattle Bank & Trust (052)**  
**Investment Portfolio (1)**

**Pledged Securities Detail**  
**March 31, 2023**

H231  
 Page 4 of 79

Report Sequence: sgrp, CUSIP, Ticket

SGrp S Typ Loc/PI	CUSIP Description S/P	Moody	Rate	Ticket-P#	Call Type Next Call Dt Call Price	Maturity Dt Issue Dt Intent	Total Face Total Par	Pledged Face % of Total	Pledge Values			
									Par Value Book Value	Carrying Value Interest Rec	Market Value Collateral Value	
MBS FNMA D02/02	3138WVJDU82 FNMA POOL AS4206	3.000	178000698-1			12/1/2014	1,160,000.00	1,160,000.00	149,145.31	149,145.31	146,276.98	146,276.98
MBS FNMA D02/02	3140FBGJ3 FNMA POOL BD3800	2.000	177051139-1			7/1/2031	1,375,000.00	1,375,000.00	339,927.50	339,927.50	314,609.01	314,609.01
MBS FNMA D02/02	3140J5EA3 FNMA POOL BM1028	2.500	177039342-1			12/1/2029	1,750,000.00	1,750,000.00	309,654.35	309,654.35	291,914.70	291,914.70
MBS FNMA D02/02	3140J5EA3 FNMA POOL BM1028	2.500	185164038-1			3/1/2017	300,000.00	300,000.00	53,083.60	53,083.60	50,042.52	50,042.52
MBS FNMA D02/02	3140QGJ99 FNMA POOL CA8387	2.500	177034617-1			12/1/2035	500,000.00	500,000.00	360,296.87	360,296.87	338,056.10	338,056.10
MBS FNMA D02/02	3140X9CH6 FNMA POOL FM5471	2.500	199000173-1			12/1/2020	337,591.74	337,591.74	353,729.66	353,729.66	317,446.28	317,446.28
MBS FNMA D02/02	3140X9LK9 FNMA POOL FM5729	3.000	177020855-1			1/1/2041	500,000.00	500,000.00	285,413.40	285,413.40	265,695.13	265,695.13
MBS FNMA D02/02	31412P2K6 FNMA POOL 931478	4.500	185164602-1			7/1/2024	2,900,000.00	2,900,000.00	15,196.67	15,196.67	15,308.38	15,308.38
MBS FNMA D02/02	31417SAL4 FNMA POOL AC5410	4.500	185165282-1			6/1/2009	15,196.67	15,196.67	15,352.09	15,352.09	15,365.37	15,365.37
MBS FNMA D02/02	31418AAC2 FNMA POOL MA0902	3.000	185165786-1			10/1/2024	2,040,000.00	2,040,000.00	19,336.32	19,336.32	19,062.96	19,062.96
MBS FNMA D02/02	31418AKN7 FNMA POOL MA1200	3.000	177011537-1			10/1/2009	19,336.32	19,336.32	19,582.95	19,582.95	19,135.47	19,135.47
MBS FNMA D02/02	31418AKN7 FNMA POOL MA1200	3.000	177011537-1			11/1/2026	1,000,000.00	1,000,000.00	30,502.62	30,502.62	28,792.92	28,792.92
MBS FNMA D02/02	31418AKN7 FNMA POOL MA1200	3.000	177011537-1			10/1/2011	30,502.62	30,502.62	30,736.77	30,736.77	28,869.18	28,869.18
MBS FNMA D02/02	31418AKN7 FNMA POOL MA1200	3.000	177011537-1			10/1/2032	800,000.00	800,000.00	119,765.16	119,765.16	117,424.39	117,424.39
MBS FNMA D02/02	31418AKN7 FNMA POOL MA1200	3.000	177011537-1			9/1/2012	119,765.16	119,765.16	125,643.43	125,643.43	299.41	117,723.80

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**Cattle Bank & Trust (052)  
Investment Portfolio (1)**

**Pledged Securities Detail  
March 31, 2023**

H231  
Page 5 of 79

Report Sequence: sgrp, CUSIP, Ticket

SGrp STyp Loc/PI	CUSIP Description S&P	Moody	Rate	Ticket-#	Call Type Next Call Dt Call Price	Maturity Dt Issue Dt Intent	Total Face Total Par	Pledged Face % of Total	Pledge Values		Carrying Value Interest Rec	Market Value Collateral Value
									Par Value Book Value	Par Value Book Value		
MBS	31418AVK1		3.000	177039341-1		7/1/2028	1,000,000.00	1,000,000.00	136,961.49	133,336.53	133,336.53	
FNMA	FNMA POOL MA1517					6/1/2013	136,961.49	100.00%	140,234.82	342.40	133,678.93	
D02/02						AFS						
MBS	31418AYS1		2.500	185166625-1		10/1/2023	587,000.00	587,000.00	4,441.84	4,260.07	4,260.07	
FNMA	FNMA POOL MA1620					9/1/2013	4,441.84	100.00%	4,447.32	9.25	4,269.32	
D02/02						AFS						
MBS	31418B5R3		4.000	177020853-1		6/1/2036	410,000.00	410,000.00	94,871.73	94,166.64	94,166.64	
FNMA	FNMA POOL MA2655					5/1/2016	94,871.73	100.00%	101,349.82	316.24	94,482.88	
D02/02						AFS						
MBS	31418DRM6		2.000	177046216-1		8/1/2030	610,000.00	610,000.00	285,664.37	265,717.06	265,717.06	
FNMA	FNMA POOL MA4091					7/1/2020	285,664.37	100.00%	276,489.56	476.11	266,193.17	
D02/02						AFS						
MBS	31418DT77		2.000	177023307-1		11/1/2030	771,122.00	771,122.00	426,050.59	396,281.44	396,281.44	
FNMA	FNMA POOL MA4173					10/1/2020	426,050.59	100.00%	439,005.10	710.08	396,991.52	
D02/02						AFS						
MBS	31418DZ96		1.500	184010674-1		6/1/2031	500,000.00	500,000.00	362,656.73	332,158.73	332,158.73	
FNMA	FNMA POOL MA4367					5/1/2021	362,656.73	100.00%	369,296.58	453.32	332,612.05	
D02/02						AFS						
MBS	31418EA83		1.500	177048016-1		2/1/2032	179,142.00	167,163.35	141,443.11	129,987.86	129,987.86	
FNMA	FNMA POOL MA4530					1/1/2022	151,578.69	93.31%	133,654.55	176.80	130,164.66	
D02/02						AFS						
MUNI	25887CAZ1		2.250	177039343-1	Cont	1/1/2034	120,000.00	120,000.00	120,000.00	105,738.00	105,738.00	
GO	DOUGLAS CNTY NEB S&I #540				1/1/2027	1/5/2022	120,000.00	100.00%	120,000.00	675.00	106,413.00	
D02/02					100.000	AFS						
MUNI	259290EB6		3.100	185142828-1	Contn	8/15/2030	150,000.00	150,000.00	150,000.00	145,722.00	145,722.00	
GO	DOUGLAS CNTY NE SAN & IMPT DIS				4/1/2023	6/15/2016	150,000.00	100.00%	150,000.00	594.17	146,316.17	
D02/02					100.000	AFS						
MUNI	259292CS7		2.700	185142831-1	Contn	11/15/2026	280,000.00	280,000.00	280,000.00	271,045.60	271,045.60	
GO	DOUGLAS CNTY SAN IMPT DIST 427				4/1/2023	11/15/2017	280,000.00	100.00%	280,000.00	2,856.00	273,901.60	
D02/02					100.000	AFS						
MUNI	259305DT4		2.500	178003667-1	Cont	3/1/2036	150,000.00	150,000.00	150,000.00	123,171.00	123,171.00	
GO	DOUGLAS CNTY NEB S&I #499				3/1/2027	3/1/2022	150,000.00	100.00%	150,000.00	312.50	123,483.50	
D02/02					100.000	AFS						

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**Cattle Bank & Trust (052)**  
**Investment Portfolio (1)**

**Pledged Securities Detail**  
**March 31, 2023**

H231  
 Page 6 of 79

Report Sequence: sgrp, CUSIP, Ticket

SGrp STyp Loc/Pl	CUSIP Description S&P	Rate	Moody	State	Ticket-P#	Call Type Next Call Dt Call Price	Maturity Dt Issue Dt Intent	Total Face Total Par	Pledged Face % of Total	Pledge Values		
										Par Value Book Value	Carrying Value Interest Rec	Market Value Collateral Value
MUNI	25930TBJ6 DOUGLAS CNTY NEB SAN I & #421	2.900	NE	184003054-1	Cont	11/15/2036	50,000.00	50,000.00	50,000.00	48,460.00	48,460.00	48,460.00
GO					5/15/2025	5/19/2020	50,000.00	100.00%	50,000.00	547.78	49,007.78	
D02/02					100.000	AFS						
MUNI	25931BEG7 DOUGLAS CNTY NEB SAN & IMPT DI	2.750	NE	184010678-1	Cont	5/1/2035	175,000.00	175,000.00	175,000.00	153,858.25	153,858.25	153,858.25
GO					5/1/2026	5/3/2021	175,000.00	100.00%	175,000.00	2,005.21	155,863.46	
D02/02					100.000	AFS						
MUNI	25931LCN2 DOUGLAS CNTY NE SAN & IMPT	2.700	NE	185142862-1	Cont	11/15/2028	170,000.00	170,000.00	170,000.00	164,119.70	164,119.70	164,119.70
GO					4/1/2023	11/15/2016	170,000.00	100.00%	170,000.00	1,734.00	165,853.70	
D02/02					100.000	AFS						
MUNI	25931VBN1 DOUGLAS CNTY NE SAN & IMPT	3.500	NE	185142866-1	Cont	8/15/2032	50,000.00	50,000.00	50,000.00	46,111.50	46,111.50	46,111.50
GO					4/1/2023	7/27/2017	50,000.00	100.00%	50,000.00	223.61	46,335.11	
D02/02					100.000	AFS						
MUNI	25931VCF7 DOUGLAS CNTY NEB SAN #471	2.350	NE	177020849-1	Cont	8/15/2035	100,000.00	100,000.00	100,000.00	83,137.00	83,137.00	83,137.00
GO					2/15/2026	2/19/2021	100,000.00	100.00%	100,000.00	300.28	83,437.28	
D02/02					100.000	AFS						
MUNI	25933BEB6 DOUGLAS CNTY NEB SAN & IMPT DI	3.000	NE	184003099-1	Cont	11/15/2035	150,000.00	150,000.00	150,000.00	140,343.00	140,343.00	140,343.00
GO					5/15/2025	5/19/2020	150,000.00	100.00%	150,000.00	1,700.00	142,043.00	
D02/02					100.000	AFS						
MUNI	25936RBY1 DOUGLAS CNTY NEB S&I #537	2.400	NE	177039345-1	Cont	1/15/2039	150,000.00	150,000.00	150,000.00	118,836.00	118,836.00	118,836.00
GO					1/15/2027	1/21/2022	150,000.00	100.00%	150,000.00	760.00	119,596.00	
D02/02					100.000	AFS						
MUNI	373807CE4 GERING NEB COMBINED UTILS REV	1.850	NE	184010461-1	Cont	12/15/2035	100,000.00	100,000.00	100,000.00	85,861.00	85,861.00	85,861.00
REV					4/29/2026	4/29/2021	100,000.00	100.00%	100,000.00	544.72	86,405.72	
D02/02					100.000	AFS						
MUNI	406036HNG HALL CNTY NE SCD #2 GRAND IS	2.400	NE	185176896-1	Cont	12/15/2024	100,000.00	100,000.00	100,000.00	99,387.00	99,387.00	99,387.00
GO					4/1/2023	2/9/2015	100,000.00	100.00%	100,000.00	706.67	100,093.67	
D02/02					100.000	AFS						
MUNI	497593DJ9 KIRKWOOD CMNTY COLLEGE IOWA CT	4.000	IA	177032959-1	Cont	6/1/2034	365,000.00	365,000.00	365,000.00	385,177.20	385,177.20	385,177.20
GMCP					6/1/2029	3/23/2020	365,000.00	100.00%	365,000.00	4,866.67	390,043.87	
D02/02	AA				100.000	AFS						
MUNI	505318QS7 LA VISTA NE	2.650	NE	185179244-1	Cont	11/15/2024	115,000.00	115,000.00	115,000.00	114,504.35	114,504.35	114,504.35
GO					4/1/2023	12/31/2014	115,000.00	100.00%	115,000.00	1,151.28	115,655.63	
D02/02					100.000	AFS						

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**Cattle Bank & Trust (052)**  
**Investment Portfolio (1)**

**Pledged Securities Detail**  
**March 31, 2023**

H231  
 Page 7 of 79

Report Sequence: sgrp, CUSIP, Ticket

SGrp	CUSIP	Description	Rate	Ticket-P#	Call Type	Maturity Dt	Total Face	Pledged Face	Pledge Values	Market Value	
											Styp
MUNI	57973FDD8	MCCOOK NE PUBLIC PWR DIST	3.150	185181089-1	Contn	12/15/2030	100,000.00	100,000.00	100,000.00	100,002.00	
REV					4/1/2023	8/9/2017					
D02/02					100.000	AFS	100,000.00	100.00%	100,000.00	100,929.50	
MUNI	652810G22	NEWTON IOWA	3.000	182011996-1	Cont	6/1/2033	185,000.00	185,000.00	185,000.00	186,766.75	
GO					6/1/2029	4/20/2022					
D02/02					100.000	AFS	185,000.00	100.00%	190,251.28	188,616.75	
MUNI	71366VKE9	PERENNIAL PUB PWR DIST NEB ELE	1.800	177020856-1	Cont	12/15/2036	210,000.00	210,000.00	210,000.00	170,160.90	
REV					2/17/2026	2/17/2021					
D02/02					100.000	AFS	210,000.00	100.00%	210,000.00	171,273.90	
MUNI	80373YER3	SARPY CNTY NEB S&I #158	2.800	182012079-1	Cont	10/15/2035	150,000.00	150,000.00	150,000.00	131,110.50	
GO					4/15/2027	4/19/2022					
D02/02					100.000	AFS	150,000.00	100.00%	150,000.00	133,047.17	
MUNI	80376DCN7	SARPY CNTY NE SAN & IMPT DIST	3.250	185187210-1	Contn	10/15/2023	200,000.00	200,000.00	200,000.00	199,996.00	
GO					4/1/2023	10/15/2012					
D02/02					100.000	AFS	200,000.00	100.00%	200,000.00	202,993.22	
MUNI	80377BKT8	SARPY CNTY NEB S&I DIST #264	2.350	184010680-1	Cont	8/15/2034	180,000.00	180,000.00	180,000.00	159,429.60	
GO					5/3/2026	5/3/2021					
D02/02					100.000	AFS	180,000.00	100.00%	180,000.00	159,970.10	
MUNI	80377TBE2	SARPY CNTY NE SAN & IMPT DIST	2.800	185187220-1	Contn	11/15/2028	85,000.00	85,000.00	85,000.00	82,479.75	
GO					4/1/2023	11/15/2016					
D02/02					100.000	AFS	85,000.00	100.00%	85,000.00	83,378.86	
MUNI	80377TBF9	SARPY CNTY NE SAN & IMPT DIST	2.900	185187221-1	Contn	11/15/2029	85,000.00	85,000.00	85,000.00	83,250.70	
GO					4/1/2023	11/15/2016					
D02/02					100.000	AFS	85,000.00	100.00%	85,000.00	84,181.92	
MUNI	80378TEW8	SARPY CNTY NE SAN & IMPT DIST	3.850	185187230-1	Contn	10/15/2033	85,000.00	85,000.00	85,000.00	80,008.80	
GO					4/15/2023	4/15/2018					
D02/02					100.000	AFS	85,000.00	100.00%	85,000.00	81,517.79	
MUNI	80379AEF5	SARPY CNTY NEB SAN & IMPT #243	2.700	177011631-1	Cont	8/15/2038	290,000.00	290,000.00	290,000.00	234,119.90	
GO					8/15/2025	8/19/2020					
D02/02					100.000	AFS	290,000.00	100.00%	290,000.00	235,120.40	
MUNI	80379KEN6	SARPY CNTY NEB SAN & IMPT #272	2.300	177018881-1	Cont	12/15/2034	50,000.00	50,000.00	50,000.00	42,651.50	
GO					12/15/2025	1/1/2021					
D02/02					100.000	AFS	50,000.00	100.00%	50,000.00	42,990.11	

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**Cattle Bank & Trust (052)**  
**Investment Portfolio (1)**

**Pledged Securities Detail**  
**March 31, 2023**

H231  
 Page 8 of 79

Report Sequence: sgrp, CUSIP, Ticket

SGrp STyp Loc/PI	CUSIP Description S&P	Rate	Moody	State	Ticket-#	Call Type Next Call Dt Call Price	Maturity Dt Issue Dt Intent	Total Face Total Par	Pledged Face % of Total	Pledge Values		
										Par Value	Carrying Value	Market Value
MUNI	810140LP6 SCOTT'S BLUFF CNTY NEB	2.550	NE	182012068-1	Cont	1/15/2034	250,000.00	250,000.00	250,000.00	236,880.00	236,880.00	
GO					4/21/2027	4/21/2022						
D02/02					100.000	AFS	250,000.00	100.00%	250,000.00	1,345.83	238,225.83	
MUNI	81847ELK0 SEWARD NE	2.350	NE	185187545-1	Contn	12/15/2023	95,000.00	95,000.00	95,000.00	94,421.45	94,421.45	
GO					4/1/2023	5/18/2012						
D02/02					100.000	AFS	95,000.00	100.00%	95,000.00	657.35	95,078.80	
MUNI	818480BF1 SEWARD NEB ARPT AUTH	3.550	NE	185187553-1	Contn	1/15/2024	25,000.00	25,000.00	25,000.00	25,009.75	25,009.75	
REV					4/1/2023	9/1/2011						
D02/02					100.000	AFS	25,000.00	100.00%	25,000.00	187.36	25,197.11	
MUNI	818483FG9 SEWARD NE ELEC REV	2.450	NE	185187557-1	Contn	2/15/2028	150,000.00	150,000.00	150,000.00	146,049.00	146,049.00	
REV					4/1/2023	6/15/2016						
D02/02					100.000	AFS	150,000.00	100.00%	150,000.00	469.58	146,518.58	
MUNI	886094CD1 THURSTON CNTY NEB	2.500	NE	184003102-1	Cont	12/15/2035	200,000.00	200,000.00	200,000.00	173,966.00	173,966.00	
GO					5/28/2025	5/28/2020						
D02/02					100.000	AFS	200,000.00	100.00%	197,459.01	1,472.22	175,438.22	
TAX	534239FX1 LINCOLN NEB	3.000	NE	177045043-1	Cont	7/15/2026	100,000.00	100,000.00	100,000.00	97,419.00	97,419.00	
TAXGO					12/1/2025	8/20/2020						
D02/02					100.000	AFS	100,000.00	100.00%	99,531.23	633.33	98,052.33	
TAX	61778RB78 MORRILL CNTY NEB SCH DIST #63	1.937	NE	177020846-1	Cont	12/1/2031	210,000.00	210,000.00	210,000.00	161,748.30	161,748.30	
TAXGO					12/1/2025	2/25/2021						
D02/02					100.000	AFS	210,000.00	100.00%	210,000.00	1,355.90	163,104.20	
TAX	68189TBA3 OMAHA NEB SPL OBLIG	6.400	NE	185184294-1	Cont	2/1/2026	45,000.00	35,000.00	35,000.00	35,381.15	35,381.15	
TAXREV						3/25/2008						
D02/02						AFS	45,000.00	77.78%	35,000.00	373.33	35,754.48	
TD	02007GXG3 ALLY BANK CD	3.450		177049980-1		8/4/2026	245,000.00	245,000.00	245,000.00	245,000.00	245,000.00	
CD						8/4/2022						
D02/02						AFS	245,000.00	100.00%	245,000.00	1,296.82	246,296.82	
TD	02589AC42 AMERICAN EXPR NATL BK CD	2.650		182012070-1		4/6/2027	245,000.00	245,000.00	245,000.00	245,000.00	245,000.00	
CD						4/6/2022						
D02/02						AFS	245,000.00	100.00%	245,000.00	3,148.42	248,148.42	
TD	89235MNH0 TOYOTA FINANCIAL SGS BK CD	3.200		177046219-1		5/17/2027	245,000.00	245,000.00	245,000.00	245,000.00	245,000.00	
CD						5/17/2022						
D02/02						AFS	245,000.00	100.00%	245,000.00	2,899.73	247,899.73	

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**Cattle Bank & Trust (052)  
Investment Portfolio (1)**

**Pledged Securities Detail  
March 31, 2023**

H231  
Page 9 of 79

Report Sequence: sgrp, CUSIP, Ticket

SGrp STyp Loc/PI	CUSIP Description S&P	Rate	Moody	State	Ticket-P#	Call Type Next Call Dt Call Price	Maturity Dt Issue Dt Intent	Total Face Total Par	Pledged Face % of Total	Pledge Values		Carrying Value Interest Rec	Market Value Collateral Value
										Par Value Book Value	Par Value		
TRSY	91282CDQ1	1.250			177038199-1		12/31/2028	250,000.00	250,000.00	250,000.00	229,804.89	229,804.69	
NOTE	U.S. TREASURY NOTE						12/31/2021	250,000.00	250,000.00	250,000.00	785.57	230,590.26	
D02/02	AA+		Aaa			AFS			100.00%				
CITY OF SEWARD								53,126,927.29		13,740,791.16	12,940,650.66	12,940,650.66	
										13,916,066.71	65,449.33	13,006,099.98	

CASH IN BANK \$10,678,010.39

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### 3. Claims & Payables Reports

CLAIMS LIST

4-18-23

COUNCIL MEETING

Abbreviations: BE, Benefits; BU, Building Upkeep; CI, Capital Improvements; DO, Donations; EQ, Equipment; EX, Expense; FA, Fixed Asset; GS, Gas; GU, Ground Upkeep; IT, Technology; IV, Inventory; MA, Maintenance; MC, Miscellaneous; MH, Merchandise; MI, Mileage; ML, Meals; MS, Memberships; OI, Oil; OP, Operations; PO, Postage; PU, Publications; RE, Repairs; RI, Reimbursement; SA, Salaries, SE, Services; SL, Sales; ST, Sales Tax; SU, Supplies; TG, Training; TO, Tools; TR, Transfer; UN, Uniforms; UT, Utilities.

All Copy Products Inc	MA	93.15
All Road Barricades Inc	SU	653.82
Allegiant Utility Service	FA	13.37
Amazon Business	SU	78.87
American Fence Co Lincoln	FA	13,535.00
ARPS	RE	1,635.50
Badger Meter	SE	515.66
Baker & Taylor	SU	2,214.35
Baker Becky J	MI	41.92
Barnhart Crane	CI	3,250.00
Bishop Michael	OP	90.00
Bizco Technologies	IT	4,073.02
Black Hills Energy	UT	1,996.63
Blackburn Manufacturing C	SU	620.28
Blue River Electric LLC	BU	425.00
Board Of Public Works	SU	159.45
Bode Adam	OP	90.00
Border States Industries	IV	6,254.87
Brunckhorst Kent	OP	90.00
Callaway Golf	MH	2,465.66
Campbell Cleaning	SE	350.00
Capital Business-Cheyenne	MA	23.86
Center Point Large Print	SU	203.00
Chelewski Kent	OP	90.00
Cihal Alan F	OP	90.00
City Seward Electric Fund	UT	37,803.31
City Seward Library Petty	PO	125.71
City Seward Merchant Serv	SE	3,825.68
City Seward Payroll Accou	SA	174,045.24
City Seward Perpetual FD	SL	600.00
Consolidated Electric	CI	132,000.00
Consolidated Fleet Servic	RE	7,227.50
Constellation Newenergy	UT	1,621.44
E M C Insurance Companies	MC	500.00
Eakes Office Solutions	SU	53.98
Emergency Medical Product	EQ	117.17
Exchange Bank	FA	3,300.00
Fairplay Corp	RE	32.32
Farmers Coop Seward	GS	5,732.90

Fast Mart	GS	8.67
Feld Fire Inc	RE	933.00
First Wireless Inc	RE	1,097.72
Fisher Zachary G	OP	90.00
Foltz Fred	SE	200.00
Fyr-Tek	EQ	5,764.70
Galls LLC	UN	139.47
Gerhold Concrete Co Inc	SU	991.34
Grandgenett Jared	OP	90.00
Great Plains Communicatio	SE	490.00
Grow Nebraska Foundation	MS	100.00
Halls Safety Equip Corp	TO	160.70
Hans Jared	OP	90.00
Hansen Dan	OP	90.00
Hawkins Inc	SU	1,405.21
Herald Cody	OP	90.00
Herpolsheimer'S Inc	RE	98.12
HireRight LLC	SE	144.60
Hobson Automotive & Tire	RE	377.00
Hochstein Jared	OP	90.00
Hoffschneider Law PC LLO	SE	300.00
Hornung's	MH	748.45
Husker Electric Supply Co	SU	21,513.58
Hydraulic Equipment	RE	350.77
Ishii-Jordan, Sharon	SE	315.00
Jones Bank	FA	9,980.00
K & Z Distributing	SU	243.45
Kahler Daniel S	OP	90.00
Kocian Tyler	OP	105.00
Last Mile Network Consult	IT	90.00
Lee'S Refrigeration	BU	484.81
Lincoln Winwater Works	RE	677.14
Lintt Braydon	OP	90.00
Lintt Mark	OP	90.00
M C 2 Inc	MA	3,898.06
Mailand'S Clothing	UN	63.00
Matheson Tri-Gas Inc	OP	122.00
Menards North	BU	144.50
Merchant Job Training & S	TG	550.00
Merle'S Garden Center	GU	58.00
Metering & Technology Sol	IV	8,749.17
Mid-American Benefits Inc	BE	1,530.74
Midwest Auto Parts	RE	260.07
Midwest Electric Transfor	CI	475.85
Midwest Laboratories Inc	MA	1,213.98
Midwest Petroleum Equip	EQ	5,680.00
Miers Robert M	OP	90.00
Municipal Supply Omaha	IV	1,743.01
Mustang Graphics	SU	412.00
Nebraska Door & Window	SU	75.00

Nebraska Equipment Inc	RE	764.96
Nebraska Municipal Power	MS	2,796.47
Nebraska Pub Pow-Desmoine	UT	476,668.68
Nebraska Society Certifie	TG	258.00
Nebraska Treasurer	OP	20.74
Neenah Foundry Company Mu	CI	573.00
Norris Public Power Distr	UT	910.32
Oborny Tanner	OP	90.00
Olsson	SE	781.75
One Call Concepts Inc	SE	249.32
One Source Background Che	SE	38.00
O'Reilly Automotive Inc	SU	95.38
Orscheln Farm & Home	SU	418.22
Pac 'N' Save Discount Foo	ML	3,220.75
Pace Analytical Services	SE	1,014.90
Pecka Brook	OP	90.00
Pedersen Brent	OP	90.00
Pitney Bowes Inc	MA	134.52
Plunkett'S Pest Control	BU	66.33
Quality Brands Of Lincoln	SU	599.10
Quill Corp	SU	205.89
Riverside Portables Llc	SE	120.00
Sestak David	OP	90.00
Seward County Chamber & D	RI	299.86
Seward County Clerk/Reg D	SE	88.50
Seward County EMA	SU	12.00
Seward County Independent	PU	976.27
Seward County Treasurer	SE	19,433.67
Seward Lumber & Home Cent	GU	751.32
Seward Public Schools	MC	375.50
Seward Wind LLC	UT	44,538.30
Siebert Paul	SE	100.00
Siteone Landscape Supply	SU	504.11
Skarshaug Testing Laborat	SE	374.61
Southeast Library System	MS	300.00
Spickelmier & Son Inc	CI	16,888.10
Sports Express	SU	1,789.34
Ss Graphics	SU	1,360.00
St Louis Michelle	OP	90.00
State Distributing Co	SU	153.26
Storey Kenworthy	SU	527.96
Summit Fire Protection	EQ	1,635.00
Taylor Robert	OP	15.00
Total Fire & Security Inc	SE	245.00
Ty'S Outdoor Power & Serv	RE	48.01
Verizon Wireless	SE	249.21
Verizon Wireless - Vsat N	MC	50.00
Visa - Pinnacle Bank		4,637.29
Amazon	SU	80.06
Bush Furniture	SU	2,327.78

Demco Inc	SU	350.20	
Johnson Hardware	BU	200.00	
NE Library Assoc	MS	35.00	
Nextlink	SE	115.00	
Sam's Club	SU	140.56	
TechSoup	IT	1,275.00	
Walmart	SU	98.82	
Zoom	MS	14.87	
Voehl Cindy	MI		13.10
Wake Max	FA		4,922.62
Watson Wendell B	OP		90.00
Wesco Distribution Inc	CI		34,238.75
Windstream Nebraska Inc	SE		1,716.21
York Equipment	RE		1,849.20
Zimco Supply Co	SU		5,196.91
	CLAIMS TOTAL		\$1,111,398.20

#### 4. Police Department Report



# *City of Seward* Police Department

## **Monthly Statistics March 2023**

Service Calls	559
Accidents	13
Arrests	6
Citations	29
Warnings	103
Parking Tickets	48

**\*\*Does not include red tag warnings, yellow tag warnings or verbal warnings\*\***

5. Draft Minutes of April 4, 2023, City Council Meeting

**April 4, 2023**

The Seward City Council met at 7:00 p.m. on Tuesday, April 4, 2023, with Mayor Joshua Eickmeier presiding and City Clerk Derek Bargmann recording the proceedings. Upon roll call, the following Councilmembers were present: Megan Kahler, Jessica Kolterman, Karl Miller, John Singleton, Tatum Tonniges, Rich Wergin, Jonathon Wilken. Councilmembers Absent: Matt Stryson. Other officials present: City Administrator Greg Butcher, City Attorney Kelly Hoffschneider, Building/Zoning & Code Enf. Director Tim Dworak, Street Superintendent Bob Miers, City Engineer Mike Oneby, Water/Wastewater Director Brandon Koll, Library Director Becky Baker, and Sergeant Russ Frazey.

Notice of the meeting was given in advance thereof, and Mayor Eickmeier announced that a copy of the Open Meetings Act and tonight's agenda is posted in the meeting room and is accessible to members of the public. Mayor Eickmeier led those in attendance in the Pledge of Allegiance.

**CONSENT AGENDA CONSIDERATION ITEMS**

The following Consent Agenda items were approved in one single motion made by Councilmember Singleton, seconded by Councilmember Wergin.

1. Claims & Payables Report (totaling \$980,394.27)
2. Draft Minutes of March 21, 2023, Council Meeting

Aye: Kahler, Kolterman, Miller, Singleton, Tonniges, Wergin, Wilken.  
Nay: None. Absent: Stryson. Motion carried.

**ADMINISTRATIVE ITEMS**

**1. SEWARD FOUNDATION APPLICATIONS:**

**A. SEWARD BLUE RIVER HISTORICAL DISTRICT – SEWARD COUNTY LOG CABIN - \$25,000 REQUESTED**

Pat Coldiron, representing The Blue River Historical District, described the proposed project which is located near the Izaak Walton Road and 2nd Street intersection. The site would include the installation, restoration and preservation of a historical log cabin structure built in approximately 1868. Additionally, a historical marker denoting a railway rescue from 1907 is proposed to be included on site with a private donor contributing the funding. The group hopes this will serve as a tourist attraction and educational site for area students. The application is seeking \$25,000 to assist with concrete pouring and moving of the structure.

City Administrator Greg Butcher inquired as to the long-term plans for maintenance and operation of the site. Ms. Coldiron opines that in a few years the site could be offered to the City or Seward County as a public park; however, the future plans have not been formalized. Councilmember Miller expressed concerns about the long-term plans for the site with the City potentially assuming responsibility for maintenance and operation. Further, he asked about the long-term plans for the Blue River Historical District group and if it would cease to exist after the site has been constructed—he feels the group should continue and operate the site. Ms. Coldiron noted it was currently undetermined what would happen with the group in the long-term and suggested a possible partnership with the City. Councilmember Wilken suggested a partnership with the Seward County Historical Society may be most appropriate for future operations.

Councilmember Singleton moved, seconded by Councilmember Kolterman to forward the application to the Seward Foundation for consideration of funding.

Aye: Kahler, Kolterman, Miller, Singleton, Tonniges, Wergin, Wilken.  
Nay: None. Absent: Stryson. Motion carried.

**B. SEWARD MEMORIAL LIBRARY – THE STORY CONTINUES - \$5,000 REQUESTED**

Library Director Baker described the application as a request for funding to assist with the refurbishment of the Library to coincide with the building's renovations slated for this spring.

Councilmember Kolterman moved, seconded by Councilmember Wergin to forward the application to the Seward Foundation for consideration of funding.

Aye: Kahler, Kolterman, Miller, Singleton, Tonniges, Wergin, Wilken.  
Nay: None. Absent: Stryson. Motion carried.

**2. CONSIDERATION OF RECOMMENDATION TO AWARD THE FOLLOWING THREE FIRMS FOR ITEMS RELATED TO THE SOUTH WATER TOWER CONSTRUCTION PROJECT**

City Engineer Oneby noted the project was originally bid on November 18, 2022, with no bids received. In consultation with the City's project engineer, Olsson, it was determined the best way forward was to break the project into three components. The project was re-bid with a receipt date of March 29<sup>th</sup> – one separate

April 4, 2023

respondent replied to each component. The Engineer's cumulative estimate for the three projects totaled \$3,875,000.00. The bids received totaled \$4,033,685.00 with the alternate bid included for water tower construction. It is the recommendation of the City Engineer and Olsson to award the bid to the lone respondent for each component with the included alternate bid amount of \$100,000 for graphical design of water tower.

A. 200,000-GALLON TANK DEMOLITION – ISELER DEMOLITION IN THE AMOUNT OF \$149,300.00

Councilmember Singleton moved, seconded by Councilmember Kolterman, to award 200,000-gallon tank demolition services to Iseler Demolition in the amount of \$149,300.00

Aye: Kahler, Kolterman, Miller, Singleton, Tonniges, Wergin, Wilken.

Nay: None. Absent: Stryson. Motion carried.

B. UTILITIES AND SITE WORK – GENERAL EXCAVATING IN THE AMOUNT OF \$696,785.00

Councilmember Wergin moved, seconded by Councilmember Tonniges, to award utilities and site work services to General Excavating in the amount of \$696,785.00.

Aye: Kahler, Kolterman, Miller, Singleton, Tonniges, Wergin, Wilken.

Nay: None. Absent: Stryson. Motion carried.

C. 500,000-GALLON WATER TOWER CONSTRUCTION – MAGUIRE IRON, INC. IN THE BASE BID AMOUNT OF \$3,087,600.00

Councilmember Kahler moved, seconded by Councilmember Singleton, to award 500,000-gallon water tower construction services inclusive with alternate bid to Maguire Iron, Inc. in the amount of \$3,187,600.00.

Aye: Kahler, Kolterman, Miller, Singleton, Tonniges, Wergin, Wilken.

Nay: None. Absent: Stryson. Motion carried.

3. CONSIDERATION OF A RESOLUTION DESIGNATING CITY ITEMS AS SURPLUS

Councilmember Kolterman introduced **Resolution 2023-2**, to declare City items as surplus. Councilmember Miller moved, seconded by Councilmember Tonniges to approve Resolution 2023-2.

Aye: Kahler, Kolterman, Miller, Singleton, Tonniges, Wergin, Wilken.

Nay: None. Absent: Stryson. Motion carried.

4. CONSIDERATION OF AN AGREEMENT WITH THE NEBRASKA MUNICIPAL POWER POOL (NMPP) TO PERFORM A FINANCIAL PLAN, COST OF SERVICE AND RATE DESIGN STUDY RELATED TO CITY UTILITY SERVICES

City Administrator Butcher noted that annually or bi-annually the City works with NMPP to study utility rates and the City's current financial position. The proposed agreement would include the deliverables of the City's financial position of utilities system, an executive summary to recommend actions to enhance performance, and draft ordinances for consideration to implement said actions.

Councilmember Singleton moved, seconded by Councilmember Kolterman, to approve the agreement with NMPP for utility rate study services as presented.

Aye: Kahler, Kolterman, Miller, Singleton, Tonniges, Wergin, Wilken.

Nay: None. Absent: Stryson. Motion carried.

5. CONSIDERATION OF A PROFESSIONAL SERVICES AGREEMENT WITH CLARK & ENERSEN FOR PHASE I CONCEPTUAL FACILITY MASTER PLAN FOR THE CIVIC CENTER RENOVATION PROJECT

City Administrator Butcher updated the consideration for Civic Center renovations has long been considered and that with a facility master plan completed the project will move to the construction phase. A design-build process was considered; however, it was determined a facility study and construction bid would be the fastest route to project completion. The Civic Center Commission unanimously supports the recommendation of this agreement.

Councilmember Singleton moved, seconded by Councilmember Kolterman, to approve the professional services agreement with Clark & Enersen for a Civic Center Facility Master Plan as presented.

Aye: Kahler, Kolterman, Miller, Singleton, Tonniges, Wergin, Wilken.

Nay: None. Absent: Stryson. Motion carried.

6. UPDATE ON THE WELLNESS CENTER

City Administrator Greg Butcher updated that the Committee had received the initial construction cost from Sampson Construction and are working to value engineer the costs to determine best return on investment. It has been determined the depth of the pool should be 7 feet, to best be used for the training of lifeguards. The first round of interviews for the Executive Director Wellness Center position have been held with consideration of next steps.

**April 4, 2023**

**COUNCILMEMBER REQUESTED ITEM - SINGLETON**

City Administrator Butcher distributed a survey that had been completed by City Administration to similar communities to determine if they operated a burn site and any fees associated for public use. The current issue seems to be high usage from commercial tree haulers, which increases the frequency of burns thus increasing the risk of combustion of compost. Councilmember Singleton noted his concern is the apparent low cost for commercial haulers to access the site and slowing their use. He would like to see an increase in fees to account for the increased fire risk their use may be causing. Mayor Eickmeier noted the challenges will be in determining the appropriate amount to charge, limiting access to the site and to whom, and future location considerations. It was requested that Administration bring back a draft resolution to the next meeting for further consideration about revised rates.

**CITY ADMINISTRATOR’S REPORT**

Councilmember Wergin moved, seconded by Councilmember Kolterman, that City Administrator Butcher’s report of April 4, 2023, be accepted.

Aye: Kahler, Kolterman, Miller, Singleton, Tonniges, Wergin, Wilken.

Nay: None. Absent: Stryson. Motion carried.

**UPCOMING EVENTS**

April 15<sup>th</sup> – Seward County Clean-up Day

**MOTION TO ADJOURN**

Councilmember Singleton moved, seconded by Councilmember Wilken, that the April 4, 2023, City Council Meeting be adjourned.

Aye: Kahler, Kolterman, Miller, Singleton, Tonniges, Wergin, Wilken.

Nay: None. Absent: Stryson. Motion carried.

Adjourned approximately 8:31 p.m.

THE CITY OF SEWARD, NEBRASKA

\_\_\_\_\_  
Joshua Eickmeier, Mayor

\_\_\_\_\_  
Derek Bargmann  
City Clerk

**ADMINISTRATIVE ITEMS**

1. Seward Foundation Application:

A. Seward Arts Council - Summer Music Series - \$9,300 Requested

Applied  
01/13/2022



### Grant Request Form

Name of Project: 5th Street Summer Music Series

Contact Name: Jeanne Wiemer

Address: 1693 224th

Phone: (402) 540-6929

City: Seward

State: NE

Zip Code: 68434

This project is being submitted to:  City Council       School Board  
for further consideration. It is understood that upon approval by the  
aforementioned entity this Grant Request Form will, in turn be submitted to the  
Seward Foundation, Inc for final determination. **Please note, this grant  
application will not be considered for funding until approval is given by the  
City Council or the School Board for submittal to the Foundation.**

Description of the Project: Please provide a brief description of the project under consideration and  
the proposed use of Seward Foundation, Inc. grant monies.  
See attached document.

Additional Information: Please provide additional information regarding the project including the  
need that the project fulfills within the community and the target market for the project. How will this  
project be promoted to the community at large?  
See attached document.

**Financial Information:** Please provide financial information for the proposed project detailing out the overall estimated cost of the project and the sources and uses of funds including this Grant Request Form. Note: The Seward Foundation, Inc. prefers and encourages investment and support from other outside entities to assist in funding projects.

**TOTAL PROJECT COST:**

<b>SOURCES OF FUNDS</b>	<b>USE OF FUNDS</b>
See attached budget for project.	

**Operating Budget:** Please attach and provide an on-going budget for this program/project.

Who will continue to fund and maintain this program/project on an on-going basis?  
Seward Arts Council

How did you arrive at the budget figures?  
Research and Bids from vendors and musicians

Will this grant be sufficient to start/continue this program/project?  
It will get the program up and running.

Are you submitting this request elsewhere for funding considerations? If so, to whom and for how much?

Yes, we are submitting it to the Seward County Visitors Bureau for marketing.

Has this request been made elsewhere and turned down? If so, why?

We have applied for a grant from The Seward County Legacy Fund and an amount of \$1200 was approved for one month of musician fees.

After grant monies from the Seward Foundation, Inc. have been expended what plans are being made to ensure the ongoing operation of the project/program?

We are continually raising awareness of the Seward Arts Council to collect donations. We are also using this event for our project for the Seward County Gives Day 2023

#### Other Information:

Is this project application related to a new or on-going program?

We began this program last year with successful Second Saturdays promoting "A Time to See Seward" Art Connections and are expanding the music concerts as a part of the same program.

Who was involved in the development and planning of this program/project?

The Seward Arts Council and volunteer sponsorship of various art related businesses in Seward.

Will this program/project be evaluated regularly and if so, by whom?

This program will be evaluated regularly by the Directors of the Seward Arts Council.

Is this program/project ready to begin immediately? If not, what is the target date for completion and/or readiness?

This project is ready to begin by marketing and promotion on May 1st 2023.

PRINT FORM

SUBMIT FORM

## **Seward Foundation**

### **Grant Application – attached documents**

**Description of the Project: Please provide a brief description of the project under consideration and the proposed use of Seward Foundation, Inc. grant monies.**

Seward Arts Council, Inc.

Project Name: 5<sup>th</sup> Street Summer Music Series

The Seward Arts Council is putting together a Summer Music Series at the community Bandshell in Seward in 2023. We plan to create a family friendly community event that is free and open to the public. We hope to close 1 block of 5th street off to have food vendors lining the streets around the bandshell, potential artist demonstrations. This series will be once per month on "Second Saturday Art Connections" which are days filled with a variety of art events going on in the community. The tentative schedule is listed below for these Second Saturdays in June-September. We are including additional businesses for the daytime events as we get further along in the planning process. We plan to close out the day with an outdoor concert at the bandshell from 5:00-8:00pm. The dates we are planning for are June 10, July 8, August 12, September 9 and we are working to book a different local band for each month. We're in the fundraising process right now to be able to bring great live music to Seward and already have one sponsorship secured. We think the community bandshell is an amazing resource to Seward and are excited to bring it to life with live music in our community.

#### **Second Saturday Art Connections Event Schedule**

- 10:00-11:30 AM Coffee & Connections at Red Path Gallery & Tasting Room - will feature a different speaker each month (artists, musicians, authors etc.)
- 10:00-11:30 AM Music Playtime at Marble Music
- 1:00-4:00PM Art Classes at Red Path Gallery & Tasting Room - classes vary each month
- 5:00-8:00PM 5th Street Summer Music Series - different band each month

**Additional Information: Please provide additional information regarding the project including the need that the project fulfills within the community and the target market for the project. How will this project be promoted to the community at large?**

Seward Arts Council, Inc., is passionate about creating art events in Seward County to build community among residents and businesses and create an economic impact through the arts. Sparked by the recent movie "Elvis", we as members of the arts council feel that music can create community and enliven the spirit of its citizens. In the movie, Elvis is inspired by the sound revival he attends as a child. This music led him to create his own sound and by doing so made an impact on community and the economy. Sound has a way of impacting the one and the many. As the arts council we feel that music is one of the things missing from our community and one of the most important things that can impact its citizens.

Our strategic vision is to use "the art of music" by offering a series of music events in the summer of 2023 and 2024. Through this vision, we see a monthly music event at the bandshell in Seward for four months of the summer season. Saturday evenings in June, July,

August, and September starting around 5pm and ending around 8pm. We plan to have a local band, promote local arts businesses, and create an environment of good cheer. By offering these four early evening concerts at the bandshell, we feel we are capturing an opportunity for new and current members of the community to gather and encourage the knitting of common good through music. Music is a creative approach to gather people together and have a broad impact on the quality of life for a significant number of people, making "feel good" moments for families and friends close to home.

These music celebrations will be free and open to the public. They will bring the community closer and serve as inspiration, resulting in more productive happy citizens. As a result, this will advance success of Seward County.

## 5th Street Summer Music Series

<i>Once per month during the summer for 4 months total</i>	June	July	August	September
Musicians	\$ 1,200.00	\$ 1,200.00	\$ 1,200.00	\$ 1,200.00
Sound equipment	\$ 750.00	\$ -	\$ -	\$ -
Restrooms x 2	\$ 400.00	\$ 400.00	\$ 400.00	\$ 400.00
Photography (2 hrs per show)	\$ 300.00	\$ 300.00	\$ 300.00	\$ 300.00
2 Bartenders & licensing fee	\$ 175.00	\$ 175.00	\$ 175.00	\$ 175.00
Bandshell Rental	\$ 50.00	\$ 50.00	\$ 50.00	\$ 50.00
Olde Glory - Rain location	\$ 150.00	\$ 150.00	\$ 150.00	\$ 150.00
Marketing				
(Logo, newspaper ads, posters, social media)	\$ 800.00	\$ 400.00	\$ 400.00	\$ 400.00
Volunteer T-shirts	\$ 150.00	\$ -	\$ -	\$ -
<b>Total Estimated Expenses per Month</b>	<b>\$ 3,975.00</b>	<b>\$ 2,675.00</b>	<b>\$ 2,675.00</b>	<b>\$ 2,675.00</b>

<b>TOTAL</b>	<b>\$ 4,800.00</b>
	<b>\$ 750.00</b>
	<b>\$ 1,600.00</b>
	<b>\$ 1,200.00</b>
	<b>\$ 700.00</b>
	<b>\$ 200.00</b>
	<b>\$ 600.00</b>
	<b>\$ 2,000.00</b>
	<b>\$ 150.00</b>
	<b>\$ 12,000.00</b>

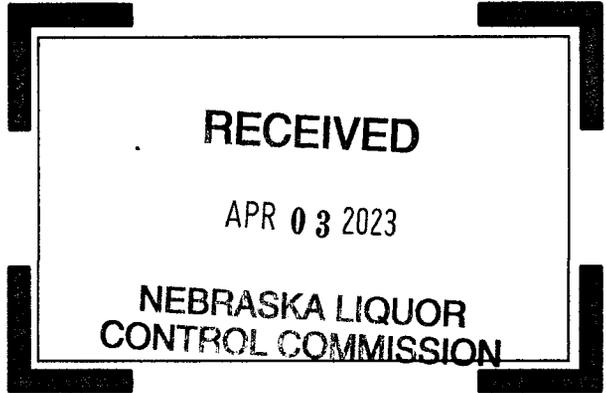
2. Consideration of a Request from the Nebraska Liquor Control Commission on Behalf of H&H Recreation, Inc. (SpareTime) to Allow for an Addition to the Existing Liquor License to Include Renovated Outdoor Area - City Clerk Bargmann

# ADDITION TO LICENSED AREA

NEBRASKA LIQUOR CONTROL COMMISSION  
301 CENTENNIAL MALL SOUTH  
PO BOX 95046  
LINCOLN, NE 68509-5046  
PHONE: (402) 471-2571  
FAX: (402) 471-2814  
EMAIL: [lcc.frontdesk@nebraska.gov](mailto:lcc.frontdesk@nebraska.gov)  
WEBSITE: [www.lcc.nebraska.gov](http://www.lcc.nebraska.gov)

License  
Class: CK

License Number:  
118158



## Application Requirements:

- Fee of \$45.00 – You may pay online at [www.ne.gov/go/NLCCpayport](http://www.ne.gov/go/NLCCpayport) or include a check made payable to the Nebraska Liquor Control Commission
- Must include a copy of the lease, deed or purchase agreement showing ownership in the name of the applicant of area to be added.
- Must include simple hand drawn sketch showing existing licensed area and area to be ADDED, must include outside dimensions in feet (not square feet), show direction North.  
DO NOT SEND BLUE PRINTS, ARCHITECT OR CONSTRUCTION DRAWINGS
- Check with your local governing body for any additional requirements that may be necessary in making this request for addition
  - Rules & Regulations Chapter 2–012.0712.07 Outdoor area shall mean an outdoor area included in licensed premises, which is used for the service and consumption of alcoholic liquors and which is contained by a permanent fence, wall or other barrier approved by the Commission and shall be in compliance with all building and fire, or other applicable local ordinances

LICENSEE NAME H+H Recreation Inc  
TRADE NAME Sparetime Lounge + Grill / Seward Bowl  
PREMISE ADDRESS 123 S 4th Street  
CITY Seward ZIP CODE 68434 COUNTY Seward  
CONTACT PERSON Tom Rief  
PHONE NUMBER OF CONTACT PERSON 402-641-5669  
EMAIL ADDRESS OF CONTACT PERSON gobowl-2000@yahoo.com

Office use only	
PAYMENT TYPE <u>CK 26592</u>	 2300003190
AMOUNT <u>\$45</u> RCPT	
RECEIVED: <u>4.3.2023</u>	
DATE DEPOSITED <u>4.3.2023</u> <u>HR</u>	

1. Will this addition cause the premises to be licensed within 150 feet of a church, school, hospital, home for indigent persons or for veterans, their wives, and children; OR within 300 feet of a college or university campus?

\_\_\_\_\_ YES X NO

If yes, provide name and address of such institution and where it is located in relation to the premises (Nebraska Revised Statute 53-177(1) **AND PROVIDE FORM 134 – CHURCH OR FORM 135 – CAMPUS AND LETTER OF SUPPORT FROM CHURCH OR CAMPUS**

2. What is being added? Explain the type of addition that is being requested, i.e. beer garden, adding to building \*if adding an outdoor area permanent fencing is required. Please contact the local governing body for other requirements regarding fencing.

dinning courtyard with a cover area and open area with fire pit. 42 in Aluminum fence.

**DESCRIPTION AND DIAGRAM OF THE AREA TO BE LICENSED**

IN THE SPACE PROVIDED BELOW OR ATTACH A DRAWING  
**SHOW EXISTING LICENSED AREA AND AREA TO BE ADDED**  
DO NOT SEND BLUEPRINTS, ARCHITECT OR CONSTRUCTION DRAWINGS  
PROVIDE LENGTH X WIDTH IN FEET (NOT SQUARE FOOTAGE)  
INDICATE THE DIRECTION OF NORTH

Building length 120 x width 98 in feet

Is there a basement? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, length \_\_\_\_\_ x width \_\_\_\_\_ in feet

Is there an outdoor area? Yes X No \_\_\_\_\_ If yes, length 45 x width 42 in feet

\*If adding an outdoor area permanent fencing is required. Please contact the local governing body for other requirements regarding fencing

Number of floors of the building \_\_\_\_\_

**PROVIDE DIAGRAM OF AREA TO BE LICENSED BELOW OR ATTACH SEPARATE SHEET**

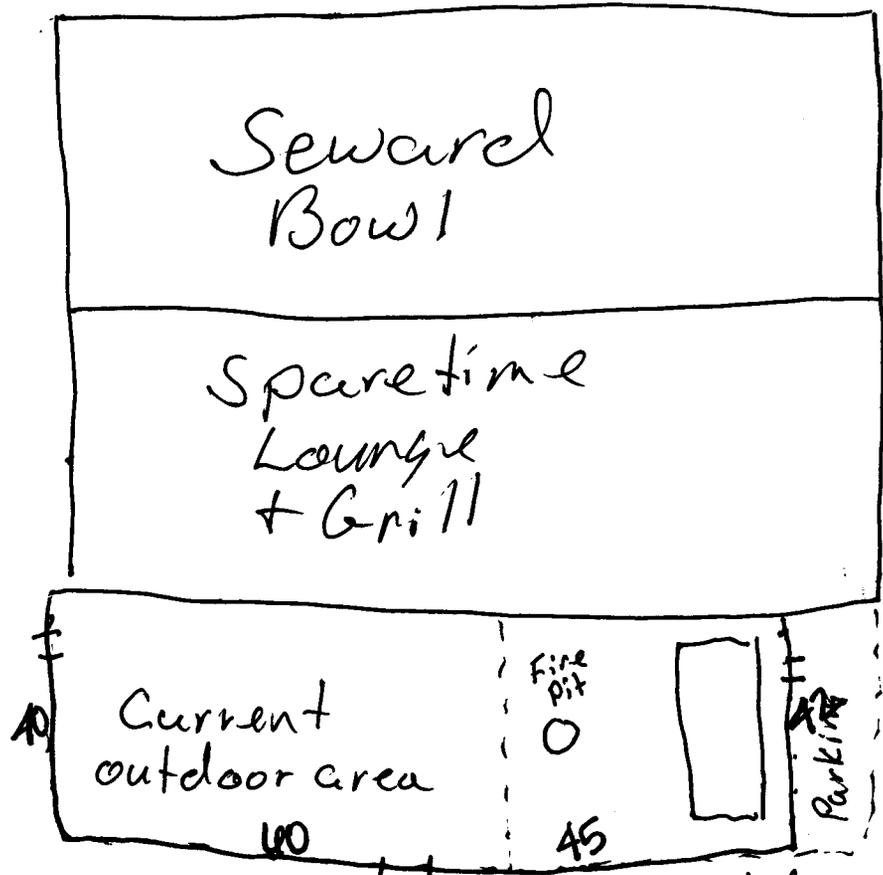
See attachment

**I acknowledge that the premises as added to comply in all respects with the requirements of the act.  
Neb Rev Stat §53-129**

Tom Oluf  
Signature of LICENSEE

Tom Rief  
Printed Name of LICENSEE

4th Street



42in aluminum fence

New outdoor area with a covered dining area

Seward Street

N

Please record and return to: Timothy L. Moll, Rembolt Ludtke LLP, 1128 Lincoln Mall, Suite 300, Lincoln, NE 68508.

### GROUND LEASE

THIS GROUND LEASE (this "Lease"), is made and entered into effective as of this 28 day of May, 2021, by and between COLUMBIA AVENUE LLC, a Nebraska limited liability company, and ELIZABETH WAKE SPARETIME LOT LLC, a Nebraska limited liability company (collectively "Lessor") and H & H RECREATION, INC., a Nebraska corporation ("Lessee"). Lessor and Lessee are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

WHEREAS, Lessor owns certain real property located at 101 S. 4<sup>th</sup> Street, Seward, Nebraska, and legally described as Lot 1, Block 11, Original Town, City of Seward, Nebraska (the "Property"); and

WHEREAS, Lessee presently owns and operates a bowling alley, restaurant, and lounge business (the "Business") on real property adjacent to the Property and has occasionally and informally used certain portions of the Property, with the permission of the Lessor, to accommodate patrons and activities associated with the Business; and

WHEREAS, the Parties wish to formalize and memorialize in writing the terms and conditions upon which Lessee may continue to use the Property in connection with its operation of the Business.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Description and Use of the Premises.

(a) Lease of the Premises. Subject to the terms, conditions, and agreements contained herein, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the the Property consisting of a commercial lot, together with any improvements, structures, fixtures, alterations, or additions located thereon (the "Premises"). For avoidance of a doubt, the eastern one-half of the Premises has been improved by certain structures, additions, and personal

property alterations owned by Lessee and related to the Business, including a chain-link fence, smoking tent, rock and gravel, and various seating areas and structures (the "Lessee Improvements"). The western one-half of the Premises is improved with an inactive car wash building owned by Landlord (the "Landlord Improvements"). The Lessee Improvements and Landlord Improvements are collectively referred to herein as the "Existing Improvements." Lessee shall have exclusive use of the Premises solely for use in connection with Lessee's Business.

(b) Improvements and Alterations.

(i) Existing Improvements. Lessee owns the Lessee Improvements, but shall be responsible for all risk of loss with respect to the Existing Improvements, all utilities (if any) serving the Existing Improvements, and for all expenses to maintain and/or repair the Existing Improvements. Lessee shall be responsible to maintain and insure the Existing Improvements and their contents and to obtain and hold all necessary permits and/or licenses for the operation of the Business on the Premises.

(ii) New Improvements. During the Term (as hereafter defined), Lessee may construct or install additional improvements or alterations on the Premises, or substantially improve, reconstruct, or modify, up to and including removal, the Existing Improvements, without the prior written consent of Lessor, provided any such new improvements are usual, customary, and substantially related to Lessee's operation of the Business on the Premises. Lessee may not engage in any improvements to the Premises outside the permitted scope described above without first submitting plans and specifications detailing such proposed improvements or alterations to Lessor and securing Lessor's prior written consent. Lessee shall pay all costs and expenses of such improvements, alterations, or modifications, shall provide evidence of such payment to Lessor upon request, and shall indemnify and hold Lessor harmless from any costs, liens, or damages arising from Lessee undertaking or otherwise commissioning such improvements, alterations, or modifications to the Premises. All work shall be performed in a good and workmanlike manner, and shall be subject to, and must comply with, the terms and requirements of this Lease. Lessee shall be responsible for risk of loss with respect to all new improvements or alterations commissioned by Lessee, shall pay all utilities (if any) serving the same, and shall be responsible for all expenses to maintain and/or repair such new improvements or alterations. Lessee agrees that no promises to alter, decorate, repair, or improve the Premises, either before or after the execution hereof, have been made by Lessor or its agents or representatives to Lessee, unless the same are expressly contained herein or made a part hereof. All work done by Lessee or its agents shall be performed in full compliance with all laws, rules, orders, ordinances, directions, regulations, and requirements of law and of Lessor and Lessee's insurance companies.

(iii) Removal. At the expiration or earlier termination of the Term, Lessee shall have the right, at its sole cost and expense, to remove any of the Existing Improvements or new improvements, trade fixtures, furnishings, equipment, signs, and personal property which were installed and paid for by Lessee during the Term; provided that Lessee shall be responsible for fully repairing, remediating, and/or promptly reimbursing Lessor for any damage caused by the removal of such

property from the Premises. Any improvements, alterations, additions, or personal property remaining on the Premises at the termination of this Lease for whatever reason shall become part of the realty and/or be considered abandoned without further notice to Lessee and shall inure to the sole benefit and ownership of Lessor, unless the Parties otherwise agree to an extension of time in writing beyond the termination date for Lessee to remove such property from the Premises.

(c) Permitted Use. The Premises shall only be occupied and used in connection with the operation of a bowling alley, restaurant, and lounge or other substantially related purposes and for no other purpose without the prior written consent of Lessor. In no event may Lessee (or its successors or assigns) use or permit the Premises to be used for any purpose related to operation of a commercial banking facility or related operations, including use as a parking lot or drive-through lane serving such facility, and violation of this covenant shall be considered a material breach of this Lease entitling Lessor to immediately terminate the Lease without further obligation to Lessee and move forward with all relief available at law or equity. Lessee covenants and agrees that it will observe and comply with all laws, orders, rules and regulations of any governmental authority relating to Lessee's use of the Premises and will not permit the same to be used for illegal purposes, nor permit any nuisance to be created or maintained thereon.

2. Term. The initial term of this Lease shall be for a period beginning on June 1, 2021 (the "Commencement Date") and continuing for a period of fifty (50) years thereafter through May 31, 2071, unless sooner terminated by either Party as provided for herein (the "Initial Term"). Following expiration of the Initial Term, and assuming Lessee is not in material default hereunder or has otherwise abandoned the Premises as defined below, Lessee is hereby granted the option to renew this Lease for an additional fifty (50) year term commencing on the first day immediately following expiration of the Initial Term (the "Renewal Term"). Such option shall be exercisable by Lessee by giving written notice to Lessor of its intent to renew at least ninety (90) days prior to the expiration of the Initial Term. If Lessee exercises its renewal option hereunder and the conditions set forth in this section are satisfied, this Lease shall continue upon the same terms and conditions as set forth herein, subject to any rental adjustments or other modifications expressly provided for herein. The Initial Term and Renewal Term (if any) are collectively referred to herein as the "Term." Notwithstanding the foregoing, Lessee shall have the right to terminate this Lease by providing one hundred eighty (180) days' advance written notice of its intent to terminate to Lessor. Additionally, following the expiration of a period of twenty-four (24) continuous months in which the Premises is not being used in connection with Lessee's Business or a substantially related business or operation, Lessor shall have the unilateral right to consider the Premises abandoned by Lessee and may at its option immediately terminate this Lease.

3. Rent; Adjustments to Rent; Late Charges; Net Lease.

(a) Base Rent. For purposes of this Lease, the term "Base Rent" shall mean the sum of Five Thousand Five Hundred and No/100 Dollars (\$5,500.00), payable annually for the first five (5) years of the Term, and as adjusted each five (5) year period thereafter as provided in Section 3(b) below. The Base Rent shall be payable through a single lump sum payment due on or before the Commencement Date specified herein in the first year of the Term, and thereafter on or before each anniversary date of the Commencement Date for

each succeeding year of the Term. All payments due from Lessee to Lessor hereunder shall be paid at such location or in such manner as Lessor may direct in writing from time to time, and shall be paid to Lessor, without setoff, deduction, or notice of demand, and in addition to all other additional rent and payments (including without limitation taxes and insurance) to be made by Lessee as herein provided.

(b) Adjustment of Base Rent. Beginning with the fifth anniversary of the Commencement Date, and on each subsequent fifth anniversary thereafter during the Term (i.e. on the first day of each new five (5) year period), the Base Rent shall be increased by three percent (3.0%) over the Base Rent amount for the expiring five-year period.

(c) Late Charge; Interest. In the event any payment due hereunder is not paid by Lessee within ten (10) days of the due date thereof, then without limitation to Lessor's other rights and remedies, Lessor may impose a late charge with respect to such past due payment in an amount equal to ten percent (10%) of the delinquent payment, which amount shall become immediately due and payable by Lessee. In addition to the foregoing, any sums due hereunder which are not paid within ten (10) days of the due date thereof shall additionally accrue interest at the rate of twelve percent (12%) per annum until paid.

(d) Additional Rent. Lessee shall pay, as additional rent, all charges required to be paid by Lessee hereunder, whether or not the same are designated as "additional rent" herein. If such charges are not paid at the time provided in this Lease, they shall be payable as additional rent upon demand or with the next installment of rent thereafter falling due, whichever shall first occur, and subject to the penalties and provisions contained in Section 2(c) above; but nothing herein contained shall be deemed to suspend or authorize delay in the payment of any charge at the time the same becomes due and payable under this Lease.

(e) Net Lease. This Agreement is intended to be a "net lease," such that the payments to Lessor shall be net of all expenses related to the Premises made the responsibility of Lessee herein. All questions related to interpretation of this Agreement, and which Party is responsible for payment of expenses, shall be resolved such that Lessee shall pay the same as additional rent.

#### 4. Taxes.

(a) Real Property Taxes. Lessee covenants and agrees to assume and pay all real estate taxes and special assessments levied against the Premises and/or becoming due and owing during the term of this Lease (including any such increases in real property taxes associated with any new improvements undertaken by Lessee on the Premises) before the same become delinquent. Lessor agrees to promptly give Lessee written notice of the amount of said taxes after the receipt of the tax statement from the appropriate taxing authorities. Such taxes shall be paid as additional rent by Lessee to the Lessor.

(b) Personal Property Taxes. Lessee shall pay, prior to delinquency, any and all taxes and assessments levied or assessed during the Term upon or against (i) all furniture, fixtures, signs and equipment and any other personal property installed or located within the Premises; and (ii) all alterations, additions, betterments or improvements of whatsoever kind or nature, made by Lessee to the Premises, including such improvements and

betterments as presently exist or as may be made by Lessee, as the same may be separately levied, taxed and assessed against or imposed directly upon Lessee by the taxing authorities.

5. Insurance.

(a) Liability Insurance. Unless otherwise agreed by Lessor, Lessee shall carry and maintain, at Lessee's sole cost and expense and as additional rent, comprehensive liability and property damage insurance, including contractual liability insurance, protecting and indemnifying Lessor as an additional insured and Lessee as named insured, against any and all claims (including all costs and expenses of defending against the same) for personal injury, sickness, disease or death or for damage or injury to or destruction of property (including loss of the use thereof) occurring upon, in or about the Premises or any adjoining properties, streets, alleys, passageways, sidewalks, gutters, or curbs, in adequate and customary amounts, but in no event less than Three Million Dollars (\$3,000,000) in respect of personal injury, sickness, disease, or death resulting from any one occurrence, and One Million Dollars (\$1,000,000) in respect of damage or injury to or destruction of property from any one occurrence.

(b) Hazard Insurance. Unless otherwise agreed by the Lessor, Lessee shall carry and maintain, at Lessee's sole cost and expense and as additional rent, fire and extended casualty coverage insurance in standard policies in an amount equal to the full insurable value of the Premises and such other coverage as deemed necessary by Lessor. Lessee shall use every reasonable precaution against fire and other hazard to the Premises.

(c) Provisions Applicable to all Insurance.

(i) Such insurance shall be issued by good and responsible insurance companies licensed to transact business in the State of Nebraska and acceptable in all respects to Lessor.

(ii) Each insurance policy shall contain agreement by or endorsements of the insurer that (1) such policy shall not be cancelled for any cause without at least ten (10) days prior notice from the insurer to Lessor; (2) losses shall be payable by the insurer notwithstanding any act or negligence of Lessee which might otherwise result in the forfeiture of said insurance; and (3) no act or omission of Lessee shall invalidate the interest of Lessor.

(iii) Certificates of insurance, together with copies of the endorsements naming Lessor as an additional insured, shall be delivered to Lessor prior to Lessee's occupancy of the Premises and from time to time upon reasonable request of Lessor.

(iv) If Lessee fails to maintain such insurance, Lessor may, at its election, procure the same, charging the premium cost thereof as additional rent due hereunder, and payment by Lessor of any such premium shall not be deemed to waive or release the default of Lessee in the payment thereof.

(v) Insurance coverage herein provided shall be for the benefit of both Lessor and Lessee, as their respective interests may appear, and any mortgagees designated by Lessor; and Lessor shall be an additional named insured under all such policies of insurance.

6. Utilities. All heat, electric current, water, sewage, gas, garbage or special fees, metering charges or utility charges of any nature used on the Premises shall be arranged by and paid for directly by Lessee, unless otherwise directed by Lessor in writing.

7. Right of Entry; Security. Lessor or its agents shall have the right to enter the Premises at all reasonable hours during the day to examine the same or to make such repairs and alterations as may be necessary for the safety and preservation of the Premises, but without any obligation to make repairs, provided such entry does not unreasonably interfere with the ordinary business operations of Lessee. Notwithstanding the foregoing, Lessee shall be solely responsible for all security related to the Premises during the Term, including the use of locks, lights, and other security devices intended to ensure the safety of the Premises and prevent unauthorized access and use.

8. Signage. Lessee shall have the right to erect and maintain ordinary and customary signs relating to Lessee's use of the Premises for its Business, consistent with local sign ordinances and regulations.

9. Hazardous Materials and Usage. Lessee shall not use, store, handle, dispose of, generate, or transport to or from the Premises any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials" or "toxic substances" under any applicable laws, ordinances or regulations, except for inventory and cleaning materials used in Lessee's ordinary course of business. Lessee shall at all times comply with all federal, state, and local laws, ordinances, and regulations relating to industrial hygiene or to environmental conditions on, under or about the Premises. Lessee shall not install, use or incorporate into the Premises any asbestos or asbestos containing materials.

10. Condition of Premises.

(a) Condition. Lessee agrees that no representations, statements, or warranties, expressed or implied, have been made by or on behalf of Lessor respecting the condition of the Premises or the use that may be made of the Premises. Lessee accepts the Premises in its then existing condition and state of repair, "AS IS," "WHERE-IS" as of the date of delivery of possession. In no event shall Lessor be liable for any other defect in the Premises or for any limitation on its use. LESSOR SPECIFICALLY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES AND CONDITIONS WITH RESPECT THERETO, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND WITH RESPECT TO THE OPERATIONAL PERFORMANCE AND USE OF ANY OF THE FOREGOING.

(b) No Services. Lessor shall not be required to furnish any services, utilities, or facilities to the Premises or to make any repairs or alterations in or to the Premises. Lessor

shall not be liable for any stoppage, interruption, or insufficiency of any such services, utilities, or facilities to the Premises.

(c) Repair and Maintenance. Lessee will keep the Premises in good order, condition and repair, reasonable wear and tear and casualty loss excepted, and shall also keep the same in a clean, sanitary and safe condition in accordance with the applicable laws of the jurisdiction in which the Premises are located. Lessee shall be responsible for all maintenance, repair and replacement of the Premises and items of property or improvements constructed or located thereon, and for all exterior lighting, signing, cleaning, painting, policing and security, pest control, fire protection, curbs, walkways, drainage, pipes, ducts, conduits and similar items, and landscaping related to the Premises. Lessee shall keep the Premises and open areas adjoining the Premises free and clear from refuse and debris. Lessee agrees that all personal property upon the Premises shall be at the risk of Lessee only, and that Lessor shall not be liable for any damage thereto or theft thereof. Lessee shall be responsible for all other repair of the Premises.

(d) Title. Except as may otherwise be provided for herein, the Premises belong to and are the property of Lessor.

(e) Snow and Ice Removal. Lessee shall keep all sidewalks, access drives, parking areas, and exterior grounds serving the Premises in neat and orderly condition, including mowing and trimming as applicable, and free and clear of ice, snow, and other debris and hazards.

11. Paramount Title of Lessor. Nothing in this Lease shall authorize Lessee to do or refrain from doing any act which shall in any way encumber the title of Lessor in and to the Premises, nor shall the title, interest, or estate of Lessor therein be in any way subject to any claim by way of lien or encumbrance, whether arising by operation of law or by virtue of an express or implied contract by Lessee. Any claim to a lien or encumbrance upon said Premises, arising from any such contrary act or omission of Lessee, shall accrue only against the leasehold estate of Lessee, and shall in all respects be subject and subordinate to this paramount title and right of Lessor in and to the Premises.

12. Indemnification of Lessor. Lessee will indemnify and save harmless Lessor, and its owners, managers, agents, heirs, successors, assigns, and representatives, against and from all liabilities, obligations, damages, penalties, claims, costs, charges and expenses which may be imposed upon or incurred by or asserted against Lessor by reason of any of the following occurring during the term of this Lease: (i) any work or thing done in, on or about the Premises, or any part thereof, by or on behalf of Lessee; (ii) any negligence on the part of Lessee or any of its agents, contractors, servants, employees, licensees, invitees, successors, assigns, and representatives; (iii) any accident, injury or damage to any person or property occurring in, on or about the Premises; or (iv) any failure on the part of Lessee to perform or comply with any of the covenants, agreements, terms, or conditions contained in this Lease on its part to be performed or complied with or any applicable law or regulation related to Lessee's operation of the Business in or about the Premises. In case any action or proceeding is brought against Lessor by reason of any such claim, Lessee upon written notice from Lessor will, at Lessee's expense, resist or defend such action or proceeding.

13. Assignment. Lessee may assign its rights hereunder as part of a sale or other succession planning transfer of the Business, or to a separate business entity wholly owned by Lessee, upon providing written notice of the same to Lessor; provided, however, Lessee shall provide a copy of this Lease to the assignee, and the assignee shall agree to be bound by all terms of this Lease, including those related to permitted uses set forth in Section 1(c) above, as fully as if such assignee were expressly named as Lessee hereunder.

14. Defaults and Remedies.

(a) Event of Default. The occurrence of any one or more of the following events shall constitute an "event of default" hereunder:

(i) The failure of Lessee to pay the Base Rent, additional rent, or any other monetary obligation of Lessee hereunder for a period of sixty (60) days after such amounts shall have become due and payable to Lessor.

(ii) The failure of Lessee to comply with any other provision of this Agreement for a period of thirty (30) days after receipt of written notice of such failure from Lessor.

(iii) Voluntary or involuntary bankruptcy, assignment for benefit of creditors, reorganization or rearrangement under the Bankruptcy Act, receivership, dissolution or the commencement of any action or proceeding for dissolution or liquidation of Lessee or any other similar action or proceeding whether instituted by or against Lessee.

(iv) Expiration of a period of twenty-four (24) continuous months in which the Premises is not being used in connection with Lessee's Business or a substantially related business or operation.

(b) Remedies. Upon a default by Lessee, Lessor shall be entitled to all remedies at law or in equity arising from such default. Lessor may re-enter and recover possession of the Premises as if the Premises were forcibly detained, and Lessee waives any demand for possession of the Premises and any exemptions granted to Lessee by law. If Lessor elects to re-enter and recover possession of the Premises, Lessor may, at the election of Lessor, either terminate this Agreement or relet the Premises on such terms and conditions as Lessor may determine. Upon reletting the Premises, rent received by Lessor shall be applied in the following order:

(i) To the costs of such reletting, including brokerage fees and attorney's fees incurred by Lessor for such re-entry and recovery of possession of the Premises;

(ii) To any sums due, other than rent, from Lessee to Lessor;

(iii) To rent and additional rent due and unpaid;

(iv) To future rent to become due hereunder.

If the rent received by Lessor shall be insufficient to satisfy the current obligations of Lessee to Lessor, the deficiency shall be computed and billed by Lessor to Lessee monthly and shall be paid by Lessee on or before the tenth (10th) day of the month following receipt of the billing. Notwithstanding any election by Lessor, Lessor may, at any time following the default of Lessee, terminate this Agreement by giving written notice of such termination to Lessee. If Lessee fails to pay, when due, any accrued rents, taxes, assessments, utility charges or other charges on the Premises which are the responsibility of Lessee hereunder, then Lessor, at its sole option, shall have the right to pay the same. If paid by Lessor, said amount shall be considered as additional rent due from Lessee to Lessor, and said sum shall become immediately due and payable by Lessee.

(c) Surrender of Possession. Lessee agrees that upon receiving notice of termination from Lessor, it shall at once surrender possession of the Premises to Lessor in accordance with the provision herein, and Lessee expressly waives the service of any other notice of intention to terminate this Lease or of intention to re-enter which may be provided for by any statute or other law, and agrees that the occurrence of any of the events of default as specified in Section 10(a) above shall, of itself upon service of the notice above provided for, constitute a forcible detainer by Lessee of the Premises within the meaning of the statutes of the State of Nebraska. No receipt of moneys by Lessor from Lessee after any termination, howsoever occurring, of this Lease, or after the giving of any notice, shall reinstate, continue, or extend the term of this Lease or affect any notice given to Lessee prior to the receipt of any such money.

15. Condemnation. If all or a substantial portion of the Premises shall be taken or condemned for any public use or purpose so as to render the Premises unsuitable for occupancy, this Agreement shall terminate on the date when possession shall be required for such use or purpose, and the rent shall be prorated to the date of such termination, without apportionment of the award for such taking or condemnation, which shall belong exclusively to Lessor.

16. Miscellaneous.

(a) Notices. All notices, demands, and requests by Lessor to Lessee shall be sent by United States certified mail, postage prepaid, addressed to Lessee, at such place as Lessee may from time to time designate in a written notice to Lessor. All notices, demands, and requests by Lessee to Lessor shall be sent by United States certified mail, postage prepaid, addressed to Lessor, at such place as Lessor may from time to time designate in a written notice to Lessee.

(b) No Waiver. No waiver by Lessor of a default by Lessee shall be implied and no express waiver shall extend to any default other than that specified therein and then only for the period and to the extent specifically stated. The failure of Lessor to insist upon strict performance by Lessee of any of the covenants, conditions and agreements of this Agreement shall not be deemed a waiver of any of the Lessor's rights or remedies and shall not be deemed a waiver of any subsequent breach or default by Lessee of any covenant, condition or term of this Agreement. No surrender of the Premises shall be affected by Lessor's acceptance of rental or by any other means whatsoever, unless the same is evidenced by Lessor's written acceptance of such as a surrender.

(c) Entire Agreement. This Lease contains all the agreements, representations, and conditions made by and between the Parties hereto. No provision of this Lease shall be changed orally or waived, modified, discharged, or amended, except by a writing duly signed by the Party to be charged therewith.

(d) Relationship of Parties. The relationship between the Parties hereto is that of Lessor and Lessee, and Lessee specifically acknowledges that all rights, remedies, and privileges afforded Lessor under the laws of the State of Nebraska accrue to Lessor hereunder. Any suggestions arising out of anything herein contained that the relationship between the Parties is that of master and servant, or principal and agent, or of a partnership or joint venture, or that Lessor is in any way liable for the debts, obligations, or liabilities of Lessee, is hereby expressly negated.

(e) Governing Law; Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska. If any term or provision of this Lease, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(f) Run with the Land. All the covenants, agreements, stipulations, provisions, conditions, and obligations herein expressed and set forth shall be considered as running with the land and shall extend to, bind, and inure to the benefit of the heirs, executors, administrators, successors, and assigns of Lessor and Lessee, respectively, as fully as if such words were written whenever reference to Lessor and Lessee occur in this Lease.

(g) Time of the Essence. Time is of the essence for each and every provision of this Lease.

(h) Recordation. The Parties hereto will, at the sole option of Lessor, simultaneous with the execution and delivery of this Lease, cause for a copy of this Lease, or a short-form version thereof, to be recorded in the public land records of the county in which the Premises is located.

(i) Counterparts. This Lease may be executed simultaneously in such counterparts as the parties may desire, each of which shall be deemed an original, but all of which shall constitute one and the same instrument, and will be effective when the counterparts, which together contain the signatures of each party, will have been delivered to the parties. Delivery of executed signature pages by electronic or facsimile transmission will constitute effective and binding execution and delivery of this Lease.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Lease effective as of the date and year first set forth above.

LESSOR:

COLUMBIA AVENUE LLC

Max T. Wake

Max T. Wake, Manager

ELIZABETH WAKE SPARETIME LOT LLC

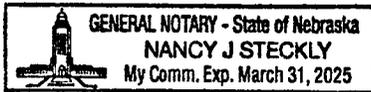
Elizabeth B. Wake

Elizabeth B. Wake, Manager

STATE OF NEBRASKA )  
 ) ss:  
COUNTY OF SEWARD )

The foregoing instrument was acknowledged before me on this 28<sup>th</sup> day of May, 2021, by Max T. Wake, as Manager of Columbia Avenue LLC, a Nebraska limited liability company, on behalf of the company.

(SEAL)

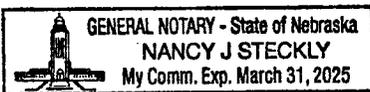


Nancy J. Steckly  
Notary Public  
Printed Name of Notary: Nancy J Steckly

STATE OF Nebraska )  
 ) ss:  
COUNTY OF Seward )

The foregoing instrument was acknowledged before me on this 18 day of May, 2021, by Elizabeth B. Wake, as Manager of Elizabeth Wake Sparetime Lot LLC, a Nebraska limited liability company, on behalf of the company.

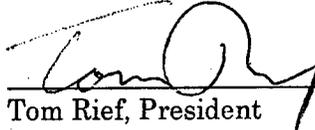
(SEAL)



Nancy J. Steckly  
Notary Public  
Printed Name of Notary: Nancy J Steckly

LESSEE:

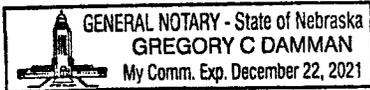
H & H RECREATION, INC.

  
\_\_\_\_\_  
Tom Rief, President

STATE OF NEBRASKA            )  
  ) ss:  
COUNTY OF SEWARD         )

The foregoing instrument was acknowledged before me on this 19<sup>th</sup> day of June, 2021, by Tom Rief, as President of H & H Recreation, Inc., a Nebraska corporation, on behalf of the corporation.

(SEAL)



  
\_\_\_\_\_  
Notary Public  
Printed Name of Notary: \_\_\_\_\_

4/3/2023

1:23:56 PM

hannah.yates

S T A T E O F N E B R A S K A  
LIQUOR CONTROL COMMISSION

MISCELLANEOUS DEPOSIT

LICENSE INFORMATION:

LICENSE NO. 118158

CATEGORY n ( R, S, M, D )

RECEIVED FROM:

REFERENCE: h & H recreation inc  
ck 26592

	CHECK	CASH	CURRENCY
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REMITTANCE AMOUNT:	000045 00		

ACCT

DEPOSIT (+/-)

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DEPRESS: ENTER - PROCESS

PA1 - RETURN TO MENU

3. Consideration of a Resolution to Adjust Burn Site Fees to Possess a Key, Effective Immediately for New Users and January 1, 2024 for Current Holders - City Administrator Butcher

RESOLUTION NO. 2023-3

WHEREAS, the City Council may by resolution fix the hours of opening and closing of the Seward Municipal Burnpile and former dumping grounds located approximately one mile south and one-half mile east of the City of Seward, Nebraska, and

WHEREAS, it is necessary to restrict and limit the materials to be deposited at such landfill to be wood, grass, leaves, and related yard and garden debris only and provide for a time that the same is open to the residents of the City of Seward, Nebraska for access thereto and for the issuance of permits and fees for the use thereof for the purposes of this resolution.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF SEWARD, NEBRASKA that:

1. The City of Seward's Municipal Burnpile and former dumping grounds shall be used for the deposit and dumping and as a burn site for brush, wood pallets, logs, trees under 8 foot lengths and untreated lumber. Plywood, particle board, painted lumber, treated lumber, household furniture, cardboard, household garbage, railroad ties, telephone poles, fence posts, dirt, stumps, paint, chemicals, batteries, and tires shall not be accepted at the site; this limitation being by order of the Nebraska Department of Environment and Energy. Grass, leaves, and related yard and garden debris shall be deposited and dumped at a separate specially designated location at the burnpile site and not co-mingled with the wood products.
2. Said burnpile site and grounds shall be open for allowed items only to residents of the City of Seward on Saturdays of each week at hours to be established except in the winter months which will be set up and posted on a yearly basis. If used during this specified time limit, no fee shall be charged, nor permit required.
3. Access to use of the site on an irregular basis on Monday through Friday of each week for deposit of allowed items for a twenty-four (24) hour period may be obtained during regular City business days and hours, upon request at City and in payment of the following fees:

DAILY LEASE FEE

Address within City Limits:	
Individual	\$ 15.00
Businesses	\$100.00
<u>Address within Seward County:</u>	
Individual	\$ 30.00
Businesses	\$100.00
Non-Resident Businesses	\$100.00

4. Upon approval for access to the site on a regular basis, a key may be issued by the City Clerk's Office to residents and industries for deposit of approved wood products and approved lawn debris in payment of the following lease fee and completion of an application:

ANNUAL LEASE FEE

Address within City Limits:	
Individual	\$ 75.00
Businesses	\$500.00
Address within Seward County:	
Resident	\$150.00
Businesses	\$500.00

Hours of access or other limitations and restrictions may be designated by the City Council as it may determine. In addition to the Annual Lease Fee, a seventy-five dollar (\$75.00) deposit shall be made for the key issued, returnable to the permittee upon surrender of such key to the City.

5. No key leased shall be assigned or transferred by the lessee nor used for any other purpose than that provided for in this resolution. If any issued key is used in violation of this resolution, it shall be revoked and allowance of lessee to deposit any items shall cease upon written notice from the City Administrator.

Resolution 26-12 and all previous resolutions in conflict with this resolution are hereby revoked.

The Mayor declared the resolution adopted.

Dated: April 18, 2023

THE CITY OF SEWARD, NEBRASKA

ATTEST:

\_\_\_\_\_  
Joshua Eickmeier, Mayor

\_\_\_\_\_  
Derek Bargmann  
City Clerk

(SEAL)

RESOLUTION NO. 2023-3

WHEREAS, ~~Section 4-402 of the City Code provides that~~ the City Council may, by resolution, fix the hours of opening and closing of the Seward Municipal Burnpile and former dumping grounds located approximately one mile south and one-half mile east of the City of Seward, Nebraska, and

WHEREAS, it is necessary to restrict and limit the materials to be deposited at such landfill to be wood, grass, leaves, and related yard and garden debris only and provide for a time that the same is open to the residents of the City of Seward, Nebraska for access thereto and for the issuance of permits and fees for the use thereof for the purposes of this resolution.

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF SEWARD, NEBRASKA that:

1. The City of Seward's Municipal Burnpile and former dumping grounds shall be used for the deposit and dumping and as a burn site for brush, wood pallets, logs, trees under 8 foot lengths and untreated lumber. ~~Plywood, particle board, painted lumber, treated lumber, household furniture, cardboard, household garbage, railroad ties, telephone poles, fence posts, dirt, stumps, paint, chemicals, batteries, and tires shall not be accepted at the site; this limitation being by order of the Nebraska State Department of Environmental Control~~Department of Environment and Energy. Grass, leaves, and related yard and garden debris shall be deposited and dumped at a separate specially designated location at the burnpile site and not co-mingled with the woods products.
2. Said burnpile site and grounds shall be open for allowed items only to residents of the City of Seward on Saturdays of each week at hours to be established except in the winter months which will be set up and posted on a yearly basis. If used during this specified time limit, no fee shall be charged, nor permit required.
3. Access to use of the site on an irregular basis on Monday through Friday of each week for deposit of allowed items for a twenty-four (24) hour period may be obtained during regular City business days and hours, upon request at City and in payment of the following fees:

DAILY USE-LEASE FEE

<u>Address within City Limits:</u>	
<del>Resident</del> <u>Individuals</u>	_____ \$ 15.00
<del>Resident</del> Businesses _____	<u>\$100.00</u> <del>20.00</del>
<u>Address within Seward County:</u>	
<del>Non-Residents</del> <u>Individual</u>	_____ \$30.00
<del>Non-Resident</del> Businesses _____	<u>40.00</u> <del>100.00</del>

**Commented [DB1]:** Daily use fees were approx 1/5 of annual fee, so it has been adjusted accordingly. We only had 1 business outside of Seward Co. using the site, so I designated by individual/business within City limits and individual/business within County. In my opinion, annual use should not be allowed for a non-Seward County entity.

4. Upon approval for access to the site on a regular basis, a key may be issued by the City Clerk-Treasurer's Office to ~~businesses~~residents and industries for deposit of approved wood products only and approved lawn debris in payment of the following lease fee and completion of an applications:

ANNUAL LEASE FEE

<u>Address within City Limits:</u>	
<del>Resident</del> <u>Individual</u>	_____ \$ 75.00
<del>Resident</del> Businesses _____	<u>\$500.00</u> <del>100.00</del>
<u>Address within Seward County:</u>	
<del>Resident</del> <u>Non-Residents</u>	_____ \$150.00
<del>Non-Resident</del> Businesses _____	<u>\$500.00</u> <del>200.00</del>

Hours of access or other limitations and restrictions may be designated by the City Council as it may determine. In addition to the Annual Lease Fees, a seventy-five dollar (\$75.00) deposit shall be made for the key issued, returnable to the permittee upon surrender of such key to the City.

5. No ~~permit-key granted-leased~~ shall be assigned or transferred by the ~~permittee-lessee~~ nor used for any other purpose than that provided for in this resolution. -If any ~~permit-issued key~~ is used in violation of this resolution, it shall be revoked and ~~allowance of lessee to depositing of allowed any~~ items shall cease ~~as to the violating permittee~~ upon written notice from the City ~~Administrator~~. ~~Such revocation shall be approved by the City Council.~~

Resolution 26-12 and all previous resolutions in conflict with this resolution are hereby revoked.

The Mayor declared the resolution adopted.

Dated: April 18, 2023

THE CITY OF SEWARD, NEBRASKA

ATTEST:

\_\_\_\_\_  
Joshua Eickmeier, Mayor

\_\_\_\_\_  
Derek Bargmann  
City Clerk

(SEAL)

4. Consideration of a Resolution Directing the Conveyance of Real Property, Legally Described as Lot 1, Summit Addition, City of Seward, Seward County, Nebraska to Summit Contracting, Inc - City Administrator Butcher

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the “Agreement”) is made and entered into on March \_\_\_\_, 2023, by and between City of Seward, Nebraska (the “Seller”), and Summit Contracting, Inc. a South Dakota corporation (the “Buyer”).

### RECITALS

A. Seller is the owner of certain real property (the “Property”) legally described as:

Lot 1, Summit Addition, City of Seward, Seward County, Nebraska.

B. Seller desires to sell and Buyer desires to acquire the property subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of, and based on, the foregoing Recitals and the mutual promises and agreements set forth below, the parties agree as follows:

1. Transfer of Property.

1.1 Sale and Purchase. At Closing (as hereinafter defined), Seller shall sell to Buyer, and Buyer shall purchase from Seller the Property.

1.2 Purchase Price and Payment. Buyer shall pay to Seller One Thousand Dollars (\$1,000) (the “Purchase Price”), of which Two Hundred Dollars (\$200) (the “Earnest Money Deposit”) will be delivered to Title Services of Blue Valley (“Title Company”), upon execution of this Agreement, and the balance, without interest, of Eight Hundred Dollars (\$800) shall be payable at Closing, subject to adjustments and prorations as herein provided.

1.3 Closing. The Closing of the purchase and sale of the Property shall take place on April 14, 2023 at the Title Company’s office located in Seward, Nebraska or at such other time, date and place as the parties may mutually agree (the “Closing”).

1.4 Title and Possession. Seller agrees to deliver at Closing a general warranty deed to the Property conveying to Buyer marketable title to the Property, free and clear of all mortgages, deeds of trusts, leases, encumbrances, liens, statutory rights or covenants, except for easements and restrictions of record that are acceptable to Buyer. Seller shall deliver possession of the Property to Buyer at the time of Closing.

1.5 Title Insurance. Prior to Closing, Seller shall furnish Buyer with a commitment for an owner's policy of title insurance with copies of all easements in the amount of Purchase Price, which insures marketable title to the Property, subject only to easements and restrictions of record that are acceptable or deemed acceptable to Buyer. Absent timely objection, any easement or restriction identified in the commitment shall be

deemed acceptable to Buyer. Seller shall have a reasonable period to cure any unacceptable easement or restriction. The premium for the owner's title insurance policy and the closing fee of the Title Company shall be divided equally between Seller and Buyer.

1.6 Taxes, Assessments, and other Costs. Seller shall be responsible for all taxes relating to the Property for the year preceding Closing and all prior years as well as all special assessments levied prior to Closing. Taxes relating to the Property for the calendar year when Closing occurs shall be pro-rated as of the date of Closing. Buyer shall pay the filing fee which becomes payable upon recordation of the warranty deed.

1.7 Purchase Agreement Preparation and Legal Representation. The cost of preparation of this Purchase Agreement shall be paid for by Seller, which shall be prepared by the law firm of Hoffschneider Law, P.C. LLO. Should Buyer choose to be represented by legal counsel, Buyer shall be responsible for all of Buyer's own attorney fees and costs charged to Buyer by Buyer's attorney.

## 2. Representations and Warranties.

2.1 Representations and Warranties of Seller. Seller represents and warrants to Buyer as follows:

2.1.1 Hazardous Substances. Seller hereby represents that the Property does not contain any known substances deemed hazardous under any applicable Local, State and Federal laws and regulations. Seller specifically grants Buyer the right to conduct an environmental study at any time prior to Closing to determine whether any environmental hazards exist. Seller acknowledges that it has made such representations and that such representations are a material inducement to Buyer to enter into this Agreement. In the event hazardous substances are discovered on the Property, Buyer may terminate this Agreement by written notice to the Seller, and the Buyer shall receive a refund of all money deposited with the Title Company

2.1.2 Maintenance of the Property. Until possession is given to Buyer, Seller will keep and maintain the Property in as good condition as it now is, reasonable wear and tear excepted.

2.1.3 No Brokerage Agreement. Seller has not entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of Buyer to pay any finder's fee, brokerage or agent's commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby. Seller acknowledges that Kelly R. Hoffschneider of Hoffschneider Law, P.C., LLO is a licensed real estate broker in the State of Nebraska, but has not been retained in that capacity.

2.2 Representations and Warranties of Buyer. Buyer represents and warrants to Seller as follows:

2.2.1 No Brokerage Agreement. Buyer has not entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of Seller to pay any finder's fee, brokerage or agent's commission or other like payment in connection with the negotiations leading to this Agreement or the consummation of the transactions contemplated hereby. Buyer acknowledges that Kelly R. Hoffschneider of Hoffschneider Law, P.C. LLO is a licensed real estate broker in the State of Nebraska, but has not been retained in that capacity.

### 3. Default

3.1 Default of Seller. If Buyer shall perform all of its obligations and terms of this Agreement, and Seller shall default in the performance of any of the terms and conditions of this Agreement, Buyer may elect to terminate this Agreement, and shall be entitled to a return of the Earnest Money Deposit under Paragraph 1.2 of this Agreement, and to pursue any other legal or equitable remedies against Seller, including, without limitation, a suit for specific performance.

3.2 Default of Buyer. If Seller shall perform all its obligations and terms of the Agreement, and Buyer shall default in the performance of any of the terms and conditions of this Agreement, the Seller may, at their option, elect to terminate the Agreement and receive and retain the Earnest Money Deposit under Paragraph 1.2 of this Agreement, and pursue any other legal or equitable remedies against Buyer, including, without limitation, a suit for specific performance.

### 4. Miscellaneous.

4.1 Binding Effect; Benefits. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

4.2 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

4.3 Further Assurances. Each of the parties hereto, without further consideration, agrees to execute and deliver such other documents and take such other action, whether prior to or subsequent to Closing, as may be necessary to more effectively consummate the intent and purpose of this Agreement.

4.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

4.5 Notices. All notices, requests, demands, objections and other communications under this Agreement shall be in writing and shall be deemed to have been duly given when delivered personally or 48 hours after being mailed registered or certified mail, return receipt requested, postage prepaid, to the party at the following

address or to such other address as any party hereto may from time to time in writing designate to the other parties:

If to Seller: City of Seward  
P.O. Box 38  
537 Main Street  
Seward, NE 68434

With a Copy to: Kelly R. Hoffschneider  
Hoffschneider Law, P.C., LLO  
1120 K Street, Suite 200  
Lincoln, NE 68508  
kelly@hoffschneiderlaw.com  
(402) 261-7677

If to Buyer: Summit Contracting, Inc.  
36581 SD Hwy 44  
Platte, SD 57369

4.6 Survival and Nonmerger. All terms, conditions, obligations, representations and warranties contained in this Agreement shall survive the execution hereof and the Closing hereunder, including, but not limited to, the execution and delivery of any deed related to the Property to be conveyed hereunder and shall not merge into any deed.

4.7 Time is of the Essence. For purposes of the respective obligations of the parties hereto, the parties agree that time is of the essence in the performance of their respective obligations hereunder.

4.8 Risk of Loss. All risk of loss and damage to the Property or other casualty until Closing is assumed by the Seller.

4.9 Severability. If for any reason whatsoever any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable, or invalid, as applied to any particular case or in all cases, such circumstance shall not have the effect of rendering such provision invalid in any case as of rendering any other provision of this Agreement inoperative, unenforceable, or invalid.

4.10 Captions. The captions in this Agreement are inserted only as matters of convenience and for reference and in no way define or limit the scope or intent of the various provisions therein, or conditions thereof.

The rest of this page is left intentionally blank. The signatures of the parties are on the following pages.

**SELLER:**

City of Seward, Nebraska

By: \_\_\_\_\_  
Joshua Eickmeier, Mayor

STATE OF NEBRASKA    )  
                                  )  
COUNTY OF SEWARD    )       ss.

The foregoing instrument was acknowledged before me this \_\_\_\_ day of March, 2023, by Joshua Eickmeier, Mayor of the City of Seward, Seller.

\_\_\_\_\_  
Notary Public

**BUYER:**

Summit Contracting, Inc.

By: \_\_\_\_\_  
Its:

STATE OF NEBRASKA    )  
                                  )  
COUNTY OF \_\_\_\_\_ )       ss.

The foregoing instrument was acknowledged before me this \_\_\_\_ day of March, 2023, by \_\_\_\_\_, \_\_\_\_\_ of Summit Contracting, Inc., Buyer.

\_\_\_\_\_  
Notary Public

**RESOLUTION NO. 2023-4**

**CITY OF SEWARD, NEBRASKA**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEWARD, NEBRASKA  
AUTHORIZING THE CONVEYANCE OF CERTAIN REAL PROPERTY VALUED AT LESS THAN \$5,000  
TO SUMMIT CONTRACTING, INC.**

**Recitals**

A. The City of Seward, Nebraska ("City"), owns certain real property ("Property") located in Seward County and more particularly described as follows:

Lot 1, Summit Addition, City of Seward, Seward County, Nebraska

B. The City currently owns and maintains the Property.

C. The City desires to convey the Property to Summit Contracting, Inc.

NOW THEREFORE, be it resolved by the City of SEWARD, Nebraska:

1. The City hereby approves the conveyance and transfer of the Property to Summit Contracting, Inc. in accordance with Nebraska law.

2. The Mayor of the City is hereby authorized per Seward Municipal Code Section 340-1.2(F) to execute a Purchase Agreement and warranty deed and to take all actions necessary to effectuate the transfer of the Property to Summit Contracting, Inc.

This has been approved as of the 18th day of April, 2023.

CITY OF SEWARD, NEBRASKA

By: \_\_\_\_\_  
Joshua Eickmeier  
Mayor

ATTEST: \_\_\_\_\_  
Derek Bargmann  
City Clerk

(Seal)

5. Items Related to the Construction of the South Water Tower - City Engineer Oneby
  - A. Consideration of a Construction Contract with General Excavating for Utilities/Site Work and Authorization for Mayor to Sign All Documents

# AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between **City of Seward** (“Owner”) and General Excavating (“Contractor”).

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

## ARTICLE 1—WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. Work shall consist of all excavation, installation of water mains, storm sewer and related work, bedding, backfilling, grading, valves, hydrants, disinfection and testing of new water mains, connections to existing water mains, fittings, construction of parking lot, pavement/sidewalk removal and replacement, seeding, sodding, and landscaping, installation of sprinkler system, , and all other incidental work as further described in the plans and in these specifications. The project shall be bid on a Unit Price basis.

## ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

**500,000-Gallon Water Tower-Utilities and Site Work – Utilities and Site Work**

**Seward, Nebraska**

**Olsson Project 019-31800**

## ARTICLE 3—ENGINEER

3.01 The Owner has retained Olsson (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

## ARTICLE 4—CONTRACT TIMES

4.01 *Time is of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Contract Times: Dates*

A. The Work will be substantially complete on or before **June 1, 2024**, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **August 1, 2024**.

#### 4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. *Substantial Completion:* Contractor shall pay Owner **\$1,000** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
  2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$500** for each day that expires after such time until the Work is completed and ready for final payment.

#### **ARTICLE 5—CONTRACT PRICE**

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

- A. For all Work other than Unit Price Work, a lump sum of \$ \_\_\_\_\_ 0.00

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

- B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item).

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

- C. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment)  
\$ 696,785.00
- D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

#### **ARTICLE 6—PAYMENT PROCEDURES**

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the third Tuesday of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
    - a. **95** percent of the value of the Work completed (with the balance being retainage).
      - 1) If 50 percent or more of the Work has been completed, as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
    - b. **95** percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to **95** percent of the Work completed.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

**ARTICLE 7—CONTRACT DOCUMENTS**

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
1. This Agreement.
  2. Bonds:
    - a. Performance bond (together with power of attorney).
    - b. Payment bond (together with power of attorney).
  3. Bid Form
  4. General Conditions.

5. Supplementary Conditions.
  6. Specifications as listed in the table of contents of the project manual.
  7. Drawings (not attached but incorporated by reference) consisting of **18** sheets with each sheet bearing the following general title: **500,000-Gallon Water Tower – Utilities and Site Work, Seward, Nebraska**.
  8. Drawings listed on the attached sheet index.
  9. Addenda (numbers   1   to   1  , inclusive).
  10. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid (pages C-410-1 to C-410-4, inclusive)
    - b. Documentation submitted by Contractor prior to Notice of Award, SRF Funding Documents.
  11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed.
    - b. Work Change Directives.
    - c. Change Orders.
    - d. Field Orders.
    - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## **ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS**

### **8.01 Contractor's Representations**

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
  2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to

existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.

5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

#### 8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Contract).

Owner:

City of Seward

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name: Joshua Eickmeier

(typed or printed)

Title: Mayor

(typed or printed)

Attest:

(individual's signature)

Title: City Clerk

(typed or printed)

Address for giving notices:

City of Seward

537 Main St

Seward, NE 68434

Designated Representative:

Name: Michael Oneby

(typed or printed)

Title: City Engineer

(typed or printed)

Address:

537 Main St

P.O. Box 38

Seward, NE 68434

Phone: (402) 643-2928 x203

Email: michael.oneby@cityofsewardne.gov

(If City of Seward is a corporation, attach evidence of authority to sign. If City of Seward is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Contractor:

~~Ted C Butler~~ General Excavating  
(typed or printed name of organization)

By:

(individual's signature)

Date:

4/5/2023

(date signed)

Name: Ted C Butler

(typed or printed)

Title: President

(typed or printed)

(If \_\_\_\_\_ is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: Emily C. Dolochot

(individual's signature)

Title: HR Admin.

(typed or printed)

Address for giving notices:

6701 Cornhusker Hwy

Lincoln, Nebraska 68507

Designated Representative:

Name: Jake Shaw

(typed or printed)

Title: Project Manager

(typed or printed)

Address:

6701 Cornhusker Hwy

Lincoln, NE 68507

Phone: (402) 890-0795

Email: JShaw@generalexavating.com

License No.:

(where applicable)

State:

**Documentation of Authority to Sign**

Complete Section A *or* B, as applicable;

Section A.

I \_\_\_\_\_ certify that I am the Secretary of the corporation named as Contractor herein; that \_\_\_\_\_ who signed this contract on behalf of the Contractor was then \_\_\_\_\_ (Title) of said corporation; that said contract was duly signed for and on behalf of the said corporation by authority of its governing body and is within the scope of its corporate powers.

IN WITNESS WHEREOF, I have hereunto affixed my hand and the seal of said corporation this day \_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_.

(Corporate Seal)

\_\_\_\_\_  
Corporate Secretary

Section B.

We hereby certify that the undersigned are the sole owners of the company named as Contractor herein; and hereby attest that Tad & Beth, who signed this Agreement on behalf of said Contractor, is authorized to legally bind the Contractor to the obligations of this Agreement.

By \_\_\_\_\_

Tad & Beth  
General Excavation - President

NOTARIZATION

STATE OF NEBRASKA

COUNTY OF \_\_\_\_\_

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

B. Amendment #3 to the Professional Services Agreement for Engineering Services with Olsson, Inc.



## LETTER AGREEMENT AMENDMENT #3

Date: April 17, 2023

This AMENDMENT (“Amendment”) shall amend and become a part of the Letter Agreement for Professional Services dated August 12, 2019 and subsequent Amendments #1 and #2 between the City of Seward (“Client”) and Olsson, Inc. (“Olsson”) providing for professional services for the following Project (the “Agreement”):

### PROJECT DESCRIPTION AND LOCATION

Project is located at: Seward, Nebraska

Project Description: Water Tower Construction Phase Services

### SCOPE OF SERVICES

Client and Olsson hereby agree that Olsson’s Scope of Services under the Agreement is amended by adding the services specifically described below for the additional compensation set forth below:

#### **Phase 600: Construction Administration Services**

##### **Task 601: General Construction Administration Services**

Olsson will provide general administration services to ensure that work is performed in general conformance with the Construction Documents. By performing these services, no authority or responsibility is assumed to supervise, direct, or control the Contractor’s work or the Contractor’s means, methods, techniques, or procedures of construction. Specific items that will be performed under this task shall include:

- **Schedule Reviews:** Olsson will review and comment on the Contractor’s initial and updated construction schedule(s) and advise the Client as to its acceptability.
- **Investigate/Negotiate Contractor Claims:** Investigate and process all necessary construction contract change order justifications and related changes to the contract documents as may be necessary. Negotiate with the Contractor to assist in obtaining a fair price for the proposed work. Said negotiation will be subject to the approval of the Client.
- **Administer Change Orders:** Review documentation and administer the processing of change orders, including applications for extensions of construction time.
- **Periodic Administrative Site Visits:** Make periodic visits to the construction site to observe progress of the work and consult with the Client and Contractor concerning problems and/or progress of the work. These visits are limited to 15 trips, which is in addition to the site visit completed as part of the monthly progress meeting.

The fee for Task 601 is based upon an estimated 5 hours of administrative time per week for an anticipated construction duration of 77 weeks (May 1, 2023, through August 1, 2024), one administrative site visit per month, and an estimated two hours per week of Team Coordinator Time to generate change order and other administrative documents necessary throughout the duration of construction. If the construction duration exceeds this time, or more hours than planned are required, they will be paid for as additional services.

#### **Task 602-Preconstruction Meeting**

At a date and time selected by the Client and at facilities provided by the Client, Olsson will conduct a preconstruction conference for the project. Olsson will prepare an agenda for the conference, preside over the meeting, and distribute meeting minutes upon its conclusion.

The preconstruction meeting will include a discussion of the Contractor's tentative schedule, progress meeting schedule, procedures for transmittal and review of the Contractor's submittals, processing payment applications, critical work sequencing, change orders, record documents, and the Contractor's responsibilities for safety and first aid during construction.

It is anticipated that a single preconstruction meeting, with Maguire Iron and General Excavating (GE) in attendance in person, and Iseler Demolition in attendance remotely via Zoom or Teams.

#### **Task 603: Progress Meetings**

Olsson will attend progress meetings at regularly scheduled intervals throughout construction. The Contractor shall prepare agenda and preside over each progress meeting, and draft and distribute meeting minutes after the conclusion of each meeting.

The project budget assumes that there will be a total of fifteen (15) progress meetings, attended by the RPR, one per month for the anticipated fifteen months of construction duration. If additional meetings are required, they will be funded via a contract amendment.

#### **Task 604: Contractor Submittals Review**

Olsson will review shop drawings and other information, such as RFI's, submitted by the Contractor as required by the Construction contract documents. The review will be for general conformity to the construction contract plans and specifications for the contract and shall not relieve the Contractor of any of his contractual responsibilities. Review of applicable American Iron and Steel (AIS) documentation will be provided to satisfy State Revolving Fund (SRF) program requirements.

### **Task 605: Pay Request Review**

Olsson will review and process the Contractor's pay requests and forward them to the Client for approval. The review will be for the purpose of making a full independent mathematical check of the Contractor's pay request.

- Olsson will require that each pay request be accompanied by payroll documents from the Contractor and any of their subcontractors for the relevant pay period.
- The review will be for the purpose of verifying that the Contractor is complying with the Davis-Bacon wage rates as required in accordance with the project's funding source.
- SRF outlays will be completed with each of the Contractor's pay requests, on a monthly basis.

The fee estimate assumes that there will be two pay requests per month (one from GE and one from Maguire Iron) for the full duration of construction, and that Iseler Demolition will have one pay request, for a total of 31 pay requests.

### **Task 606: Instrumentation and Controls Services**

Olsson will program the new Allen-Bradley Micro820 PLC at the New Water Tower to include the following signals:

- Tower Inlet Valve Position Command (AO)
- Tower Outlet Valve Position Command (AO)
- Tower Inlet Valve Position Feedback (AI)
- Tower Outlet Valve Position Feedback (AI)
- Water Tower Level (AI)
- Tower Inlet Valve Open (DI)
- Tower Inlet Valve Closed (DI)
- Tower Inlet Valve Auto (DI)
- Tower Inlet Valve Fail (DI)
- Tower Outlet Valve Open (DI)
- Tower Outlet Valve Closed (DI)
- Tower Outlet Valve Auto (DI)
- Tower Outlet Valve Fail (DI)
- Tower Intrusion Detection (DI)
- UPS Fault (DI)
- UPS On Battery (DI)
- Panel Power Failure (DI)
- Power Supply Failure (DI)
- Tower Mixer Running (DI)

Olsson will program the new water tower Ethernet Radio to communicate with the existing WTP Ethernet Radio. (Antenna mounting and radio installation by others)

Olsson will program the existing WTP SCADA HMI to include the following:

- New Water Tower Level Graphics
  - Including Tower Level and Valve Position Notification
- New Water Tower Alarms

- Including Tower Level and Valve Actuator Alarms
- Trending of New Water Tower Level
- Reporting as required

### **Task 607: Record Drawings**

Upon completion of construction, Olsson will produce Record Drawings of the project. The Record Drawings will incorporate revisions to the original plans, specifications, or equipment that occurred during the construction of the project.

Final Record Drawings will be provided to the Client, both electronically (PDF and CAD files) and in hard copy form, of the quantity requested by the Client. These documents will also be provided to regulatory agencies in fulfillment of applicable construction permits.

The Fee assumes that two sets of record drawings will be produced, one for the Water Tower project and one for the Utilities/Site project. No record drawings will be produced for the Tank Demolition project.

### **Phase 700: Construction Observation Services**

Olsson will provide a Resident Project Representative (RPR) during the full duration of the project. The full responsibilities of the RPR are included in the General Conditions of the specifications. The RPR will provide the following services:

#### **Task 701: Periodic Observation Site Visits**

Olsson will conduct site visits to observe construction activities. It is anticipated that the Client will provide day-to-day construction observation, with Olsson supplementing regular construction observation for all major construction activities as necessary to coordinate key construction operations as needed. These visits are in addition to those listed in the Construction Administration section, if needed, and at the City's request. The fee for site visits is calculated using the following assumptions:

- Nine months of construction duration for the water tower, one visit per week at six hours per visit.
- Seven visits to observe progress on the utilities/site work project.
- Two visits to observe progress on the tank demolition project.

If further observation is needed, it will be funded as additional services.

#### **Task 702: Substantial Completion Walkthrough**

Olsson will perform a Substantial Completion Walkthrough at a time coordinated with the Client, RPR, and Contractor for each of the three projects. The purpose of the walkthrough is to verify substantial completion and develop a "punch list", which includes items necessary for the Contractor to complete in order to achieve

Final Completion of the project. After the walkthrough takes place, Olsson will issue a Certificate of Substantial Completion on the project to the Client and Contractor along with the punch list.

**Task 703: Final Completion Walkthrough**

When the Contractor indicates that all punch list items have been completed, Olsson will schedule a time to perform a Final Completion Walkthrough for each project (a total of three) to verify that items on the punch list have been corrected. After verifying that all punch list items have been addressed, Olsson will issue a Certificate of Final Completion to the Client and Contractor. Final funding documents will be prepared for submission to SRF, including Davis-Bacon wage report review documents, initiation of operation (IOO), AIS summaries, including the Contractor's de-minimus waiver, and related documents. Copies of these documents will be provided to the City.

**Phase 800: Construction Support and Materials Testing Services**

The following Cost Estimate is approximate and intended to be used only as a basis for estimating the probable cost of the Work. Actual quantities of tests, site trips and technician time may differ from the estimated quantities. The basis of payment for the Work will be the actual quantities of tests, site trips, and technician time performed or expended. The below Cost Estimate was prepared without the anticipation of profits on account of any difference between the actual and estimated quantities. If the construction methods utilized by contractors for the below referenced project increases the frequency of site visits and construction testing units as listed in the below cost estimate, this agreement shall be amended to supplement the cost of the out-of-scope services. Olsson will notify the Client if construction testing frequencies and site visits of the below scope of work are subject to increase due to construction methods or design changes prior to the commencement of said out of scope services. Olsson's sole obligation is to report its observation, inspection and test results to Client as provided herein.

**Task 801: Earthwork Observation**

**Site Preparation (Soils Testing for Structural Fill and Backfill)** – Olsson will observe the exposed subgrade within the construction limits of the water tower and pavement areas to verify that soils unsuitable for floor slab and pavement support have been removed and to identify unstable areas that require additional excavation prior to placement of the water tower floor slab and concrete pavement sections. A proofroll will be performed when accessible.

Olsson will obtain samples of materials proposed for use as structural fill and backfill for laboratory testing. Laboratory tests, including standard Proctors and Atterberg limits tests, will be performed to evaluate the physical properties of the proposed fill and backfill materials. Olsson will observe field placement methods and perform field density tests on

structural fill placed within the footprint of the water tower and pavement areas, as well as backfill along segments of utility trenches and foundation wall backfill. We have assumed a maximum of 3 Proctors and 2 Atterberg Limits tests will be required for testing of soil to be used as structural fill and backfill.

**Foundation Bearing Materials** – Olsson will observe the bearing materials at the base of the shallow foundation excavations. The bearing materials will be evaluated with respect to the design bearing pressure.

### **Task 802: Reinforced Concrete Testing**

Olsson will observe placement of reinforcing steel in the foundations, walls, thrust blocks, and slab on grade. Field tests including slump, air entrainment and temperature will be performed on samples of concrete obtained from these areas. Cylinders will be cast from the concrete used in construction of the structure for compressive strength testing at a rate of one set of 5 cylinders for every 100 yards of concrete placed per day. The following have been assumed:

- Footings, Foundation Walls, and Thrust Blocks – 10 sets of 5 cylinders per set, cast over 10 placement events
- Slab on Grade – 1 set of 5 cylinders per set, cast over 1 placement event
- Concrete Pavement – 4 sets of 5 cylinders per set, cast over 4 placement events

### **Task 803: Non-Destructive Testing**

**Radiography** – Olsson will provide a radiographic inspection during erection of the water tower following procedures in accordance with Sec. 11.4, 11.5, and 11.6 of AWWA D100-11. Radiographic film and report will be presented to the erection company each trip for their records. Olsson has estimated the following:

- Three (3) – 10 hr days onsite
  - Two (2) trips for bowl
  - One (1) trip for column

**NACE Inspection** – Olsson will provide random Holiday Testing and Dry Film Thickness gauging to verify shop quality after coated materials have arrived at the construction site. Olsson will make another trip to check Dry Film Thicknesses and overall conformance with the specifications once the final coating system has been applied.

**Task 804: Reporting and Project Management**

Olsson's field professionals will prepare electronic field reports summarizing each day's field observations presenting test results and detailing items not in compliance with the project drawings and/or specifications.

Field reports will be reviewed by our project manager and submitted electronically to the designated project team on a weekly basis. Olsson is not responsible for the Contractor's means and methods and does not have the obligation or authority to stop the Contractor's work. Olsson's responsibility as the special inspection firm is to report field observations and test results to the Contractor and Client as provided herein.

**Task 805: Construction Staking**

Olsson will provide Construction Staking Services as follows:

- Locate and maintain existing vertical and horizontal control points.
- Provide vertical and horizontal offset control for the proposed water main improvements. And locate the center of the water tower. The estimate is based on two (2) trips only to the site for this service.
- Provide vertical and horizontal offset control for the proposed storm sewer improvements. The estimate is based on one (1) trip only to the site for this service.
- Provide vertical and horizontal offset control for parking lot improvements. The estimate is based on one (1) trip only to the site for this service.
- Provide vertical and horizontal offset control for sidewalk and flatwork. The estimate is based on one (1) trip only to the site for this service.

## **SCHEDULE FOR OLSSON'S SERVICES**

Unless otherwise agreed, Olsson expects to perform its services covered by this Amendment as follows:

Anticipated Start Date:            May 1, 2023  
Anticipated Completion Date:    August 1, 2024

Olsson will endeavor to start its services on the Anticipated Start Date and to complete its services on the Anticipated Completion Date. However, the Anticipated Start Date, the Anticipated Completion Date, and any milestone dates are approximate only, and Olsson reserves the right to adjust its schedule and any or all of those dates at its sole discretion, for any reason, including, but not limited to, delays caused by Client or delays caused by third parties.

## **COMPENSATION**

For the additional Scope of Services specifically set forth in this Amendment, Client shall pay Olsson the following fee in addition to the fee(s) set forth in the Agreement:

Olsson's Scope of Services will be provided on a time-and-expense basis not to exceed \$232,000.00.

All fees were calculated under the assumption that Construction Phase Services will commence on May 1, 2023 and Final Completion will occur on August 1, 2024. If the construction schedule extends past this date, or if hours or number of tests exceed the assumptions listed in the scope of services the additional fees will be funded as additional services.

**TERMS AND CONDITIONS OF SERVICE**

All provisions of the original Agreement not specifically amended herein shall remain unchanged.

If this Contract Amendment satisfactorily sets forth your understanding of our agreement, please sign in the space provided below. Retain a copy for your files and return an executed original to Olsson. This proposal will be open for acceptance for a period of 30 days from the date set forth above, unless changed by us in writing.,

**OLSSON, INC.**

By \_\_\_\_\_ By \_\_\_\_\_

By signing below, you acknowledge that you have full authority to bind Client to the terms of this Amendment. If you accept this Amendment, please sign:

**CITY OF SEWARD, NE**

By \_\_\_\_\_  
Signature

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Dated: \_\_\_\_\_

Attachments:

- Olsson Reimbursable Expense Schedule
- Special Inspections Rate and Expense Schedule



6. Items Related to City Personnel:

- A. Update to the Finance Director/Treasurer Job Description - City Clerk Bargmann



**Job Title:** Finance Director/Treasurer  
**Department:** Finance  
**FLSA Status:** Exempt, Salaried, Full Time  
**Revised Date:** 4/18/23 (Council Approval)

### **Accountability**

Under the direction of the City Administrator and in compliance with State Statute and City Code.

### **Job Summary**

Performs professional government accounting work as the appointed City Treasurer. Duties including but not limited to oversight of all aspects of the accounting and investment system; receipt and disbursement of City funds; development of long-rang capital improvements program; coordination of the short- and long-term debt financing program; preparation of bond issues and offerings; and comprehensive development, forecasting, adoption, and monitoring of the City's annual budget.

### **Essential Job Functions**

Accounting/Investment System: Directs the maintenance and ongoing operation of the City's accounting system; performs and directs financial operations in sufficient detail to produce adequate cost, financial, and statistical data for management purposes to meet statutory requirements consistent with established and generally accepted accounting principles and practices; responsible for monthly accounting procedures including: revenue and all general ledger accounts, general ledger accruals and adjusting/closing entries, asset management and depreciation, and preparation of monthly financial reports, including balance sheets, operating statements, and cash flow reports; provides fiscal management in collection, control, security, disbursement, and investment of City funds; responsible for the check register of the City treasury, as well as maintenance and reconciling of all City bank accounts including: recording deposits/checks, making appropriate account transfers, monitoring CD's rate terms to ensure cash flow, monitoring bond/federal funds, reconciling bank accounts monthly for accuracy and against general ledger accounts, and sufficient City pledging as per state statute; develops and implements short- and long-range goals, objectives, policies, systems, procedures, and reports to ensure sound City-wide financial management practices; ensures proper financial management that will allow the opportunity to issue debt instruments; designs and implements various City-wide internal controls to ensure that all financial procedures are being followed, revenue collection procedures are within good business practices, and cash collection is accurate.

Payroll, Utilities Billing, & Accounts Payable/Receivable: Supervises all payroll procedures including preparation of payroll checks and benefit withholdings, employee leave balances, submittal of payroll tax deposits/deductions, and preparation and submittal of quarterly and end-of-year federal and state tax forms; supervises all functions of the utilities billing office including meter reading, printing/mailling of utility bills, outstanding bills collection and utility disconnects; supervises City asset inventory and depreciation schedule; supervises the accounts payable process for budgetary compliance and reviews claims report prior to consideration of the City Council; prepares monthly sales tax filings and annual 1099 reporting; supervises accounts receivable to ensure billings are sent out and appropriate payments recorded and balance with the general ledger accounts, and appropriate entries made for the write-off of delinquent accounts; and audits, approves, and certifies all claims against the City for payroll, goods, and services.

Budget Preparation & Annual Audit: Assists City Administrator and Mayor with budget analysis; prepares budget schedule including review and adoption dates; assists departments with projecting revenue estimates and expenditures; assists in preparing property tax requirement and levy; estimates cash on hand and ending cash balance; submits proposed budget requests to City Administrator and Mayor denoting proposed tax increases, and preparation of bond issues and offerings; coordinates interim financing for all City projects; prepares final budget for City Council approval; and prepares/submits all state budget forms; prepares state budget documents and fiscal notes for the Airport Authority; and performs and provides analytical analysis of financial results and assist in research and implementation of emerging issues. Secures a favorable post audit of City's financial records that will indicate conformance with generally accepted accounting principles; assists the auditor in preparation of the City's Comprehensive Annual Financial Report including preparation of the financial, introduction, and statistical sections. File audit with appropriate state and federal agencies, including the Municipal Securities Rulemaking Board; directs compilation of statements of current operating and capital outlay expenditures; and maintains retention of budgetary and audit records per State Statute.

### **Additional Duties and Responsibilities**

Performs or supervises the duties for the Ex-Officio Treasurer for the Seward Airport Authority; assists with information for utility rate studies; assists with information for personnel comparability study; may be asked to attend City Council;

Personnel, Finance & Audit Committee; LB840, CRA; or meetings and other meetings as requested by the City Administrator; performs other duties as assigned.

### **Knowledge, Abilities and Skills**

Knowledge of Generally Accepted Accounting Principles (GAAP), and Government Accounting Standards Board (GASB); principles and practices of municipal budgeting; project management procedures; research practices and techniques; record keeping methods; federal and state laws and regulations applicable to accounting/finance operations; computerized accounting software; financial statements, balance sheet, income statement, and cash flow reporting. Skill in deciphering, understanding, recommending, and acting upon complex information received; forecasting both short- and long-term budgetary and revenue trends; analytically assessing the City's financial status; compiling and presenting comparative data; offering effective, and sometimes difficult budgetary recommendations; robust writing skills; and strong supervisory skills required, with the ability including but not limited to: planning, coordinating, assigning, delegating, supervising, training, managing, and evaluating the work of subordinate personnel. Good oral and written communication skills required to effectively communicate on a daily basis with elected and appointed officials, City employees and the public; proper public relations for budgetary questions/criticism; and high degree of organization skills to effectively administer functions of the department. Ability to apply principles of accounting, statistics and fiscal management; interpret and apply state and federal fiscal policies and procedures; manage funds and provide financial and budget recommendations; organize and present facts and opinions with logical reasoning so others will understand; communicate to exchange information and ideas and to promote agency needs, plans, and objectives; analyze and interpret financial data and draw conclusions; evaluate the soundness of financial practices and compliance with state and federal laws and regulations; organize files and retrieve data effectively; understand and assess accounting software applications and suggest improvements. Ability to work independently, prioritize projects to meet deadlines, work on several projects at once, and work under distracting conditions; and to learn and interpret ever-changing rules, regulations, laws and ordinances. Ability to sit and/or stand for long periods of time; visual stamina and acuity adequate to review alpha/numeric data and spend long periods of time looking at computer screen; operate basic office machines, such as copy machine, computer, calculator, fax machine, cash register; keep confidential information confidential; attend meetings and/or conferences in town or out of town; and ability to type at a rate of 60 wpm.

### **Education and Experience**

Five (5) years of increasingly responsible experience in finance and government accounting operations; or a Bachelor's Degree in accounting, finance, business administration, with major course work devoted to accounting and data processing with at least one (1) year of applicable work experience is desirable; or any equivalent combination of training and experience deemed to be sufficient for the position. CPA license preferred.

### **Special Requirements**

Must possess the ability to be bonded.

**Note:** *The statements herein are intended to describe the general nature and level of work being performed by employees assigned to this classification. They are not intended to be constructed as an exhaustive list of all responsibilities, duties, and skills required of personnel so classified. This job description may be changed or updated at any time without notice.*

JOB TITLE: FINANCE DIRECTOR/TREASURER (Salaried - Exempt)

ACCOUNTABILITY: Under the direction of the City Administrator and in compliance with State Statute and City Code.

JOB SUMMARY: ~~Performs professional government accounting work as the appointed City Treasurer, including but not limited to: oversight of all aspects of the accounting and investment system; receipt and disbursement of City funds; development of long-rang capital improvements program; coordination of the short- and long-term debt financing program; preparation of bond issues and offerings; and comprehensive development, forecasting, adoption, and monitoring of the City's annual budget. Direct planning, implementation, and maintenance of accounting and investment system, and receipt and disbursement of all City funds. Participate in planning and development of long-range capital improvements program and responsible for planning, development, and coordination of long-term debt and short-term debt financing program. Direct preparation of the budget for review and adoption; projection of revenue estimates and expenditures; and preparation of bond issues and offerings. Hold office of City Treasurer.~~

ESSENTIAL DUTIES AND RESPONSIBILITIES:

~~Accounting/Investment System: directs~~ Directs the maintenance and ongoing operation of the City's accounting system; ~~Perform~~ performs and directs financial operations in sufficient detail to produce adequate cost, financial, and statistical data for management purposes to meet statutory requirements consistent with established and generally accepted accounting principles and practices;~~;~~

Responsible for monthly accounting procedures including: ~~balance procedure,~~ revenue and all general ledger accounts;~~;~~ perform general ledger accruals and adjusting/closing entries;~~;~~ asset management and depreciation;~~;~~ and preparation of monthly financial reports, including balance sheets, operating statements, and cash flow reports;~~;~~

~~direct activities to secure sound financial procedures and internal controls.~~

Provides fiscal management in collection, control, security, disbursement, and investment of City funds;~~;~~

Responsible for all checks drawn on the City treasury.~~;~~ as well as ~~Maintain~~ Maintenance of all City bank accounts including: recording deposits/checks;~~;~~ make appropriate account transfers;~~;~~ monitoring CD's rate terms to ensure cash flow;~~;~~ monitoring bond/federal funds;~~;~~ reconciling bank accounts monthly for accuracy and against general ledger accounts;~~;~~ and sufficient City pledging as per state statute;~~;~~

Develops and implementts short- and long-~~and short-~~range goals, objectives, and ~~financial~~ policies, systems, procedures, and reports for the City. Work with all levels of City management to ensure sound City-wide financial management practices.~~;~~ ensures proper financial management that will allow ~~Develop~~ systems, procedures and reports to achieve sound financial management.~~;~~

~~Provide necessary financial management that will afford~~ the opportunity to issue debt instruments;~~;~~

~~Provide direction and financial administration of federal and state grants.~~

Designs and implements various City-wide internal controls to ensure that all financial procedures are being followed, revenue collection procedures are within good business practices, and cash collection is accurate.

#### Payroll & Billing:

Supervises all payroll procedures ~~including and time input; responsible for~~ preparation of payroll checks ~~and~~ and benefit withholdings, employee leave balances, submittal of payroll tax deposits/deductions; and preparation and submittal of quarterly and end-of-year federal and state tax forms ~~including W-2's. compensated absences;~~

Supervises all functions of the utilities billing office including meter reading, printing/mailing of utility bills, outstanding bills collection and utility disconnects; supervises City asset inventory and depreciation schedule;

Supervises ~~Accounts—the accounts Payable—payable process~~ for budgetary compliance and reviews claims report ~~prior to consideration of submitted to the City Council.—;~~ pPrepares monthly sales tax filings and annual 1099 reporting. Supervises Accounts Receivable to ensure billings are sent out and appropriate payments recorded and balance with the general ledger accounts, and appropriate entries made for the write-off of delinquent accounts.—; ~~Direct approval of audits, approves, and certification certifies of~~ all claims against the City for payroll, goods, and services.

~~budgetary comparisons,~~

#### Budget Preparation & Annual Audit:

Assists City Administrator and Mayor with budget analysis; ~~direct preparation prepares budget schedule including of budget—~~review and adoption dates; assists departments with projecting revenue estimates and expenditures; assists in preparing property tax requirement and levy; estimates cash on hand and ending cash balance; submits proposed budget requests to City Administrator and Mayor denoting proposed tax increases, and preparation of bond issues and offerings; coordinates interim financing for all City projects; prepares final budget for City Council approval; and prepares/submits all state budget forms.—; Prepare prepares state budget documents and fiscal notes for the Airport Authority.—; and Perform performs and provides analytical analysis of financial results and assist in research and implementation of emerging issues.

Secures a favorable ~~Post-post Audit—audit~~ of City's financial records that will indicate conformance with generally accepted accounting principles.—; Assist assists the ~~Auditor—auditor~~ in preparation of the City's Comprehensive Annual Financial Report including preparation of the financial, introduction, and statistical sections. File audit with appropriate state and federal agencies, including the Municipal Securities Rulemaking Board.—; ~~Direct—directs~~ compilation of statements of current operating and capital outlay expenditures; and—maintains retention of budgetary and audit records per State Statute.

~~Communicate with subordinates, supervisors, co-workers, customers, vendors and any other persons or organizations with whom interaction is required to accomplish work and employer goals.~~

#### ADDITIONAL DUTIES AND RESPONSIBILITIES:

Performs or supervises the duties for the Ex-Officio Secretary/Treasurer for the Seward Airport Authority; Aassists with information for utility rate studies;—assists with information for personnel comparability study; may be asked to attend City Council; Personnel, Finance & Audit Committee; LB840, CRA; or —meetings and other meetings as requested by the City Administrator;

~~Punctual and timely in meeting all requirements of performance, including, but not limited to, attendance standards and work deadlines; beginning and ending assignments on time; and scheduled work breaks, where applicable.~~

Performs other duties as assigned.

EDUCATION, TRAINING AND EXPERIENCE: ~~Five (5) years of increasingly responsible experience in finance and government accounting operations; or a Associates Degree or Bachelor's Degree in accounting, finance, business administration, with major course work devoted to emphasis in accounting and, or related field with some courses in data processing with at least one (1) year of applicable work experience is desirable. or equivalent experience strongly preferred. Experience in government accounting preferred. CPA preferred. Five years of increasingly responsible finance and accounting experience or an equivalent level of experience preferred; or any equivalent combination of training and experience deemed to be sufficient for the position. CPA license preferred.~~

~~SPECIAL REQUIREMENTS: Must possess the ability to be bonded.~~

KNOWLEDGE/SKILLS/ABILITIES:

Knowledge: ~~of~~ Generally Accepted Accounting Principles (GAAP), and Government Accounting Standards Board (GASB); principles and practices of municipal budgeting; project management procedures; public relations; research practices and techniques; record keeping methods; federal and state laws and regulations applicable to accounting/finance operations; computerized accounting software; financial statements, balance sheet, income statement, and cash flow reporting;

Skills ~~in:~~ ~~Listening to and deciphering,~~ understanding, and acting upon complex information received; ~~forecasting both short- and long-term budgetary and revenue trends; analytically assessing the City's financial status; compiling and presenting comparative data; offering effective, and sometimes difficult budgetary recommendations; and strong supervisory skills required, with the ability including but not limited to: planning, coordinating, assigning, delegating, supervising, managing, and evaluating the work of subordinate personnel;. Good oral and written communication skills required to effectively communicate on a daily basis with elected and appointed officials, City employees and the public; high degree of organization skills.~~ ~~effective oral and written communication;~~

Ability ~~to:~~ ~~Apply~~ ~~apply~~ principles of accounting, statistics and fiscal management; interpret and apply state and federal fiscal policies and procedures; manage funds and provide financial and budget recommendations; organize and present facts and opinions so others will understand; communicate to exchange information and ideas and to promote agency needs, plans, and objectives; analyze and interpret financial data and draw conclusions; evaluate the soundness of financial practices and compliance with state and federal laws and regulations; organize files and retrieve data effectively; ~~learn and understand and assess PC-accounting software applications and suggest improvements; alpha and numeric recognition; . Ability to work independently; , prioritize work projects to meet deadlines; , logical reasoning; patience; carry out assignments through oral and written instructions; concentration; make and receive telephone calls; compute basic math computations; work on several projects at once; , and work under distracting conditions; read and comprehend City policies and ordinances, state and federal laws and regulations; train and guide others; exhibit tact, diplomacy, and judgement when dealing with co-workers, other City employees, and external contacts; analyze complex problems and recommend solutions; work under pressure; hand-eye coordination; sit and/or stand for long periods of time; visual stamina and acuity adequate to review alpha/numeric data and spend long periods of time looking at computer screen; attend meetings and/or conferences in town or out of town. ~~operate Microsoft~~~~

~~Word, Excel, PowerPoint, Gmail, Accounting Software, and other software as required to perform City functions;~~ operate basic office machines, such as copy machine, computer, calculator, fax machine, cash register; keep confidential information confidential; ~~oral and written communication skills required to effectively communicate on a daily basis with elected and appointed officials;~~ professional conduct and communication with fellow City employees and the public at large. manual dexterity; ability to work in environment with constant interruptions; good typing and data entry; reading; customer/public relations; working knowledge of word processing, email, and calendaring computer software applications; interpersonal skills; grammar, punctuation, spelling, and proofreading; supervisory and leadership; perform complex math and accounting functions; ability to interpret information; ability to summarize. ability to perform basic math and accounting;

Updated: ~~06/2018~~

- B. Consideration of an Ordinance to Amend the 'Electric Lineman, Journeyman Lineman, Electric Line Crew Chief, Electric Superintendent' Pay Lines - City Administrator Butcher

ORDINANCE NO. 2023-9

AN ORDINANCE TO PROVIDE FOR ANNUAL CLASSIFICATION OF OFFICERS AND EMPLOYEES OF THE CITY OF SEWARD, NEBRASKA; TO PROVIDE FOR LONGEVITY PAY AND PAYMENT OF PART-TIME EMPLOYEES; TO PROVIDE FOR A DATE SUCH CLASSIFICATION AND PAY RANGES OF COMPENSATION SHALL BECOME EFFECTIVE; TO PROVIDE FOR PUBLICATION IN PAMPHLET FORM; TO PROVIDE FOR A TIME WHEN THIS ORDINANCE SHALL TAKE EFFECT.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF SEWARD, NEBRASKA:

Section 1. CLASSIFICATION, RANGES OF COMPENSATION. The classification of officers and employees of the City of Seward, Nebraska, pay grades and ranges of compensation for such classification are as follows:

2022-2023 SALARY SCHEDULE  
PAY RANGE RATES

<u>POSITION</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>
(A) CLERICAL (HOURLY)		
Payroll Clerk	19.43	26.25
Utility Billing/Account Clerk	17.26	24.26
Administrative Assistant	16.71	23.54
Admin Assistant - Municipal Bldg	15.83	21.57
Library Assistant II/Social Media/IT	17.86	23.50
Library Assistant I	13.65	15.94
Library Clerk	11.04	13.76
Aging Services Commission Assistant	16.65	23.94
Golf Shop Seasonal Employee	10.86	13.17
(B) LABOR & TRADES (HOURLY)		
Civic Center Assistant	10.83	12.65
Custodian	14.03	20.90
Electric Line Crew Chief	37.29	47.67
Electric Journeyman Lineman	34.98	45.36
Electric Lineman	32.36	39.65

Electric Seasonal Groundman	20.66	24.36
Meter Maintenance Utility Worker	19.11	25.12
Utilities Locator	18.52	34.65
Assistant Public Properties Director	22.98	28.94
Public Properties Maintenance Worker	16.39	24.21
Street Foreman	25.01	32.35
Street Maintenance Worker III	20.18	26.46
Street Maintenance Worker II	18.00	24.28
Street Maintenance Worker I	17.45	21.82
Burn Site Assistant	11.08	15.91
Recycling Center Worker	11.08	15.91
Facility Maintenance Supervisor	25.98	34.50
WW Treatment/Sanitary System Operator	21.63	28.77
Senior Utility Maintenance Worker II	23.82	32.03
Utility Maintenance Worker II	22.58	30.98
Utility Maintenance Worker I	20.48	27.30
Summer Seasonal Laborer	14.09	14.65
Pool Manager	13.22	15.63
Assistant Pool Manager	11.42	13.55
Swim Program Coordinator	11.13	13.16
Lifeguard	10.83	12.02
Pool Office/Concession Work	10.83	12.02
Water Safety Instructor	10.83	12.02
Water Safety Instructor Aide	7.21	7.82

(C) PUBLIC SAFETY (HOURLY)

Police Sergeant	28.35	37.09
Police Officer II	27.22	33.22
Police Officer I	25.03	31.15
Administrative Secretary/Records Clerk	17.47	24.02
Community Service Officer	15.23	21.55

(D) SUPERVISORY, TECHNICAL & ADMINISTRATIVE (MONTHLY)

City Administrator	10,556	12,740
Chief of Police	6,894	8,605
City Engineer	6,596	8,794
Police Captain	5,999	7,185

Electric Superintendent	6,864	8,787
Public Properties Director	5,629	6,999
City Clerk/Human Resources Director	5,550	7,705
Water/Wastewater Director	5,336	7,929
Street Superintendent	5,507	7,046
Finance Director/Treasurer	6,448	7,808
Library Director	4,881	6,056
Deputy Treasurer	4,688	5,733
Golf Course Grounds Superintendent	4,688	5,467
Building/Zoning/Code Enforcement Director	4,779	5,962
Executive Director Wellness Center	4,688	5,467
Assistant Recreation Director	3,407	5,016
Golf Shop Manager	3,277	4,264
Assistant Library Director	3,270	4,421
Civic Center Manager	3,469	3,844

Section 2. LONGEVITY PAY. Each employee, who has completed their introductory period, will, for each year of service to the City, receive three dollars and forty-seven cents (\$3.47) per month if classified as exempt, or two cents (\$0.02) per hour if classified as non-exempt. This pay will be in addition to the established base pay in their classification as set forth in Section One of this ordinance.

Section 3. COMPENSATION PAYABLE BIWEEKLY. The compensation and salary fixed for the respective officers and employees of the City by this ordinance shall be paid biweekly.

Section 4. PART-TIME EMPLOYEES. Persons employed by the City on a part-time or occasional basis shall be paid on an hourly rate and at such time as shall be fixed by the Mayor and Council by motion.

Section 5. REPEAL. Any City of Seward ordinance, resolution, or employee handbook or part of any ordinance, resolution, or employee handbook of the City of Seward, Nebraska in conflict with this Ordinance is hereby repealed to the extent of such conflict.

Section 6. WHEN OPERATIVE. This ordinance shall be effective after its approval, passage and publication as required by law and the ordinances of the City.

Passed and approved this 18<sup>th</sup> day of April, 2023.

ATTEST:

THE CITY OF SEWARD, NEBRASKA

\_\_\_\_\_  
Derek Bargmann  
City Clerk

\_\_\_\_\_  
Joshua Eickmeier, Mayor

**2022-2023 (EFFECTIVE 1ST FULL PAY PERIOD FOLLOWING OCTOBER 1, 2022)**

<b>CLERICAL (HOURLY)</b>									
POSITION	1	2	3	4	5	6	7	8	9
PAYROLL CLERK	19.43	20.28	21.13	21.98	22.84	23.69	24.54	25.40	26.25
UTIL BILLING/ACCOUNT CLERK	17.26	18.14	19.01	19.88	20.76	21.63	22.51	23.38	24.26
ADMIN ASSISTANT	16.71	17.56	18.41	19.27	20.12	20.98	21.83	22.69	23.54
ADMIN ASSISTANT - MUNI BUILDING	15.83	16.55	17.27	17.98	18.70	19.42	20.13	20.85	21.57
LIBRARY ASSISTANT II/Social Media/IT	17.86	18.57	19.27	19.97	20.68	21.38	22.09	22.79	23.50
LIBRARY ASSISTANT I	13.65	13.94	14.22	14.51	14.79	15.08	15.37	15.65	15.94
LIBRARY CLERK	11.04	11.38	11.72	12.06	12.40	12.74	13.08	13.42	13.76
AGING SERV. COMM. ASSISTANT	16.65	17.56	18.47	19.39	20.30	21.21	22.12	23.03	23.94
GOLF SHOP SEASONAL EMPLOYEE	10.86	11.15	11.43	11.72	12.01	12.30	12.59	12.88	13.17

<b>LABOR &amp; TRADES (HOURLY)</b>									
POSITION	1	2	3	4	5	6	7	8	9
CIVIC CENTER ASSISTANT	10.83	11.05	11.28	11.51	11.74	11.97	12.20	12.42	12.65
CUSTODIAN	14.03	14.89	15.74	16.60	17.46	18.32	19.18	20.04	20.90
<b><u>ELECTRIC LINE CREW CHIEF</u></b>	<b><u>37.29</u></b>	<b><u>38.59</u></b>	<b><u>39.88</u></b>	<b><u>41.18</u></b>	<b><u>42.48</u></b>	<b><u>43.78</u></b>	<b><u>45.08</u></b>	<b><u>46.37</u></b>	<b><u>47.67</u></b>
<b><u>ELECTRIC JOURNEYMAN LINEMAN</u></b>	<b><u>34.98</u></b>	<b><u>36.28</u></b>	<b><u>37.57</u></b>	<b><u>38.87</u></b>	<b><u>40.17</u></b>	<b><u>41.47</u></b>	<b><u>42.77</u></b>	<b><u>44.06</u></b>	<b><u>45.36</u></b>
<b><u>ELECTRIC LINEMAN</u></b>	<b><u>32.36</u></b>	<b><u>33.27</u></b>	<b><u>34.18</u></b>	<b><u>35.10</u></b>	<b><u>36.01</u></b>	<b><u>36.92</u></b>	<b><u>37.83</u></b>	<b><u>38.74</u></b>	<b><u>39.65</u></b>
ELECTRIC SEASONAL GROUNDMAN	20.66	21.13	21.59	22.05	22.51	22.97	23.44	23.90	24.36
METER MAINTENANCE UTILITY WORKER	19.11	19.86	20.61	21.36	22.11	22.86	23.61	24.37	25.12
UTILITIES LOCATOR	18.52	20.54	22.55	24.57	26.59	28.60	30.62	32.63	34.65
ASSIST. PUBLIC PROP. DIRECTOR	22.98	23.73	24.47	25.22	25.96	26.71	27.45	28.19	28.94
PUBLIC PROP. MAINTENANCE WORKER	16.39	17.37	18.35	19.32	20.30	21.28	22.26	23.24	24.21

<b>LABOR &amp; TRADES (HOURLY)</b>									
POSITION	1	2	3	4	5	6	7	8	9
STREET FOREMAN	25.01	25.93	26.85	27.76	28.68	29.60	30.52	31.43	32.35
STREET MAINT. WORKER III	20.18	20.97	21.75	22.54	23.32	24.11	24.89	25.68	26.46
STREET MAINT. WORKER II	18.00	18.78	19.57	20.35	21.14	21.92	22.71	23.49	24.28
STREET MAINT. WORKER I	17.45	18.00	18.54	19.09	19.64	20.18	20.73	21.27	21.82
RECYCLING WORKER	11.08	11.68	12.29	12.89	13.49	14.10	14.70	15.30	15.91
BURN SITE ASSISTANT	11.08	11.68	12.29	12.89	13.49	14.10	14.70	15.30	15.91
FACILITY MAINTENANCE SUPERV	25.98	27.04	28.11	29.17	30.24	31.31	32.37	33.44	34.50
WW TRMT / SANITARY SYS OPER	21.63	22.52	23.42	24.31	25.20	26.09	26.99	27.88	28.77
SENIOR UTIL. MAINT. WORKER II	23.82	24.85	25.87	26.90	27.92	28.95	29.97	31.00	32.03
UTIL MAINT. WORKER II	22.58	23.63	24.68	25.73	26.78	27.83	28.88	29.93	30.98
UTIL MAINT. WORKER I	20.48	21.33	22.18	23.03	23.89	24.74	25.59	26.45	27.30

SUMMER SEASONAL LABORER	14.09	14.65							
POOL MANAGER	13.22	13.52	13.82	14.13	14.43	14.73	15.03	15.33	15.63
ASST. POOL MANAGER	11.42	11.69	11.95	12.22	12.48	12.75	13.01	13.28	13.55
SWIM PROGRAM COORDINATOR	11.13	11.38	11.64	11.89	12.14	12.40	12.65	12.90	13.16
POOL LIFEGUARD	10.83	10.98	11.12	11.27	11.42	11.57	11.72	11.87	12.02
POOL OFFICE/CONCESSIONS	10.83	10.98	11.12	11.27	11.42	11.57	11.72	11.87	12.02
WATER SAFETY INSTR.	10.83	10.98	11.12	11.27	11.42	11.57	11.72	11.87	12.02
WATER SAFETY INSTR. AIDE	7.21	7.29	7.37	7.44	7.52	7.59	7.67	7.75	7.82

**POLICE (HOURLY)**

POSITION	1	2	3	4	5	6	7	8	9
POLICE SERGEANT	28.35	29.44	30.53	31.63	32.72	33.81	34.90	35.99	37.09
POLICE OFFICER II	27.22	27.97	28.72	29.47	30.22	30.97	31.72	32.47	33.22
POLICE OFFICER I	25.03	25.80	26.56	27.33	28.09	28.86	29.62	30.39	31.15
ADM/SEC RECORDS CLK PD	17.47	18.29	19.11	19.93	20.75	21.57	22.39	23.21	24.02
COMMUNITY SERVICE OFFICER	15.23	16.02	16.81	17.60	18.39	19.18	19.97	20.76	21.55

**SUPERVISORY, TECHNICAL, ADMINISTRATIVE (MONTHLY)**

POSITION	1	2	3	4	5	6	7	8	9
CITY ADMINISTRATOR	10,556	10,829	11,102	11,375	11,648	11,921	12,194	12,467	12,740
CHIEF OF POLICE	6,894	7,108	7,322	7,536	7,750	7,963	8,177	8,391	8,605
CITY ENGINEER	6,596	6,871	7,146	7,420	7,695	7,970	8,244	8,519	8,794
POLICE CAPTAIN	5,999	6,147	6,295	6,444	6,592	6,740	6,889	7,037	7,185
<b><u>ELECTRIC SUPERINTENDENT</u></b>	<b><u>6,864</u></b>	<b><u>7,104</u></b>	<b><u>7,344</u></b>	<b><u>7,585</u></b>	<b><u>7,825</u></b>	<b><u>8,066</u></b>	<b><u>8,306</u></b>	<b><u>8,547</u></b>	<b><u>8,787</u></b>
PUBLIC PROPERTIES DIRECTOR	5,629	5,800	5,972	6,143	6,314	6,485	6,657	6,828	6,999
CITY CLERK/HR DIRECTOR	5,550	5,820	6,089	6,358	6,628	6,897	7,166	7,436	7,705
W/WWTW DIRECTOR	5,336	5,660	5,984	6,308	6,632	6,956	7,280	7,604	7,929
STREET SUPERINTENDENT	5,507	5,700	5,892	6,084	6,276	6,469	6,661	6,853	7,046
FINANCE DIRECTOR/TREASURER	6,448	6,618	6,788	6,958	7,128	7,298	7,468	7,638	7,808
LIBRARY DIRECTOR	4,881	5,028	5,175	5,322	5,469	5,616	5,763	5,910	6,056
DEPUTY TREASURER	4,688	4,819	4,949	5,080	5,211	5,341	5,472	5,602	5,733
GOLF COURSE GROUNDS SUPERINTENDENT	4,688	4,786	4,883	4,980	5,078	5,175	5,273	5,370	5,467
BLDG/ZONING/CODE ENFORCEMENT	4,779	4,926	5,074	5,222	5,370	5,518	5,666	5,814	5,962
EXECUTIVE DIRECTOR WELLNESS CENTER	4,688	4,786	4,883	4,980	5,078	5,175	5,273	5,370	5,467
ASSISTANT RECREATION DIRECTOR	3,407	3,608	3,809	4,010	4,212	4,413	4,614	4,815	5,016
GOLF SHOP MANAGER	3,277	3,400	3,524	3,647	3,771	3,894	4,017	4,141	4,264
ASST LIBRARY DIRECTOR	3,270	3,414	3,557	3,701	3,845	3,989	4,133	4,277	4,421
CIVIC CENTER MANAGER	3,469	3,516	3,563	3,610	3,657	3,703	3,750	3,797	3,844

7. Update on the Wastewater Treatment Plant, Presentation by Project Engineer SEH Engineering - City Engineer Oneby
8. Update on the Wellness Center - City Administrator Butcher
  - A. Consideration of an Agreement with Sampson Construction for Construction-Manager-At-Risk Services

# DRAFT AIA® Document A133™ - 2019

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

AGREEMENT made as of the «7<sup>th</sup>» day of «March» in the year «2023»  
(In words, indicate day, month, and year.)

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

City of Seward« »« »  
537 Main Street« »  
Seward, Nebraska 68434« »  
« »

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

«»«»  
«Sampson Construction Co., Inc.»  
5825 South 14<sup>th</sup> Street  
Lincoln, Nebraska 68512«»  
«»  
«»

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

Seward Wellness Center« »  
« »  
Seward, Nebraska« »

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

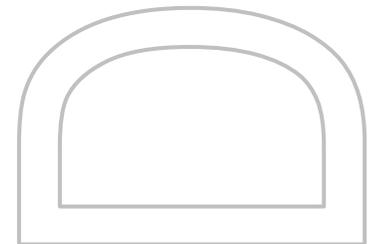
BVH Architects« »  
440 N. 8<sup>th</sup> Street, Suite 100« »  
Lincoln, Nebraska 68508« »  
« »  
« »

The Owner and Construction Manager agree as follows.

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

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

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



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TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 GENERAL PROVISIONS
- 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES
- 4 OWNER'S RESPONSIBILITIES
- 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
- 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES
- 7 COST OF THE WORK FOR CONSTRUCTION PHASE
- 8 DISCOUNTS, REBATES, AND REFUNDS
- 9 SUBCONTRACTS AND OTHER AGREEMENTS
- 10 ACCOUNTING RECORDS
- 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES
- 12 DISPUTE RESOLUTION
- 13 TERMINATION OR SUSPENSION
- 14 MISCELLANEOUS PROVISIONS
- 15 SCOPE OF THE AGREEMENT

- EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT
- EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

~~§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1. (For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")~~

~~§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1: (Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)~~

~~←→~~

~~§ 1.1.2 The Project's physical characteristics: (Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)~~

~~←→~~

~~§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6: (Provide total and, if known, a line item breakdown.)~~

~~←→~~

**§ 1.1.4** The Owner's anticipated design and construction milestone dates:

.1 — Design phase milestone dates, if any:

«—»

.2 — Construction commencement date:

«—»

.3 — Substantial Completion date or dates:

«—»

.4 — Other milestone dates:

«—»

**§ 1.1.5** The Owner's requirements for accelerated or fast track scheduling, or phased construction, are set forth below:  
(Identify any requirements for fast track scheduling or phased construction.)

«—»

**§ 1.1.6** The Owner's anticipated Sustainable Objective for the Project:  
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

«—»

**§ 1.1.6.1** If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234-2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234-2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

**§ 1.1.7** Other Project information:  
(Identify special characteristics or needs of the Project not provided elsewhere.)

«—»

**§ 1.1.81** The Owner identifies the following representative in accordance with Section 4.2:  
(List name, address, and other contact information.)

Greg Butcher, City Administrator« »  
537 Main Street« »  
Seward, Nebraska 68434 « »

« »

« »

« »

**§ 1.1.9** The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:  
(List name, address and other contact information.)

«—»

~~§ 1.1.10~~ The Owner shall retain the following consultants and contractors:  
(List name, legal status, address, and other contact information.)

.1 — Geotechnical Engineer:

« »« »  
« »  
« »  
« »  
« »

.2 — Civil Engineer:

« »« »  
« »  
« »  
« »  
« »

.3 — Other, if any:

« »

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

~~§ 1.1.214~~ The Architect's representative:  
(List name, address, and other contact information.)

Cleve Reeves, AIA, ALEP« »  
BVH Architects« »  
440 N. 8<sup>th</sup> Street, Suite 100« »  
Lincoln, Nebraska 68508« »  
« »  
« »

~~§ 1.1.312~~ The Construction Manager identifies the following representative in accordance with Article 3:  
(List name, address, and other contact information.)

David Cavlovic, Vice President« »  
« »  
Sampson Construction Co., Inc.  
5825 South 14th Street  
Lincoln, Nebraska 68512« »  
« »  
« »  
« »  
« »

~~§ 1.1.13~~ The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:  
(List any Owner-specific requirements to be included in the staffing plan.)

« »

~~§ 1.1.14~~ The Owner's requirements for subcontractor procurement for the performance of the Work:  
(List any Owner-specific requirements for subcontractor procurement.)

« »

~~§ 1.1.15 Other Initial Information on which this Agreement is based:~~



§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

### § 2.2 Relationship of the Parties

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

### § 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

## ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

## § 3.1 Preconstruction Phase

### § 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, or are free of errors or omissions, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

### § 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

### § 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

### § 3.1.5 Phased Construction

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

### § 3.1.6 Cost Estimates

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

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement.

The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

#### § 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

#### § 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### § 3.1.13 Compliance with Laws

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

#### § 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

*(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)*

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### § 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The

Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Construction Manager shall not be required to seek approval from or to provide advanced notice to the Owner prior to using contingency.

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

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

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

### § 3.3 Construction Phase

#### § 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner’s execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

#### § 3.3.2 Administration

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

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

#### § 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

#### § 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

#### § 3.3.2.5 Cost Control

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 and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

### ARTICLE 4 OWNER’S RESPONSIBILITIES

#### § 4.1 Information and Services Required of the Owner

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

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner’s budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner’s other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner’s budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project’s scope and quality.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Construction Manager’s performance of the Work with reasonable promptness after receiving the Construction Manager’s written request for such information or services.

The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

#### § 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

#### § 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

### ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

#### § 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

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

«The lump sum of Fifty Thousand Dollars (\$50,000.00). »

**§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.**

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

«-»

**Individual or Position**

**Rate**

§ 5.1.2.4 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within « four » ( « 4 » ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

**§ 5.2 Payments**

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid « »thirty ( « - » 30 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Managers set forth in the Nebraska Construction Prompt Pay Act.  
*(Insert rate of monthly or annual interest agreed upon.)*

« - » % « - »

**ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

**§ 6.1 Contract Sum**

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

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

« Two and three fourths of one percent (2.75%) of the Cost of the Work. »

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

« Ten percent (10%) of the value of the change for self-performed work. Five percent (5%) of the value of the change for all other changes. »

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work will be set forth in the Contract Documents.

« »

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed « - » percent ( « - » %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

*(Insert terms and conditions for liquidated damages, if any.)*

« None. »

§ 6.1.7 Other:

*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

« N/A »

## § 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

## § 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to “cost” and “fee,” and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

### § 7.2 Labor Costs

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

§ 7.2.2 Wages or salaries of the Construction Manager’s safety, management, quality control, supervisory and administrative personnel ~~when stationed at the site and performing Work, with the Owner’s prior approval~~ assigned to the Project regardless of whether their duties are performed at the site, at a location other than the site, or at one of Construction Manager’s offices.

**§ 7.2.2.1** Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:  
*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*

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**§ 7.2.3** Wages and salaries of the Construction Manager's safety, management, quality control, supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

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

**§ 7.2.5** If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

### **§ 7.3 Subcontract Costs**

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

### **§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 7.4.1** Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

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

### **§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

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

**§ 7.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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

**§ 7.5.4** Costs of the Construction Manager's site office, including general office equipment and supplies, document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone and data service related to the Project and reasonable petty cash expenses of the site office.

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

## § 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

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

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

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of 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, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

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

§ 7.6.12 The following are reimbursable as a Cost of the Work whether the same are incurred on site or at Construction Manager's home or satellite offices to the extent the same are reasonable and related to the Work: project management and administration; safety and administration; printing, telephone, data and postage; and scheduling and procurement.

## § 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

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

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

## § 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term “related party” shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

## § 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as ~~specifically provided in Sections set forth in Article 7.2, or as may be provided in Article 14;~~
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid ~~to anyone hired by the Construction Manager or paid~~ to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager’s principal office and offices other than the site office ~~except to the extent the same are directly related to the Work of this Project;~~
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; ~~and,~~
- .9 ~~Costs for services incurred during the Preconstruction Phase.~~

## ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 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 the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

## ARTICLE 10 ACCOUNTING RECORDS

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

## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 11.1 Progress Payments

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

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

« »

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the ~~«fifth»~~ day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the ~~«twenty-fifth»~~ day of the ~~«same»~~ month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ~~«thirty»~~ (~~«30»~~) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

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

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make 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.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

**§ 11.1.8 Retainage**

**§ 11.1.8.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

«Five percent (5%). »

**§ 11.1.8.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

« »

**§ 11.1.8.2** Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

« »

**§ 11.1.8.3** Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage, such as upon completion of the Owner’s audit and reconciliation, upon Substantial Completion.)*

« »

**§ 11.1.9** If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

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

**§ 11.1.11** The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

**§ 11.1.12** In taking action on the Construction Manager’s Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner’s auditors acting in the sole interest of the Owner.

## § 11.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner ~~shall may~~ conduct and complete an audit of the Cost of the Work or shall endeavor to notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within ~~10~~5 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within ~~seven~~5 days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. ~~Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager.~~ Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than ~~30~~10 days after the issuance of the Architect's final Certificate for Payment, ~~or as follows:~~

« »

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

## § 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate ~~stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located~~ set forth in the Nebraska Construction Prompt Pay Act.

*(Insert rate of interest agreed upon, if any.)*

« » % « »

**ARTICLE 12 DISPUTE RESOLUTION**

**§ 12.1 Initial Decision Maker**

~~§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.~~

~~§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)[intentionally omitted]~~

<< >>  
<< >>  
<< >>  
<< >>

**§ 12.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:  
(Check the appropriate box.)

Arbitration pursuant to Article 15 of AIA Document A201–2017

Litigation in a Nebraska state court of competent jurisdiction

Other: (Specify)

<< >>

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

**ARTICLE 13 TERMINATION OR SUSPENSION**

**§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment**

~~§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner.~~

~~§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 5.1.~~

~~§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.~~

~~§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 5.1.~~

**§ 13.1.5** If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

**§ 13.1.6** 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 that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. 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 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

## **§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment**

### **§ 13.2.1 Termination**

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

### **§ 13.2.2 Termination by the Owner for Cause**

**§ 13.2.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

**§ 13.2.2.2** 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 that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. 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 13, 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.

### **§ 13.2.3 Termination by the Owner for Convenience**

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:  
(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

« »

### § 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

## ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

### § 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

### § 14.3 Insurance and Bonds

#### § 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than « one million dollars » (\$ « 1,000,000.00 ») for each occurrence and « two million dollars » (\$ « 2,000,000.00 ») in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than « one million dollars » (\$ « 1,000,000.00 ») per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers’ Compensation at statutory limits and Employers Liability with policy limits not less than « five hundred thousand dollars » (\$ « 500,000.00 ») each accident, « five hundred thousand dollars » (\$ « 500,000.00 ») each employee, and « five hundred thousand dollars » (\$ « 500,000.00 ») policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than « two million dollars » (\$ « 2,000,000.00 ») per claim and « two million dollars » (\$ « 2,000,000.00 ») in the aggregate.

**§ 14.3.1.6 Other Insurance**

*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*

Coverage	Limits

**§ 14.3.1.7 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager’s negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner’s insurance policies and shall apply to both ongoing and completed operations.

**§ 14.3.1.8** The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

**§ 14.3.2 Construction Phase**

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

**§ 14.3.2.1** The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

**§ 14.4** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

« »

**§ 14.5** Other provisions:

« »

**ARTICLE 15 SCOPE OF THE AGREEMENT**

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

**§ 15.2** The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction
- ~~.5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
*(Insert the date of the E203–2013 incorporated into this Agreement.)*~~

« »

~~.6 Other Exhibits:~~

*(Check all boxes that apply.)*

*— AIA Document E234™ 2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:  
(Insert the date of the E234-2019 incorporated into this Agreement.)*

*— Supplementary and other Conditions of the Contract:*

Document	Title	Date	Pages

**.7** *— Other documents, if any, listed below:*

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

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

\_\_\_\_\_  
**OWNER** *(Signature)*

« »« »

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**CONSTRUCTION MANAGER** *(Signature)*

« »« »

\_\_\_\_\_  
*(Printed name and title)*

# DRAFT AIA® Document A133™ – 2019

## Exhibit B

### Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the « 7th » day of « March » in the year « 2023 »  
(In words, indicate day, month and year.)

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

Seward Wellness Center« »  
Seward, Nebraska« »

**THE OWNER:**  
(Name, legal status, and address)

City of Seward« »  
537 Main Street« »  
Seward, Nebraska 68434« »

**THE CONSTRUCTION MANAGER:**  
(Name, legal status, and address)

«-»«-»Sampson Construction Co., Inc.  
«-»5825 South 14<sup>th</sup> Street  
Lincoln, Nebraska 68512

#### TABLE OF ARTICLES

- B.1 GENERAL
- B.2 OWNER'S INSURANCE
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS
- ~~B.4 SPECIAL TERMS AND CONDITIONS~~

#### ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™-2017, General Conditions of the Contract for Construction.

#### ARTICLE B.2 OWNER'S INSURANCE

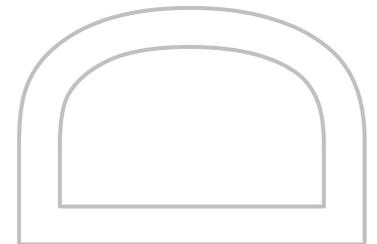
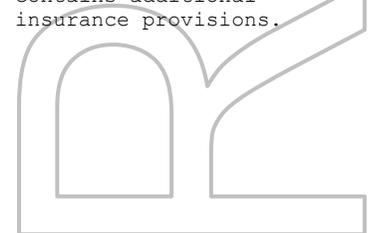
##### § B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

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

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

This document is intended to be used in conjunction with AIA Document A201™-2017, General Conditions of the Contract for Construction. Article 11 of A201™-2017 contains additional insurance provisions.



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**§ B.2.2 Liability Insurance**

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

**§ B.2.3 Required Property Insurance**

**§ B.2.3.1** Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk “all-risks” completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

**§ B.2.3.1.1 Causes of Loss.** The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

Cause of Loss	Sub-Limit

**§ B.2.3.1.2 Specific Required Coverages.** The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s and Construction Manager’s services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows: *(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

Coverage	Sub-Limit

**§ B.2.3.1.3** Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

**§ B.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section B.2.3 or [Section B.3.3.2.1](#) is subject to deductibles or self-insured retentions, the Owner shall be responsible for [the payment of any such deductibles or retentions without reimbursement from Contractor and for](#) all loss not covered because of such deductibles or retentions.

**§ B.2.3.2 Occupancy or Use Prior to Substantial Completion.** The Owner’s occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ B.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, “all-risks” property insurance, on a replacement cost basis, protecting the existing structure

against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ B.2.4 Optional Extended Property Insurance.**

The Owner shall purchase and maintain the insurance selected and described below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

[  ] **§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

[  ] **§ B.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

[  ] **§ B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

[  ] **§ B.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

[  ] **§ B.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

[  ] **§ B.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

[  ] **§ B.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ B.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

[  ] **§ B.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

[  ] **§ B.2.5.2 Other Insurance**  
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

Coverage	Limits

**ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS**

**§ B.3.1 General**

**§ B.3.1.1 Certificates of Insurance.** The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

**§ B.3.1.2 Deductibles and Self-Insured Retentions.** The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager.

**§ B.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations at the site of the Project; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

**§ B.3.2 Construction Manager's Required Insurance Coverage**

**§ B.3.2.1** The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below: *(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ B.3.2.2 Commercial General Liability**

**§ B.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than ~~one million dollars~~ (\$~~1,000,000.00~~) each occurrence, ~~two million dollars~~ (\$~~2,000,000.00~~)

) general aggregate, and ~~two million dollars~~ (\$~~2,000,000.00~~) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

§ B.3.2.2 The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 ~~Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project. [intentionally omitted]~~
- .8 Claims related to roofing, if the Work involves roofing.
- .9 ~~Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces. [intentionally omitted]~~
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than ~~one million dollars~~ (\$~~1,000,000.00~~) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than ~~five hundred thousand dollars~~ (\$~~500,000.00~~) each accident, ~~five hundred thousand dollars~~ (\$~~500,000.00~~) each employee, and ~~five hundred thousand dollars~~ (\$~~500,000.00~~) policy limit.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than ~~two million dollars~~ (\$~~2,000,000.00~~) per claim and ~~two million dollars~~ (\$~~2,000,000.00~~) in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than ~~«two million dollars»~~ (\$ ~~«2,000,000.00»~~) per claim and ~~«two million dollars»~~ (\$ ~~«2,000,000.00»~~) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than ~~«two million dollars»~~ (\$ ~~«2,000,000.00»~~) per claim and ~~«two million dollars»~~ (\$ ~~«2,000,000.00»~~) in the aggregate.

~~§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.~~

~~§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate.~~

### § B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

« »

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

*(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)*

- [  ] § B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for the payment of any such deductibles without reimbursement from Construction Manager and for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner-Construction Manager shall adjust and settle the loss with the insurer and be the trustee-payee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

*(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below:*

*Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

« »

- [  ] § B.3.3.2.2 **Railroad Protective Liability Insurance**, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate, for Work within fifty (50) feet of railroad property.

- [  ] § B.3.3.2.3 **Asbestos Abatement Liability Insurance**, with policy limits of not less than « » (\$ « ») per claim and « » (\$ « ») in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[ « » ] § B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an “all-risks” completed value form.

[ « » ] § B.3.3.2.5 Property insurance on an “all-risks” completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

[ « » ] § B.3.3.2.6 Other Insurance  
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

### § B.3.4 Performance Bond and Payment Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:  
(Specify type and penal sum of bonds.)

Type

Penal Sum (\$0.00)

Payment Bond

Equal to GMP

Performance Bond

Equal to GMP

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement, and shall be provided within five (5) business days of the commencement of the Construction Phase or the execution of the Guaranteed Maximum Price Amendment, whichever occurs first.

### ARTICLE B.4 — SPECIAL TERMS AND CONDITIONS

~~Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:~~

« »

#### § B.3.4.1 Payment of Bond Premium

Notwithstanding anything to the contrary elsewhere in the Contract Documents, Owner shall pay Construction Manager’s invoice for all bond premiums, costs, and expenses not later than thirty (30) calendar days after receipt thereof.

# DRAFT AIA® Document A201™ – 2017

## General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Seward Wellness Center« »

Seward, Nebraska« »

**THE OWNER:**

(Name, legal status and address)

City of Seward« »« »

537 Main Street

Seward, Nebraska 68434« »

**THE CONTRACTOR:**

(Name, legal status and address)

Sampson Construction Co., Inc.

5825 South 14th Street

Lincoln, Nebraska 68512

**THE ARCHITECT:**

(Name, legal status and address)

BVH Architects« »

440 N. 8<sup>th</sup> Street, Suite 100« »

Lincoln, Nebraska 68508« »

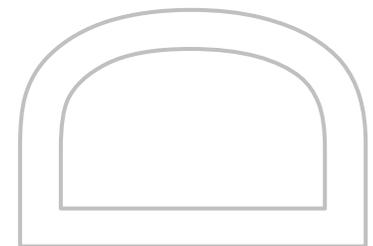
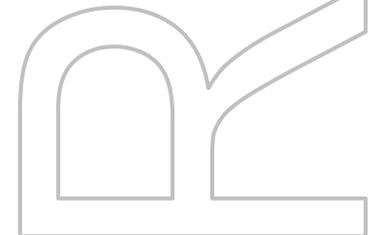
### TABLE OF ARTICLES

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

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- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES



## INDEX

(Topics and numbers in bold are Section headings.)

### **Acceptance of Nonconforming Work**

9.6.6, 9.9.3, **12.3**

Acceptance of Work

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

### **Access to Work**

**3.16**, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,  
10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

### **Additional Inspections and Testing**

9.4.2, 9.8.3, 12.2.1, **13.4**

### **Additional Time, Claims for**

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

### **Administration of the Contract**

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

### **Allowances**

**3.8**

### **Applications for Payment**

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,  
3.12.10.1, 4.2.7, 9.3.2, 13.4.1

### **Arbitration**

8.3.1, 15.3.2, **15.4**

## **ARCHITECT**

**4**

**Architect**, Definition of

#### **4.1.1**

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,  
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,  
13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3,  
4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2,  
9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,  
7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,  
13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,  
3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,  
3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,  
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

### **Award of Subcontracts and Other Contracts for Portions of the Work**

**5.2**

### **Basic Definitions**

**1.1**

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,  
15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

### **Bonds, Performance, and Payment**

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

### **Building Information Models Use and Reliance**

**1.8**

Building Permit

3.7.1

### **Capitalization**

**1.3**

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

### **Certificates for Payment**

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7,  
9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval

13.4.4

Certificates of Insurance  
9.10.2  
**Change Orders**  
1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3,  
7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1,  
9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2  
**Change Orders**, Definition of  
**7.2.1**  
**CHANGES IN THE WORK**  
2.2.2, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1,  
11.5  
**Claims**, Definition of  
**15.1.1**  
Claims, Notice of  
1.6.2, 15.1.3  
**CLAIMS AND DISPUTES**  
3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4  
Claims and Timely Assertion of Claims  
15.4.1  
**Claims for Additional Cost**  
3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**  
**Claims for Additional Time**  
3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**  
**Concealed or Unknown Conditions, Claims for**  
**3.7.4**  
Claims for Damages  
3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3,  
11.3.2, 14.2.4, 15.1.7  
Claims Subject to Arbitration  
15.4.1  
**Cleaning Up**  
**3.15**, 6.3  
Commencement of the Work, Conditions Relating to  
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,  
6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**  
**Commencement of the Work**, Definition of  
**8.1.2**  
**Communications**  
3.9.1, **4.2.4**  
Completion, Conditions Relating to  
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,  
9.10, 12.2, 14.1.2, 15.1.2  
**COMPLETION, PAYMENTS AND**  
**9**  
Completion, Substantial  
3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1,  
9.10.3, 12.2, 15.1.2  
Compliance with Laws  
2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1,  
13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8,  
15.4.2, 15.4.3  
Concealed or Unknown Conditions  
3.7.4, 4.2.8, 8.3.1, 10.3  
Conditions of the Contract  
1.1.1, 6.1.1, 6.1.4  
Consent, Written  
3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2,  
15.4.4.2

**Consolidation or Joinder**  
**15.4.4**  
**CONSTRUCTION BY OWNER OR BY**  
**SEPARATE CONTRACTORS**  
1.1.4, **6**  
**Construction Change Directive**, Definition of  
**7.3.1**  
**Construction Change Directives**  
1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**,  
9.3.1.1  
Construction Schedules, Contractor's  
3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2  
**Contingent Assignment of Subcontracts**  
**5.4**, 14.2.2.2  
**Continuing Contract Performance**  
**15.1.4**  
**Contract**, Definition of  
**1.1.2**  
**CONTRACT, TERMINATION OR**  
**SUSPENSION OF THE**  
5.4.1.1, 5.4.2, 11.5, **14**  
Contract Administration  
3.1.3, 4, 9.4, 9.5  
Contract Award and Execution, Conditions Relating  
to  
3.7.1, 3.10, 5.2, 6.1  
Contract Documents, Copies Furnished and Use of  
1.5.2, 2.3.6, 5.3  
**Contract Documents**, Definition of  
**1.1.1**  
**Contract Sum**  
2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4,  
**9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2,  
12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**  
**Contract Sum**, Definition of  
**9.1**  
Contract Time  
1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5,  
7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1,  
8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2,  
14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5  
**Contract Time**, Definition of  
8.1.1  
**CONTRACTOR**  
**3**  
Contractor, Definition of  
**3.1**, **6.1.2**  
**Contractor's Construction and Submittal**  
**Schedules**  
**3.10**, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2  
Contractor's Employees  
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,  
10.3, 11.3, 14.1, 14.2.1.1  
**Contractor's Liability Insurance**  
**11.1**  
Contractor's Relationship with Separate Contractors  
and Owner's Forces  
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4

Contractor's Relationship with Subcontractors  
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7,  
9.10.2, 11.2, 11.3, 11.4

Contractor's Relationship with the Architect  
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,  
3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2,  
7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3,  
11.3, 12, 13.4, 15.1.3, 15.2.1

Contractor's Representations  
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work  
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents  
3.2

Contractor's Right to Stop the Work  
2.2.2, 9.7

Contractor's Right to Terminate the Contract  
14.1

Contractor's Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2,  
9.8.3, 9.9.1, 9.10.2, 9.10.3

Contractor's Superintendent  
3.9, 10.2.6

Contractor's Supervision and Construction Procedures  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3,  
7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4

Coordination and Correlation  
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications  
1.5, 2.3.6, 3.11

Copyrights  
1.5, **3.17**

Correction of Work  
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3,  
15.1.3.1, 15.1.3.2, 15.2.1

**Correlation and Intent of the Contract Documents**  
**1.2**

**Cost**, Definition of  
**7.3.4**

Costs  
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3,  
7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2,  
12.1.2, 12.2.1, 12.2.4, 13.4, 14

**Cutting and Patching**  
**3.14**, 6.2.5

Damage to Construction of Owner or Separate Contractors  
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damage to the Work  
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damages, Claims for  
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2,  
11.3, 14.2.4, 15.1.7

Damages for Delay  
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2

**Date of Commencement of the Work**, Definition of  
**8.1.2**

**Date of Substantial Completion**, Definition of  
**8.1.3**

**Day**, Definition of  
**8.1.4**

Decisions of the Architect  
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4,  
7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2,  
14.2.2, 14.2.4, 15.1, 15.2

**Decisions to Withhold Certification**  
9.4.1, **9.5**, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of  
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3,  
9.10.4, 12.2.1

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

**Delays and Extensions of Time**  
**3.2**, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**,  
10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5

**Digital Data Use and Transmission**  
**1.7**

Disputes  
6.3, 7.3.9, 15.1, 15.2

**Documents and Samples at the Site**  
**3.11**

**Drawings**, Definition of  
**1.1.5**

Drawings and Specifications, Use and Ownership of  
3.11

Effective Date of Insurance  
8.2.2

**Emergencies**  
**10.4**, 14.1.1.2, **15.1.5**

Employees, Contractor's  
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,  
10.3.3, 11.3, 14.1, 14.2.1.1

Equipment, Labor, or Materials  
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3,  
9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work  
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1,  
3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1,  
9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time  
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,  
10.4, 14.3, 15.1.6, **15.2.5**

**Failure of Payment**  
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work  
(See Defective or Nonconforming Work)

**Final Completion and Final Payment**  
4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's  
2.2.1, 13.2.2, 14.1.1.4

## GENERAL PROVISIONS

### 1

#### Governing Law

##### 13.1

Guarantees (See Warranty)

#### Hazardous Materials and Substances

##### 10.2.4, 10.3

Identification of Subcontractors and Suppliers

##### 5.2.1

#### Indemnification

3.17, 3.18, 9.6.8, 9.10.2, 10.3.3, 11.3

#### Information and Services Required of the Owner

2.1.2, 2.2, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

#### Initial Decision

##### 15.2

#### Initial Decision Maker, Definition of

##### 1.1.8

Initial Decision Maker, Decisions

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

#### Injury or Damage to Person or Property

##### 10.2.8, 10.4

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders

##### 1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

#### Instruments of Service, Definition of

##### 1.1.7

Insurance

6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, 11

Insurance, Notice of Cancellation or Expiration

11.1.4, 11.2.3

#### Insurance, Contractor's Liability

##### 11.1

Insurance, Effective Date of

8.2.2, 14.4.2

#### Insurance, Owner's Liability

##### 11.2

#### Insurance, Property

##### 10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials

##### 9.3.2

## INSURANCE AND BONDS

### 11

Insurance Companies, Consent to Partial Occupancy

##### 9.9.1

Insured loss, Adjustment and Settlement of

##### 11.5

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13

#### Interest

##### 13.5

#### Interpretation

1.1.8, 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12

Judgment on Final Award

15.4.2

#### Labor and Materials, Equipment

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

Liens

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability

3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6, 4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3, 11.3, 12.2.5, 13.3.1

Limitations of Time

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15, 15.1.2, 15.1.3, 15.1.5

#### Materials, Hazardous

##### 10.2.4, 10.3

Materials, Labor, Equipment and

1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

#### Mediation

8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, 15.3, 15.4.1, 15.4.1.1

#### Minor Changes in the Work

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, 7.4

## MISCELLANEOUS PROVISIONS

### 13

#### Modifications, Definition of

##### 1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

#### Mutual Responsibility

##### 6.2

#### Nonconforming Work, Acceptance of

9.6.6, 9.9.3, 12.3

Nonconforming Work, Rejection and Correction of  
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4,  
12.2

#### **Notice**

**1.6**, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4,  
3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4,  
8.2.2 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1,  
13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5,  
15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance  
11.1.4, 11.2.3

#### **Notice of Claims**

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5, 15.1.6,  
15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections  
13.4.1, 13.4.2

Observations, Contractor's  
3.2, 3.7.4

Occupancy  
2.3.1, 9.6.6, 9.8

Orders, Written  
1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2,  
14.3.1

#### **OWNER 2**

**Owner**, Definition of  
**2.1.1**

**Owner**, Evidence of Financial Arrangements  
**2.2**, 13.2.2, 14.1.1.4

**Owner**, Information and Services Required of the  
2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2,  
9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,  
14.1.1.4, 14.1.4, 15.1.4

Owner's Authority  
1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2,  
4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1,  
7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2,  
10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4,  
15.2.7

**Owner's Insurance**  
**11.2**

Owner's Relationship with Subcontractors  
1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

**Owner's Right to Carry Out the Work**  
**2.5**, 14.2.2

**Owner's Right to Clean Up**  
**6.3**

**Owner's Right to Perform Construction and to  
Award Separate Contracts**

**6.1**  
**Owner's Right to Stop the Work**  
**2.4**

Owner's Right to Suspend the Work  
14.3

Owner's Right to Terminate the Contract  
14.2, 14.4

#### **Ownership and Use of Drawings, Specifications and Other Instruments of Service**

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12,  
5.3

**Partial Occupancy or Use**  
9.6.6, **9.9**

**Patching, Cutting and**  
**3.14**, 6.2.5

Patents  
3.17

**Payment, Applications for**  
4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1,  
14.2.3, 14.2.4, 14.4.3

**Payment, Certificates for**  
4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1,  
9.10.3, 14.1.1.3, 14.2.4

**Payment, Failure of**  
9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final  
4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

**Payment Bond, Performance Bond and**  
7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

**Payments, Progress**  
9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

#### **PAYMENTS AND COMPLETION 9**

Payments to Subcontractors  
5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB  
10.3.1

**Performance Bond and Payment Bond**  
7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

**Permits, Fees, Notices and Compliance with Laws**  
2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

#### **PERSONS AND PROPERTY, PROTECTION OF 10**

Polychlorinated Biphenyl  
10.3.1

**Product Data**, Definition of  
**3.12.2**

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

**Progress and Completion**  
4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

**Progress Payments**  
9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

**Project**, Definition of  
**1.1.4**

Project Representatives  
4.2.10

**Property Insurance**  
10.2.5, **11.2**

**Proposal Requirements**  
1.1.1

#### **PROTECTION OF PERSONS AND PROPERTY 10**

Regulations and Laws  
1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,  
10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4

Rejection of Work  
4.2.6, 12.2.1

Releases and Waivers of Liens  
9.3.1, 9.10.2

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

Representatives  
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1

Responsibility for Those Performing the Work  
3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

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

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

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

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

**Rights and Remedies**  
1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,  
6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,  
12.2.4, 13.3, 14, 15.4

**Royalties, Patents and Copyrights**  
3.17

Rules and Notices for Arbitration  
15.4.1

**Safety of Persons and Property**  
10.2, 10.4

**Safety Precautions and Programs**  
3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4

**Samples, Definition of**  
3.12.3

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

**Samples at the Site, Documents and**  
3.11

**Schedule of Values**  
9.2, 9.3.1

Schedules, Construction  
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

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

**Separate Contractors, Definition of**  
6.1.1

**Shop Drawings, Definition of**  
3.12.1

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

**Site, Use of**  
3.13, 6.1.1, 6.2.1

Site Inspections  
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4

Site Visits, Architect's  
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Special Inspections and Testing  
4.2.6, 12.2.1, 13.4

**Specifications, Definition of**  
1.1.6

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

Statute of Limitations  
15.1.2, 15.4.1.1

Stopping the Work  
2.2.2, 2.4, 9.7, 10.3, 14.1

Stored Materials  
6.2.1, 9.3.2, 10.2.1.2, 10.2.4

**Subcontractor, Definition of**  
5.1.1

**SUBCONTRACTORS**  
5

Subcontractors, Work by  
1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,  
9.6.7

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

Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8,  
9.9.1, 9.10.2, 9.10.3

Submittal Schedule  
3.10.2, 3.12.5, 4.2.7

**Subrogation, Waivers of**  
6.1.1, 11.3

**Substances, Hazardous**  
10.3

**Substantial Completion**  
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2,  
15.1.2

**Substantial Completion, Definition of**  
9.8.1

Substitution of Subcontractors  
5.2.3, 5.2.4

Substitution of Architect  
2.3.3

Substitutions of Materials  
3.4.2, 3.5, 7.3.8

**Sub-subcontractor, Definition of**  
5.1.2

Subsurface Conditions  
3.7.4

**Successors and Assigns**  
13.2

**Superintendent**  
3.9, 10.2.6

**Supervision and Construction Procedures**  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3,  
7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

Suppliers  
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6,  
9.10.5, 14.2.1

Surety  
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2,  
15.2.7  
Surety, Consent of  
9.8.5, 9.10.2, 9.10.3  
Surveys  
1.1.7, 2.3.4  
**Suspension by the Owner for Convenience**  
**14.3**  
Suspension of the Work  
3.7.5, 5.4.2, 14.3  
Suspension or Termination of the Contract  
5.4.1.1, 14  
**Taxes**  
3.6, 3.8.2.1, 7.3.4.4  
**Termination by the Contractor**  
**14.1, 15.1.7**  
**Termination by the Owner for Cause**  
5.4.1.1, **14.2, 15.1.7**  
**Termination by the Owner for Convenience**  
**14.4**  
Termination of the Architect  
2.3.3  
Termination of the Contractor Employment  
14.2.2

**TERMINATION OR SUSPENSION OF THE CONTRACT**  
**14**  
**Tests and Inspections**  
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,  
9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**  
**TIME**  
**8**  
**Time, Delays and Extensions of**  
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3, 9.5.1, 9.7,**  
10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5  
Time Limits  
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2,  
5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1,  
9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2,  
15.1.3, 15.4  
**Time Limits on Claims**  
3.7.4, 10.2.8, 15.1.2, 15.1.3

Title to Work  
9.3.2, 9.3.3  
**UNCOVERING AND CORRECTION OF WORK**  
**12**  
**Uncovering of Work**  
**12.1**  
Unforeseen Conditions, Concealed or Unknown  
3.7.4, 8.3.1, 10.3  
Unit Prices  
7.3.3.2, 9.1.2  
Use of Documents  
1.1.1, 1.5, 2.3.6, 3.12.6, 5.3  
**Use of Site**  
**3.13, 6.1.1, 6.2.1**  
**Values, Schedule of**  
**9.2, 9.3.1**  
Waiver of Claims by the Architect  
13.3.2  
Waiver of Claims by the Contractor  
9.10.5, 13.3.2, **15.1.7**  
Waiver of Claims by the Owner  
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**  
Waiver of Consequential Damages  
14.2.4, 15.1.7  
Waiver of Liens  
9.3, 9.10.2, 9.10.4  
**Waivers of Subrogation**  
6.1.1, **11.3**  
**Warranty**  
**3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2,**  
15.1.2  
Weather Delays  
8.3, 15.1.6.2  
**Work, Definition of**  
**1.1.3**  
Written Consent  
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3,  
13.2, 13.3.2, 15.4.4.2  
Written Interpretations  
4.2.11, 4.2.12  
Written Orders  
1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

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

#### § 1.1.2 The Contract

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

#### § 1.1.3 The Work

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

#### § 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### § 1.1.5 The Drawings

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

#### § 1.1.6 The Specifications

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

#### § 1.1.7 Instruments of Service

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

#### § 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

### § 1.2 Correlation and Intent of the Contract Documents

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

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

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

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

### § 1.3 Capitalization

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

### § 1.4 Interpretation

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

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

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

### § 1.6 Notice

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

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

### § 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. ~~The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

### § 1.8 Building Information Models Use and Reliance

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

and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

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

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

### **§ 2.2 Evidence of the Owner's Financial Arrangements**

**§ 2.2.1** Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### **§ 2.3 Information and Services Required of the Owner**

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

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

**§ 2.3.3** If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

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

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

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

#### § 2.4 Owner's Right to Stop the Work

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

#### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of 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 default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for 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 current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

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

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

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

#### § 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These

obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor ~~fails-willfully refuses~~ to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such ~~direct, actual costs and damages~~ to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. Notwithstanding the foregoing, the Contractor shall not be liable for Architect's errors, omissions, or the substandard performance of Architect's contractual or professional obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### § 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

### § 3.4 Labor and Materials

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

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

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

### **§ 3.5 Warranty**

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

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

### **§ 3.6 Taxes**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **§ 3.7 Permits, Fees, Notices and Compliance with Laws**

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

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

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

### **§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 Allowances**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

### § 3.9 Superintendent

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

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

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

### § 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

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

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

### § 3.11 Documents and Samples at the Site

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

### § 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and

other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

### **§ 3.13 Use of Site**

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

### **§ 3.14 Cutting and Patching**

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

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

### **§ 3.15 Cleaning Up**

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

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

### **§ 3.16 Access to Work**

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

### **§ 3.17 Royalties, Patents and Copyrights**

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

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent

acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

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

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

### **§ 4.2 Administration of the Contract**

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

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### **§ 4.2.4 Communications**

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

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

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise

such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

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

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

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

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

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

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

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

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

## § 5.3 Subcontractual Relations

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

## § 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

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

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

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

### § 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner 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 notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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

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

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

### § 6.3 Owner's Right to Clean Up

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

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

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

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

### § 7.2 Change Orders

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

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

### § 7.3 Construction Change Directives

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

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

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

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

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

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

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

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

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

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

#### § 7.4 Minor Changes in the Work

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

### ARTICLE 8 TIME

#### § 8.1 Definitions

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

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

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

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

#### § 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

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

### § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other reasonable causes that the Contractor asserts, including but not limited to pandemics, riots, civil disobedience, insurrection, or acts of domestic or international terrorism, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Owner and Contractor/Architect may determine. The Owner and Architect shall be presumed to have caused a delay in the progress of the Work by withholding decisions on matters relevant to the Work for more than five (5) business days after the submission thereof.

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

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

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

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

### § 9.2 Schedule of Values

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

### § 9.3 Applications for Payment

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

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location

agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

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

#### **§ 9.4 Certificates for Payment**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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

#### **§ 9.5 Decisions to Withhold Certification**

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

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

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

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

## § 9.6 Progress Payments

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

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

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

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

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

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

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

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

## § 9.7 Failure of Payment

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

## § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

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

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

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

## § 9.9 Partial Occupancy or Use

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

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

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

## § 9.10 Final Completion and Final Payment

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

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

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

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

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings

against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

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

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

### **§ 10.2.8 Injury or Damage to Person or Property**

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

### **§ 10.3 Hazardous Materials and Substances**

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

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

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

(other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

#### **§ 10.4 Emergencies**

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

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§ 11.1 Contractor's Insurance and Bonds**

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

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

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

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

#### **§ 11.2 Owner's Insurance**

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

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to

provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### **§ 11.3 Waivers of Subrogation**

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

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

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

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

### **§11.5 Adjustment and Settlement of Insured Loss**

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

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner

shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 Uncovering of Work**

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

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

### **§ 12.2 Correction of Work**

#### **§ 12.2.1 Before Substantial Completion**

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

#### **§ 12.2.2 After Substantial Completion**

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

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

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

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

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

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for

correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### § 12.3 Acceptance of Nonconforming Work

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

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

### § 13.2 Successors and Assigns

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

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

### § 13.3 Rights and Remedies

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

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

### § 13.4 Tests and Inspections

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the 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 13.4.3, shall be at the Owner's expense.

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

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

§ 13.4.5 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.

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

### § 13.5 Interest

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

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

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

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

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

### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

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

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

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

### § 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

### § 14.4 Termination by the Owner for Convenience

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

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

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

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

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

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

#### § 15.1.2 Time Limits on Claims

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

### § 15.1.3 Notice of Claims

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

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

### § 15.1.4 Continuing Contract Performance

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

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

### § 15.1.5 Claims for Additional Cost

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

### § 15.1.6 Claims for Additional Time

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

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

### § 15.1.7 Waiver of Claims for Consequential Damages

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

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

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

### § 15.2 Initial Decision

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

and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

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

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

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

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

### § 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

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

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

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

#### § 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

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

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

#### § 15.4.4 Consolidation or Joinder

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

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

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

# **CITY ADMINISTRATOR'S REPORT**

## CITY ADMINISTRATORS REPORT – 4/18/23

- Monitoring a number of street projects on East Seward (construction), design on East Hillcrest, and drainage near Park Street & Bradford Street (bid opening).
- Assisting City Attorney with a number of real estate items and related matters.
- Assisted with Civic Center items and issues, working with Commission on Building Design.
- Reviewed additional DTR items and worked with applicants on needed documents, met with applicants and SENDD.
- Continued to work with RDG Planning to complete blight study.
- Met with BVH, Sampson and Wellness Center Committee on design updates. Reviewed first estimate for the building from Sampson. Interviewed Executive Director candidates. Selected Joel Brase.
- Continue to work with new Water/Wastewater Director Brandon Koll as he gets acquainted with position.
- Continued 2023 comparability study with staff.
- Taught Junior Achievement class at Seward Elementary.
- Reviewed Supervisory Performance Eval system with HR Director.
- Monitored Seward County 1 & 6 Year Road Plan.
- 6<sup>th</sup> Month Target Meetings with all Department Heads. Reviewed goals for next 6 month period.
- Phone conference with Gilmore Bell to discuss bonding options on Wellness Center and WWTP.
- Met with execs from Black Hills Energy to discuss capacity in Seward and Seward Rail Campus.
- Reviewed 2019 Flood Report with City Clerk.
- Reviewed Handbook Section 5 and 6 redraft.
- Worked on a potential project for the Seward Rail Campus. Conducted site visit with project engineering team.
- Reviewed all 6-month evaluations for all City employees.
- Reviewed NPPD PURPA assignment presentation with Electric Superintendent.
- Reviewed Electric System Study with Electric Superintendent and Line Crew Chief.
- Conducted a budget process overview with new Wastewater/Water Superintendent.
- Began process to replace Finance Director after receipt of Nick Wolf's notice.
- Met with SEH to plan for City Council presentation on the Wastewater Treatment Plant Design.
- Met with local land owner regarding ROW issues and City street project.
- Conducted final Police Interviews for the current open PO-I position.
- Reviewed parking plan for S. 4<sup>th</sup> Street between Main and Seward with staff. Plan will add ADA parking and a few additional stalls.
- Reviewed potential private floodplain violations along with staff.

The departments are working on the following projects to name a few:

### **Police Department**

- Suicide Prevention Coalition.
- Interview w/ PO-I candidate.
- E911 Board.
- Spring clean-up around the PD building.

### **City Clerk/Human Resources/City Hall**

- City website launched by end of week.
- Follow up with Greg about roofing RFP from the June 14<sup>th</sup> Storm Cleanup.
- Quarterly report submitted Friday for Pump House with NEMA.
- Reschedule meeting to discuss Sec.5-6 of the Employee Personnel Handbook.

- Review scoring and three goals for next six months of performance evaluations.

### **Water/Wastewater Department**

- Sludge hauling this week.
- Finish DMR's.
- New meter reading laptop.

### **Parks and Rec/Cemetery/Golf/Pool**

- The crew will be working on hole 4 at the golf course doing drainage.
- Concordia and High School baseball have games on Tuesday through Saturday.
- Irrigation start up and maintenance.

### **Civic Center**

- Quiz Bowl.
- Marble Music this weekend.
- Still looking for part-time help.

### **Electric Department**

- Work on E. Seward, pull in wire and terminate, and set vault.
- Terminate wire at Tenneco.
- Replace service wire at 1144 6<sup>th</sup> Ave.
- Change out meters.

### **Street Department**

- Street sweeping.
- Tree removal.
- Fix curb line for Sparetime on Seward Street.
- Work on 5<sup>th</sup> Street from Jackson to Roberts.

### **Library**

- Remodel construction begins 4/10/23.
- York University play presented 4/15/23.
- Work on reorganizing Heritage Room.
- Cleaning/emptying lower-level staff storage room for construction.

### **Building Inspection/Planning Department**

- No April agenda for Planning Commission.
- Working on water permit resolution for fee increase of \$120.00. Assisting Brandon with grease trap monitoring and reporting.
- Met with Fire Marshalls and Contractor about building remodel for Mercy City Church.
- Meeting over historic downtown signage this week.

### **Engineering**

- Water main extension, storm sewer construction, adjust manholes to grade and damage on East Seward Street.
- Letter to SEH on budget & scope and complete final flowsheet meeting.
- Execute agreements with contractor for the Water Tower.
- Paving, storm manhole frame and cover for Prairie View Development.

### **Finance Dept.**

- Setting sewer rates.
- Distribute CDGB DTR Draw #4.
- Distribute TIF tax receipts.
- Prepping for bonuses and step increases for payroll.
- Semi-annual treasurer's report.

**FUTURE REQUESTS FOR COUNCIL AGENDA ITEMS OR ADMINISTRATIVE  
ACTION  
ANNOUNCEMENT OF UPCOMING EVENTS  
STRATEGY SESSION**

1. Strategy Session with City Attorney Regarding Real Estate Interests - City Attorney Hoffschneider

**MOTION TO ADJOURN**

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I, Derek Bargmann, the duly appointed qualified and acting City Clerk of the City of Seward, Nebraska, hereby certify that the foregoing Notice of Meeting and Agenda for such meeting has been posted in the following places: Seward City Hall, Seward Municipal Building, Seward County Courthouse, Seward Memorial Library and CityofSewardNE.gov

IN WITNESS WHEREOF, I have hereunto set my hand officially and affixed the seal of the City.

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Derek Bargmann, City Clerk

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Date