



OWNER - CONTRACTOR CONSTRUCTION AGREEMENT

Contract # insert #

Project Identification:

5551-GS SECURITY CAMERA INSTALLATIONS BEH, CHB, GRA, SLC-A and SLC-D
PWP# -CL-2025-395
IFB# 5551-GS
CAM 2505 PC-193287

Owner:

The Board of Regents of the Nevada System of Higher Education (NSHE),
on behalf of the University of Nevada, Las Vegas

4505 South Maryland Parkway
Las Vegas, NV 89154-1033
(702) 895-3521

Contractor:

Insert Name of Contractor
Insert Contractor Business Address
Insert Contractor Phone Number

Contact Information

Owner: University of Nevada, Las Vegas

Project Manager: insert name

Phone: insert#

E-mail: insert

Contractor: insert firm

Project Executive: insert name

Phone: insert #

E-mail: insert

Contractor: insert firm

Superintendent: insert name

Phone: insert #

E-mail: insert

Architect: insert firm

Contact: insert name

Phone: insert#

E-mail: insert

Contractor: insert firm

Project Manager: insert name

Phone: insert #

E-mail: insert

Contractor: insert firm

Safety Director: insert name

Phone: insert #

E-mail: insert

OWNER-CONTRACTOR CONSTRUCTION AGREEMENT

This Owner-Contractor Construction Agreement (“**Agreement**”) is entered into effective as of the date of the last signature below, by and between the Board of Regents of the Nevada System of Higher Education (“**NSHE**”) on behalf of the University of Nevada, Las Vegas (“**Owner**”), and Insert Full Legal Name (“**Contractor**”). Owner and Contractor are each hereinafter a “Party” and collectively, the “Parties.”

Owner desires to engage Contractor to provide certain construction services for the project identified on the cover page (the “Project”), as described herein, and Contractor warrants that it is fully licensed to provide the same. The Parties therefore agree as follows:

1 | DEFINITIONS

- 1.1 “**Accepted Working Days**” means the days and times set forth in this Section 1.1, if any; and any days or times approved in accordance with Section 5.3. Added Accepted Working Days are as follows: Describe or state N/A.
- 1.2 “**Architect**” means the person or organization responsible for the design of the Project and the preparation of the Drawings and Specifications on behalf of Owner. For Projects where there is no such person or organization, all references to the “Architect” shall mean Owner.
- 1.3 “**AHJ**” means the authority having jurisdiction.
- 1.4 “**Apprentice**” means a person enrolled in a Program.
- 1.5 “**Apprenticeship Utilization Act**” means the Apprenticeship Utilization Act which was passed by Senate Bill 207 (2019 Nev. State., ch 527, §1.7) and codified at Nev. Rev. Stat. §338.01165.
- 1.6 “**Apprentice Waiver**” means a waiver from the Labor Commissioner of an obligation under the Apprenticeship Utilization Act.
- 1.7 “**Calendar Day**” means any day of the year including weekends and holidays.
- 1.8 “**Contract Amount**” shall have the meaning set forth in Section 2.
- 1.9 “**Contract Documents**” shall have the meaning set forth in Section 4.1.
- 1.10 “**Contract Time**” shall have the meaning set forth in Section 5.1.
- 1.11 “**Good cause**” means: (1) There are no Apprentices available from a Program within the jurisdiction where the Project is to be completed; (2) Contractor or one of its subcontractors is required to perform uniquely complex or hazardous tasks on the public work that require the skill and expertise of a greater percentage of journeymen; or (3) Contractor or one of its subcontractors has requested Apprentices from a Program and the request has been denied or the request has not been approved within 5 business days. The term does not include the refusal of Contractor or one of its subcontractors to enter into an apprenticeship agreement.
- 1.12 “**Key Personnel**” means the project executive, superintendent, project manager, safety director and any other role specifically designated for a particular project.
- 1.13 “**Normal Working Days**” means Monday through Friday, excluding State holidays and any blackout dates explicitly mentioned in the Invitation for Bid.
- 1.14 “**NAC**” means Nevada Administrative Code.
- 1.15 “**NRS**” means the Nevada Revised Statutes.
- 1.16 “**Program**” means an apprenticeship program recognized by the State Apprenticeship Council (as defined in Nev. Rev. Stat. §610.30) for the particular craft or type of work.
- 1.17 “**Project**” means the project identified on the cover page as briefly summarized with any special requirements noted on Exhibit A.

- 1.18 **“Purchase Order”** means a purchase order or purchase order modification issued by Owner.
- 1.19 **“Unavoidable Delays”** means delays due to any of the following, and only the following, (provided that such delay is beyond Contractor’s reasonable control): war, insurrection, civil commotion, strikes, slowdowns, lock outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, acts of terrorism, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental moratoriums, unusually severe or abnormal weather conditions, failure of utilities, or a court order which causes a delay (unless resulting from a wrongful act). In no event shall the application to Contractor of any applicable law, regulation, rule or other governmental requirement constitute an Unavoidable Delay.
- 1.20 **“Warranty Period”** shall have the meaning set forth in Section 42.4
- 1.21 **“Work”** means all labor, materials, services, equipment, tools, transportation, power, water, permanent and temporary utilities, connections, provisions for safety, and all incidental and other things necessary to produce the finished construction as described by the Contract Documents.

2 | CONTRACT AMOUNT.

For furnishing all labor, materials, equipment, tools and services and for doing everything required by this Agreement and the other Contract Documents, the Owner will pay and the Contractor shall receive as full compensation therefore, in accordance with the Pricing Response Form and related supporting documentation as required to determine the final contract amount, a total sum not to exceed (the **“Contract Amount”**):

Base Bid	\$ insert amount
click insert #	\$ insert amount
TOTAL CONTRACT AMOUNT	\$ insert total

The Contract Amount will be paid in accordance with Section 45 entitled Payments.

3 | PREVAILING WAGES. Pursuant to NRS, any contract for construction work for which the estimated cost exceeds one hundred thousand dollars (\$100,000) shall be subject to the provisions of the Prevailing Wage Act, including but not limited to payment of prevailing wages, regardless of whether the construction work qualifies as a "public work" as defined by NRS. In accordance with NRS, Contractor agrees that if the Contract Sum at any time equals or exceeds one hundred thousand dollars (\$100,000), the Project is subject to the prevailing wage requirements under Nevada Law and the requirements of this Section 3. If one (1) or more Change Order(s) causes the Contract Amount to exceed one hundred thousand dollars (\$100,000), the Contractor and each Subcontractor shall be obligated to pay prevailing wages retroactive to the commencement of Work on the Project. Contractor is solely responsible for any retroactive payments of prevailing wage and shall not pass the cost on to Owner. Contractor agrees to comply with the Prevailing Wage Act and all other provisions of NRS that are applicable to the Project.

- 3.1 **Rates.** Contractor shall ensure that all employees on the Project are paid, at minimum, the prevailing wages established by the State Labor Commissioner. Prevailing Wages Rates for Clark County must be used. See Office of the Labor Commissioner Website at www.laborcommissioner.com. Click on Prevailing Wage, then Prevailing Wage Rates by County, and then click on Clark to view or print the Prevailing Wage rates for this Project.
- 3.2 **Contractual Provisions.** Contractor shall include the substance of the prevailing wages requirement of this Section 3 as contractual language in all contracts and lower tier subcontracts. In addition, all solicitations and contracts shall contain the applicable prevailing wage rates.
- 3.3 **Records.** Contractor shall keep accurate records showing the name, occupation and actual per diem wages paid to each employee used in connection with construction of the improvements. Such records shall be open to inspection and reproduction by the Owner during normal business hours. Contractor

will send one (1) electronic copy of each wage report to Owner's Project Manager using LCPTracker. Contractor shall, and shall ensure that each Subcontractor does, timely submit to OWNER the electronic reports required under NRS 338.070(6) using LCPTracker.

- 3.4 **Subcontractors.** Contractor shall report to the Labor Commissioner and the Owner the name and address of each subcontractor performing work on the project within 10 days after the subcontractor commences work on the project and the identifying (PWP) number for the public work.
- 3.5 **Penalties.** Contractor shall monitor and ensure compliance to the payment of prevailing wages and submission of reports. Failure to comply with the requirements shall result in the penalties set forth in NRS and the NAC.
- 3.5.1 Contractor shall forfeit as a penalty to the Owner, amounts required by NRS 338.060, for each Calendar Day or portion thereof that each worker employed on the Owner's project is paid less than the designated rate for any work done under the contract by the Contractor or any Subcontractor under it.
- 3.5.2 Contractor shall forfeit as a penalty to the Owner, amounts required by NRS 338.060, for each calendar day or portion thereof for each worker employed on the Owner's project for which the Contractor or Subcontractor willfully included inaccurate or incomplete information in the monthly record required to be submitted to the public body pursuant to subsection 6 of NRS 338.060.
- 3.5.3 Contractor shall forfeit as a penalty to the Owner, amounts required by NRS 338.060, for each calendar day or portion thereof that each worker employed on the Owner's project is not reported to the public body awarding the contract by the contractor or any subcontractor engaged on the public work as required pursuant to subsection 6 of NRS 338.060.
- 3.5.4 If a violation of more than one (1) provision of Sections 3.5.1, 3.5.2 or 3.5.3 of this Agreement involves the same worker, the Contractor shall forfeit the penalty set forth in each Section that was violated.
- 3.6 **Posting.** Pursuant to NRS 338.20(1)(b), Contractor shall post the hourly and daily wages in a generally visible place to the workers.
- 3.7 **Changes in law.** This Section 3 shall be deemed to incorporate any future modifications to the NRS or NAC with respect prevailing wage requirements that are applicable to the Nevada System of Higher Education.

4 INCORPORATED DOCUMENTS

- 4.1 **Contract Documents.** The Owner and the Contractor agree that the following project documents are incorporated into and made a part of this Agreement by reference (collectively, the "**Contract Documents**"):
1. Invitation for Bid No. insert xxxx-xx;
 2. Addenda No(s). insert #'s or N/A;
 3. Bid Documents, (excluding any terms, conditions or exceptions added by Contractor);
 4. Performance Bond provided by Contractor;
 5. Payment Bond provided by Contractor;
 6. Certificate of Insurance provided by Contractor;
 7. Specifications;
 8. Drawings;
 9. The current Prevailing Wage Rates for Clark County
 10. Exhibit A
 11. Other Documents: List or state N/A.

Execution of this Agreement shall constitute the representation by each Party that it has examined the contents of the Contract Documents, has read and understands the same, and specifically agrees to be bound thereby.

4.2 **Order of Precedence.** The Contract Documents are intended to include and require all items which are necessary for the proper execution and completion of the Work. In general, the Specifications may describe types and quantities of materials, equipment, and other items of the Work and methods of installation which cannot be easily shown on the Drawings. It is not intended that the Specifications will mention every item of Work that can be adequately shown on the Drawings nor is it intended that the Drawings will show all items of Work adequately described or required by the Specifications, even if it is the case that such Work could have been shown thereon. Further, the Contract Documents are complementary and what is required by any one shall be as binding as if required by all. However, in the event of any conflict or inconsistency between or within any of the Contract Documents, then such conflict or inconsistency shall be resolved in accordance with the following order of precedence:

1. Change Orders;
2. This Agreement;
3. Addenda to Specifications;
4. Addenda to Drawings;
5. Specifications;
6. Drawings;
7. Invitation for Bid

Large scale drawings shall further take precedence over smaller scale drawings.

In the event of an inconsistency between or within any of the Contract Documents and any applicable code(s), the better quality or greater quantity of work shall be provided, at no additional cost to the Owner.

5 | CONTRACT TIME

5.1 **Duration.** The Contractor agrees to provide all labor and materials to complete the Project as drawn and specified:

5.1.1 **By Thursday, February 1, 2024.**

5.2 **Commencement.** The date of commencement of the Work is the date of the Purchase Order issued by Owner or such other date established in the Purchase Order or as otherwise modified by a subsequent notice to proceed issued by Owner. The Purchase Order serves as the Notice to Proceed. The Contractor shall carry the Work forward expeditiously with adequate forces and shall complete the Work within the Contract Time.

5.3 **Working Days.** Works shall be performed during Normal Working Days or Accepted Working Days. If the Contractor desires to work on days or at times other than Normal Working Days or Accepted Working Days, he shall obtain Owner's written approval at least five (5) Calendar Days in advance of the scheduled work day.

5.4 **Acceptance.** It is agreed by the Contractor and Owner that the time established in the Contract Documents is an acceptable time for completion of the Work considering the average climatic range and the usual industrial and labor conditions prevailing in the locality of the Work. The Contract amount is based on the Contract Time specified in the Contract Documents and is not based on an early completion schedule. No additional compensation will be allowed to the Contractor for delays to an early completion schedule.

5.5 **Contract Time Extensions.** All claims for extensions of time shall be made in writing in accordance with the process for Change Orders described in Section 24.3; otherwise, they will be disallowed. If the Contractor is delayed at any time in the progress of the Work by any act or neglect of Owner, or its employee, or by any separate contractor employed by Owner, or by changes ordered in the Work, or Unavoidable Delay, the Contract Time may be extended by Change Order for such reasonable time as Owner may determine. Contractor shall use reasonable good faith efforts to notify Owner not later than five (5) days after Contractor knows of the occurrence of an Unavoidable Delay or any other delay.

5.5.1 An extension of time for an Unavoidable Delay shall only be for a period of the Unavoidable Delay,

which period shall commence to run from the time of the commencement of the cause of the Unavoidable Delay.

5.5.2 An extension in Contract Time for a delay will be allowed only in the case that a Normal Working Day or Accepted Working Day is lost. A "Normal Working Day" is defined as any day, except weekends and holidays, during which the Contractor can work for at least four (4) hours. Delays will not be allowed for any other non-working days (e.g., weekends and holidays).

5.5.3 Claims by the Contractor for delays will not be allowed on account of failure to furnish interpretations, until fourteen (14) Calendar Days after a Request for Information is submitted by the Contractor, and then not unless such claim is reasonable.

5.6 **Weather Delays.** For delays related to weather conditions, it is expressly understood and agreed that the Contract Time includes adequate time to allow for delays on account of usual weather, considering the climatic conditions in Las Vegas, Nevada. No adjustment to the Contract Time is allowed on account of usual weather. The project schedule shall include adequate float or allowance in the construction schedule to accommodate weather conditions that may be associated with weather-dependent work. An extension to the Contract Time based upon weather will be considered only in a case where an abnormal or unusual weather delay has directly affected the critical path identified in the approved construction schedule.

5.7 **Delay Compensation.** It is further expressly understood and agreed that the Contractor shall not be entitled to any damages or compensation, or be reimbursed for any losses, on account of any Unavoidable Delay. Owner agrees to compensate the Contractor for any damages resulting from any affirmative, willful act in bad faith performed by Owner or its employees which unreasonably interfered with the Contractor's ability to perform the Work. Without limiting the circumstances that may cause delays for which the Contractor is assuming the risk for delay damages, the following possible delay circumstances are considered within the contemplation of the parties: (i) unknown or uncertain conditions including, but not necessarily limited to, the discovery of caliche, ground water and all other subsurface conditions; (ii) weather conditions (including, but not limited to, precipitation, flood, mud slides, sink holes, ice and snow resulting from precipitation, wind, temperature or humidity) and the resultant effects thereof regardless of the nature, duration, severity or abnormality of such weather condition; (iii) unmarked utilities or utility interferences; (iv) events of war, labor disputes, transportation delays, freight embargos, earthquakes, floods, epidemics, terrorist threats or acts, workplace violence, theft, vandalism damage to the Work (including fire and explosion), acts of God and all other events, acts or omissions resulting in the unavailability of labor, materials, equipment or utilities; (v) acts or omissions of the AHJ acting in its role as code and regulation enforcement regulators; (vi) acts or omissions of Contractor's SubContractors, suppliers and material manufacturers involved in the Work; (viii) acts, omissions and coordination of other contractors regardless of the event location or contractual relationship between the parties, unless such contractors are under the direction or control of the Owner; and (ix) discovery of hazardous substances or substances suspected of being hazardous. Owner agrees to compensate the Contractor for any damages resulting from any affirmative, willful act in bad faith performed by Owner or its employees which unreasonably interfered with the Contractor's ability to perform the Work.

5.8 **Exclusions.** Except as provided in NRS 338.485(2)(c), extensions to the Contract Time will only be allowed for delays that affect the critical path for completion of the entire Work as identified in the approved construction schedule, provided however that under no circumstances shall extensions of Contract Time be allowed for the following types of delays:

5.8.1 Delays which could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor;

5.8.2 Delays in the execution of parts of the Work, which may in themselves be unavoidable, but do not prevent or delay prosecution of other parts of the Work, nor the completion of the whole Work within the time specified;

5.8.3 Delays arising from interruptions occurring in the prosecution of the Work on account of reasonable interference of other contractors employed by Owner, which do not prevent the completion of the whole Work within the Contract Time.

5.8.4 Delays resulting from correction of Work rejected as defective or as failing to conform to the Contract Documents.

6 | LIQUIDATED DAMAGES

- 6.1 **Time is of the Essence.** It is hereby mutually agreed, between the Contractor and Owner, that Contract Time is an essential condition of the Agreement. Time is of the essence in completion of the Work. The Contractor agrees that all work shall be prosecuted regularly, diligently, and without interruption at a rate of progress that will ensure completion of the Work within the Contract Time.
- 6.2 **Reasonable Time.** It is expressly understood and agreed, by and between the Contractor and Owner, that the time for completion described in the Contract Documents is an acceptable time for the completion, taking into consideration the average climatic range and usual industrial and labor conditions prevailing in the locality of the Work.
- 6.3 **Failure to Complete.** If the Contractor shall neglect, fail, or refuse to complete the Work within the specified Contract Time, as it may be extended by Change Order, then the Contractor does hereby agree, as a part of the consideration for receiving the award of the Agreement, to pay to Owner, not as a penalty, but as liquidated damages, the amount of money specified for each and every excess Calendar Day that is required to complete the Work.
- 6.4 **Key Personnel.** Contractor acknowledges that the superintendent, safety director and project manager are Key Personnel who were identified in Contractor's bid for the project. The parties recognize that in the event Contractor changes any Key Personnel without the consent of Owner, Owner may incur additional expenses and delay that will be difficult or impossible to quantify.
- 6.5 **Unauthorized Change.** If the Contractor changes the assigned project executive, safety director, superintendent and/or project manager without the consent of Owner, does hereby agree, as a part of the consideration for receiving the award of the Agreement, to pay to Owner, not as a penalty, but as liquidated damages, the amount of money specified for the unauthorized change.
- 6.6 **Delay Amount.** The unit amount of liquidated damages is established as insert amount dollars and zero cents (\$insert amount) for every Calendar Day after the Contract Time that the Work is not complete, and is fixed amount mutually agreed upon by and between the Contractor and Owner to be the appropriate and best estimate due to the impracticability and extreme difficulty of ascertaining in advance the actual damages Owner would sustain should the Work not be completed within the Contract Time.
- 6.7 **Unauthorized Change Amount.** The unit amount of liquidated damages is established as insert amount dollars and zero cents (\$insert amount) for substitution of a Key Personnel without first obtaining Owner's consent,, and is a fixed amount mutually agreed upon by and between the Contractor and Owner to be the appropriate and best estimate due to the impracticability and extreme difficulty of ascertaining in advance the actual damages Owner would sustain should the Work not be completed within the Contract Time.
- 6.8 **Sole Remedy.** The specified liquidated damages shall be the sole and exclusive remedy for excess Calendar Days or unauthorized changes. The Contractor agrees to and hereby waives any defense as to the validity or enforceability of any liquidated damages payable by the Contractor under the Contract on the grounds that such damages are a penalty or that such damages are disproportionate to the actual damages sustained by the Owner. Assessment of liquidated damages does not affect the requirement that Key Personnel be satisfactory to Owner.
- 6.9 **Right to Collect.** Should monies due the Contractor for Work performed be insufficient to cover such liquidated damages, then Owner shall have the right to recover said sum or sums from the Contractor, from his Surety, or both.

- 6.10 **Assessment.** All changes to authorized Contract Time shall be set forth in Change Orders. Time extensions in Change Orders apply only to those specific elements related to the changed Work and the remaining contract completion dates for all other portions of the work will not be altered. Liquidated damages shall cease to be assessed on the date of Substantial Completion provided the Contractor completes all punch list work within the time limit stipulated in the Certificate of Substantial Completion. If the Contractor does not complete all of the punch list work within the time limit stipulated in the Certificate of Substantial Completion, the assessment of liquidated damages shall resume on the date that the stipulated time limit expires and shall continue until all such punch list work is completed.

7 | INTERPRETATION

- 7.1 **Governing Law and Venue.** This Agreement shall be construed and interpreted according to the laws of the State of Nevada, excluding any laws or principals regarding the conflict or choice of laws. Venue for any dispute or litigation arising out of or in connection with this Agreement shall be in a court of competent jurisdiction in Clark County, State of Nevada, and Contractor expressly consents to the jurisdiction of said court.
- 7.2 **Chapter 338.** Contractor and each Subcontractor must comply with the applicable requirements of NRS Chapter 338 and NAC Chapter 338. To the extent a provision of this Contract is prohibited by NRS Chapter 338 and/or NAC Chapter 338, it is hereby deemed modified to the extent necessary to comply with the provisions of NRS Chapter 338 and/or NAC Chapter 338. To the extent a provision is required to be inserted into this Contract by NRS Chapter 338 and/or NAC Chapter 338, it is deemed inserted.
- 7.3 **Entirety Clause.** This Agreement constitutes the entire agreement between the Parties and supersede all prior and contemporaneous agreements, understandings and negotiations with respect to the subject matter thereof
- 7.4 **Modification.** This Agreement may be modified only by a written Change Order executed by the Parties.
- 7.5 **Headings and Terminology.** The headings in this Contract are for purposes of convenience and reference only and shall not in any way define, limit, extend or otherwise affect the meaning or interpretation of any of the terms hereof. The words "will" and "shall" denote a mandatory requirement or obligation. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Contract shall refer to this Contract as a whole and not to any particular section. The words "including," "including without limitation," and words of similar import shall not be deemed restrictive but rather shall be deemed illustrative examples.

8 | WRITTEN NOTICE

- 8.1 **Method.** Written notices required under this Contract shall be sent by certified mail (return receipt requested), a nationally recognized overnight courier with tracking capability, or by email to the following:

8.1.1 For Owner: Musa Pam, CEM, CPE, CHFM
Associate Vice President for Facilities Management
Box 451027, 4505 Maryland Pkwy.
Las Vegas, NV 89154-1027
adm.fms@unlv.edu

AND: Sharrie Mayden, C.P.M.
Executive Director of Purchasing and Contracts
University of Nevada, Las Vegas
Box 451033, 4505 Maryland Pkwy.
Las Vegas, NV 89154-1033
purchasingunlv@unlv.edu

8.1.2 For Contractor: insert name

insert contractor information, include e-mail

- 8.2 **Exclusions.** Minutes of construction progress meetings, Contractor's daily reports and/or Requests for Information do not constitute written notice.

9 | INFORMATION ACCESS

The books, records, documents and accounting procedures and practices of the Contractor relevant to this Agreement shall be subject to inspection, examination and audit by Owner, including legal counsel, during the course of this Project and for three (3) years after its completion.

10 | ASSIGNMENT

The Contractor binds itself and each of its partners, successors, assigns and legal representatives to Owner and to Owner's partners, successors, assigns and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents. The Contractor shall neither assign, transfer nor delegate any rights, obligations, monies or duties under this Agreement without the prior written consent of the Owner.

11 | SEVERABILITY

If any provision or any portion of any provision of this Agreement shall be held invalid, illegal, or unenforceable, the remaining provisions or portions of any provisions shall be valid and enforceable to the extent possible.

12 | USE OF DOCUMENTS

Any reports, studies, photographs, negatives or other documents or drawings prepared by Contractor in the performance of its obligations under this Agreement shall be the exclusive property of Owner and all such materials shall be remitted to Owner by Contractor upon completion, termination or cancellation of this Agreement. The Contractor shall not use, willingly allow or cause to have such materials or any of the Contract Documents used for any purpose other than the performance of Contractor's obligations under this Agreement without the prior written consent of Owner.

13 | INDEMNIFICATION

- 13.1 **Indemnity.** To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless Owner, Owner's officials, officers, employees and agents, from and against all claims, damages, losses, and expenses, including, but not limited to attorneys' fees, arising out of, resulting from or relating to 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, 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 such claim, action, damage, loss, injury, liability, cost or expense is caused in part by a party indemnified hereunder.
- 13.2 **Employees.** In any and all claims against Owner, or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under Workers' Compensation Acts, disability benefit acts, or other employee benefit acts.
- 13.3 **No Limitation by Insurance.** Obligations of the Contractor shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist. This indemnification obligation shall not be diminished or limited in any way to the total limits of insurance required in this Agreement or otherwise available to the Contractor or Subcontractors.

14 | INDEPENDENT CONTRACTOR

14.1 **NRS §333.700.** The Parties agree that the Contractor is an independent contractor and that this Agreement is entered into in accordance with NRS §284.173, which statute in pertinent part provides that the Contractor is not an employee of Owner and that there shall be no: withholding of income taxes by Owner; industrial insurance coverage provided by Owner; participation in group insurance plans which may be available to employees of Owner; participation or contribution by either the independent contractor or Owner to the Public Employees Retirement System; accumulation of vacation leave or sick leave; or unemployment compensation coverage provided by Owner if the requirements of NRS §612.085 for

independent contractors are met.

- 14.2 **Status.** It is further agreed that Contractor is not an employee of Owner and is not entitled to any of the compensation, benefits, rights, or privileges of employees of Owner.

15 | FAIR EMPLOYMENT PRACTICES

- 15.1 **No Discrimination.** In connection with the performance of Work, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, gender identity or expression, or age including without limitation, with regard to employment, upgrading, demotion or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor further agrees to insert this provision in all subcontracts relating to this Project, except subcontracts for standard commercial supplies or raw materials. Any violation of this provision by the Contractor shall constitute a material breach of contract.
- 15.2 **Preferential Employment.** In addition to the forgoing, the Contractor agrees to abide by all provisions of NRS §338.130 related to preferential employment of persons employed in the construction of public works. A failure or refusal by the Contractor to comply with this NRS §338.130 shall render this Agreement void.

16 | LEGAL COMPLIANCE

- 16.1 **Laws.** Contractor agrees to and shall comply with the requirements of all applicable federal, state and local laws, including, without limitation, any applicable licensing and registration requirements and requirements for the payment of sales and use taxes on equipment, materials and supplies provided for the Project. Contractor agrees to insert this provision in contracts it may have with any Subcontractor or other person who provides labor, equipment, materials, supplies or services for the Project.

- 16.2 **Nevada Preference.** If applicable, the provisions of the Affidavit Pertaining to Preference Eligibility executed by Contractor (the "Affidavit") are deemed incorporated into the Contract and any failure to comply with the provisions of the Affidavit entitles Owner to a penalty in accordance with NRS §338.0117.

The following provisions apply if Contractor received a preference:

16.2.1 If a party to the contract causes the contractor, applicant or design build team to fail to comply with a requirement of paragraphs (a)-(d), inclusive, of subsection 1 of NRS §338.0117, the party is liable to the Owner for a penalty in the amount of 1 percent of the cost of the largest contract to which he or she is a party;

16.2.2 The right to recover the amount determined pursuant to Section 16.2.1 by Owner pursuant to subsection 5 of NRS §338.0117 may be enforced by Owner directly against the party that caused the failure to comply with a requirement of paragraphs (a)-(d), inclusive, of subsection 1 of NRS §338.0117;

16.2.3 No other party to the contract is liable to Owner for a penalty; and

16.2.4 Contractor shall include this provision in all subcontracts and require it to be included in all lower tier subcontracts.

- 16.3 **Apprenticeship Utilization Act.** Contractor shall, and shall ensure each subcontractor shall, comply with the apprentice employment requirements contained in the Apprenticeship Utilization Act.

16.3.1 For vertical construction, Contractor and each subcontractor who employs a worker on a public work pursuant to NRS 338.040 shall use one or more Apprentices for at least 10 percent of the total hours of labor worked for each apprenticed craft or type of work to be performed on the public work for which more than three workers are employed.

16.3.2 For horizontal construction, Contractor and each subcontractor who employs a worker on a public work pursuant to NRS 338.040 shall use one or more Apprentices for at least 3 percent of the total hours of labor worked for each apprenticed craft or type of work to be performed on the public work for which more than three workers are employed.

16.3.3 If at any time during the Project, Contractor requires an Apprentice Waiver, Contractor shall submit a request for waiver utilizing the form attached as Exhibit B. If Contractor has demonstrated Good Cause, Owner will submit the request to the Labor Commissioner for approval. If a request for an Apprentice Waiver is denied, Contractor must comply with the requirements of the Apprenticeship Utilization Act.

16.3.4 Contractor's failure to comply with the Apprenticeship Utilization Act shall constitute a material breach of this Agreement.

17| INSURANCE PROVISIONS.

17.1 **Insurance.** Without limiting any of the other obligations or liabilities of the Contractor, the Contractor as primary insured shall, at Contractor's sole expense procure, maintain and keep in force for the duration of the Agreement the following insurance conforming to the minimum requirements specified below. Unless specifically noted herein or otherwise agreed to by the Owner the required insurance shall be submitted to the Owner and accepted prior to the issuance of a Purchase Order and Notice to Proceed. Such insurances must remain in force and effect until the later of: (1) final acceptance by the Owner of the completion of the Work in this Agreement, or (2) such time as the insurance is no longer required by the Owner under the terms of the Agreement.

17.1.1 **Commercial General Liability Insurance.** Coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Coverage shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 10 01 and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, and liability assumed under contract. Explosion, collapse and underground coverage shall not be excluded.

17.1.2 **Umbrella/Excess Liability Insurance.** Coverage shall be in the amounts as follows:

17.1.2.1 \$5,000,000 each occurrence/aggregate and must be project specific/dedicated limit for construction contracts between \$1,000,001 and \$5,000,000 or:

17.1.2.2 \$10,000,000 each occurrence/aggregate and must be project specific/dedicated limit for construction contracts over \$5,000,000.

17.1.2.3 May be used to achieve the above minimum liability limits.

17.1.2.4 Shall be endorsed to state it is as broad as primary policies.

17.1.3 **Automobile Liability Insurance.** Coverage in the amount of \$1,000,000 Combined Single Limit per occurrence. Coverage shall include owned, non-owned, and hired vehicles and be written on ISO form CA 00 01 10 01 or a substitute providing equal or broader liability coverage.

17.1.4 **Employers Liability.** Limits shall be at least \$100,000 per occurrence and for occupational disease. Workers' Compensation is required by law for anyone with employees. Sole proprietors and corporate officers can waive coverage with mandatory affidavit available from Owner. Contractor providing services shall provide proof of Workers' Compensation insurance as required by NRS §616B.627 or proof that compliance with the provisions of NRS Chapter 616A-D and all other related chapters, is not required.

17.1.5 **Pollution Liability.** If applicable, the minimum limit of liability required will be \$5,000,000 per occurrence/aggregate if this coverage is required.

17.1.6 **Builders Risk.** If applicable, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial contract sum, plus value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the contract documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in this contract or until no person or entity other

than the Owner has an insurable interest in the property required to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

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

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

17.1.6.3 This builders risk / property insurance shall cover portions of the work stored off the site, and also portions of the work in transit.

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

17.1.7 **Boiler Insurance.** The Contractor shall purchase and maintain boiler and machinery insurance machinery and/or inland marine installation floater required by the contract documents or by law, which shall specifically cover such insured objects like machinery, equipment, and other similar property during installation and prior to installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the work and be at least in the amount of the actual cash value of the property being installed.

17.1.8 **Hazards.** The Contractor shall purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

17.2 **General Requirements.** Each insurance policy shall conform to the below listed requirements.

17.2.1 Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and

17.2.2 Currently rated by A.M. Best as A - IX or better.

17.2.3 Be endorsed to provide ten (10) days' notice for non-payment of premium

17.3 **Additional Insured.** The Board of Regents of the Nevada System of Higher Education must be named as an Additional Insured on all primary and excess / umbrella liability policies (excluding professional liability) affording the broadest possible coverage. Endorsements shall be submitted to allow blanket addition as required by contract or individualized endorsement naming the Owner as an additional insured.

17.4 **Primary Policy.** Parties contracting directly with the Owner must have their policy endorsed to reflect that their insurance coverage is primary over any other applicable insurance coverage available. Any insurance or self-insurance available to the Owner shall be in excess of and non-contributing with any insurance required.

17.5 **Loss Payee:** The Board of Regents of the Nevada System of Higher Education on behalf of Owner shall

be named as loss payee as respects their interest in any property that the Contractor has an obligation to insure on behalf of Owner.

17.6 **Evidence of Insurance.** Prior to the start of any work, the Contractor must provide the below listed documents to Owner:

17.6.1 Certificate of Insurance: The ACORD 25 Certificate of Insurance form or a form substantially similar must be submitted to the Owner to show evidence the insurance policies and coverage required of the Contractor.

17.6.2 Additional Insured Endorsement: Original Additional Insured Endorsement(s) signed by an authorized insurance company representative(s).

17.6.3 Endorsement reflecting Contractor insurance policies are primary over any other applicable insurance.

17.6.4 Loss Payee Endorsement

17.7 **Obligations.** Contractor shall do the following;

17.7.1 Have each of their insurance policies endorsed to provide ten (10) days notice for non-payment of premium;

17.7.2 Specify that the policies cannot be cancelled, non renewed, coverage and/or limits reduced or coverage materially altered that can effect Owner without sixty (60) days prior written notice to Owner and the notices required by this paragraph shall be sent by certified mail to Owner;

17.7.3 Send to the Owner a facsimile copy of the policy cancellation and/or change of policy and conditions notice in this paragraph to the Owner within three (3) business days upon their receipt;

17.7.4 Provide a copy of each policy and the loss history therefor upon request of Owner.

17.7.5 Until such time as the insurance is no longer required by the Owner, Contractor shall provide Owner with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance.

17.7.6 If at any time during the period when insurance is required by this contract, an insurer or surety shall fail to comply with the requirements of this contract, as soon as Contractor has knowledge of any such failure Contractor shall immediately notify Owner and immediately replace such insurance or bond with insurance or bond meeting the contract's requirements.

18 | PERFORMANCE AND PAYMENT BONDS

18.1 **Form.** Contractor shall cause to be executed Performance and Payment Bonds each in a form acceptable to Owner for one hundred percent (100%) of the Contract Amount. The Surety shall be registered with the Insurance Division of the Nevada Department of Commerce, and shall be satisfactory to the Owner. Contractor shall provide the original Performance and Payment Bonds prior to commencing any work on the Project. If the Performance and Payment Bonds are not furnished within thirty (30) days of Notice of Award, Contractor Bid Bond may be forfeited and the Contract may be awarded to an alternate contractor.

18.1.1 The Contractor shall require the attorney-in-fact who executes the required bond on behalf of the surety to affix thereto a certified and current copy of the Power of Attorney.

18.1.2 The bonds shall be payable to Owner.

18.2 **Increases.** Owner will not require the Contractor to increase the Performance and Payment Bonds to accommodate Change Orders, unless a Change Order amounts to an increase of more than ten percent (10%) in the Contract Total. Owner will not pay additional costs for increased bond fees resulting from Change Orders on the work.

18.3 **Subcontractor Bonds.** Owner reserves the right to require the Contractor to obtain Performance and

Payment Bonds for any Subcontractor's bid. Owner will pay the actual cost of any bond so required, not including any overhead and profit. If said bonds cannot be obtained within thirty (30) Calendar Days of notification, the Subcontractor shall be replaced at no additional cost to Owner.

- 18.4 **Replacement Bonds.** If at any time the Owner, for justifiable cause, shall be or become dissatisfied with any Surety as providers of the required Performance Bond or the Payment Bond, the Contractor shall within five (5) calendar days after being notified by the Owner, substitute an acceptable bond in the form and sum and signed by such other Surety as may be satisfactory to the Owner. The premiums on such Bonds shall be paid by the Contractor. No further progress payments to the Contractor shall be deemed due or payable until acceptable bonds are furnished. The new bond amount shall be for the remaining balance of the Agreement. In the event that the Contractor is unable to obtain a new bond, the Owner may obtain the bond and charge the Contractor for the cost required to obtain said bond. Owner shall have the right to demand reimbursement for any cost or automatically deduct the cost of the bond from the cost of the work without a Change Order. The new bond amount shall be for the remaining balance of the contract.

19 | PROJECT COMPLETION

- 19.1 **Substantial Completion.** Substantial Completion is the stage in the progress of the Work, or a designated portion thereof, when construction is sufficiently complete in accordance with the Contract Documents, so that Owner can occupy and/or utilize the Work (or portion thereof) for its intended use. The Work will not be considered substantially complete if any of the following conditions exist:
- 19.1.1 Excessive punch list work remains to be completed that would prevent or interfere with the occupancy and intended use of the facility in Owner's reasonable judgment.
 - 19.1.2 Any of the Work is incomplete or defective (including Work identified in the final punch list) which, in the opinion of Owner, would prevent or interfere with occupancy and/or full use of the facility.
 - 19.1.3 The Project's mechanical systems have not been tested, balanced, and accepted as being fully complete (including commissioning when applicable).
 - 19.1.4 The Project's electrical and life safety systems have not been tested and accepted as being fully complete.
 - 19.1.5 The building commissioning process is not complete.
 - 19.1.6 Final Inspections, Approvals and Temporary or Full Certificates of Occupancy by regulatory officials are not received and complete.
 - 19.1.7 Final clean-up is not complete to support the occupancy and intended use of the facility, outside of clean-up associated with punchlist items to be completed (outside of cleaning as an item).
 - 19.1.8 Successful/compliant testing of all data cabling (copper, fiber or other) and labeling of all data ports is incomplete and not fully correct.
 - 19.1.9 Any other basis for Owner's reasonable determination that Substantial Completion has not been achieved.
- 19.2 **Punch List.** When the Contractor determines that the Work, or a portion thereof which Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to Owner and the Architect a list of items to be completed or corrected. The failure to include any items on the list does not alter the responsibility of the Contractor to complete all work in accordance with the Contract Documents. Inspections for Substantial or Final Completion may be requested by the Contractor only after the status of completion has been reviewed with Owner and Owner agrees/concurs that the Work is ready for such inspection.
- 19.3 **Occupancy.** No use or occupancy of the Project, or any portion thereof, by Owner, shall constitute acceptance of any Work that is not completed in accordance with the Contract Documents, nor shall it relieve the Contractor of full responsibility for correcting defective Work or materials found at any time

prior to completion of the entire Project or during the warranty period.

- 19.4 **Final Completion.** Upon receipt of written notice from the Contractor that the Work is completed and is ready for final inspection, Owner will within a reasonable time, make such inspection. When Owner is satisfied that the Work and all provisions of the Contract Documents are fully and satisfactorily completed, including any outstanding items after Substantial Completion, Owner will authorize Final Payment to the Contractor in accordance with Section 45.6. The Work will not be considered to meet the definition of Final Completion if any of the following conditions exist:

19.4.1 Any required final inspection by the AHJ or Owner has not been passed.

19.4.2 Any required final Certificate of Occupancy has not been received by Owner.

20 | CLAIMS FOR DAMAGES

Should either Party to the Agreement suffer injury or damage to person or property because of any act or omission of the other Party or of any of his employees, agents, or others for whose acts he is legally liable, claim shall be made in writing to such other Party within twenty-one (21) Calendar Days after the first knowledge of such injury or damage.

21 | MEDIATION

All claims, disputes and other matters in question arising out of, or relating to the Agreement, or any breach thereof, shall be subject to non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either Party. Such mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association ("AAA") then in effect, unless the Parties mutually agree otherwise. Any request for mediation shall be filed in writing with the other Party to this Agreement and with the AAA. 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 otherwise mutually agreed by the Parties and consistent with the mediator's schedule, the mediation shall commence within ninety (90) Calendar Days of the submission of the dispute to mediation.

22 | TERMINATION

- 22.1 **Termination by Contractor.** The Contractor may, upon seven (7) Calendar Days written notice, terminate the Agreement if the Work is stopped for a period of thirty (30) Calendar Days through no act or fault of the Contractor, or a Subcontractor, or their employees or agents, for any of the following reasons:

22.1.1 Issuance of a court order or other order from a public authority having jurisdiction;

22.1.2 Failure by Owner to make payment to the Contractor within the time specified herein.

22.1.3 If one of the aforementioned reasons exists, the Contractor may terminate the Agreement and recover from Owner payment for work executed prior to the date of such termination.

- 22.2 **Termination by Owner**

22.2.1 If the Contractor is adjudged bankrupt, or if Contractor makes a general assignment for the benefit of Contractor's creditors, or if a receiver is appointed on account of Contractor's insolvency, or if Contractor persistently or repeatedly refuses or fails to supply enough properly skilled workers, proper supervision or proper materials, or if Contractor fails to make prompt payment to Subcontractors or to materials suppliers for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then Owner may, without prejudice to any right or remedy and after giving the Contractor and Contractor's Surety seven (7) Calendar Days written notice, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method Contractor may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

22.2.2 Owner expressly reserves the right to terminate the Agreement at any time due to a national emergency, court injunction, or for any reason determined to be in the best interest of the Owner. Termination shall be effected by giving the Contractor seven (7) Calendar Days written notice. In this case, payment to the Contractor shall be made as if termination was initiated by the Contractor.

22.2.3 If the unpaid balance of the Contract Amount exceeds the costs of finishing the Work, including compensation for any additional professional services, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to Owner.

23 | SEPARATE CONTRACTS

23.1 **Coordination.** Owner reserves the right to award other contracts in connection with other portions of the Project. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate the work. If any part of the Contractor's Work depends on the proper execution of the work of any other separate contractor, the Contractor shall inspect and promptly report to Owner and the Architect any discrepancies or defects in such other work. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other Contractor's work as fit and proper to receive his work, except as to defects which may develop in the other separate contractor's work after the execution of the Contractor's work. The Contractor shall do all cutting, fitting, and patching of his Work that may be required to fit it to receive or be received by the work of other contractors shown upon, or reasonably implied by, the Contract Documents. The Contractor shall not endanger or alter the work of any other contractor.

23.2 **Damage.** Should the Contractor cause damage to the work or property of any separate contractor on the Project, the Contractor shall, upon written notice, settle with the other contractor by agreement if such contractor will so settle. If the separate contractor sues Owner on account of any damage alleged to have been sustained, Owner shall notify the Contractor who, at Contractor's sole expense, shall defend the proceedings and pay all costs in connection therewith, including, but not limited to, all court costs and attorney fees, and any judgments against Owner arising therefrom. If a dispute arises between the separate contractors as to their responsibility for cleaning up, Owner may clean up and charge the cost thereof to the contractors as Owner determines to be just.

24 | CHANGES IN THE WORK

24.1 **Change Order.** A Change Order is an amendment to the Agreement issued to the Contractor authorizing a change in the Work, an adjustment in the Contract Amount, or a change in the Contract Time. No change to the Work, the Contract Amount, or the Contract Time, is valid without a properly issued Change Order.

24.2 **Approval Required.** The Contractor shall not proceed with changes to the Work without a Change Order or a Construction Change Directive. If the Contractor proceeds with changes to the Work without proper written approval, Contractor does so at its own risk.

24.3 **Change Order Request.** Should any event or circumstance occur that the Contractor believes may constitute a change in the Work entitling the Contractor to an adjustment to the Contract Amount or the Contract Time, the Contractor shall issue written notice and a request for a Change Order to the Owner within seven (7) Calendar Days of the occurrence of such event or circumstance. Such written notice shall be issued by the Contractor for any event or circumstance that the Contractor knows, or should have known, to have a potential impact on the Work. The request shall describe in detail the related causes and any potential impact to the Work. The Contractor shall also identify any anticipated adjustment to the Contract Amount and/or to the Contract Time as a result of such impact. Failure to submit such written notice and a request within the time stipulated and with the information required by this Section 24 shall constitute a waiver by the Contractor of the right to a Change Order.

24.4 **Amount.** The cost or credit to Owner resulting from a change in the Work shall be determined in one or

more of the following ways:

24.4.1 By unit prices stated in the Contract Documents or subsequently agreed upon;

24.4.2 By mutual acceptance of a lump sum proposal, properly itemized, to include the following:

24.4.2.1 Labor, including fringe benefits, payroll taxes, and workers' compensation insurance, overhead and profit;

24.4.2.2 Materials entering permanently into the Work, including sales tax;

24.4.2.3 Equipment costs for equipment utilized to perform the Change Order work.

24.4.3 By the actual cost of:

24.4.3.1 Labor, including fringe benefits, payroll taxes, and workers' compensation insurance, overhead and profit;

24.4.3.2 Materials entering permanently into the Work, including sales tax;

24.4.3.3 Equipment costs for equipment utilized to perform the Change Order work;

24.4.4 Total cost based on a not-to-exceed maximum cost limit.

24.5 **Overhead and Profit.** These costs may be increased to include a fixed fee for Subcontractor profit and overhead, Contractor profit and overhead on Subcontractor work, and profit and overhead on work done by the Contractor's own forces. This fee shall not exceed ten percent (10%) for changes to the Work, and shall be full compensation for the cost of supervision (to include Project Manager, Project Coordinator, Superintendent, Secretary, etc.), overhead, profit, tools, insurance and bonding, and all other expenses associated with completing the change in the scope of work.

24.5.1 Contractor shall ensure that Subcontractor's overhead and profit shall not exceed fifteen (15%) of the changes to Subcontractor's portion of the changes to Work. The Contractor further agrees to insert this provision in all subcontracts relating to this Project, except subcontracts for standard commercial supplies or raw materials.

24.5.2 Each deductive Change Order proposal shall include a five percent (5%) minimum credit for Contractor profit and overhead.

24.5.3 All change proposals shall be submitted to Owner and the Architect in sufficient detail to allow a complete analysis of all costs. The Contractor shall, upon request by Owner, submit invoices for materials and equipment utilized in Change Order work. If applicable to the Project, labor rates, including fringe benefits, shall be in conformance with the applicable Prevailing Wage Rates as published by the Nevada State Labor Commission for this Project.

24.6 **Minor Changes.** Owner, or the Architect acting in conjunction with Owner, shall have authority to order minor changes in the Work which do not involve an adjustment in the Contract Amount or an extension of the Contract Time. Such minor changes shall be consistent with the intent of the Contract Documents. Such changes shall be implemented only through written memorandum.

25 | SUBMITTALS

25.1 **Approval.** The Contractor shall review, stamp with his approval, and submit to the Owner and the Architect with reasonable promptness, and in a reasonable and orderly sequence so as to cause no delay in the Work, all submittals and/or shop drawings required by the Contract Documents or subsequently required by Owner, or the Architect acting in conjunction with Owner,. None of the Work requiring submittals or shop drawings shall commence until the associated submittals have been reviewed and approved by the Owner, or the Architect acting in conjunction with Owner.

25.2 **Deviations.** The Contractor's submittals shall provide specific written notice of any deviation from the requirements of the Contract Documents. Failure to specifically identify such deviations shall be

adequate grounds for withdrawing or voiding approval of the submittal. The Contractor shall be responsible for all costs and delays associated with purchase and installation of any Work that deviates from the requirements of the Contract Documents.

- 25.3 **Verification.** Submittals shall be properly identified as specified, or as the Owner, or the Architect acting in conjunction with Owner, may require. By approving and issuing submittals, the Contractor thereby represents that he has determined and has verified all field measurements, field construction criteria, materials, catalog numbers and similar data, and that he has checked and coordinated each submittal with the requirements of the Contract Documents.
- 25.1 **Review.** The Architect will review submittals within fourteen (14) Calendar Days for conformance with the Contract Documents. The review of a separate item shall not indicate approval of an assembly in which the item functions. The review and approval of submittals by the Architect shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents, nor shall review by the Architect relieve the Contractor from responsibility for errors or omissions in the submittals.
- 25.2 **Alternate Equipment.** When a specific manufacturer and model of equipment is scheduled on the Drawings and/or in the Specifications, and a second or third acceptable manufacturer is also listed in the Specifications, it shall be the responsibility of the Contractor to confirm with the equipment supplier and equipment manufacturer that the alternative manufacturer is providing pricing for equipment that is equipped with features and capabilities that are equal to the scheduled and specified item of equipment. The acceptability of an equipment submittal shall be subject to the equipment supplier and manufacturer providing evidence satisfactory to Owner and the Architect that the submitted equipment is, in fact, equal to the scheduled and specified equipment. Any cost savings achieved in providing alternate equipment shall be passed onto the Owner via change order.
- 25.3 **Corrections.** The Contractor shall correct submittals as required by the Owner, or the Architect acting in conjunction with Owner. The Contractor shall identify in writing all revisions made, in addition to identifying the corrections requested by the Owner, or the Architect acting in conjunction with Owner, on previous submittals.
- 26 | SUBSTITUTIONS** The characteristics of the products specified in the Drawings and Specifications have been utilized in the design of the Project and as such establish minimum standards of function, dimension, appearance, and quality necessary for the Project. Equivalent products of other manufacturers may be acceptable, if, in the judgment of the Owner and the Architect, they meet the standards of the Contract Documents.
- 26.1 **Requests.** The Contractor shall submit any requests for substitutions in writing to Owner and the Architect within the time specified in Section 26.1.3.
- 26.1.1 Submittals and shop drawings do not constitute a request for substitution.
- 26.1.2 Products not specified or accepted in writing as equivalent to those specified shall not be installed. The Contractor shall be responsible for all costs associated with removal and replacement should the Contractor proceed with installation of any substituted product without specifically identifying the substitution and obtaining written approval of the substituted product.
- 26.1.3 Requests for substitutions must be submitted to Owner and the Architect in accordance with the Specifications. Thereafter, substitutions will be considered only in cases of documented product unavailability or other conditions beyond the control and without the fault of the Contractor, or in special circumstances when allowed by Owner and the Architect.
- 26.2 **Burden of Proof.** The burden of proof of substituted product equality rests with the Contractor. Final approval of all substituted products shall be contingent on acceptance of the associated submittals and/or shop drawings, compliance with the Contract Documents, and acceptable installation. Approval to use a substituted product does not relieve the Contractor of his responsibility to meet the requirements of the Contract Documents.

27 | GENERAL DUTIES AND RESPONSIBILITIES OF THE CONTRACTOR

- 27.1 **Turnkey.** The Contractor shall provide all labor, materials, equipment, tools and services necessary, and to do everything required by this Agreement and by the Contract Documents, as necessary to complete all Work required for the Project.
- 27.2 **Errors.** The Contractor shall carefully study and compare all parts of the Contract Documents with each other and with all information furnished by Owner and shall at once report any errors, inconsistencies, or omissions discovered. The Contractor shall not be liable to Owner for damage resulting from errors, inconsistencies, or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency, or omission and failed to report it to Owner. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to Owner, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.
- 27.3 **RFI.** The Contractor shall, upon discovering any discrepancy, omission, conflict, or inconsistency in the Contract Documents, immediately submit a Request for Information (RFI) to the Owner and the Architect. The Architect, upon receipt of any such request, will promptly investigate the circumstances and give appropriate instructions to the Contractor, but will take such action only after consultation with Owner. Until such written instructions are given, any work done by the Contractor, either directly or indirectly relating to such discrepancy, omission, conflict, or inconsistency will be at his own risk, and he shall bear all costs arising there from. The Contractor shall not take advantage of any such discrepancy, omission, conflict, or inconsistency, but shall comply with any instructions regarding the same issued by the Owner, or the Architect, acting in acting in conjunction with Owner,. The Contractor shall maintain a sequential log of all RFIs.
- 27.3.1 No work shall be performed by the Contractor without adequate drawings or specifications, or that is in conflict with or contrary to the Contract Documents.
- 27.3.2 Requests for Information shall be limited to one (1) specific issue or group of related issues and shall not address multiple issues. The Architect will review and respond to RFIs within fourteen 14 Calendar Days from the date that the RFI is received by the Architect. RFIs shall be issued by the Contractor to the Owner and the Architect in a reasonable and orderly sequence such that they are not unreasonably grouped together and then delivered to the Owner and the Architect.
- 27.3.3 In any case where the manufacturer's installation instructions conflict with the Contract Documents the Contractor shall bring such conflict to the attention of Owner and the Architect prior to installing the associated materials or equipment, such that Owner and the Architect, acting in conjunction with the Owner, may provide direction for an appropriate resolution to the identified conflict. Should the Contractor proceed with installing any materials or equipment in a manner contrary to the manufacturer's instructions without first notifying Owner and the Architect, if so directed by Owner, the Contractor shall remove and reinstall the materials or equipment in accordance with the manufacturer's instructions at no cost to Owner.
- 27.4 **Reports.** The Contractor shall prepare daily reports identifying for each day workers on site, work performed, weather conditions, material and equipment deliveries, outstanding issues, and pending RFIs. Such reports shall be submitted to Owner and the Architect weekly in electronic format (PDF) unless requested by Owner and the Architect on a more frequent basis.
- 27.5 **License.** The Contractor and each Subcontractor shall have and maintain a State of Nevada Contractor's license all contractor's licenses necessary to perform the work in good standing for the entire duration of the Work.
- 27.6 **Requested Data.** The Contractor shall submit cost proposals, progress schedules, payrolls, reports, estimates, records, and other data as Owner or Architect may request concerning work performed, or to be performed under the Agreement.
- 27.7 **Oversight.** The Contractor shall, in a workmanlike manner, complete the Work in strict accordance with

the Contract Documents. The Contractor shall supervise and direct all portions of the Work.

27.7.1 The Contractor shall be solely responsible for all construction procedures, methods, techniques, sequences, safety, and for coordinating all portions of the Work to comply with the Contract Documents.

27.7.2 The Contractor shall be responsible for the acts and omissions of all his employees and Subcontractors, their agents and employees, and all other persons performing any of the Work.

27.7.3 The Contractor shall at all times enforce good discipline and order among his employees and Subcontractors and shall, at his own cost, provide the security necessary to adequately protect the Work. The Contractor shall at all times safely guard Owner's property from injury or loss in connection with the Project. The Contractor shall at all times safely guard and protect the Work and adjacent property from damage. The Contractor shall replace or make good any such damage, loss, or injury unless such is caused directly by errors contained in the Contract Documents.

27.7.4 The Contractor shall give all notices and shall comply with all laws, ordinances, rules, orders, and regulations of all public authorities, relating to the performance of the Work. The Contractor shall be responsible for the protection of adjacent property and the maintenance of passageways, guard fences, and other protective facilities. In the event of temporary suspension of work, or during inclement weather, the Contractor shall protect, and shall cause his Subcontractors to protect carefully his and their work and materials against damage or injury from the weather. If any work or materials become damaged by failure on the part of the Contractor or any of his Subcontractors to protect his work, such material shall be removed and replaced at the expense of the Contractor.

27.7.5 All work necessary to be performed after regular working hours, on weekends or legal holidays, shall be performed without additional expense to Owner.

27.8 **Security.** The Contractor is responsible at all times for the Work and for the Project site regardless of whether or not the Owner has required any insurance coverages (such as Builder Risk Insurance) which would have protected the interest of the Contractor and the Owner. The Contractor shall conduct its operations under the Contract in a manner so as to avoid the risk of damage, injury, loss or theft by any means (including acts of God, vandalism or sabotage) to the Work or to the property of the Contractor, Owner or any other person. The Contractor shall promptly take such reasonable precautions, which are necessary and adequate against any and all conditions involving such risk of damage, injury, loss or theft. The Contractor shall continuously inspect the Work (including the materials, equipment and temporary facilities used in connection therewith) to discover and determine if any such conditions exists and shall be solely responsible for correcting such conditions. The Contractor shall cooperate with the Owner on all security matters and shall promptly comply with any security requirements established by the Owner. Such compliance with these security requirements shall not relieve the Contractor of its responsibility for maintaining proper security for the above-noted items, nor shall it be construed as limiting in any manner the Contractor's obligation to undertake such reasonable action as may be required to establish and maintain secure conditions at the Work site. The Contractor shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and shall furnish these reports to the Owner in a timely manner.

27.9 **Protect Adjacent Areas.** Unless otherwise specifically provided in the Contract, the Contractor shall not perform the Work in a manner that would disrupt or otherwise interfere with the operation of any pipeline, telephone line, electric transmission line, ditch or other structure which may be on or adjacent to the Work site, or enter upon lands in their natural state until approved by the Owner. Thereafter, and before it begins the Work, the Contractor shall give due notice to the Owner of its intention to start the Work. The Contractor shall not be entitled to an increase in the Contract Time, or extra compensation on account of any postponement, interference or delay of the Work caused by such line, ditch or structure. The Contractor shall preserve and protect cultivated areas and planted vegetation (such as trees, plants,

shrubs and grass) on or adjacent to the Work site that the Owner has determined does not unreasonably interfere with the performance of the Work (including the operation of equipment or stockpiling of materials) and shall repair or restore any damage thereto.

- 27.10 **Hazardous Materials.** If damage or loss results in hazardous materials at the Project Site or Adjacent Areas, Contractor shall secure the area containing hazardous materials within two (2) hours of awareness of the existence of hazardous materials, and must clean-up or remove any hazardous materials within twelve (12) hours of awareness of the existence of hazardous materials. If Owner incurs expense due to Contractor's non-performance of these terms, Owner shall have the right to process a deductive Change Order for any Owner expenses incurred.
- 27.11 **Quality.** Unless otherwise specifically required, all materials and equipment incorporated in the Work shall be new, free of faults and defects, and shall conform to the Contract Documents. If requested Contractor shall furnish satisfactory evidence as to the type and quality of materials and equipment. No materials or equipment for the Work shall be purchased by the Contractor, nor shall Contractor permit any Subcontractor to purchase materials or equipment that are subject to any chattel mortgage, or are under a conditional sale contract or other security agreement by which any right, title, or interest is retained by the seller.
- 27.12 **Standards.** All materials and equipment used in the Work shall be subject to inspection and testing in accordance with accepted standards to ensure conformity with the requirements of the Contract Documents, laws, ordinances, rules and regulations, or orders of any public authority having jurisdiction. Where specific certificates concerning materials and/or equipment are required, securing payment for the prompt delivery of such certificates shall be the responsibility of the Contractor. Such certificates shall be executed by qualified firms acceptable to the Owner and the Architect, shall include all information required by the Specifications, and shall clearly refer specifically to materials to be used in the Project.
- 27.13 **Key Personnel.** The Contractor shall employ a competent full-time superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The Contractor shall further employ a project manager who shall represent the Contractor in the overall planning, execution and closing of the project including but not limited to observing all constraints related to the cost, timing and scope of the project. The Contractor shall also designate a project executive who will serve as an executive contractor representative for the project and a safety director who will be a primary contact for the Owner regarding project safety. The superintendent shall not also be the safety director. The superintendent and assistants shall be satisfactory to Owner, and shall not be changed except with the consent of Owner. The superintendent shall represent the Contractor and have full authority to act on his behalf. If Owner reasonably requests the removal of any Key Personnel, Contractor shall promptly replace such Key Personnel with a satisfactory replacement.
- 27.14 **Coordination Meetings.** The Contractor shall schedule a weekly coordination meeting at the Project site, to be attended by Owner, Architect, Contractor's Superintendent, and Subcontractors, as may be appropriate. Coordination meetings may be scheduled at less frequent intervals if agreed upon by Owner and the Contractor. The Contractor shall record each coordination meeting and shall provide a comprehensive set of meeting minutes to be distributed and reviewed at the next coordination meeting.
- 27.15 **Project Bulletin Board.** Unless otherwise agreed by Owner in writing, the Contractor shall provide a weather protected bulletin board mounted in a prominent location within the construction site, with items required to be posted by law clearly visible and available for examination. The items required to be posted include, but are not limited to, an emergency phone number list, Federal and State notices, Nevada Prevailing Wage Rates (if applicable to the Project), and other items as may be requested by Owner.
- 27.16 **Project Site Advertising.** The Contractor may, at the Contractor's expense, install one (1) sign advertising the Project and their company. The sign must be approved by Owner in writing before being installed by the Contractor. No other signage or advertising may be installed by the Contractor or any

Subcontractor without the express written consent of Owner. Owner may, at Owner's expense, also install signage at the Project site where it reasonably does not interfere with the Work.

27.17 **Export Control Requirements.** Before furnishing goods, software, services or technical data that are on the U.S. Munitions List (22 C.F.R. pt. 121) or in the 500- or 600-series Export Control Classification Numbers of the Commerce Control List (15 C.F.R. pt. 774), Contractor will notify Owner that such items are export-controlled. Contractor will furnish export-controlled items only after Owner's Export Controls Officer has furnished written confirmation that Owner is prepared to accept delivery of such items.

27.18 **Software & Data.** Contractor shall use commercial anti-virus software to remove viruses capable of being detected in software prior to furnishing to Owner. Contractor must safeguard all information of a personal or confidential nature that the Contractor has access to through work with software or data. All software and electronic equipment must meet the applicable accessibility standards set forth in the Web Content Accessibility Guidelines (WCAG) 2.0 Level AA, Section 508 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended.

28 | TEMPORARY UTILITIES

28.1 **Responsibility.** The Contractor shall be solely responsible for providing all temporary utilities necessary for the completion of the Work. The Contractor shall further be solely responsible for providing temporary utilities, including without limitation heating, cooling, and/or ventilation, as required to prevent degradation or damage to the Work.

28.2 **Permanent Systems.** The permanent heating, cooling, and air handling systems of the Project shall not be utilized for the purpose of temporary heating, cooling, or ventilation unless and until Owner approves of such use in writing. In no case shall the permanent heating, cooling, or air handling systems be operated until they are complete, including formal start-up, check-out, and testing and balancing. Utilization of any of the permanent heating, cooling, or air handling systems prior to Substantial Completion shall not impact the specified warranty for such equipment.

28.3 **Connections.** Utility connections may be required as a part of the Work, as indicated in the Specifications or other Contract Documents, and such utility connections may cause disruptions or temporary shutdowns to utilities at other Owner buildings. The Contractor shall be solely responsible for providing all necessary temporary utilities to other Owner buildings disrupted by a utility connection that is part of the Work. The Contractor is required to coordinate such connections and temporary utilities with Owner at least fourteen (14) Calendar Days before connection activity. No extensions of the Contract Time will be considered for utility connection delays caused by the Contractor's failure to coordinate a connection within the foregoing period of time.

28.4 **Costs.** In all cases where temporary utilities are required under this Section 28, the Contractor shall pay all costs related thereto, including, but not limited to, applications, fees, labor, permits, engineering, and any other costs as may be required to acquire temporary utilities. Owner will not be responsible for any delays or costs related to obtaining any temporary utilities required under this Section 28. Temporary utilities may be connected to Owner's existing metered utilities only with Owner's written authorization. Any connection to Owner's utilities shall be separately metered upon direction from Owner to allow for proper allocation of utility costs. Temporary meters shall be removed upon completion of the Work with Owner's written approval.

29 | EMERGENCIES.

29.1 **Diligence.** In case of an emergency which threatens loss or injury of property, and/or safety of life, the Contractor shall act in a diligent manner, without previous instructions from Owner or the Architect, acting in conjunction with the Owner. He shall notify Owner and the Architect immediately. The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided herein for other claims.

- 29.2 **Phone List.** The Contractor shall maintain a current emergency telephone number list with e-mail addresses at the job site. The list shall include telephone numbers for responsible individuals that can be contacted after normal working hours in the event of an emergency.

30 | CONSTRUCTION SCHEDULE.

- 30.1 **Submission.** Unless sooner requested by Owner, the Contractor shall prepare and submit a construction schedule which is acceptable to Owner within fourteen (14) Calendar Days after the effective date of the Agreement. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.
- 30.2 **Progress.** The construction schedule shall be organized to show progress for each trade or operation. As a minimum, the schedule shall show the order in which the Contractor proposes to perform work, and the proposed starting and completion dates for each activity. Activities which define critical portions of the Work shall be identified on the schedule. To the fullest extent permitted by law, failure by the Contractor to provide and maintain an adequate construction schedule shall be justification for Owner to withhold approval of progress payments.

31 | TAXES, PERMITS, FEES AND NOTICES.

- 31.1 **Payment.** The Contractor shall pay all federal, state and local sales, consumer, use, and other taxes, levies, duties and assessments required by applicable law. Contractor shall make any and all payroll deductions required by law. Contractor herein indemnifies and holds Owner harmless from any liability on account of any and all such taxes, levies, duties, assessments and deductions. The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the Work, including without limitation dust control permits. The Contractor shall not be required to pay for a State, municipal or county building permit, or permanent utility connection fees. However, Contractor shall coordinate the issuance of State building and Fire Marshal permits through the Owner.
- 31.2 **Notices.** The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the Work and Owner. If the Contractor observes that any of the Contract Documents are at variance therewith, he shall promptly notify Owner and the Architect. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice, he shall assume full responsibility therefore and shall bear all costs attributable thereto.

32 | SITE ACCESS

- 32.1 **Owner's Access.** Owner and its representatives shall at all times have access to the Work whenever it is in preparation or progress, and the Contractor shall provide proper equipment and facilities for such access and inspection. If any work is required to be tested or approved, the Contractor shall give Owner timely notice of its readiness for inspection. Neither the observations of Owner or the Architect in the administration of the Agreement, nor any inspections, tests, or approvals shall relieve the Contractor from his obligation to perform the Work in accordance with the Contract Documents.
- 32.2 **Access Roads.** The Contractor shall be required to use designated access roads as directed by Owner, and these roads shall be kept passable at all times. The Contractor shall be entirely responsible for any damage to roads, trees, shrubs, gates, fences, grass, curbs, gutters, and driveways due to construction usage. All damaged portions shall be restored to the same condition as existed before the commencement of the Work. Dirt roads shall be periodically sprinkled with water when dust conditions create an onsite or offsite hazard or nuisance to workmen, neighboring properties, or the public in general.

33 | TOILET FACILITIES.

The Contractor shall provide and maintain in a clean and sanitary condition in a weatherproof building satisfactory toilet accommodations for all workmen. Minimum toilet accommodations shall consist of a frost-proof chemical toilet or water closet with urinal. Temporary or portable toilet accommodations shall be completely removed upon

completion of the Project.

34 | PATENTS AND ROYALTIES.

The Contractor shall hold and save Owner and his officers, agents, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Agreement, including its use by Owner, unless otherwise specifically stipulated in the Contract Documents. If the Contractor uses any design, device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with Owner of such patented or copyrighted design, device or material. It is mutually agreed and understood, that without exception, the Contract Amount shall include all royalties or costs arising from and the use of such design device or materials, in any way involved in the Work.

35 | SURVEYS AND SUBSURFACE CONDITIONS

- 35.1 **Surveys.** Owner may furnish site surveys describing the topography and physical characteristics, legal limits, and utility locations for the Project site. Unless otherwise expressly provided for in the Contract Documents, however, the Contractor shall verify any information provided and furnish and pay for all other surveys necessary to his execution of the Work or required by the Contract Documents.
- 35.2 **Existing Conditions.** It is the Contractor's responsibility to ascertain any existing conditions that may affect the cost of the proposed Work which could have been discovered by reasonable examination of the site.
- 35.2.1 No additional costs shall be allowed to the Contractor for existing conditions which could have been discovered by reasonable examination of the site.
- 35.2.2 Existing improvements visible at the job site, for which no specific disposition is made in the Contract Documents, but which could reasonably be assumed to interfere with the satisfactory completion of the Work, shall be removed and disposed of by the Contractor at no additional cost to Owner, after written notification is given to Owner.
- 35.2.3 Any geotechnical report issued with the Contract Documents is provided for the Contractor's information and is not a Contract Document. Owner does not guarantee the accuracy or completeness of the report and shall not be liable for any additional work or cost arising out of conclusions reached by the Contractor based upon the geotechnical report. The Contractor assumes all responsibility for any conclusions reached by the Contractor based on the geotechnical report.
- 35.3 **Subsurface Conditions.** Should the Contractor encounter subsurface or latent conditions at the site materially differing from those indicated in the Contract Documents, he shall immediately give notice to Owner and the Architect of such conditions before they are disturbed. The Architect will promptly investigate the conditions, and if the Architect finds that they materially differ, the Architect will, after consultation with Owner, make such changes in the Contract Documents as the Owner and Architect may find necessary. Any increase or decrease in cost resulting from such changes will be adjusted by Change Order. The Contractor shall perform all work in strict conformance with the current "Call Before You Dig" program.
- 35.4 **Archaeological Findings.** Any historic, prehistoric, or archeological evidence discovered on the site shall remain undisturbed and shall be reported immediately to Owner.

36 | MATERIALS TESTING

- 36.1 **Conformance.** Testing of construction materials delivered to the job site shall be carried out by Owner unless otherwise required in the Contract Documents. Owner shall select the testing laboratory or inspection agency to carry out this work. The purpose of such testing is to verify conformity of materials and/or equipment with the Specifications. Where tests indicate conformity, costs of testing will be paid by Owner; where tests indicate non-conformance, costs of re-testing will be paid by the Contractor.
- 36.2 **Cost.** If concrete mix design, batch plant inspection or any other special inspection or testing

requirements are established by any of the Contract Documents, conduct of and payment for such work shall be as specifically stated therein. If the manner of payment is not specified or if there is no mention of such inspection or testing in the Contract Documents, but such inspection is judged necessary by Owner, then Owner shall pay the cost thereof. The Contractor shall cooperate toward minimizing the cost of such inspection and testing.

- 36.3 **Benefit.** All testing and inspection carried out by Owner is for the benefit of Owner and not the Contractor. Lack of performance or failure on the part of any testing laboratory or inspection agency retained by Owner shall not relieve the Contractor of his responsibility to complete the Work in accordance with the Contract Documents.

37 | OPERATING AND MAINTENANCE MANUALS.

Upon Substantial Completion of the Project, the Contractor shall submit to the Owner and Architect a draft of all approved operating and maintenance instructions for all equipment, material, finishes, and surfaces. Upon approval by the Owner and Architect, acting in conjunction with the Owner, the Contractor shall furnish to Owner electronic copies, in PDF or equivalent format, of all approved Operating and Maintenance (O&M) Manuals. O&M Manuals shall be submitted with indexes and labeling as required for all appropriate sections. Where electronic copies of the manuals are not available except by scanning, submission of indexed, labeled, printed copies is acceptable.

38 | CORRECTION OF WORK

- 38.1 **Covered Work.** If any work should be covered prior to a specified or requested inspection, the Contractor shall uncover the work for observation and shall replace same at no cost to Owner. If any work has been covered which Owner has not specifically requested to observe prior to being covered, Owner may request to see such work and it shall be uncovered by the Contractor. If the uncovered work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to Owner. If the uncovered work is not in accordance with the Contract Documents, the Contractor shall pay such costs.
- 38.2 **Rejected Work.** The Contractor shall promptly correct all work rejected as defective or as failing to conform to the Contract Documents, whether observed before or after Final Completion, and whether or not fabricated, installed, or completed. The Contractor shall bear all costs of correcting such rejected work, including the cost for additional services of the Architect when applicable. The Contractor shall bear the cost of making good all work of separate contractors destroyed or damaged by removal or correction.
- 38.3 **Self-Perform.** If the Contractor does not remove defective or non-conforming work within a reasonable time, Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) Calendar Days thereafter, Owner may upon ten (10) additional Calendar Days written notice sell such work at auction or at private sale and shall account for the net proceeds thereof, after deducting all costs that should have been borne by the Contractor including compensation for additional professional services. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount the Contractor shall pay the difference to Owner.
- 38.4 **Acceptance.** If Owner prefers to accept defective or non-conforming work, Owner may do so instead of requiring its removal or correction, in which case a Change Order will be issued to reflect an appropriate reduction in the Contract Amount, or, if the amount is determined after final payment, it shall be paid to Owner by the Contractor.
- 38.5 **Damage.** All damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor, except damage or loss attributable to errors and/or omissions in the Drawings or Specifications.

39 | SUBCONTRACTORS

- 39.1 **List.** The Contractor shall not award any work to any Subcontractor without submitting to Owner a written statement concerning the proposed award to the Subcontractor, which statement shall contain the Subcontractor's name, address, and Nevada State Contractor's License number, and a description of the Work to be completed by the Subcontractor. After submitting the required Subcontractor information to Owner, the Contractor shall not contract with any other Subcontractor nor change Subcontractors without compliance with NRS§ 348.141 and written approval of Owner.
- 39.1.1 If the Contractor substitutes a Subcontractor to perform any work that the Contractor listed in the bid proposal forms that he would self-perform, the Contractor shall forfeit as a penalty to the Owner the lesser of, excluding change orders, the following:
- 39.1.1.1 An amount equal to 2.5% of the Contract Sum; or
- 39.1.1.2 An amount equal to 35% of the estimated cost of the work that the Contractor indicated in his bid that he would perform.
- 39.1.2 If the Contractor substitutes a Subcontractor and fails to comply with NRS §338.141, the Contractor shall forfeit as a penalty to the Owner an amount equal to 1% of the Contract Sum.
- 39.2 **Objection.** If Owner has a reasonable objection to any Subcontractor, and requests in writing a change in Subcontractors, the Contractor shall submit an acceptable substitute and the Contract Amount shall be increased or decreased by the difference in costs occasioned by such substitution and an appropriate Change Order shall be issued. The Contractor will not be required to contract with any subcontractor, person or organization against whom he has a reasonable objection.
- 39.3 **Flow-down.** The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor by the terms of the Contract Documents. These provisions shall include, but shall not be limited to, the following:
- 39.3.1 Require that all work be performed in accordance with the requirements of the Contract Documents and be guaranteed unconditionally for a period of one (1) year or as may be required in the Contract Documents.
- 39.3.2 Require work to be done in accordance with a construction schedule that will ensure completion within the Contract Time.
- 39.3.3 Require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor in the manner provided in the Contract Documents for like claims by the Contractor upon Owner.
- 39.4 **Payment.** The Contractor shall pay each Subcontractor, within ten (10) Calendar Days after receipt of payment from Owner, an amount equal to the percentage of completion allowed to the Contractor on account of each Subcontractor's work. The Contractor shall also require each Subcontractor to make similar payments to his Subcontractors. The Contractor shall indemnify and save Owner harmless from all claims arising out of the lawful demands of Subcontractors, workmen, and suppliers.
- 39.5 **Insurance Distribution.** The Contractor shall be responsible for the proper distribution of all insurance recoveries resulting from an insured loss under this Contract.
- 39.6 **Information.** Owner may furnish to any Subcontractor, information regarding payments to the Contractor on account of work done by such Subcontractor.
- 39.7 **Liability.** The Contractor shall be as fully responsible to Owner for the acts and omissions of his Subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of the persons directly employed by him. If, through acts of neglect on the part of the Contractor, any Subcontractor shall suffer loss or damage on the Work the Contractor agrees to settle with such Subcontractor by agreement if such Subcontractor will so settle. If such Subcontractor shall

assert any claim against Owner on account of any damage alleged to have been sustained, Owner shall notify the Contractor, who shall indemnify and save harmless Owner against any such claim.

40 | JOB SAFETY

- 40.1 **Programs.** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. All work shall be performed in strict accordance with the most current edition of the State of Nevada Occupational Safety and Health Standards. The Contractor shall comply with all applicable laws, ordinances, rules, and regulations of any public authority having jurisdiction for the safety of persons or property, or to protect them from damage, injury, or loss.
- 40.2 **Unsafe Work.** Owner may direct the Contractor to stop any unsafe work, any non-complying work, and/or any work that presents a life-safety concern. The Contractor shall not be entitled to any compensation or to any additional time for such work stoppage.
- 40.3 **Precautions.** The Contractor shall take necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury or loss to:
- 40.3.1 All employees on the Project and all other persons who may be affected thereby;
 - 40.3.2 All of the Work, whether in storage on or off the site; and
 - 40.3.3 Other property or persons at the site or adjacent thereto, including landscaping, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
- 40.4 **Hazards.** The Contractor shall be responsible for reporting all hazards to all Subcontractors in all trades throughout the Project. This reporting shall be done in advance of potential exposure to known hazards, and immediately following the discovery of any unforeseen hazards.
- 40.5 **OSHA.** As per the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (1910.1200 and 1926.59 HCP), Contractors must submit Safety Data Sheets (SDSs) for all products used for projects on Owner properties. Contractors must also submit a Written Hazard Communication and Safety Program. This Program must include but may not be limited to:
- 40.5.1 The method to be used in providing Owner with copies of the SDSs for each chemical used on the job site prior to such usage;
 - 40.5.2 Maintenance on the job site of copies of the SDSs for each chemical used;
 - 40.5.3 Methods to be used to inform Owner of any precautionary measures which need to be taken by Owner's employees;
 - 40.5.4 Methods to inform Owner of the labeling system being used on the job site;
 - 40.5.5 Methods Contractor will use to provide other employers on-site access to SDS for each hazardous chemical the other employer(s) may be exposed to while working;
 - 40.5.6 Methods Contractor will use to inform the other employer(s) of any precautionary measures that need to be taken to protect employees during the workplace's normal operation conditions and in foreseeable emergencies;
 - 40.5.7 Methods Contractor will use to inform the other employer(s) of the labeling system used in the workplace.
- 40.6 **Hot Work.** If hot work is to be performed on the Project, the Contractor shall obtain a hot work permit from the Owner daily or as required by Owner, until the hot work is complete. This permit request may be found on-line at <https://www.unlv.edu/rms/occupational/hot-work>.
- 40.6.1 The submission of a hot work permit request to Owner does not constitute permission for hot work to commence. Only when the Contractor's designated Permit Authorizing Individual has authorized the permit may hot work be performed.

40.6.2 Indoor air quality must be maintained through local ventilation when performing hot work or using offensive chemicals. Complaints about indoor air quality must be immediately addressed and remedied.

40.7 **Safety Director.** The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall not be the Contractor's superintendent unless otherwise designated in writing by the Contractor and approved by Owner. In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury, or loss. The Contractor shall be responsible for the safe operation of all equipment, for utilizing safe construction methods, and for any damage which may result from failure or from improper construction, maintenance, or operation.

40.8 **Fencing.** The Contractor shall securely fence, barricade, cover, or otherwise adequately protect all excavations, holes, shafts, or other hazards to guard against danger to persons or animals and shall properly maintain such protection until the completion of the Project. The Contractor shall periodically sprinkle the construction site with water to prevent or control blowing dust when conditions present a hazard or nuisance to workmen, neighboring properties or the public.

40.9 **Asbestos.** Should asbestos-containing materials be discovered during the Contractor's survey, one (1) of the following options will be chosen at Owner's discretion: (i) Owner will remove detected asbestos using Owner personnel; (ii) Owner will initiate a contract with an asbestos abatement contractor; or (iii) Owner will issue a Change Order to the existing Agreement to cover the Contractor's expenses in removing the material.

40.9.1 Should the Contractor remove asbestos from Owner's property, work must be in accordance with all local, county, state and federal laws and guidelines. The Contractor shall make every effort to minimize the unintentional disturbance of asbestos-containing material on Work performed under this Agreement.

40.9.2 Contractor hereby represents and warrants that all materials used on this Project shall be asbestos free. Contractor shall provide Owner with written documentation verifying its compliance with this representation and warranty. A manufacturer's product Safety Data Sheet (SDS) can be considered as adequate for these purposes provided that the document identifies greater than ninety-nine percent (99%) of the material's composition. Lacking such manufacturer's documentation, documented analysis of a representative sample of the product by an accredited laboratory may be substituted.

41 | SITE MANAGEMENT AND CLEAN UP PROCEDURES

41.1 **Site Operations.** The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the Contract Documents, and shall not unreasonably encumber the site. The Contractor shall at all times keep the site and the Work free from accumulation of waste materials and rubbish resulting from his operations.

41.2 **Waste.** Upon completion of the Work the Contractor shall remove all waste materials, rubbish, tools, construction equipment and machinery, and surplus materials from the Project site. The Contractor shall clean all surfaces and leave the Work in a finished, cleaned, washed, waxed, and polished condition. The aforementioned cleanup requirements are also specifically applicable to all mechanical, electrical, and telecom equipment and to all mechanical, electrical, and telecom equipment rooms.

41.3 **Debris.** The Contractor is solely responsible to contain all materials and debris at the Project site. When Contractor's acts or omissions on the Project Site, including without limitation the failure to properly store or secure materials, causes materials or debris to accumulate on adjacent property, the Contractor shall promptly remove the same and restore the adjacent property to its condition prior to the accumulation. Notwithstanding the same, Contractor shall not enter upon any adjacent property not owned by Owner without first obtaining permission from the owner thereof.

42 | WARRANTY

- 42.1 **General.** The Contractor hereby represents and warrants that it (i) is familiar with requirements of the Contract; (ii) has investigated the site and is knowledgeable concerning the local conditions that may affect the performance of the Work; (iii) is satisfied that the Work can be performed and completed as required by this Contract; (iv) accepts all of the risks directly or indirectly connected with the performance of the Contract; (v) has not been influenced by any statement or promise other than those contained in the Contract; (vi) is experienced and competent to perform the Contract; (vii) is familiar with all general and special laws, ordinances and regulations that may affect the Work, its performance, or those persons employed therein; (viii) is familiar with tax and labor regulations and with rates of pay that will affect the Work, and (ix) is properly licensed and will remain properly licensed in order to perform the Contract.
- 42.2 **Inferior Quality.** For the duration of the Warranty Period, Contractor and its Surety unconditionally warrant and guarantee all Work, including all materials, equipment, and service against poor and inferior quality or workmanship.
- 42.3 **Defect Free.** In addition to other warranties and longer time periods which may be provided in the Contract, and as a minimum, the Contractor warrants the Work performed under the Contract is in conformance with the requirements of the Contract, and that the Work is free of defects and deficiencies in design, materials and workmanship and will remain free of defects and deficiencies in design, materials and workmanship for the duration of the Warranty Period.
- 42.4 **Maintenance Obligations.** The Contractor shall perform all service and maintenance on any equipment that is operated prior to the date of the Certificate of Substantial Completion. Start up or use shall not constitute commencement of warranty period. Such service and maintenance shall be performed in accordance with the equipment manufacturer's written instructions, and as required to maintain the equipment warranty.
- 42.5 **Warranty Period.** Unless a longer period is specified in the Contract Documents, the "Warranty Period" shall equal one (1) year from the later of the date (a) of Substantial Completion; (b) on which the warranted material, equipment, service, or Work was fully and satisfactorily installed or performed; or (c) on which defective or non-conforming Work is corrected and passes final inspection.
- 42.6 **Time of Essence.** Time is of the essence of this Contract. Contractor shall repair, replace, and/or correct any inoperable or defective materials, equipment, or work warranted or guaranteed herein in a timely manner. Contractor shall fully and unconditionally warrant and guarantee the quality and workmanship of all materials, equipment, and Work repaired, replaced, and/or corrected during the Warranty Period or Guarantee Period for an additional period of not less than one (1) year from the date of such repair, replacement, and/or correction.
- 42.7 **Not Exclusive Remedy.** The obligations of the Contractor herein shall be in addition to and not in limitation of any obligation imposed upon him by special guarantees required by the Contract Documents or otherwise prescribed by law.
- 42.8 **Correction.** Upon receipt of written notice from the Owner of any non-conformance to the Contract during the applicable warranty period, the Contractor shall promptly correct the affected non-conformance at a time acceptable to the Owner. Nothing contained in this Section 42 shall be construed to establish a period of limitation with respect to the Contractor's obligations under the Contract other than specifically to correct the Work then known by the Owner to be in non-conformance with the Contract, including, but not limited to, defects and deficiencies in design, materials and workmanship (unless furnished by the Owner).
- 42.9 **Not Exclusive Remedy.** The obligations of the Contractor herein shall be in addition to and not in limitation of any obligation imposed upon him by special guarantees required by the Contract Documents or otherwise prescribed by law.
- 42.10 **Inspection.** The Contractor (and requested Subcontractors) shall attend a warranty inspection during the year following Project completion. The inspection will be scheduled by Owner for a date approximately eleven (11) months after Substantial Completion. The Contractor shall take immediate

action to remedy, at no cost to Owner, all warranty items identified during the inspection.

42.11 **Condition of Payment.** The Contractor shall deliver all equipment warranties to Owner as a condition to final payment.

42.12 **Warranty Exclusions Prohibited.**

42.12.1 The Owner will not accept any warranty clause from the Subcontractor or manufacturer that states: (i) that the implied warranties of Merchantability or Fitness for a Particular Purpose are excluded from the Contract; or (ii) that the warranty clause is in lieu of all other warranties that are either expressed or implied.

42.12.2 In addition to the above restrictions, the warranty requirements of the Contract shall exist in a direct extension from the manufacturer to the Owner as well as from the Contractor to the Owner if the manufactured product is sold directly to the Contractor.

43 | REQUIREMENTS PRIOR TO START OF WORK

43.1 **Documentation.** Contractor agrees to provide the following documents within five (5) Normal Working Days of any request from Owner therefor

43.1.1 Written Hazard Communication & Safety Program;

43.1.2 Safety Data Sheets;

43.1.3 Proof of General Liability Certificate;

43.1.4 Proof of Worker's Compensation (SIIS) Insurance;

43.1.5 Performance and Payment Bonds;

43.1.6 Verification that all materials used on campus are asbestos free;

43.1.7 Copies of all filed asbestos surveys and reporting documents.

43.2 **Prerequisite.** NO WORK IS TO BEGIN UNTIL ALL OF THESE DOCUMENTS HAVE BEEN SUBMITTED AND ACCEPTED BY OWNER.

44 | INSPECTION

44.1 **Inspector.** The State Public Works Division (SPWD) and State Fire Marshal (SFM) inspectors have the authority to enforce compliance with the Contract Documents, and to identify non-complying work. The Architect will render interpretations of the Drawings and Specifications as may be necessary to assist the Inspector with proper assessment of non-complying work.

44.2 **Extra Services.** The Contractor will be charged for extra inspection services when (a) any work requiring inspection is performed during time periods other than the Normal Working Day, or (b) re-inspections are required due to a prior failed inspection. The charges shall be based on the current rate of pay for State Inspection Personnel, including any applicable travel and per diem expenses. Charges for extra inspection services hereunder will be processed as deductive Change Order items. The necessity for extra inspection services outside of Normal Working Days will be determined by Owner.

44.3 **Owner Right to Inspect.** Owner and its authorized representatives shall be permitted to inspect the Work materials, payrolls, records of personnel, invoices for materials and other relevant data and work of the Contractor and Subcontractors. Such inspection by Owner or his authorized representatives shall not be considered a warranty as to the fitness or acceptability of the Work, materials, payrolls, records of personnel, invoices for materials and other relevant data and work, and shall not relieve the Contractor or his Subcontractors of their obligations or duties required by the Contract Documents.

44.4 **Non-Responsibility.** Owner will not be responsible for the acts or omissions of the Contractor or any Subcontractor, or any of his or their agents or employees, or any other persons performing any of the Work.

- 44.5 **Notice.** The Contractor shall provide the Owner inspector and the SPWD inspector with a minimum forty-eight (48) hour written notice of all desired inspections.
- 44.6 **Failure to Correct.** If the Contractor fails to correct work which is not in accordance with the requirements of the Contract Documents or fails to carry out work in accordance with the Contract Documents, Owner, by written notice, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.
- 44.7 **Title to Materials.** Owner reserves the right to retain title to all soils, stone, sand, gravel, and other materials developed and obtained from the excavation and from other operations connected with the Work. Unless otherwise specified in the technical specifications, neither the Contractor nor any Subcontractor shall have the right, title, or interest in or to any such materials. The Contractor with the approval of Owner will be permitted to use in the Work without change any such materials which meet the requirements of the Specifications and Drawings.
- 44.8 **Fees.** Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, Owner shall secure and pay for easements and utility connection fees for permanent structures or for permanent changes in existing facilities.
- 44.9 **Information.** Information or services under Owner's control shall be furnished by Owner within a reasonable time to avoid delay in the orderly progress of the Work.
- 44.10 **Right-of-way.** Prior to the start of construction, Owner shall obtain all land and rights-of-way necessary for the carrying out and completion of the Work.

45 | PAYMENTS

- 45.1 **Schedule of Payments.** The Contractor shall prepare and submit a construction schedule of payments of the various portions of the Work to Owner and the Architect. Schedule of payments must include quantities, aggregating to the total Contract Amount, divided so as to facilitate payments to Subcontractors, prepared in such form as required by Owner, and supported by such data to substantiate its correctness as Owner may require. Each item in the schedule of payments shall include its proper share of overhead and profit. This schedule, when approved by Owner and the Architect, shall be the format for each Request for Payment.
- 45.2 **Invoices.** All payment requests and invoices must reference the Purchase Order Number, the Project Number and the Contract Number. Submit invoices as designated in the Purchase Order.
- 45.3 **Interest.** Interest on outstanding amounts shall be payable only as required by NRS Chapter 338.
- 45.4 **Progress Payments**
- 45.4.1 Each Request for Payment shall correctly set forth the value of all work satisfactorily performed to date. Owner may pay the invoiced value of materials properly stored on site or in approved, bonded, and insured warehouses. In no event, however, will the Contractor be paid more than the listed value of each portion of the Work until the Project has been completed.
- 45.4.2 If payment is requested for materials or equipment not incorporated, but delivered and suitably stored at the site or at a bonded and insured warehouse previously approved by Owner, such payment shall be conditioned upon submission by the Contractor of bills of sale, satisfactory to Owner, to establish Owner's title to such materials or equipment, or otherwise protect Owner's interest, including applicable insurance and transportation to the site.
- 45.4.3 The Contractor shall warrant and guarantee that title to all work, materials, and equipment covered by a Request for Payment, whether incorporated into the Project or not, will have passed to Owner prior to the making of the Request for Payment, free and clear of all liens, claims, security interests or encumbrances, and that no work, materials, or equipment covered by a Request for Payment will have been acquired by the Contractor, or by any other person performing the Work at the site or furnishing materials and equipment for the Project, subject to

an agreement under which an interest therein, or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person. This provision shall not be construed to relieve the Contractor of his sole responsibility for the care and protection of the materials and of the Work, and to make restoration of damaged work, or as a waiver of the right of Owner to require the fulfillment of all terms of the Contract Documents.

45.4.4 Except as provided below, Owner shall make payment to the Contractor within thirty (30) Calendar Days of Owner's receipt of a properly submitted Request for Payment accompanied by all supporting documentation required by the Contract Documents.

45.4.5 Owner or the Architect may decline to approve any Request for Payment in whole or in part, or, because of subsequently discovered evidence or subsequent inspections, may nullify the whole or any part of a Request for Payment previously issued to such extent as may be necessary to protect Owner from loss because of:

45.4.5.1 Defective work not remedied;

45.4.5.2 Claims filed or reasonable evidence indicating probable filing of claims;

45.4.5.3 Failure of the Contractor to make payment properly to Subcontractors or for any labor, materials or equipment;

45.4.5.4 Reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount;

45.4.5.5 Damage to another Contractor;

45.4.5.6 Reasonable indication that the Work will not be completed within the Contract Time;

45.4.5.7 Unsatisfactory execution of the Work by the Contractor; or

45.4.5.8 Any other failure of the Contractor to comply with the Contract Documents or any applicable building code, law, or regulation.

45.4.6 In the event Owner or the Architect declines to approve any Request for Payment in whole or in part for any of the reasons stated above, Owner or the Architect, acting in conjunction with the Owner, shall, within twenty (20) Calendar Days of Owner's receipt of a properly submitted Request for Payment, give written notice to the Contractor (i) setting forth the amount of the Request for Payment that will be withheld, and (ii) containing a reasonably detailed explanation of the reason Owner will withhold that amount, including, without limitation, a specific reference to the provision or section of the Contract Documents, or the applicable building code, law, or regulation with which the Contractor has failed to comply..

45.4.7 If Contractor provides Owner with a written notice of the correction of the condition that is the reason for the withholding, signed by an authorized agent of the Contractor, Owner shall, after confirming that the condition has been corrected, pay the undisputed portion of any amount withheld within thirty (30) Calendar Days after Owner receives the next Request for Payment. If Owner or the Architect object to the scope or manner of the Contractor's correction, within thirty (30) Calendar Days after Owner receives the notice of correction Owner or the Architect, acting in conjunction with the Owner, shall notify Contractor of such objection in writing, setting forth the reason(s) for the objection and Owner may continue to withhold the disputed portion of any payment until the condition is corrected.

45.4.8 No payment, nor any partial or entire use or occupancy of the Project by Owner, shall constitute an acceptance of any work not in accordance with the Contract Documents.

45.5 **RETENTION** | Owner shall retain from any progress payment otherwise due Contractor an amount equal to five percent (5%) of the Request for Payment provided, however, that when fifty percent (50%) of the Work required by the Agreement has been performed, then the following shall apply:

45.5.1 If Owner determines that satisfactory progress is being made in the Work, Owner shall continue to withhold any retainage amount withheld from past Requests for Payment, but shall cease withholding retention on subsequent Requests for Payment provided, however, that Owner reserves the right to reinstate the withholding of retention from subsequent Requests for Payment pursuant to the provisions immediately below in the event Owner anytime thereafter determines satisfactory progress is no longer being made;

45.5.2 If Owner determines that satisfactory progress is not being made in the Work and:

45.5.2.1 If there is no failure to comply with the Contract, applicable building codes, laws or regulations, Owner shall pay to the Contractor fifty percent (50%) of the amount of any retainage that was withheld from past Requests for Payment, and the rate of retention withheld from subsequent Requests for Payment shall be reduced to two and one-half percent (2.5%) of the subsequent Request for Payment; or

45.5.2.2 If there is an alleged failure to comply with the Contract, applicable building codes, laws or regulations, Owner shall continue to withhold the full amount of any retainage that was withheld from past Requests for Payment, and the rate of retention withheld from subsequent Requests for Payment shall remain at five percent (5%) of the subsequent Request for Payment.

45.6 **FINAL PAYMENT** | When Owner has received satisfactory evidence that the Work and all requirements of the Contract Documents are fully and satisfactorily completed, Owner will make final payment to the Contractor consisting of the remaining unpaid balance of the Contract Amount due to the Contractor. For Prevailing Wage Projects, such payment cannot be made until Notice of Completion is filed with the Office of the Labor Commissioner.

45.6.1 **Waiver.** Issuance of final payment shall constitute a waiver of all claims by Owner except those arising from:

45.6.1.1 Unsettled claims;

45.6.1.2 Failure of the Contractor to make payment properly to Subcontractors or for any labor, materials or equipment;

45.6.1.3 Warranty issues;

45.6.1.4 Faulty or defective Work;

45.6.1.5 Failure of the Work to comply with the requirements of the Contract Documents;

45.6.1.6 Terms of any special guarantees required by the Contract Documents; or

45.6.1.7 Latent defects in the Work.

45.6.2 **Refund.** If any such claims remain unsatisfied after all payments are made, the Contractor shall refund to Owner all moneys Owner may be compelled to pay in discharging such claims and costs related thereto.

45.6.3 **Release.** The acceptance by the Contractor of final payment shall be and shall act as a full and final release and waiver of all Contractor claims against and all liability of Owner for all things done or furnished in connection with the Work and for every act and neglect of Owner and others relating to or arising out of the Work. No payment, final or otherwise, shall operate to release the Contractor or his Surety from any obligations under the Agreement, the Performance Bond or the Payment Bond. As a condition to receiving final payment, the Contractor shall submit all O&M Manuals, as-built drawings, surety release, and all other close-out documents as may be applicable under the Contract Documents.

46 | SMALL AND LOCAL BUSINESS CONCERNS REPORTING REQUIREMENTS

- 46.1 **MDWDBE.** The Nevada System of Higher Education (Owner) supports equal opportunity for minority owned, women-owned, and other small disadvantaged business concerns (*MDWDBE*) to compete for contracts awarded by Owner. Owner also supports efforts to encourage local businesses to compete for Owner contracts. In some situations, MDWDBE and local business concerns may not have the depth or full capability to meet all the requirements of large contracts. Nevertheless, Owner supports finding opportunities for such MDWDBE and local business concerns to participate as subcontractors or Tier 2 suppliers in large contracts.
- 46.2 **Contract Sum Exceeds \$1,000,000.** For purchase of goods or services that exceed \$1,000,000 the Contractor must provide, at a minimum, annual reports listing expenditures with MDWDBE business concerns and local subcontractors. These reports pertain only to expenditures that are directly attributable to the Owner prime contract. The report should contain the following information:
- 46.2.1 The name, address, phone number, and type of each local, women-owned, minority and/or disadvantaged subcontractor (Tier 2 supplier or local subcontractor). If a business concern meets more than one definition (e.g. local and women-owned, or minority and women owned), that should be identified;
 - 46.2.2 A description of the goods or services purchased; and
 - 46.2.3 The amount of expenditures with the subcontractor attributed to the prime contract for the 12 month period.
- 46.3 **Definitions.**
- 46.3.1 Definition of Local Subcontractor. "Local subcontractor" is intended to mean a business concern that is a) owned 51% or more by Nevada residents, b) is headquartered in Nevada, or c) a majority of employees of the business are Nevada residents.
 - 46.3.2 Definition of Disadvantaged Business Enterprise (DBE). "Disadvantaged Business Enterprise" is intended to mean a business concern owned by a minority or woman that is at least fifty-one percent (51%) unconditionally owned by one or more minority or women individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals. Individuals who certify that they are a member of named groups, i.e. African Americans, Hispanic Americans, American Indians and Alaska Natives (Eskimos and Aleuts) and Asian and Pacific Island Americans are to be considered socially and economically disadvantaged.
 - 46.3.3 Definition of Minority Business Enterprise (MBE). "Minority Business Enterprise" is intended to mean a business concern owned by one or more minority individuals that is at least fifty-one percent (51%) unconditionally owned by one or more minority individuals, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals. Individuals who certify that they are a member of named groups, i.e. African Americans, Hispanic Americans, American Indians and Alaska Natives (Eskimos and Aleuts) and Asian and Pacific Island Americans are to be considered socially and economically disadvantaged.
 - 46.3.4 Definition of Women-Owned Business Enterprise (WBE). "Women-Owned Business Enterprise" is intended to mean a business concern owned by one or more women that is at least fifty-one percent (51%) unconditionally owned by one or more women, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals.
 - 46.3.5 Definition of Veteran/Disabled Veteran Business Enterprise (VDBE). "Veteran/Disabled Veteran

Business Enterprise" is intended to mean a business concern which performs a commercially useful function and is at least 51% owned and controlled by one or more veterans/disabled veterans who have served in the active military and discharged under conditions other than dishonorable.

46.3.6 Definition of Small Business Enterprise (SBE). "Small Business Enterprise" is intended to mean a business concern which performs a commercially useful function, is not owned and controlled by individuals designated as minority, women, veterans, or physically-challenged, and where gross annual sales does not exceed \$2,000,000.

46.4 **Total Spend.** A Contractor with other contracts with UNLV should report in accordance with the above requirements if the aggregate annual spend of UNLV exceeds One Million Dollars (\$1,000,000).

47 | PUBLIC RECORDS. This Contract is a public record and is subject to disclosure without notification pursuant to a valid Nevada Public Records request.

48 | PANDEMIC.

48.1 **COVID-19.** Contractor is responsible for ensuring the Work and the Project Site comply with all directives, mandates, requirements and guidance from Federal, State, and Local authorities relating to COVID-19, including, but not limited to the Governor's Emergency Directive 003, NVOSHA COVID-19 response guidelines for construction, and OSHA 3990-03-2020 Guidance on Preparing Workplaces for COVID-19. These documents can be found on the State of Nevada Department of Business & Industry website at: <https://dir.nv.gov/OSHA/Home/>. Contractor shall post at the Project Site, in a prominent area visible to all Project visitors and workers, the above-referenced documents and any updates thereto, as well as any additional current guidance.

Signatures on following page.

49 | SIGNATURES

IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the Effective Date.

Owner: Board of Regents of the Nevada System of Higher Education on behalf of the University of Nevada, Las Vegas **Contractor:** Insert Full Legal Name

Recommended by:

_____	_____
Musa Pam, CEM, CPE, CHFM	Name: _____ Date _____
Associate Vice President for	Title: _____
Facilities Management	

APPROVED:

BY: _____	_____
Jean M. Vock, Senior Vice President, Business Affairs	Date _____

Exhibit A
Project Description

Insert

EXHIBIT B

Request For Waiver

For Compliance with the Nevada Apprenticeship Utilization Act, 2019

Contract No.: _____ Contractor/Subcontractor: _____

Contact: _____ License Number: _____

Phone: _____ Fax: _____ e-mail: _____

☐ Waiver needed for the following craft(s)/trade(s) _____

as there are no apprentices available from an Apprenticeship Program registered by the Nevada State Apprenticeship Council within the jurisdiction where the public work is to be completed. Please describe why an Apprentice is not available or cannot be provided:

☐ Waiver needed for the following craft(s)/trade(s) _____

as the contractor/subcontractor listed above requested Apprentices from a registered Apprenticeship Program and the request has been denied or not approved within 5 business days. Please describe why an Apprentice is not available or cannot be provided:

☐ Waiver needed for the following craft(s)/trade(s) _____

as the contractor/subcontractor is required to perform uniquely complex or hazardous tasks on the project, as described below, that require the skill and expertise of a journeyman:

Please attach all additional documentation/evidence needed to support the request for waiver.

I affirm I am fully authorized to sign on behalf of the contractor/subcontractor listed above, and that the information provided is true and correct to the best of my knowledge.

Signed: _____ Date: _____

Name and Title: _____